



THE GOVERNMENT OF KENYA
THE NATIONAL TREASURY

**INFRASTRUCTURE FINANCE AND PUBLIC, PRIVATE PARTNERSHIP (IFPPP)
PROJECT**

FINAL VERSION

VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK (VMGF)

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
ACRONYMS & ABBREVIATIONS	5
EXECUTIVE SUMMARY	7
1.1 IFPPP-Phase 1	7
Project Development Objectives	9
Project Components.....	9
Indigenous Peoples Policy OP. 4.10.....	13
Justification For VMGF	14
Policy, Legal and Institutional Issues	17
Development of VMGPs	20
Free, Prior Informed Consultation.....	21
Feedback and Grievance Redress and Management	22
Monitoring.....	23
2 INTRODUCTION.....	25
2.1 IFPPP-Phase 1	25
2.2 Project Description (IFPPP-AF).....	26
2.2.1 <i>Country and sector context/ Project Concept</i>	26
2.3 Sectoral and Institutional Context	27
2.3.1 <i>Proposed Development Objectives (PDOs)</i>	30
2.4 Project Institutional and Implementation Arrangements.....	32
3 METHODOLOGY AND CONSULTATION	36
3.1 Detailed & In-depth Literature Review.....	36
3.2 Interactive Discussions.....	36
4 legal framework and VULNERABLE AND Marginalized GROUPS IN KENYA.....	37
4.1 Constitution of Kenya, 2010	37
4.1.1 <i>Constitutional Implementation</i>	38
4.2 Similarities and Differences between COK and OP. 4.10.....	40
4.3 Similarities and Differences	42
5 POTENTIAL POSITIVE AND NEGATIVE IMPACTS OF IFPPP-AF on VULNERABLE & Marginalized GROUPS.....	45
5.1 Potential Beneficial Impacts.....	45
5.1.1 <i>Government Fiscal Efficiency and Transparency</i>	45
5.1.2 <i>Modernization</i>	46
5.1.3 <i>Reducing risk for the public sector</i>	46
5.1.4 <i>Providing alternative funding/freeing government funds</i>	46
5.1.5 <i>Improved legal, institutional and technical PPP growth environment</i>	46
5.1.6 <i>Increased Private Sector Investment</i>	46
5.1.7 <i>Provide funding to maintain infrastructure overtime</i>	46
5.1.8 <i>Improved economic growth</i>	46
5.1.9 <i>Employment and Improved Service Delivery</i>	46
5.1.10 <i>Increase Water Supply</i>	47
5.1.11 <i>Flood Control and Water Resources Conservation</i>	47
5.2 Potential Adverse Impacts.....	47
5.3 Proposed Mitigation Measures	48
6 SOCIAL ASSESSMENT	52
6.1 Sub Project Investment Screening.....	52
6.1.1 <i>Preparation of Social Screening Form</i>	52
6.2 Social Assessment Process.....	53
6.2.1 <i>Who Conducts the SA</i>	54
6.3 Methodology of Social Assessment	54

6.3.1	Survey/Data Gathering Methods	55
6.3.2	Stakeholder Identification	56
6.3.3	Stakeholder Consultation.....	56
6.3.4	Impact Identification Including Long Term	58
6.3.5	Determination of Mitigation Measures.....	58
6.3.6	Development of strategies for participation of Vulnerable and Marginalized Groups.....	58
6.3.7	Strategies for inclusion of women and youth.....	59
6.3.8	Capacity Building	60
6.3.9	Establish equitable representation of VMGs in decision making organs within IFPPP-AF	60
6.3.10	Steering Committee for sub projects	61
6.3.11	Role of Sub Project Steering Committee.....	61
6.3.12	IP Community Steering Committee.....	61
6.3.13	Role of IP Community Steering Committee	62
6.4	Bank Review of Sub Project Investments	62
7	VULNERABLE AND Marginalized GROUPS PLAN FOR IFPPP-AF	63
7.1	Elements of a Vulnerable and Marginalized Groups Plan.....	63
7.1.1	Vulnerable and Marginalized Groups Plan.....	64
8	STRATEGY FOR ENSURING FREE, PRIOR & INFORMED CONSULTATION WITH Vulnerable & marginalised groups	67
8.1	Methods For Ensuring Consultation.....	67
8.2	Methods for Information Dissemination	68
8.3	Participation and Engagement of VMGs.....	69
9	GRIEVANCES REDRESS MECHANISM	73
9.1	Overview	74
9.2	Grievance Redress Process.....	74
9.2.1	Establishment of Grievance Redress Committee	74
9.2.2	Community Grievance Redress Management Committee	75
9.2.3	Use of Alternative Dispute Resettlement Mechanisms.....	76
9.2.4	Further Redress: Kenya Courts of Law	76
9.2.5	Environment and Land Courts	76
9.2.6	World Bank's Grievance Redress Service.....	76
9.2.7	Complaint Pattern.....	77
9.2.8	Grievance Log.....	77
9.2.9	Monitoring Complaints.....	79
10	Monitoring and reporting arrangements.....	80
10.1	Monitoring and evaluation mechanisms.....	80
10.1.1	Participatory Impact Monitoring.....	81
11	Disclosure arrangements for VMGPs.....	83
11.1	Communication Framework.....	83
11.2	Disclosure.....	83
11.3	Roles and Responsibilities.....	84
11.3.1	IFPPP/PPPU.....	84
11.3.2	Non-Governmental Organizations.....	84
11.3.3	World Bank	84
12	VMGP IMPLEMENTATION BUDGET	85
13	REFERENCE.....	86
14	aNNEXES	87
14.1	Participants List (Vulnerable and Marginalized Groups).....	88
14.2	ANNEX 2. ISSUES RAISED DURING CONSULTATION	89
14.3	PROPOSED NATIONAL PIPELINE PROJECTS TO BE SUPPORTED UNDER IFPPP-AF	96
14.4	ANNEX 2-SOCIAL SCREENING FORM.....	98

14.5	ANNEX 3- CONTENTS VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK.....	99
14.6	ANNEX 4-CONTENTS OF VULNERABLE AND MARGINALIZED GROUPS PLAN (VMGP), OP 4.10.....	100
14.7	ANNEX 5: SAMPLE TERMS OF REFERENCE FOR DEVELOPING A VMGP.....	103
14.8	ANNEX 6- SELECTED PROFILE OF SOME VULNERABLE AND MARGINALIZED GROUPS IN KENYA.....	107
14.8.1	<i>Sengwer</i>	107
14.8.2	<i>Turkana</i>	108
14.8.3	<i>Rendille</i>	109
14.8.4	<i>Gabra</i>	109
14.8.5	<i>Ajuran</i>	110
14.8.6	<i>Maasai</i>	111
14.8.7	<i>Illchamus</i>	111
14.8.8	<i>Aweer/Boni</i>	111
14.8.9	<i>Pokot</i>	112
14.8.10	<i>Endorois</i>	113
14.8.11	<i>Watha</i>	113
14.8.12	<i>The Bajuni</i>	114
14.9	ANNEX 7; SAMPLE FACT SHEET FOR VMGPs; VMGP REVIEW – FACT SHEET FOR VMGPs.....	115
14.10	ANNEX 8; THREE POINT RANK ORDER SYSTEM FOR VMGPs.....	118

ACRONYMS & ABBREVIATIONS

APL	Adaptable Program Lending
BP	Bank Policy
CoK	Constitution of Kenya
CSO	Civil society organizations
DFID	UK Department for International Development
EAs	Environmental Assessments
EIA	Environmental Impact Assessment
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
GDP	Gross Domestic Product
GOK	Government of Kenya
GRM	Grievance Redress Mechanism
HIV/AIDS	Human Immune Deficiency Syndrome
ICT	Information and Communication Technologies
IDA	International Development Association
IE	Impact Evaluation
IFPPP	Infrastructure Finance and Public Private Partnership Program
IPPF	Indigenous Peoples Planning Framework
KNCHR	Kenya National Commission on Human Rights
Ksh	Kenyan Shilling
LA	Land Act 2012
LAC	Land Administration Committees
LACT	Land Acquisition Compensation Tribunal
LLM	live-line maintenance
LRA	Land Registration Act 2012
M&E	Monitoring and Evaluation
MDGs	Millennium Development Goals
MEWNR	Ministry of Environment, Water and Natural Resources
MOF	Ministry of Finance
MTR	Mid-Term Review
NEMA	National Environment Management Authority
NGO	Non-Governmental Organisation
NLC	National Land Commission
NLC	National Land Commission
NLP	National Land Policy
NT	National Treasury
OAF	Officer Administering the Fund
OP	Operational Policy
PAD	Project Appraisal Document
PAP	Project Affected Persons
PDO	Project Development Objective

PFF	Project Facilitation Fund
PIC	Public Information Center
PIU	Project Implementation Unit
PIM	Participatory Impact Monitoring
PIM	Project Implementation Manual
PPA	Purchase Power Agreement (PPA)
PPIAF	Public Private Infrastructure Advisory Facility (PPIAF)
PPP	Public-Private-Partnership
PPPSC	Public-Private-Partnership Steering Committee
PPPU	Public-Private-Partnership unit
PRA	Participatory Rural Appraisal
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
RRA	Rapid Rural Appraisal
SA	Social Assessment
UNDRP	Declaration on the Rights of Indigenous Peoples
US\$	United States Dollars
VMG	Vulnerable and Marginalized Groups
VMGF	Vulnerable and Marginalized Groups Framework
VMGP	Vulnerable and Marginalized Groups Plan
WB	World Bank

EXECUTIVE SUMMARY

The Government of Kenya (GOK) through the National Treasury (NT) is seeking additional financing from the World Bank for the Infrastructure Finance and Public-Private Partnership Program (IFPPP) Additional Financing (AF) to support improvement in the legislative, institutional, financial, fiduciary and technical framework in order to continue in the generation of pipeline of bankable Public-Private-Partnership (P-P-P) projects.

The Government of Kenya National Treasury has prepared a Vulnerable and Marginalized Groups Framework (VMGF¹) for the IFPPP based on the World Bank Operational Policy (OP 4.10) Indigenous People and the applicable laws and regulations of the Government of Kenya. The OP 4.10 is triggered when it is likely that groups that meet criteria of OP 4.10 “are present in, or have collective attachment to the project area” and that such investments may affect such groups. The policy has also now been triggered retrospectively for the parent project.

The VMGF will provide guidance for the process that should be followed in the preparation of the requisite instruments such as the Social Assessment (SA) and the Vulnerable and Marginalized Groups Plans (VMGP).

The project is triggering the policy to ensure that if the project uncovers a sub-project site where IPs are present during implementation of the project, then such cases will be adequately dealt with in line with the policy. In such cases, the policy will be applicable to the specific sub-projects rather than the entire project.

1.1 IFPPP-Phase I

The primary objective of the first phase of the project was to strengthen the country’s PPP framework using the IFPPP APL project which would put in place the necessary foundation for Kenya to realize the benefits of PPPs, including increased private investments in infrastructure, increased employment opportunities, improved service delivery to enterprises and the population in general, and an improved fiscal impact on government from better project preparation, better risk allocation, increased transparency, wider quality control, and greater efficiency.

A total of 14 sub-projects are being prepared under this phase. Preparation entails solely the development of feasibility studies (including preliminary ESIA and RAPs). Should the feasibility determine the sub-project is viable for private sector financing, and upon

¹ The OP 4.10 contemplates that different terminology may be applied in different countries without affecting the application or substance of the policy. It states: “*Indigenous Peoples* may be referred to in different countries by such terms as *indigenous ethnic minorities; aboriginals, hill tribes, minority nationalities, scheduled tribes, or tribal groups.*” The 2010 Constitution of Kenya uses the terms “vulnerable groups” and “marginalized communities” OP

approve of the PPP committee, the sub-project will proceed to procurement for a project sponsor and private sector investment.

11 sub-projects have been subjected to preliminary feasibility detailed designs and preliminary environmental and social impact assessments. Also, preliminary RAPs have been prepared to inform potential private investors who express interest in the investments. It is important to note that private investors will be expected to prepare detailed designs and update of the preliminary safeguards instruments.

Preliminary ESIA and RAP documents have been prepared for the following 11 sub-projects thus far:

1. Nairobi-Mombasa Highway;
2. Nairobi-Nakuru Highway;
3. Second Nyali Bridge;
4. Nairobi Southern Bypass;
5. Nairobi-Thika Highway;
6. Embu University Hostel;
7. Moi University Hostel;
8. Egerton University Hostel;
9. South Eastern Kenya University Hostel;
10. Kenya Technical Training College Hostel; and,
11. Kisumu Port.

Two remaining projects have yet to procure transaction advisors to undertake the feasibility studies: 300 Bed Private Hospital, and Tolling Operator. One remaining project, Olkaria VII is in early stages of a feasibility study. Under the Parent Project, O.P. 4.10 was not triggered, as it was deemed that the sub-projects would all focus on urban and peri-urban areas with no presence of IPs. Because Olkaria VII was recently added to the list of sub-projects, it was determined that the addition of Olkaria VII was justification for triggering OP 4.10 for the Parent Project, as well as the Additional Financing.

IFPPP-Additional Financing (Phase 2) Program Description

Kenya's economic growth remains robust and resilient in recent years amid weakness in the global economy. The country's GDP was estimated at US\$ 63.4 billion as of Oct 2016 (up from US\$ 61.4 billion in 2014), with GDP per capita standing at US\$ 1,377 (up from US\$1,368 in 2014). The growth is projected at 5.9 percent in 2016 from 5.6 in 2015 and strengthening to 6.1 percent by 2018. This is against the backdrop of the significant improvement in external and internal balances, such as falling oil prices; and public investment, mainly in infrastructure (energy and the standard gauge railway).²

² The World Bank Group, Kenya Economic Update: Beyond Resilience – *Increasing Productivity of Public Investments* 2016, Edition No. 14

Project Development Objectives

The overall development objective of this project is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. The potential sub projects under various sectors in this IFPPP-AF are numerous and include “first mover” PPP transactions, which may include construction and rehabilitation projects in the sectors like: Transport (Roads, Airports, Ports, Rail lines), Energy (Geo-thermal energy, Liquefied Natural Gas), Solid Waste (including medical waste), Water and Sanitation (bulk water supply including sanitation, sewerage systems), Health, Education and Housing.

Project Components

The additional financing will consist of three components: 1) Upstream support to PPP Institutions and capacity building; 2) Support to Project Preparation and Procurement; and 3) Support to Project Management

The additional financing provided by the Bank is in the form of Technical Assistance as part of the upstream development of the project. Physical works to construct the PPP sub projects are considered downstream activities that are outside the scope of bank financing.

Component I: Support to Institutional Strengthening

The budget for this component is US\$10 million. This allocation was established based on lessons learned from prior technical assistance projects including the IFPPP project and PPIAF supported activities, an assessment of the remaining institutional strengthening activities following the activities undertaken under the IFPPP and the need for institutional strengthening based on future expected project activities. Current known parallel coordinated support from other donors such as PPIAF and DFID has been taken into account while establishing the allocation. These donors are likely to continue supporting parallel activities through the life of the project.

Component II: Support to Project Preparation and Procurement

The budget for this component is US\$39.5 million. This component will assist the Government of Kenya, at national as well as county level, to prepare well-structured and bankable PPP projects with optimal risk allocation building on the experience in the development of the first mover PPPs under IFPPP.

While transport, education, health and energy will continue to be sectors of focus for the national government, sectors of interest at county level appear to be housing, solid and medical waste management, health services, bulk water supply and distribution, county roads, agriculture, county markets, etc. Funds under this component will be used for engaging consultants for undertaking feasibility assessments, preparation of bid documents and hand-holding during bid-negotiations and other processes leading to commercial and financial close.

This will include the financing of safeguards documents including Environmental and Social Impact Assessments, Resettlement Action Plans or Vulnerable and Marginalized

Groups Plans or any other documents, as needed, and in accordance with, the frameworks (i.e. Environmental and Social Management Framework, Resettlement Policy Framework, Vulnerable and Marginalized Group Framework) that have been prepared. It is expected that these safeguard documents will be implemented during downstream development of the PPP subprojects by the Contracting Authority.

The demand for funds under this component has been gauged based on the following: experience of the project preparation component under IFPPP, an examination of the current and potential pipelines at county and national levels in various sectors, and detailed discussions with government counterparts and coordination within the WBG GPs, including with IFC and MIGA. Potential list of pipeline sub-projects for the AF is in Annex 14.3.

Component III: Support for Program Management

The budget for this component is US\$ 0.5 million. This component will be used to support the Project Implementation Unit that is currently functioning under IFPPP. The PIU will continue to provide the fiduciary, safeguards, and monitoring and evaluation (M&E) expertise required for the implementation of the project in accordance with Bank policies and requirements. This component may include equipment, operating costs, organization and systems development, training, capacity building and technical assistance.

Project Implementation

The Ministry of Finance (MoF) will be the overall implementation agency for the IFPPP project. The Project Facilitation Fund (PFF), established under section 68 of the PPP Act, 2013, will manage day-to-day activities for the IFPPP additional financing project. PFF is as a multi-purpose fund to provide financial support for the implementation of PPP projects under the Act, which may be provided in the form of grants, loans, equity, guarantees and other financial instruments approved by the Cabinet Secretary (CS) from time to time.

PFF will have four windows: i) **Contracting Authorities**³ in the preparation, appraisal and tendering phase of their PPP projects through engagement of consultants (TA) to provide the technical assistance in preparation and appraisal; ii) the activities of the PPP Unit in its delivery of its mandate; iii) extend viability gap finance to PPP projects; and iv) provide a source of liquidity to meet any contingent liabilities arising from a PPP project. PFF will be operationalized during the project implementation phase.

The PPP committee will act as the oversight body of the PFF. An Officer Administering the Fund (OAF) will be designated to manage and administer the Fund. The OAF reports to the Auditor General and has responsibilities of: i) Review and assess requests for Government support in relation to a project and advise the Committee on the

³ “contracting authority”, means a State department, agency, state corporation or county government which intends to have a function undertaken by it performed by a private party;

support that should be accorded in relation to the project; ii) Put in place measures to eliminate constraints limiting the realization of benefits expected from a PPP; and iii) Monitor contingent liabilities and accounting and budgetary issues related to PPPs with the relevant offices within the State department responsible for finance. The OAF be supported by a Secretariat who shall provide technical and administrative support to the OAF. The PPP Unit and PIU supporting the IFPPP Project will be the Secretariat to the Fund/OAF.

The PPP Unit and PIU combined currently have 27 staffs, the majority of which are support and non-technical staff. The unit is planning to recruit additional staffs to have a total staffing number of close to 50, including 29 technical officers. The additional staffing plan aims to enhance the technical capacity in core areas of PPP project development and implementation, such as finance, legal, technical, and procurement; and accelerate program implementation and disbursement. **Figure 1 illustrates** the governance structure of the PFF.

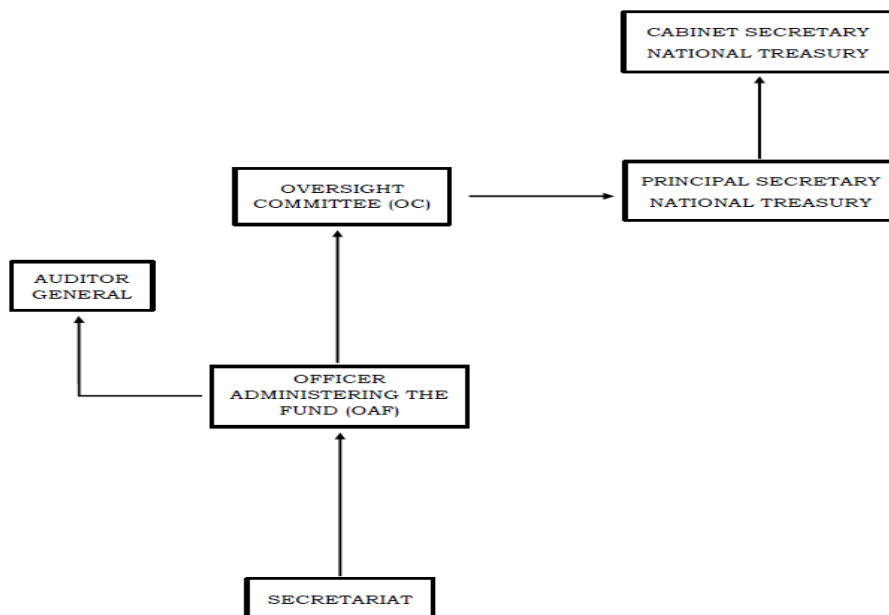


Figure 1: PFF Governance Structure

Role of PPP Institutions in the PPP Process

Implementation of PPPs is based on the National Policy on Public Private Partnerships (PPP). The PPP Policy outlines the roles of the various Ministries and Agencies for the successful processing and implementation of a PPP program. In general, the various institutions will be supporting the following broad functions: (a) PPP awareness building and communication campaign; (b) Individual project sponsorship, design, preparation and execution; (c) Financial management of funded and contingent obligations; (d) Gate-keeping and approval functions, and (e) PPP project advice, support and promotion. Below are the specific roles of the various institutions.

Ministry of Finance (MoF): Is spearheading the development of PPP and is responsible for developing the legal, institutional, and regulatory framework for the PPP program. MoF is also responsible for the issuing of Standardized PPP provisions and PPP Manual/Guidelines for effective management of PPP Projects.

The PPP Steering Committee (PPPSC): This Inter-Ministerial Committee will be responsible, inter alia, for PPP policy guideline formulation, project approvals and monitoring and evaluation oversight. It will be chaired by the Ministry of Finance Principal Secretary and includes, as members, the Principal Secretaries responsible for Government Coordination, National Planning, Lands, Local, and County Government and representative from the Attorney General's office as well as four representatives from outside of Government as appointed by the Cabinet Secretary.

The PPP Unit (PPPU): Currently the PPPU is staffed with a Director and support staff. The proposed organization structure, including an initial scoping of job descriptions and candidates' profiles (taking into account the potential for overlap in the various fundamental roles to be played by the PPPU) has been drafted for consideration by the GoK and is included in **Figure 2 below**. The key role of the PPPU will be coordination of Policy implementation across the participating Ministries and Departments of Government. The PPPU will also manage donor relations in respect of the Policy, serve as the Secretariat to the PPPSC and provide a range of advisory and oversight functions that will be detailed more comprehensively in the detailed organigram currently being prepared by the PPPU (see summary below). In light of the start-up status of the Policy, it is to be expected that these roles and responsibilities will be subject to some fluidity and evolve over time in response to operational effectiveness and efficiency considerations and other lessons learned.

Contracting Authority: The PPP Act of 2013 recognizes Contracting Authorities (CA) as Ministries/Government Departments, County Governments and Statutory Corporations. Their main responsibilities with respect to PPP are to identify, develop, implement and monitor projects. To discharge their responsibilities, procuring entities are required to conduct feasibility studies, prepare bidding documents and seek necessary approvals.

PPP Nodes/Contracting Authority: The PPP Nodes are satellite PPP units present in contracting authorities with a pipeline of projects which will be functionally reporting to the PPPS and administratively reporting to the Contracting Authorities. Their function is to support the development and ensure procurement and contract management of PPPs within the national policy guidelines and implementation of the draft PPP bill, soon to be approved.

MoF- Debt Management Office: The Debt Management Division will ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically, the DMD will be responsible for: (a) Fiscal impact: assessing and managing the long-term fiscal risks and impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other priority national needs; and (b)

Government support: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.

MoF- Budget Division: The Budget Division shall establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. The Division shall therefore ensure that any payments to be made by Ministries and Agencies under the PPP contract are consistent with the national budget. Cabinet shall be the approving authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

Parliament shall be the final approving authority for PPP projects where PPP Projects require the approval of Parliament subject to the provisions of the Schedule to this Policy and detailed regulations to be promulgated. This is to ensure the protection of public interest.

Attorney-General's Department with the assistance and advice of PPPS Legal Expert shall ensure the conformity of all project agreements with Kenyan law.

Regulatory Authorities shall ensure that the PPP contract, insofar as it will have an impact on customer tariffs is consistent with and furthers good regulatory principles.

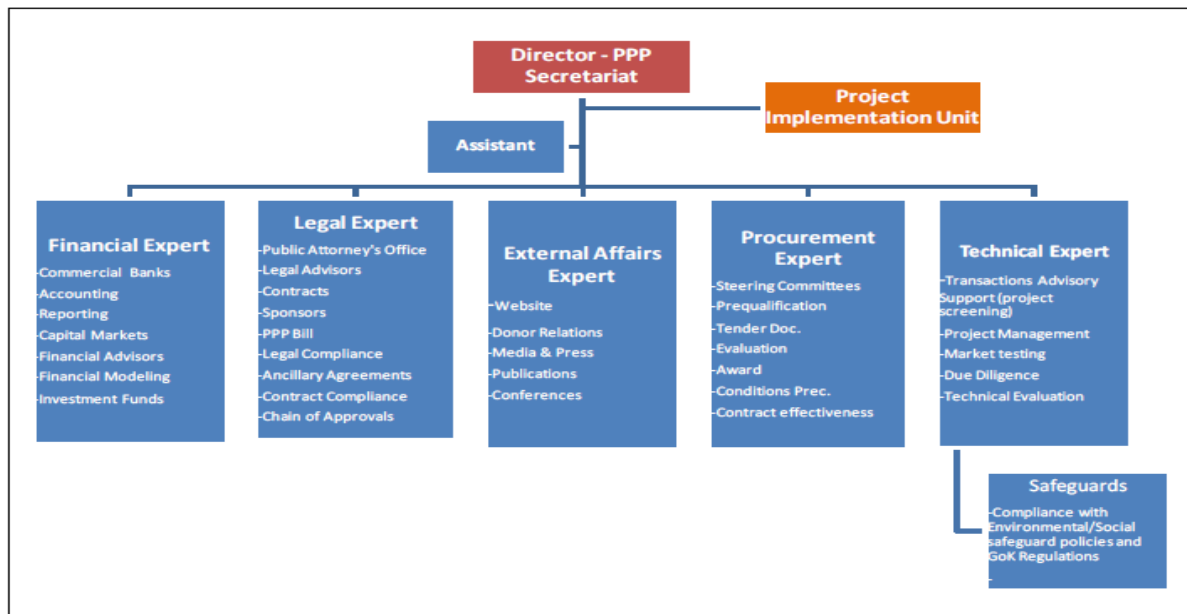


Figure 2: PPPU Organisational Chart

Indigenous Peoples Policy OP. 4.10

The Indigenous Peoples Policy (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 for the project by the affected vulnerable and marginalised groups. Such Bank-financed projects must include measures to;

1. Avoid potentially adverse effects on the Indigenous Peoples' communities; or
2. When avoidance is not feasible, minimize, mitigate, or compensate for such effects
3. Ensure that the vulnerable and marginalised people receive social and economic benefits that are culturally appropriate and gender as well as inter-generationally inclusive.
4. The VMGF must be based on free, prior and informed consultations with indigenous peoples.

Justification For VMGF

A Vulnerable and Marginalised Groups Framework is developed when a proposed project design is not yet finalized and the location of subprojects and their exact impacts are not yet known. This situation applies to all the related proposed sub projects under the IFPPP. At the time of preparation of this VMGF (a) it is not clear yet which feasibility studies will be selected for financing; and (b) final designs are not prepared to confirm the locations and sites. However, a number of pre-feasibility studies have been undertaken and some, if selected, could traverse locations where vulnerable and marginalised groups that meet the criteria of OP 4.10 could be present.

Objective of VMGF

The objectives of OP 4.10 are to avoid, reduce and/or mitigate adverse impacts on vulnerable and marginalised groups and to provide them with culturally appropriate benefits⁴. The VMGF is an instrument used by the Government to guide the preparation of VMGFs when the exact locations, scope and nature of proposed sub-projects remain unknown at the time of project preparation and appraisal.

The upstream activities to be supported by the IFPPP will not be implemented in areas where VMGs are present. This is because the upstream activities to be undertaken relate to financing (a) strengthening institutional and legal frameworks and institutions; (b) support to project preparation and procurement of bankable PPP feasibility project studies; and (c) support to project management of the PIU to continue to provide fiduciary, safeguards and monitoring and evaluation. However, the subsequent funding of the Feasibility Studies will result in concrete sub-projects being financed. As a result of the possible impacts of the downstream subprojects, should VMG presence be found in their area of influence this VMGF will be used to screen for VMGs, undertake social analysis and develop sub-project specific VMGFs if necessary.

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

Table 1: Possible Feasibility Studies to be financed under the IFPPP Additional Finance

S/NO	Project	Project preparation phase to be supported	Estimated Cost (US\$ '000)
National Government			
1	Energy Auction projects	FS + Procurement	3,500
2	300 Bed Private Hospital	Procurement	1,500
3	Nairobi Commuter Rail	FS + Procurement	2,500
4	JKIA Greenfield Terminal	FS + Procurement	3,000
5	Tourism Information Center	FS + Procurement	2,100
TA for 2 nd Wave Tollroads:			
6	Thika -Nanyuki - Lewa	FS + Procurement	7,500@1,500ea
7	Mau Summit - Eldoret - Malaba		
8	Mau Summit - Kisumu		
9	Mombasa - Malindi		
10	Ring Roads -Nairobi		
11	2 nd Umbrella Student Hostels Program		4,000
	Sub-total		24,100
County Government			
1	Nairobi Bulk Water Supply	Procurement	1,500
2	Murangá Water Supply	Procurement	1,500
3	Nakuru Solid Waste Management	Procurement	2,000
4	Potential Affordable Housing projects within the counties- Other counties to be considered other than Nakuru	FS + Procurement	2,400
5	SWM, Health Services, Water Supply, County Roads, Agriculture, County markets	FS + Procurement	3,000
	Sub-total		10,400
	Contingency		4,500
	Total		39,000

The African Commission’s Working Group of Experts on Indigenous Populations and Communities affirms “**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, addresses⁵.**”

⁵ See ACHPR, *Report of the African Commission’s Working Group of Experts on Indigenous Populations*

The IFPPP-AF is countrywide in nature and Kenya is known to have groups that meet the World Bank criteria for indigenous peoples who could be present in, or have collective attachment to, the project areas

In addition to OP 4.10 screening, screening and profiling of marginalized communities and marginalized groups will be done in line with the interpretation of article 260 of the Kenya Constitution of Kenya, 2010 which provides a list of those categorized as Marginalized Communities and Marginalized Groups⁶

A Vulnerable and Marginalised Groups Framework is developed when a proposed project design is not yet finalised so that it is not possible to identify all of the adverse impacts, as is required to prepare a Vulnerable and Marginalised Groups Plan (VMGP).

While many of the PPP sub-projects are in urban or peri-urban areas, it's possible that some investments could be located in areas in the vicinity groups that meet the criteria of OP 4.10 as many of them groups. As a result, the Government of Kenya has prepared a Vulnerable and Marginalised Groups Framework (VMGF) to ensure that the development process fully respects the dignity, human rights, economies, and culture of vulnerable and marginalised people and that the IFPPP-AF sub projects have broad community support from the affected vulnerable and marginalised people.

The VMGF outlines the processes and principles of screening to determine if a proposed sub-project 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 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, 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.

⁶ 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 .

At the same time, this policy, together with the Resettlement Policy Framework (RPF) and Environmental and Social Management Framework (ESMF) already prepared for this IFPPP-AF, recognizes that VMGs can play a vital role in sustainable development and thus efforts should be made to ensure they participate in and benefit from development interventions.

This VMGF is to be used by the National Treasury (NT) under IFPPP-AF 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.

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

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 IFPPP-AF to ensure effective mitigation of potentially adverse impacts while enhancing accruing benefits.

Policy, Legal and Institutional Issues

Vulnerable and Marginalized Groups. There is considerable overlap between groups identified by the government of Kenya as vulnerable and marginalized and groups for whom OP 4.10 is triggered. Similarly, the groups identified both by the government and in the context of Bank-supported operations align with some of the groups that have been identified by the African Commission on Human and Peoples' Rights (ACHPR) in its conceptualization of the notion of indigeneity and what it means in the African context.

Box 1 Profiles of some Groups that self-identify as Indigenous Peoples in Kenya⁷

Hunter Gatherer groups are generally found in the forested areas of the central Rift Valley province, in the western part of the country. Moving south to north, these groups include: the Ogiek (20,000), who live in the Mau Forests; the Sengwer (30,000) of the Cherangany Hills and Kapolet Forest in Trans Nzoia, Marakwet and West Pokot Districts;⁸ and the Yaaku (1,000) who live in the Mukogodo forest west of Mount Kenya, in the Laikipia District. Two more groups are the Watta (a few thousands) who live dispersed in the southern coastal areas of the Coast region, and the Elmolo (a few hundred) who are a small fishing community living on the shores of Lake Turkana, in the northwestern part of the country.

Hunter gatherers are often addressed as *Torobbo*, *Dorobo*, *Ndorobo*, or *Wandorobo*, which are Swahili terms deriving from *Il Torobbo*, the Maasai term for people without cattle, i.e., “poor people” In coastal areas, hunter gatherers are mostly addressed by the Somali term *Boni*, which refers to “someone without any possessions”, and/or *Sanye*, which means “to gather together to use for a general purpose.” The people themselves, however, usually refer to themselves by their own names.

Kenya’s pastoralists mostly occupy the arid and semi-arid lands of Northern Kenya and towards the border between Kenya and Tanzania in the south. They include, moving east to west, the Somali, along the border with Somalia; the Borana, the Rendile, the Gabra, and the Turkana. The Samburu live in the southern part of Northern Kenya. Other pastoralists are found in the southern part of the country, along the Rift Valley: the Maasai, in the southern part in the Narok and Kajiado districts bordering with Tanzania; the Endorois near Lake Bogoria; and the Pokot (100,000) in West Pokot district in the central western part of the country. Some Maasai live in Laikipia, in the center of the county, near Dol Dol. Source: The Indigenous Peoples World 2014 and FPP website.

The groups meet the four OP 4.10 criteria in varying degrees: (1) they self-identify as distinct social and cultural groups, and are identified as such by others; (2) they have collective attachment to geographically distinct habitats or ancestral territories; (3) their customary social, cultural, economic or political institutions are different from those of the dominant groups despite strong forces toward acculturation and assimilation; and (4) they maintain a distinct language from the official Swahili. The OP 4.10 policy is triggered by the identification of groups present that meet the criteria in the policy. It is therefore critical for the project team to undertake on the ground verification (i.e. the screening procedures) to determine if the communities in the project area of impact meet the criteria and whether a VMG plan is required.

Constitutional provisions. The 2010 Constitution of Kenya captures the disadvantaged position of vulnerable and marginalized groups in relation to other dominant communities in Kenya. It “promotes and pledges to protect the diversity of language of the people of Kenya and promotes the development and use of indigenous languages” (Article 7 (3)). It spells out human dignity, equity, social justice, inclusiveness, equality, human rights, nondiscrimination and protection of the marginalized as national values and principles of governance (Article 10 (2)(b)). The Constitution explicitly recognizes marginalized communities, minority, and vulnerable groups and provides the means to address their concerns.

The Constitution requires the state to address the needs of vulnerable groups, including “minority or marginalized” and “particular ethnic, religious or cultural communities” [Article 21(3)]. It also provides for: affirmative action programs and policies for

⁷ The Indigenous World 2014, Indigenous Work Group for Indigenous Affairs, Copenhagen, 2014.

⁸ Rodolfo Stavenhagen, Mission to Kenya UN Doc. A/HRC/4/32/Add.3, 26 February 2007, para. 39.

minorities and marginalized groups [(Articles 27(6) and 56)]; rights of “cultural or linguistic” communities to maintain their culture and language [(Articles 44(2) and 56)]; protection of community land, including “ancestral lands and lands traditionally occupied by hunter-gatherer communities” (Article 63); and an equalization fund to provide basic services to marginalized areas (Article 204).

GOK has, through the National Treasury, prepared this VMGF as the instrument which all the IFPPP-AF investments vulnerability related impacts will be identified, assessed, evaluated and appropriate mitigation, management and monitoring measures, designed and incorporated within the proposed investment itself.

There are 2 other safeguards instruments that will compliment this VMGF and they are: (i) Resettlement Policy Framework (RPF) already prepared and provides standards and procedures for compensation for any land acquisition, assets, or restriction of access to resources that this project and associated investment may require, in accordance with World Bank OP 4.12 – Involuntary Resettlement; and (ii). the Environmental and Social Management Framework (ESMF) in accordance with World Bank OP 4.01.

Environmental and Social Safeguards Requirements

In order to reduce, minimise and mitigate adverse impacts and undue harm of its development projects to the environment, all bank-financed projects are guided by environmental and social policies and procedures commonly referred to as safeguards instruments. A number of Banks’ policies⁹ have been triggered as a result of this project and they include:

1. OP 4.01 (Environmental Assessment),
2. OP 4.12 (Involuntary Resettlement)
3. OP 4. 10 (Indigenous People)
4. OP.4.11 (Physical Cultural Resources),
5. OP 4.09 (Pest Management)
6. OP 4.37 (Safety of Dams)

All safeguards policies of the World Bank require that, before a project is appraised, all relevant framework instruments are prepared and made available for public review at a place accessible to local people (e.g. at County offices, Ministry, etc.) in a form, manner, and language they can understand. The public display of the documents should be advertised in a common local or regional newspaper.

All necessary safeguard documents will be locally disclosed and will also be forwarded to the Bank for disclosure at its Public Information Center (PIC) of the country, if there is one, and at the Bank’s Infoshop.

⁹ The World Bank Safeguard Operational Policies (OPs) are OP4.01 – Environmental Assessment; OP4.04 – Natural Habitats; OP4.09 – Pest Management; OP4.10 Indigenous Peoples; OP4.11 – Physical Cultural Resources; OP4.12 – Involuntary Resettlement; OP4.36 – Forests; OP4.37 Safety of Dams; OP7.50 – Projects on International Waterways; and OP7.60 – Projects in Disputed Areas. See www.worldbank.org/safeguards for more information.

Screening Procedures and VMGP Development

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, and in particular, sub-project site. This screening will be conducted by the safeguards specialists within Project Implementation Unit (PIU) in collaboration with the Contracting Authorities and if needed, consultants with expertise on the social and cultural groups in the project area will be used.

Ideally the screening for VMGs will 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 VMGs are present in, or have collective attachment to the project area or sub-project site, a social/analysis/social assessment will be undertaken by executing partner agencies of IFPPP-AF with direct support of the environmental and social specialists in the PIU to evaluate the projects' potential positive and adverse effects on the VMGs, and to examine project alternatives where adverse effects may be significant. The social analysis will be commensurate to the level of impacts.

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.

Development of VMGPs

The Contracting Authorities (Ministry of County Government) will prepare project (through consultants) specific VMGPs for identified investments once the feasibility study phase of the project has secured funding and detailed designs are available to allow for screening of VMGs in the project area of influence. 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 project framework. **Annex 4** section of this report outlines the contents of a VMGP.

The scale and depth of the VMGPs will depend on the nature and scale of the sub project impact and vulnerability of VMGs. The social analysis/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 Contracting Authority 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, VMGPs 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 with those of the 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. No separate VMGPs will be prepared in such cases.

Free, Prior Informed Consultation

Projects affecting the vulnerable and marginalized, whether adversely or positively, therefore, need to be prepared with care and with the participation of affected communities. The requirements include social analysis to improve the understanding of the local context and affected communities; and, 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 for the project; and development of project-specific measures to avoid adverse impacts and enhance culturally appropriate benefits.

OP 4.10 requires that a process of free, prior, and informed consultation with the affected vulnerable and marginalized communities, on the potential adverse and positive effects of the project, be designed and used in engagements with them.

Free, prior and informed consultation (FPICon), 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, on whether and how these activities should 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 with VMGs and other local civil society organizations (CSOs) identified by the affected VMGs, at each stage of project preparation and implementation of IFPPP-AF.

Free, prior and informed consultations with the vulnerable and marginalized communities will be conducted at each stage of the project, and particularly during sub-project preparation, to fully identify their views and ascertain their broad community support for the project. Participatory consultation with affected households will be undertaken during sub-project planning and implementation stages.

Feedback and Grievance Redress and Management

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.

The Contracting Authority will establish a mechanism to receive and facilitate resolution of affected VMGs concerns, complaints, and grievances about the project's safeguards performance for each subproject in consultation with affected parties and key stakeholder. Under the Grievance Redress Mechanism (GRM), a Grievance Redress Committee (GRC) will be formed for each subproject with involvement of VMGs representative and local stakeholders.

The Feedback and GRCs are to be formed and activated during the VMGPs preparation process to ensure that VMGs are consulted upstream in the design of such mechanism and are able to share their concerns and provide input. The Feedback and GRC should be accessible and assistance to VMGs will be given to document and record the complaint, if necessary. The grievance redress mechanism is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the law courts for resolution which would otherwise take a considerably longer time.

The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances.

From the sub-project level, any grievances can be channelled through 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 Contracting Authority 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 vulnerable 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 their views, providing feedback, 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.

Monitoring

The implementation of VMGPs will be monitored. IFPPP/PIU and the Contracting Authority implementing specific investments will establish a monitoring system involving PIU staff, partner implementing agencies, County governments, and VMGs to ensure effective implementation of VMGP.

A set of monitoring indicators will be determined during VMGP preparation and will be guided by the indicators contained in the document (*see table 3 section 7*). IFPPP/PIU 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 Contracting Authority 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 Contracting Authority will prepare a corrective action plan or an update to the approved VMGP.

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 Contracting Authority 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.

Reporting and Performance Review Requirements

A Project Implementation Unit (PIU) for the IFPPP exists and will continue to exist during the IFPPP-AF phase. The PIU will prepare project specific quarterly reports for submission to the Bank. Technical assistance to the contracting authorities in relation to reporting on safeguards will be provided by the IFPPP-PIU's safeguards advisor who has been recruited for this purpose. These reports will be submitted to the World Bank's implementation support and review missions.

Public Consultations for the Preparation of the VMGF

Stakeholders were identified and consulted as part of the preparation of the VMGF. A stakeholder consultation was held on December 16, during which safeguard instruments prepared for the project, including a VMGF, were presented and consulted upon. Secondly, on 1st February 2017 in Nairobi at the Nairobi Safari Club Hotel, representatives of VMGs from all parts of the country were invited to give their input into this VMGF. A total of 21 VMG representatives from both the hunter-gatherer and pastoralist communities, including 9 women, participated in the consultations. While the VMG representatives broadly supported the project, they raised numerous points for clarification including: (a) the long delay in project preparation to actually implementation of sub-projects; (b) possibilities of IP representation in various oversight bodies of the PPP programs; (c) ensuring implementers adherence to the safeguards documents; (d) need for upstream engagement of VMGs at the upstream stage; (e) legal status of the safeguards instruments; and (f) securing benefit sharing for VMGs. **Annex 1** shows the institutions and stakeholders consulted thus far and the issues and responses from the consultation process.

VMGP Budget

All costs for implementation of VMGPs will be financed by the Contracting Authorities. The costs will be estimated during the feasibility study stage in consultation with community members and relevant government officials. This will be updated after the detailed survey and investigations.

The budget for the implementation of the VMGP will mainly include costs for skills development and self-employment training of the VMGs, implementation of any agreed sub-projects that are targeted at uplifting the VMGs livelihoods, consultation/meetings, information dissemination, NGO hiring for VMGP implementation and monitoring, and instituting a functioning Grievance Redress Mechanism (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 Contracting Authorities 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 PIU staff. In summary there should be adequate budgetary provisions to implement any VMGP where necessary for the subproject development.

2 INTRODUCTION

The Government of Kenya (GOK) through the National Treasury (NT) is seeking additional financing from the World Bank for the Infrastructure Finance and Public-Private Partnership Program (IFPPP) Additional Financing (AF) to support improvement in the legislative, institutional, financial, fiduciary and technical framework in order to continue in the generation of pipeline of bankable Public-Private-Partnership (P-P-P) projects.

2.1 IFPPP-Phase I

The primary objective of the first phase of the project was to strengthen the country's PPP framework using the IFPPP APL project which would put in place the necessary foundation for Kenya to realize the benefits of PPPs, including increased private investments in infrastructure, increased employment opportunities, improved service delivery to enterprises and the population in general, and an improved fiscal impact on government from better project preparation, better risk allocation, increased transparency, wider quality control, and greater efficiency.

A total of 13 sub-projects have been prepared under this phase. Preparation entails development of feasibility studies reports (including preliminary ESIA and RAPs) and procurement of private investor using IFPPP financing but only on projects investments that have been determined as viable during feasibility study stage. These PPP viable projects proceed to procurement of private investors upon clearance by the PPP Committee.

11 sub-projects have been subjected to preliminary feasibility detailed designs and preliminary environmental and social impact assessments. Also, preliminary RAPs have been prepared to inform potential private investors who express interest in the investments. It is important to note that private investors will be expected to prepare detailed designs and update of the preliminary safeguards instruments.

Preliminary ESIA and RAP documents have been prepared for the following 11 sub-projects thus far:

1. Nairobi-Mombasa Highway;
2. Nairobi-Nakuru Highway;
3. Second Nyali Bridge;
4. Nairobi Southern Bypass;
5. Nairobi-Thika Highway;
6. Embu University Hostel;
7. Moi University Hostel;
8. Egerton University Hostel;
9. South Eastern Kenya University Hostel;
10. Kenya Technical Training College Hostel; and,
11. Kisumu Port.

The other remaining 2 projects are still undergoing feasibility studies and safeguards documents are also part of the preparation. Olkaria VI and the 300-private bed hospital at Kenyatta National Hospital.

2.2 Project Description (IFPPP-AF)

2.2.1 Country and sector context/Project Concept

Kenya's economic growth remains robust and resilient in recent years amid weakness in the global economy. The country's GDP was estimated at US\$ 63.4 billion as of Oct 2016 (up from US\$ 61.4 billion in 2014), with GDP per capita standing at US\$ 1,377 (up from US\$1,368 in 2014). The growth is projected at 5.9 percent in 2016 from 5.6 in 2015 and strengthening to 6.1 percent by 2018. This is against the backdrop of the significant improvement in external and internal balances, such as falling oil prices; and public investment, mainly in infrastructure (energy and the standard gauge railway).¹⁰

Despite the positive growth outlook, poverty levels remain high and income distribution is uneven. The World Bank Country Partnership Strategy 2014-18 for Kenya recognizes that 4 out of 10 Kenyans live in poverty, and the richest 10 percent of the population receive 40 percent of the nation's income. Poverty in Kenya continues to be closely associated with poor infrastructure.

Infrastructure and logistics are the backbone of Kenya's long term growth. The Government's second Medium-Term Plan calls for huge investments in infrastructure. In an effort to close the infrastructure deficit, Kenya has quadrupled spending in the infrastructure sector. About half of its capital budget is allocated for infrastructure. This budget increased from about 4.5 percent of GDP to 7 percent of GDP in 2014/2015. However, the gap still remains and more effort is needed to further close the gap.

Private domestic investment remains constrained by high cost of credit (notwithstanding the decline in interest rates) and a challenging business regulatory environment (Kenya ranks 92 in the World Bank's Doing Business rankings). Nonetheless, there has been an increasing investor confidence of prospects in the Kenyan economy, which is reflected in a surged foreign direct investment (FDI) in the recent years (the FDI increased by 52 percent in 2015).

The Kenya Country Partnership Strategy (CPS) 2014-2018 identifies a key opportunity to address this by leveraging private sector resources through innovative public-private partnerships (PPPs), which is currently being implemented through the World Bank Kenya Infrastructure Finance and Public Private Partnership Project (IFPPP), in partnership with the PPP Unit of the National Treasury.

¹⁰ The World Bank Group, Kenya Economic Update: Beyond Resilience – *Increasing Productivity of Public Investments* 2016, Edition No. 14

2.3 Sectoral and Institutional Context

The IFPPP Additional Financing Project supports Kenya’s Vision 2030 and Second Medium Term Plan 2010-2017 (MTP2). Vision 2030 aims to transform Kenya into a newly industrializing, middle-income country whilst making the country globally competitive.¹¹ The vision aspires to “strengthen the framework for infrastructure development and enhance private sector participation in the provision of infrastructure facilities and services strategically complemented by government interventions.” The MTP 2 also addresses the challenges of an inclusive growth model with high cost of infrastructure and calls for infrastructure investments and leveraging of private sector resources.

Unlocking infrastructure gap is the key to increase international competitiveness of Kenya’s national economy, facilitate domestic and international trade, and enhancing the country’s integration into the global economy. One of the top constraints identified by Kenyan businesses are infrastructure services, especially in affordable and reliable power supply, as well as dilapidated transportation infrastructure. Close to 80 percent of firms in Kenya experience losses because of power interruptions. As a consequence, almost 70% of firms have generators, which are costly to obtain and to operate. Similarly, Kenyan companies lose 2.6 percent of their sales because of spoilage and theft during transportation¹².

The country’s current infrastructure funding gap stands at about US\$ 4 billion per annum¹³. Addressing the funding gap in the infrastructure is one of the key enablers to help eliminate inefficiencies and allow the sector to adopt the appropriate financing strategies and technologies. Kenya’s infrastructure budget allocation amounted to KSH 244 billion (or US\$ 2.4 billion) in 2013/14, equivalent to 4.9 percent of GDP¹⁴. Since public resource alone is not sufficient to cover the infrastructure funding gap, the ability to bring in private sector investment would be crucial to tap on the gap.

The Kenyan financial sector is the third largest in sub-Saharan Africa (SSA) and has been relatively stable through recent slowdowns and shocks, both domestic and global. It is comprised of (i) a large banking sector that has leveraged its gains in resilience and growth to establish a notable sub-regional presence; (ii) a relatively large securities market (third in terms of capitalization in SSA and degree of sophistication), and; (iii) a relatively large pensions and growing insurance sector.

The financial system continues to be dominated by a growing banking sector. Total assets of the banking sector amounts to KSH 3.4 trillion (USD 35 billion) in 2015, which accounts for 53 percent of GDP. Credit extended to the private sector amounted to almost 34.8 percent of GDP in 2015. The banking sector is comprised 43 commercial banks, 1 mortgage finance company, 9 deposit taking microfinance institutions (DTMs), 7

¹¹ Kenya Vision 2030 Progress Report

¹² Investment Climate Assessments (ICA 2008)

¹³ Bloomberg, 2014

¹⁴ Kenya Public Expenditure Review Report 2014, Volume 1, the World Bank

representative offices of foreign banks, 105 foreign exchange bureaus, and 2 credit reference bureaus.

The Kenyan capital market is the largest in East Africa and third in terms of capitalization in Sub-Saharan Africa after South Africa and Nigeria. Capital markets are dominated by equities and government bonds, with an incipient, yet fast growing, non-government bond market. A total of 64 companies are listed on the Nairobi Stocks Exchange (NSE) with a total market capitalization of over Ksh 2.3 trillion in the fourth quarter of 2014. The ten largest listed companies, the majority of which are commercial banks, account for over 70 percent of market capitalization and almost 80 percent of traded values. A total of 97 institutions are licensed to operate by the Capital Markets Authority (CMA), including the NSE, a central depository, 12 investment banks, and 10 stockbrokers.

The Government bond market is relatively developed by sub-Saharan Africa Standards. The outstanding government bond market represents about 26 percent of GDP, although volumes remain shallow at around 53 percent of outstanding debt in 2014. There has been considerable improvement in its debt structure, including ongoing efforts to develop an incipient benchmark strategy and a greater and longer-term variety of instruments. Between 2000 and 2014, the debt structure shifted from 78 percent in T-bills and 22 percent in T-bonds to the reverse, 77 percent in T-bonds and 23 percent in T-bills. Significant work is still required to build benchmark bond programs, strengthen associated liability management processes, and develop the secondary markets in order to establish more credible yield curves that can be used as a pricing reference for non-government issues. The secondary bond market liquidity is low, partly as a result of an inefficient market structure, infrastructure and fragmentation in the primary market.

The non-government bond market in Kenya is still in the early stage of development. Outstanding public offers of non-government bonds stood at Ksh.64 billion in 2014, representing only 1% of GDP. There are only a handful of issuers and non-government bonds represent an insignificant holding in institutional investor portfolios, which, in large part is understandably due to the small supply of corporate paper. There is a relatively large variety of issuers represented amongst the issuers but with a general bias towards financial institutions. The longest tenor is 10 years, but most have tenors of between 5 and 7 years. There are gaps in systemically important infrastructure particularly the post-trade infrastructure, which is misaligned with current market needs (processes and institutional arrangements), as well as not being fully in line with international best practice. This makes the trading and settlement processes a stumbling block for further development of the capital markets, in addition to being less attractive to international investors.

Government intervention in the financial sector in Kenya is relatively low. Among the 44 Commercial banks and Mortgage Finance Institution, 5 have certain level of government participation, and 3 are defined by the Central Bank of Kenya (CBK) as

public financial institutions with the majority shareholding owned by Government of Kenya (GoK) and state corporations.¹⁵ These include Consolidated Bank of Kenya (CBOK), Development Bank of Kenya (DBK) and National Bank of Kenya (NBK). The ownership structure of these three commercial banks varies from one to another: While the DBK is 100 percent owned by GoK through the Industrial and Commercial Development Corporation (ICDC, 89.3 percent) and TransCentury Investments, CBOK and NBK are 100 percent by GoK through 11 state-owned financial institutions, which include Deposit Protection Fund (owns 50 percent of CBOK) and National Social Security Fund (owns 48 percent of NBK). Together, these banks have total assets of \$14 billion USD as at December 2013, representing 0.5 percent of total banking sector assets.

In order to support GoK to address the infrastructure financing gap and develop a robust market for private sector financing, the WB launched the IFPPP project, a US\$ 40 million IDA credit that became effective in February 2013 and is currently scheduled to close on December 31, 2017. The IFPPP project was conceived as the first stage of a two-phase Adaptable Lending Program (APL), a lending instrument that no longer exists. The Project Development Objective (PDO) was to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. The specific development objective of the first phase of the Project is to improve the enabling environment to generate a pipeline of bankable PPP projects. The components of the Project are: *Component 1:* Institutional Development and Regulatory Reform. *Component 2:* Preparation of a pipeline of PPP transactions. *Component 3:* Improvement of Fiscal Commitment and Contingent Liability (FCCL) framework associated with PPP projects (especially infrastructure); and *Component 4:* Program Implementation Support.

The IFPPP project has successfully improved the enabling environment and generating a pipeline of bankable PPP projects. Following the enactment of the PPP law in 2013, the project has established well-functioning PPP institutions including a PPP unit and 53 PPP nodes. The project has also built capacity and awareness among key stakeholders, as well as developed 72 PPP pipeline projects. In addition, over 10 large-scale transactions at national level, in the transport, energy, education and health sectors, with an estimated compound capex of USD 4-5 billion are currently under implementation with IFPPP financing.

The implementation for IFPPP is largely on track. The project has now reached a stage of maturity in creating enabling environment, made reasonable progress towards actual transactions, as well as embarked on the next stage of PPPs at subnational and county level.

As mentioned in the earlier section, the IFPPP was initially designed as a two-phase APL project. The overall APL was expected to be a US\$130 million program, comprising US\$40 million for APL1 and US\$90 million for APL2. Given that the APL instrument no longer exists, the proposed additional financing of US\$50 million is

¹⁵ In addition to the 3 banks that are defined as public financial institutions by the CBK, Kenya Commercial Bank (KCB) also has 17.74% of shareholding by the Kenyan Government.

intended to scale up the existing PPP program in Kenya. It will benefit from the sound legal and regulatory framework and well-established institutional capacity that is accomplished under its parent project, help foster private sector investment in a more efficient and sustainable manner, and bridge the country's infrastructure gap in the long run.

The additional financing is anticipated to be used for the following activities:

- Upstream support for PPP Institutions and Capacity Building
- Support for PPP Project Preparation and Procurement
- Support for Project Management

2.3.1 Proposed Development Objectives (PDOs)

The overall development objective of this project is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time.

IFPPP-AF Components

The additional financing will consist of three components: 1) Upstream support to PPP Institutions and capacity building; 2) Support to Project Preparation and Procurement; and 3) Support to Project Management.

The additional financing provided by the Bank is in the form of Technical Assistance as part of the upstream development of the project. Physical works to construct the PPP sub projects are considered downstream activities that are outside the scope of bank financing.

Component I: Support to Institutional Strengthening

The budget for this component is US\$10 million. This allocation was established based on lessons learned from prior technical assistance projects including the IFPPP project and PPIAF supported activities, an assessment of the remaining institutional strengthening activities following the activities undertaken under the IFPPP and the need for institutional strengthening based on future expected project activities. Current known parallel coordinated support from other donors such as PPIAF and DFID has been taken into account while establishing the allocation. These donors are likely to continue supporting parallel activities through the life of the project.

Sub-Component I.A: Upstream Support to PPP Institutions

This sub-component will provide support for the sustainable functioning of the Project Facilitation Fund, the PPPU, the Contracting Authorities and selected county governments. It will specifically support activities focusing on:

- Further policy dialogue and design of strategies and policies relating to specific sectors. This will also include the preparation of standard procurement documentation for sectors where there is a strong potential pipeline such as in the energy, transport, education and health sectors.

- Enhancing the ability of these entities to support project preparation, procurement and implementation, including policy, planning and analysis through embedded advisory (including through resident advisors) and consultancy services. Staffing of the PPPU is still inadequate and needs to be supplemented by embedded advisory services given the increasing number of projects in the pipeline. The PFF in its newly established state would need hand-holding, at least in the initial years, in order to become a sustainable funding source for project preparation, contingent payments and viability gap funding. The competence of the current county team is limited to finance and legal. Creation of the complete spectrum of PPP expertise at county level would require additional support from individuals with technical, sectoral and social and environmental background.
- Review of national law, regulations and policy to support drafting of practice notes and guidelines on application and process at county level. This will include review of policies and related applicable law and regulations vis-à-vis counties to ensure suitability of current frameworks and tools to county PPPs which face unique challenges in their implementation – for example, county PPPs are smaller in scale, have high transaction costs proportionate to total project cost, and face financing constraints due to the risk profile of projects, lower creditworthiness of the entities sponsoring these projects, and overall limited capacity and experience of local investors. Some of the areas that would require review/reform for a customized county-level solution include:
 - Draft County PPP Regulations
 - Draft FCCL Management Framework
 - Draft PPP PFF Regulations
 - Draft PPP Manual

Sub-Component I.B: Support to Capacity Building Activities

This sub-component will provide support for;

- Specific hands-on skill-based and specific project based training to teams within national ministries and county governments to enhance the ability of project teams to support project related activities, including preparation, procurement and implementation. Sector ministries with projects in the pipeline or where there is potential for PPPs and a majority of the 47 counties will be involved in the program which will consist of a structured learning program geared towards creating a moderate level of awareness and understanding of principles, concepts and processes of PPPs. This will also include benchmarking visits to successful projects.
- Preparation of a PPP curriculum and study material for national and county governments.
- Activities relating to PPP certification of government officials at national and county levels
- Public awareness campaigns, workshops and investment conferences to inform external stakeholders on evolving and new policy as well as pipeline status and

projects being brought to market. This will also include bidders' conferences for projects already brought to market.

Component II: Support to Project Preparation and Procurement

The budget for this component is US\$39.5 million. This component will assist the Government of Kenya, at national as well as county level, to prepare well-structured and bankable PPP projects with optimal risk allocation building on the experience in the development of the first mover PPPs under IFPPP. Funds under this component will be used for engaging consultants for undertaking feasibility assessments, preparation of bid documents and hand-holding during bid-negotiations and other processes leading to commercial and financial close. This will include the financing of safeguards documents including Environmental and Social Impact Assessments, Resettlement Action Plans or Vulnerable and Marginalized Groups Plans or any other documents, as needed, and in accordance with, the frameworks (i.e. Environmental and Social Management Framework, Resettlement Policy Framework, Vulnerable and Marginalized Group Framework) that have been prepared. It is expected that these safeguard documents will be implemented during downstream development of the PPP subprojects by the Contracting Authority.

The demand for funds under this component has been gauged based on the following: experience of the project preparation component under IFPPP, an examination of the current and potential pipelines at county and national levels in various sectors, and detailed discussions with government counterparts and coordination within the World Bank Group (WBG) GPs, including with International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The list of potential pipeline sub-projects under the IFPPP Additional Financing is in Annex 14.3

Component III: Support for Program Management

The budget for this component is US\$ 0.5 million. This component will be used to support the Project Implementation Unit that is currently functioning under IFPPP. The PIU will continue to provide the fiduciary, safeguards, and Monitoring and Evaluation (M&E) expertise required for the implementation of the project in accordance with Bank policies and requirements. This component may include equipment, operating costs, organization and systems development, training, capacity building and technical assistance.

2.4 Project Institutional and Implementation Arrangements

The Ministry of Finance (MoF) will be the overall implementation agency for the IFPPP project. The Project Facilitation Fund (PFF), established under section 68 of the PPP Act, 2013, will manage day-to-day activities for the IFPPP additional financing project. PFF is as a multi-purpose fund to provide financial support for the implementation of PPP projects under the Act, which may be provided in the form of grants, loans, equity, guarantees and other financial instruments approved by the CS from time to time. PFF will have four windows: i) contracting authorities in the preparation, appraisal and tendering phase of their PPP projects; ii) the activities of the PPP Unit in its delivery of its mandate; iii) extend viability gap finance to PPP projects; and iv) provide a

source of liquidity to meet any contingent liabilities arising from a PPP project. PFF will be operationalized during the project implementation phase.

The PPP committee will act as the oversight body of the PFF. An Officer Administering the Fund (OAF) will be designated to manage and administer the Fund. The OAF reports to the Auditor General and has responsibilities of: i) Review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project; ii) Put in place measures to eliminate constraints limiting the realization of benefits expected from a PPP; and iii) Monitor contingent liabilities and accounting and budgetary issues related to PPPs with the relevant offices within the State department responsible for finance. The OAF be supported by a Secretariat who shall provide technical and administrative support to the OAF. The PPP Unit and PIU supporting the IFPPP Project will be the Secretariat to the Fund/OAF.

The PPP Unit and PIU combined currently have 27 staffs, the majority of which are support and non-technical staff. The unit is planning to recruit additional staffs to have a total staffing number of close to 50, including 29 technical officers. The additional staffing plan aims to enhance the technical capacity in core areas of PPP project development and implementation, such as finance, legal, technical, and procurement; and accelerate program implementation and disbursement. **Figure 3 illustrates** the governance structure of the PFF.

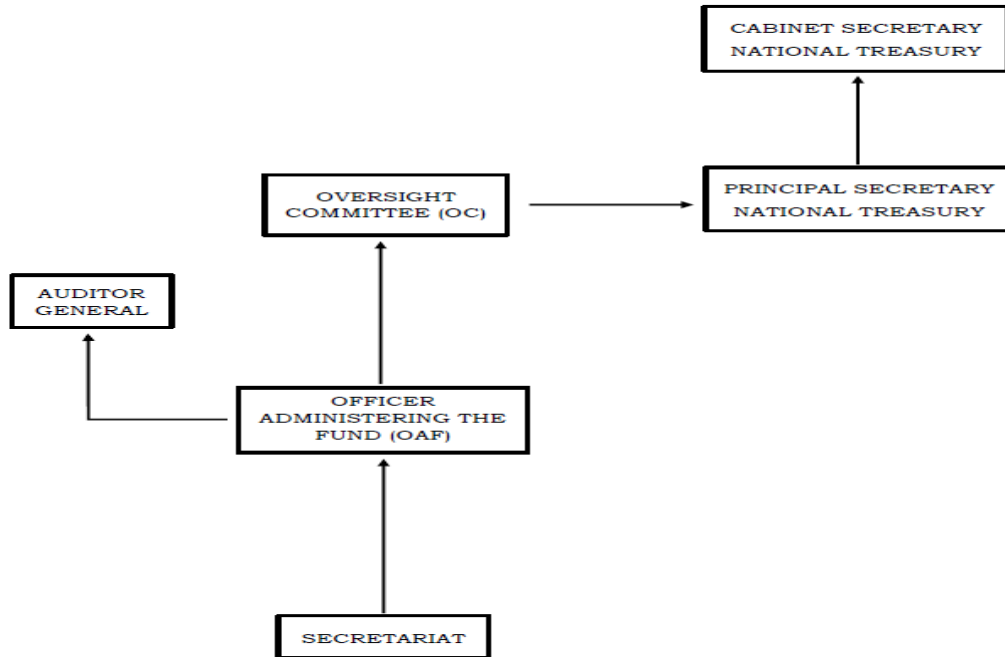


Figure 3. PFF Governance Structure

Role of PPP Institutions in the PPP Process

Implementation of PPPs Based on the National Policy on PPP: The PPP Policy outlines the roles of the various Ministries and Agencies for the successful processing and implementation of a PPP program. In general, the various institutions will be supporting the following broad functions: (a) PPP awareness building and communication campaign; (b) Individual project sponsorship, design, preparation and execution; (c) Financial management of funded and contingent obligations; (d) Gate-keeping and approval functions, and (e) PPP project advice, support and promotion. Below are the specific roles of the various institutions.

Ministry of Finance (MoF), the National Treasury (NT): Is spearheading the development of PPP and is responsible for developing the legal, institutional, and regulatory framework for the PPP program. MoF is also responsible for the issuing of Standardized PPP provisions and PPP Manual/Guidelines for effective management of PPP Projects.

The PPP Steering Committee (PPPSC): This Inter-Ministerial Committee will be responsible, inter alia, for PPP policy guideline formulation, project approvals and monitoring and evaluation oversight. It will be chaired by the Ministry of Finance Principal Secretary and includes, as members, the Principal Secretaries responsible for Government Coordination, National Planning, Lands and County Government and representative from the Attorney General's office as well as four representatives from outside of Government as appointed by the Cabinet Secretary.

The PPP Unit (PPPU): Currently the PPPU is staffed with a Director and support staff. The proposed organization structure, including an initial scoping of job descriptions and candidates' profiles (taking into account the potential for overlap in the various fundamental roles to be played by the PPPU) has been drafted for consideration by the GoK and is included in **Figure 4 below**. The key role of the PPPU will be coordination of Policy implementation across the participating Ministries and Departments of Government. The PPPU will also manage donor relations in respect of the Policy, serve as the Secretariat to the PPPSC and provide a range of advisory and oversight functions that will be detailed more comprehensively in the detailed organigram currently being prepared by the PPPU. In light of the start-up status of the Policy, it is to be expected that these roles and responsibilities will be subject to some fluidity and evolve over time in response to operational effectiveness and efficiency considerations and other lessons learned.

PPP Nodes/Contracting Authority: The PPP Nodes are satellite PPP units present in contracting authorities with a pipeline of projects which will be functionally reporting to the PPPS and administratively reporting to the Contracting Authorities. Their function is to support the development and ensure procurement and contract management of PPPs within the national policy guidelines and implementation of the draft PPP bill, soon to be approved.

MoF- Debt Management Office: The Debt Management Division will ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically,

the DMD will be responsible for: (a) Fiscal impact: assessing and managing the long-term fiscal risks and impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other priority national needs; and (b) Government support: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.

MoF- Budget Division: The Budget Division shall establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. The Division shall therefore ensure that any payments to be made by Ministries and Agencies under the PPP contract are consistent with the national budget.

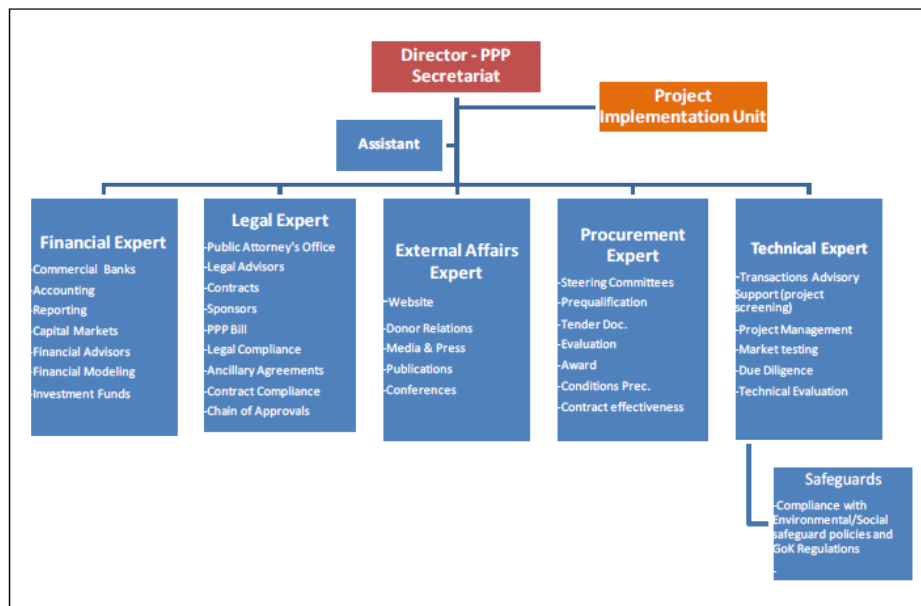
Cabinet shall be the approving authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

Parliament shall be the final approving authority for PPP projects where PPP Projects require the approval of Parliament subject to the provisions of the Schedule to this Policy and detailed regulations to be promulgated. This is to ensure the protection of public interest.

Attorney-General's Department with the assistance and advice of PPPS Legal Expert shall ensure the conformity of all project agreements with Kenyan law.

Regulatory Authorities shall ensure that the PPP contract, insofar as it will have an impact on customer tariffs is consistent with and furthers good regulatory principles.

Figure 4: PPPU Organization Chart



3 METHODOLOGY AND CONSULTATION

3.1 Detailed & In-depth Literature Review

Review of the existing baseline information and literature material was undertaken and helped in gaining a further and deeper understanding of the proposed project. A desk review of the Kenyan legal framework and policies was also conducted in order to identify the relevant legislations and policy documents that should be considered during project implementation. Among the documents that were reviewed in order to familiarise and further understand the project included:

World Bank Related Documents

- *Aide Memoire for the IFPPP-AF*
- *Draft Project Appraisal Document (PAD)*
- *World Bank Safeguards Policies*

Kenyan Legislative Documents

- *Constitution of Kenya*
- *Land Act*
- *NLC Act*
- *Community Land Act*

3.2 Interactive Discussions

Stakeholder consultation formed part of the methodology in preparing this VMGF and entailed organising a stakeholder workshop to deliberate on the draft safeguards instrument. The issues raised and concerns expressed including possible mechanisms of addressing these issues and concerns are appended as **Annex 1** of this document.

4 LEGAL FRAMEWORK AND VULNERABLE AND MARGINALIZED GROUPS IN KENYA

This section describes the Kenya's legal and institutional framework with respect to vulnerable and marginalised groups and provides an analysis of the similarities and differences between OP 4.10 and Kenya's legal frameworks.

4.1 Constitution of Kenya, 2010

The Government of Kenya uses the term “vulnerable and marginalized groups,” which the 2010 Constitution of Kenya recognizes as groups being in a disadvantaged position in relation to dominant communities in the country.

The 2010 Constitution of Kenya (CoK) 2010 does not provide a definition of indigenous peoples but mentions “marginalized groups” and “marginalized communities.” In this regard, *article 260* of the constitution defines “*marginalized group*” as “*a group of people who, because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4)*.” Article 260 goes on to define a *Marginalized Community* as:

- i. “A community that because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- ii. A traditional community that, out of a need or desire to preserve its unique culture and identify from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- iii. An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter-gatherer economy;
- iv. Pastoral persons or communities, whether they are (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 as a whole.*”

The 2010 Constitution of Kenya captures the disadvantaged position of vulnerable and marginalized groups in relation to other dominant communities in Kenya. It “promotes and pledges to protect the diversity of language of the people of Kenya and promotes the development and use of indigenous languages” (Article 7 (3)). It spells out human dignity, equity, social justice, inclusiveness, equality, human rights, nondiscrimination and protection of the marginalized as national values and principles of governance (Article 10 (2)(b)). The Constitution explicitly recognizes marginalized communities, minority, and vulnerable groups and provides the means to address their concerns.

The Constitution requires the state to address the needs of vulnerable groups, including “minority or marginalized” and “particular ethnic, religious or cultural communities” [Article 21(3)]. It also provides for: affirmative action programs and policies for

minorities and marginalized groups [(Articles 27(6) and 56)]; rights of “cultural or linguistic” communities to maintain their culture and language [(Articles 44(2) and 56)]; protection of community land, including “ancestral lands and lands traditionally occupied by hunter-gatherer communities” (Article 63); and an equalization fund to provide basic services to marginalized areas (Article 204).

Article 69(1)(a) compels the State to: “ensure sustainable exploitation, utilization, management, and conservation of the environment and natural resources”, and Article 69(1)(d) requires the state to “encourage public participation in the management, protection and conservation of the environment.”

Article 56 requires the state to “ensure that vulnerable and marginalized groups have reasonable access to water, health services and infrastructure.”³

Representation. Exclusion from participation in the governance and political life of the country. Article 56 states that the State “shall put in place affirmative action programs to ensure that minorities and marginalized groups participate and are represented in governance.”

Article 7(b) obligates the State “to promote the development and use of indigenous languages” and Article 11(2)(a) obliges it to promote all forms of cultural heritage.

4.1.1 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. However, important constitutional provisions alone are not enough. They require a body of enabling laws, regulations and policies to guide and facilitate their effective implementation. In 2011, Kenya’s parliament enacted 22 laws. In the main, these laws are of general application and will have a bearing on the way in which the state exercises power in various sectors, some of them of fundamental importance to indigenous communities.

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.

Additionally, the adoption of a law establishing the Environment and Land Court is important for VMG 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.”

The Revenue Allocation Commission is 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.

Specifically, the its tasks as spelt out in the Constitution include: (i) Recommend on equitable sharing of revenues between National and County Governments; and among Counties, Article 216 (1)(b)); (ii) Recommend on financing and financial management of County Governments (Article 216 (2)); (iii) Define and enhance revenue sources of National Government and County Governments (Art. 216 (3) (b)); (iv) Encourage fiscal responsibility by National and County Governments (Article 216 (3) (c)); and (v) Determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for the purposes of Article 204 (2) (Article 216 (4)).

The constitution has further established the *Equalization Fund as the instrument with which CRA it to achieve its mandate. The objective of the equalization fund is to eradicate marginalization and other forms of economic inequalities in Kenya* and to bring all groups into mainstream development within 20 years from the date of promulgation of the COK, 2010. There is clear overlap between the counties designated as marginalized by the CRA and the location of marginalized groups.

In Article 59 of the Constitution established the Human Rights Commission, the Commission on Administrative Justice and the National Gender Equality Commission which are all tasked with increasing inclusion and equality in accessing services

These similarities and differences between Kenya’s key legal framework (COK) and Bank’s OP. 4.10 are reflected in the table below.

4.2 Similarities and Differences between COK and OP. 4.10

Table 2.3. Similarities between the Kenyan Constitution and OP 4.10

OP 4.10	Constitution of Kenya	Similarity
Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others	<ul style="list-style-type: none"> • Article 10(2): “The national values and principles of governance include: Human dignity, equity, social justice, inclusiveness, equality, human rights, nondiscrimination and protection of the marginalized.” • Article 27(4) prohibits discrimination on any grounds: “the State shall not discriminate directly or indirectly against any person on any ground, including ... conscience, belief, culture, dress, language or birth.” 	The Kenyan Constitution recognizes the existence of diverse and unique cultural communities within its borders, some of whom are marginalized and vulnerable. It does not explicitly mention self-identification of a cultural community as a prerequisite to be considered as vulnerable and marginalized.
Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories	<ul style="list-style-type: none"> • Article 63(1): “Community land shall vest in, and be held by communities identified on the basis of ethnicity, culture or similar community interest.” • Article 63(2): “...Community land consists of ... (d) land that is (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities.” • Article 63(4) protects community land from arbitrary disposal “except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.” 	The Constitution includes a definition of “community land” which states that such land includes that which is held collectively by communities identified on the basis of ethnicity, culture or similar community of interest and is therefore to be protected.
Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture	<ul style="list-style-type: none"> • Article 44. (1): “Every person has the right to use the language, and to participate in the cultural life, of the person’s choice. A person belonging to a cultural or linguistic community has the right, with other members of that community— (a) to enjoy the person’s culture and use the person’s language; or (b) to form, join and maintain cultural and linguistic associations and other organs of civil society. A person shall not compel another person to perform, observe or undergo any cultural practice or rite.” 	The Constitution accepts a person’s right to participate in “cultural life.” If read broadly, the “cultural life” of an individual may include culturally-specific socio-political institutions.
An indigenous language, often different from the official language of the country or region	<ul style="list-style-type: none"> • Article 7(3) (b): “The State shall—(a) promote the development and use of indigenous languages.” 	The Kenyan Constitution upholds the right to speak an indigenous language.

Table 2.3. Continued

OP 4.10	Constitution of Kenya	Similarity
Free, prior and informed consultation leading to broad community support	<ul style="list-style-type: none"> Article 118(1): "Parliament shall— ... (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees." Article 196(1): "A County shall—(a) conduct its business in an open manner, and hold sittings and those of its committees in public; (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees." 	The Kenyan Constitution supports public participation and involvement in government business, but does not explicitly mention the concept of Free Prior and Informed Consultations leading to Broad Community Support.
Mitigation of harm to Indigenous Peoples	<ul style="list-style-type: none"> Article 27(6) provides the means for redressing marginalization and other forms of discrimination: "To give full effect to the realization of rights guaranteed under this Article, the State shall take full legislative and other measures, including affirmative action programs and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination." 	The Kenyan Constitution focuses on efforts to redress past marginalization.
Culturally appropriate benefit-sharing	<ul style="list-style-type: none"> Article 69(1): "The State shall—(a) ensure sustainable exploitation, utilization, management, and conservation of the environment and natural resources, and ensure equitable sharing of the accruing benefits." 	The Kenyan Constitution focuses on equitable benefit-sharing and not on culturally appropriate benefit-sharing.
Grievance redress mechanism	<ul style="list-style-type: none"> Article 67 establishes the National Land Commission whose mandate is: "(e) to initiate investigations on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts." 	The Kenyan Constitution focuses on redressing past grievances. It explicitly encourages the use of traditional dispute resolutions mechanisms in land conflicts.
Recognition and protection of customary land rights of Indigenous Peoples	<ul style="list-style-type: none"> Article 63(4) protects community land from arbitrary disposal "except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively." 	The Constitution provides for mechanisms for the protection of communally held land.

(continued)

Table 2.3. Continued

OP 4.10	Constitution of Kenya	Similarity
Consultation and benefit-sharing related to the commercial development of natural and cultural resources	<ul style="list-style-type: none"> • Article 11(1): “The Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.” • Article 11(2) (a) obliges the state to: “promote all forms of cultural expression through ... arts, traditional celebrations ... and other cultural heritage. Article 11(2) (c) obliges the State to recognize the role of ... and indigenous technologies in the development of the nation.” • Article 11(3): “Parliament shall enact legislation to—(a) ensure communities receive compensation or royalties for the use of their culture and cultural heritage.” • Article 69(1) provides for public participation in the management, protection and conservation of the environment: “The State shall— ... (d) encourage public participation in the management, protection and conservation of the environment.” 	The Constitution focuses on promoting all forms of cultural expression and benefit sharing mechanisms in case their cultural heritage is commercialized.
Consultation and protections to avoid or mitigate the effects of economic and physical displacement of Indigenous Peoples		This issue is not addressed in the Kenyan Constitution.

4.3 Similarities and Differences

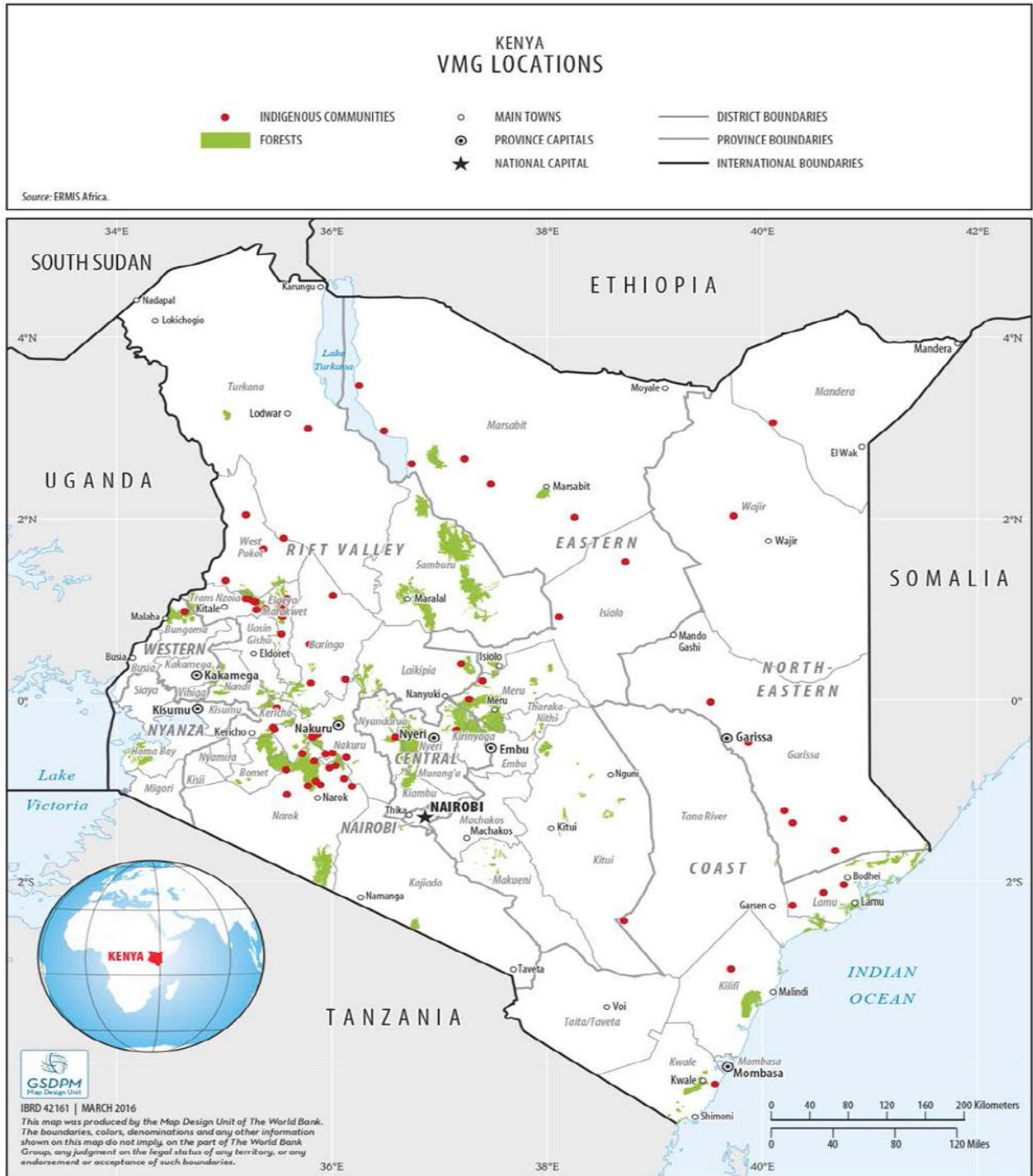
The Constitution of Kenya and other related legislations as shown in the tables above have a lot of similarities with the tenets of OP. 4.10. There is considerable overlap between groups identified by the government of Kenya as vulnerable and marginalized and groups that have triggered OP 4.10. Similarly, the groups identified both by the government and in the context of Bank-supported operations align with some of the groups that have been identified by the African Commission on Human and Peoples’ Rights (ACHPR) in its conceptualization of the notion of indigeneity and what it means in the African context.

Overall, there is no contradiction between the objectives and key principles of the OP 4.10 and the Kenyan Constitution. The implementation of some key Constitutional provisions would create an environment supportive of the application of the application of OP 4.10 in Kenya. Summary Profile of Vulnerable and Marginalized Groups in Kenya which may possibly meet the Criteria of OP.4.10

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’ number 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, Munyoya and Sanye, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. *Annex 8* of this report describes vulnerable and marginalized communities as described by the constitution of Kenya. Figure 5 below illustrates the locations of VMGs in Kenya as per the COK.

Figure 5. Map showing locations of Vulnerable and Marginalized Groups
Map 1.2. Vulnerable and Marginalized Groups: Presence by Region



Source: ERMIS AFRICA, www.ermisafrika.org, 2016.

5 POTENTIAL POSITIVE AND NEGATIVE IMPACTS OF IFPPP-AF ON VULNERABLE & MARGINALIZED GROUPS

World Bank funds will be used to provide technical assistance for upstream activities to prepare bankable PPP sub projects and will not involve physical construction works and will not have any adverse impacts which are associated with physical activities. Physical works will be part of downstream activities that will be undertaken by PPP sub project developer and likely financed by others.

5.1 Potential Beneficial Impacts

The downstream infrastructure development investments to be supported under the Government's Program could include infrastructure for:

- Roads and Bridges
- Multipurpose dams
- Hospitals
- Housing infrastructure for academic institutions and public servants
- Ports
- Convention and conference centres
- Marinas
- Export quarantine stations and livestock export zones
- Special economic zones
- Multi-level car parks
- Shopping centres
- Energy plants (co-generation facilities)
- Solid waste management infrastructures (landfills)
- Coal plants
- Geothermal projects
- Wind power plants
- Solar power plants
- LPG power plants
- Commuter rails systems and infrastructure
- Integrated Marine Transport Systems
- Berths and Container Terminals

5.1.1 *Government Fiscal Efficiency and Transparency*

Improved fiscal impact on government from better project preparation, better risk allocation, increased transparency, wider quality control, and greater efficiency are other positive impacts expected as a result of implementing this project.

5.1.2 Modernization

The private sector is often ahead in deploying modern day technology and business tools for improved efficiency. Through PPP therefore, the public can benefit from more modern technology in infrastructure and associated services.

5.1.3 Reducing risk for the public sector

PPP can help the public sector reduce financial risk by passing the burden of economic performance of infrastructure projects to the private sector

5.1.4 Providing alternative funding/freeing government funds

PPP arrangements attract investors and financial institutions and this helps to mobilize alternative funding for projects that may have been financed by scarce government resources

5.1.5 Improved legal, institutional and technical PPP growth environment

The primary objective of the program is to improve the legislative, institutional, financial, fiduciary and technical framework to generate a pipeline of bankable PPP projects. This is a definite positive impact that will result in improved legal, institutional, financial, fiduciary and technical framework supportive of pipeline bankable PPP projects.

5.1.6 Increased Private Sector Investment

By strengthening this PPP framework, the IFPPP project will put in place the necessary foundation for Kenya to realize the benefits of PPPs, including increased private investments in infrastructure. This framework will allow increasing the availability and quality of infrastructure in different sectors to boost enterprise growth and productivity and improve the wellbeing of Kenyans.

5.1.7 Provide funding to maintain infrastructure overtime

As PPPs are run as revenue generating enterprises, often with loan repayment obligations, there is an underlying driver to maintain the income generating facilities. Indeed, lack of maintenance has been one major reason for Kenya's poor state of infrastructure.

5.1.8 Improved economic growth

Poor infrastructure has been identified as one of the primary causes of poor economic and employment growth in Kenya. If the PPP succeeds therefore, the program will translate to overall measurable economic growth for the country.

5.1.9 Employment and Improved Service Delivery

Increased employment opportunities, improved service delivery to enterprises and the population across the sector in general remains one of the positive benefits that will arise from the IFPPP-AF sub project investments. Under the Kenya Economic Stimulus Programme, emphasis has been placed on applying human labour in projects in order to provide significant employment opportunities. This project is no different and will therefore provide substantive employment opportunities to local populations. It is anticipated that the project will provide direct employment during the construction phase and another operational stage. Indirect employment through aspects such as transportation, infrastructure maintenance, markets, research and marketing will be far much greater and over a longer period of time.

5.1.10 Increase Water Supply

Bulk water supply systems under this program will ensure that the general public in the targeted areas have access to clean water supply a pre-requisite for health and sanitation and a basic right as per the constitution of Kenya including part of the MDGs.

5.1.11 Flood Control and Water Resources Conservation

Flood control sub project activities will have a direct impact on reducing effects of flood disasters like water and sanitation, displacement etc. Flood control effects of the project will free more land for farming as well as prevent destruction of food crops for those farmers who cultivate floodplains during the dry season. This indirect impact will help achieve food security especially for rain depended crops. This is an immediate impact that will be realized during wet season when floods occur. The IFPPP-AF will invest in infrastructures that will be used by local communities' water harnessing and storage.

5.2 Potential Adverse Impacts

The Bank funds will be used to provide technical assistance for upstream activities to prepare bankable PPP sub projects and will not involve physical construction works. Physical works will be part of downstream activities that will be undertaken by PPP sub project developer and likely financed by others.

The downstream implementation of the identified sub projects could to lead to adverse impacts on vulnerable and marginalised groups. . However, even if PPP sub projects are not implemented/constructed under Bank support, the expectation for the GOK (owner of the VMGF) is that the VMGPs prepared under Bank project will be implemented.

Permanent effects - Permanent effects will result into an infinite loss of use of property, vegetation, or land by the affected person as a result of the subproject activities. This is likely to occur where permanent installations are established. Such effects are anticipated to affect:

- Vulnerable groups whose land is found suitable for these infrastructures and this can translate into either loss of land, pasture and crop cover or all. The main activity for land use among IPs in Kenya is subsistence farming dominated by cultivation of crops, bee keeping, hunting wild animals and gathering fruits. The mitigation is for IFPPP-AF sub project investments to avoid the need for land acquisition and displacement of people. Where land acquisition is inevitable, the provisions in the RPF should be followed and if possible, project should consider land owned by GoK to minimize displacement. The above mitigations to minimize the need for new land acquisition should be considered in line with the requirements of the RPF, which has also been prepared for the IFPPP-AF.
- Increase of infectious diseases like HIV/AIDS due to new interactions of communities' with "influx workers" who may be engaged in the construction activities. Sensitization and awareness about HIV/Aids will be carried out as a mitigation measure for reducing incidence of contracting HIV/Aids and other sexually transmitted diseases.

- The above impacts can result in further indirect impacts, including causing the IP and vulnerable groups to be more vulnerable as they could trigger poverty.

Temporal impacts - Temporal impacts will result into an interruption in the current use of property or land by the affected communities or individuals as a result of the sub project activities.

5.3 Proposed Mitigation Measures

To avoid or minimize adverse impacts and, at the same time, ensure enhancement of benefits and full participation of the vulnerable groups, the PIU for the IFPPP-AF in collaboration with the Contracting Authorities should apply the following:

- Ensure that vulnerable groups in general and their organizations are not excluded by any means in activities selection, design, and implementation processes;
- IFPPP/PIU should ensure even distribution of the new facilities in the project areas to ensure that the vulnerable groups get equal share of new facilities in their lands. A coordinated attempt to ensure the equitable distribution of services among neighboring communities will also further reduce the likelihood of raids erupting as a result of newly formed disparities in economic assets and opportunities. Thus, IFPPP-AF /PIU has to be mindful of the potential for harm caused by gaps in service provision;
- IFPPP/PIU should carry out specific assessments of the impact of proposed project on the economic and social development of VMGs and other affected communities as an integral part of the project cycle, through a transparent process with the free and informed participation of the affected communities. IFPPP/PIU has to ensure that the interventions do not unnecessarily and unintentionally exacerbate factors outside the scope of planned impacts;
- Together with VMGS the IFPPP/PIU should carefully screen the activities of all subprojects for a preliminary understanding of the nature and magnitude of potential impacts, and explore alternatives to avoid or minimize any adverse impacts as detailed in the ESMF and RPF;
- Where alternatives are infeasible and adverse impacts on IPs and vulnerable groups are unavoidable, the IFPPP/PIU, together with IPs and others knowledgeable of IP culture and concerns should immediately make an assessment of the key impact issues and possible mitigation measures;
- IFPPP/PIU should undertake the necessary tasks in order to adopt appropriate mitigation measures. The most important in this respect is intensive consultation with the VMG communities, community elders/leaders, civil society organizations like NGOs and others who have experience working with IPs and other vulnerable groups.

A summary of the potential adverse impacts of sub project investments under IFPPP-AF 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

Impact	Possible Actions	Responsibilities and Issues
Loss of access to water and pasture as a result of land acquisition	Ensure that adequate benefits and/or compensation be provided based on agreements reached through free, prior and informed consultations	IFPPP-AF Contracting Authorities will implement any agreements reached under this framework. GOK would provide resources to implement these agreements.
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>	IFPPP-AF and Contracting Authorities
Increased risk of exposure to diseases such as HIV/AIDS and other communicable diseases	Design public health messages and measures to combat spread of diseases	IFPPP-AF /MOH/Contracting Authority
Physical/Economic Displacement of VMGs	<p>No physical displacement of VMGs and thus exclude all sub projects screened and determined to trigger displacement of VMGs</p> <p>Compensate the VMGs who are economically displaced</p>	IFPPP-AF
Loss of traditional livelihoods	Design projects to blend with traditional livelihoods to the extent possible	IFPPP-AF and Contracting Authorities
Encroachment on and degradation of land, territory and natural resources	<p>Provide for meaningful representation of the VMGs in decision making in IFPPP-AF 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.</p> <p>Implement VMGP to re-assert VMGs rights to land and other natural resources affected by the project.</p>	Strict control of migration may not be possible within the context of Kenya where there is no restriction to free movement of citizens.

	Ensure adherence to the project Resettlement Policy Framework. Control in-migration of people from outside the area.	
Participation of women in decision-making processes)	IFPPP-AF Contracting Authorities 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	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 of institutions including attending meetings convened by such institutions.
Increased marginalization and exclusion of the VMGs	Adequate communication framework to ensure VMPs voices are heard, pending issues resolved and grievances heard	IFPPP-AF

6 SOCIAL ASSESSMENT

6.1 Sub Project Investment Screening

Screening of all the IFPPP-AF project investments will be a mandatory requirement prior to implementation to determine if vulnerable and marginalized people are present. The project will take every measure to avoid project-investment involving involuntary resettlement, acquisition or physical relocation of VMGs. .

Early in sub-project preparation, screening will be undertaken 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 groups living in their midst (several VM groups appear to be dispersed among other ethnic groups). In view of which it is necessary to carefully identify who will be adversely affected by subprojects which may well turn out to be part of a VM group or parts of several different groups only some of which are VMGs. This will be done during the screening phase of the sub project implementation.

6.1.1 Preparation of Social Screening Form

The IFPPP/PPPU Safeguards Advisor 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 section*. The OP 4.10 of the World Bank suggests “using the term ‘indigenous peoples’ in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

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

Therefore, during the screening exercise, 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 IFPPP/PIU and Contract Authorities 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 IFPPP/PPPU 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 sub project, a social assessment will be undertaken for those areas.

6.2 Social Assessment Process

If, based on the screening, the IFPPP/PPPU 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 IFPPP/PPPU 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 5 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 in line with national and county laws and regulations 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 supported by training and capacity building to enhance VMGs and community development*

6.2.1 Who Conducts the SA

The social assessment (SA) will be undertaken by social consultants who will be recruited by the Contracting Authorities. 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 analysing the SA, and for leading the development of an action plan with the VMG representatives, 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 alternatives should be considered.

6.3 Methodology of Social Assessment

Combined qualitative and quantitative analysis method

Since a Social Assessment (SA) is comprehensive and involves complex social issues, the projects impacts should be captured and monitored using quantitative and qualitative analysis to capture population structure, educational level and socioeconomic indicators to determine a baseline for monitoring.

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.

Logical 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:

1. **Statistics:** social and economic development statistics of the sub project area; census and sampling population survey data; statistics on social relief.
2. **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
3. **Research findings:** existing research findings on construction planning and other findings related to the Project Design documents related to the Project: project proposals, feasibility study reports and relevant documents
4. **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.
5. **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 offices in collaboration with the IFPPP/PIU Contracting Agencies 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 consultation will include use of indigenous languages, allowing time for consensus building, and selecting appropriate venues to facilitate the articulation by VMGs of their views and preferences. Representatives of the vulnerable and marginalized groups in collaboration with the local administration in the sub project area will select a venue that is considered by way of mutual consensus as appropriate.

Engagement will be based on honest and open provision of information, and in a form that is accessible to VMGs. Engagement will begin at the earliest possible stage, prior to substantive on-the-ground activity implementation. 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, roles and responsibilities under the policy and in the project;*
- *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 IFPPP-AF*
- *Traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully*
- *There is mutual understanding and respect between the IFPPP/PPPU 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:

- Building and operating schools
- Enhancing food security
- 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 to 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/or receive less assistance from governmental services,*
- *Have less capacities to defend their legal rights,*

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 IFPPP/PIU and its Contracting Authorities 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 IFPPP-AF/PPPU and Contracting Authorities will have to consider and apply the following strategies in order to avoid many of these problems associated with VMGs and specifically the IFPPP-AF 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 IFPPP-AF 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 good idea for IFPPP-AF Contracting Authorities 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 IFPPP/PPPU will provide training for the Contracting Authorities 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 IFPPP-AF

The IFPPP/PPPU 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 IFPPP/PIU 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 as per the national laws and requirements 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*

6.3.10 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 (government, CA, CSO and communities) from the area namely;

- County Administrator/representative
- Sub County Administrator
- Representative of CBOs/NGOs active in the area
- Representative of the VMGs
- Women representative from the VMGs
- Youth representative from the VMGs
- Government ministries representatives e.g. Ministry of Lands, Ministry of Environment and Natural Resources, Ministry of Youth and Gender, Ministry Culture and National Heritage etc.
- Consultants (social specialists)
- Representative from the CA e.g. Social Development Specialist

The structure of the Committee will be agreed upon in the particular project sub-locations.

6.3.11 Role of Sub Project Steering Committee

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

- Identification of the VMGs
- Support in undertaking the Social Assessment
- Facilitate meetings with VMGs and consultants
- Recommend mitigation measures for the VMGPs
- Address grievances from VMGs
- Monitor implementation of the VMGPs

6.3.12 IP Community Steering Committee

At the project site level, an all community led and instituted committee excluding the government and other stakeholders will be established to act as the focal point between the communities and the sub project steering committee. This community committee will comprise of:

- Women VMG representative

- Youth VMG representative
- Elder VMG representative
- Men VMG representative
- Business VMG representative
- VMG representative for persons with disability

6.3.13 Role of IP Community Steering Committee

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

- Identification of the VMGs
- Support in undertaking the Social Assessment
- Facilitate meetings with VMGs, Project Steering Committee and consultants
- Recommend mitigation measures for the VMGPs
- Address grievances from VMGs
- Monitor implementation of the VMGPs

6.4 Bank Review of Sub Project Investments

In deciding whether to proceed with the project, the IFPPP-AF 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 IFPPP/PIU 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 IFPPP-AF and Contracting Authorities 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. In cases which require a Resettlement Action plan the Bank will need to review and approve the RAP as per the RPF.

7 VULNERABLE AND MARGINALIZED GROUPS PLAN FOR IFPPP-AF

The constitution of Kenya recognizes a number of communities in various parts of the country as vulnerable and marginalized (*Annex 4*). 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. If the VMGs support the sub-Project implementation a VMGP will be developed.

This Vulnerable and Marginalized Groups Framework 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 projects screened and found to be implemented in areas where VMGs are present or have a collective attachment. The Vulnerable and Marginalized Groups Plan will be prepared in a flexible and pragmatic manner, and its level of detail will vary depending on the specific project and the nature of effects to be addressed.

7.1 Elements of a Vulnerable and Marginalized Groups Plan

All the VMGPs that will be prepared under the IFPPP-AF 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’.

7.1.1 *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 territories, 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 Plan

Issues	Activity	Responsibility	Indicators
Screening	Carry out an inventory of VMGs in the proposed sub project operation areas	IFPPP/PIU and Contracting Authorities/VMGs	Outcome of the Screening Report.
Vulnerable and Marginalized Groups Orientation and Mobilization	Reconnaissance survey Community meetings	IFPPP/PIU and Contracting Authorities / 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	IFPPP/PIU and Contracting Authorities	Information from consultations verified by VMGs and VMGOs as correct and a true representation of their needs and priorities
Mapping of community	Baseline Surveys	IFPPP/PIU and Contracting	Community transect reports

resources critical to VMGs		Authorities /VMGOs	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	IFPPP/PIU Contracting Authorities /VMGOs and	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
Prepare out VMGP(s), if the need arises	If the inventory documents that the proposed sub projects 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	IFPPP/PIU Contracting Authorities /VMGOs and	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 District Level meetings	IFPPP/PIU Contracting Authorities /VMGOs and	Active participation of VMGs in forums VMGs and M&E indicate that representation is satisfactory to the VMGs
Participatory M&E	Internal M&E	IFPPP/PIU and	M&E reports

with VMGs	External M&E	Contracting Authorities /VMGOs	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 partner executing agencies and VMG Organizations	IFPPP/PIU and Contracting Authorities	Participants are able to implement VMGF

8 STRATEGY FOR ENSURING FREE, PRIOR & INFORMED CONSULTATION WITH VULNERABLE & MARGINALISED GROUPS

OP 4.10 requires that a process of free, prior, and informed consultation, with the affected vulnerable and marginalized communities, on the potential adverse and positive effects of the project, during implementation and monitoring and evaluation be designed and used in consultation with the VMGs. 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 with VMGs and other local civil society organizations (CSOs) identified by the VMGs, at each stage of project preparation (feasibility studies), implementation and monitoring and evaluation.

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

8.1 Methods For Ensuring Consultation

Consultation is the continuous process that allows indigenous peoples to express their views, concerns and issues, and also seek clarification of information provided to them and inquire about additional information as needed. Consultation also serves as a mechanism for continuing exchange and interaction between VMGs and other entities to engage in a project towards gaining common understanding, resolving issues and conflicts, and defining terms of engagements and/or agreements in certain cases.

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

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

Adapted from UN Permanent Forum on Indigenous Interests (UNPFII), the Tebtebba Foundation, the International Indian Treaty Council and others.

Consultation in this VMGF will be a two-way flow of information and the exchange of views. This will involve sharing information, garnering feedback and reactions and, in more formal consultation processes, responding to stakeholders about how their recommendations were addressed (including if they were not, why not).

VMGs will have the right to participate through representatives chosen by themselves in accordance with their own procedures and decision-making institutions. Consultations should also take into account the issues of gender.

Consultations with VMGs will be carried out through their own existing processes, organizations and institutions, e.g., councils of elders, headmen and tribal leaders.

A communication and consultation process and plan will be agreed with the VMGs as part of the preparation stage. Nevertheless, it is anticipated that consultation and information exchanges during VMGP preparations for sub projects under IFPPP-AF could occur through the following ways:

1. Meetings with individuals
2. Public meetings,
3. Workshops
4. Soliciting feedback on documents, etc.

Records of consultations and reports on the outcome of the consultations should be prepared and publicly disclosed in a culturally appropriate form, including in local languages.

This will be done with a view toward achieving agreement. It shall be done in a culturally appropriate way when dealing with indigenous peoples and in a manner that respects their norms and traditions related to communications and decisions-making.

To avoid miscommunications, the perpetuation of faulty assumptions and misunderstandings, and to ensure the proper documentation of the consultation and negotiation processes, the parties may agree on mechanisms to summarize their exchanges and any mutual understandings reached at meetings (e.g. the drafting of Meeting Minutes). The documentation of these exchanges could even be acknowledged by the delegations attending the respective meetings with copies maintained by all parties

8.2 Methods for Information Dissemination

The prerequisite to the full and effective participation is the dissemination of timely information at all levels in the forms and manners understood by VMGs and relevant stakeholders, and based on the agreed communication plan or process. Sufficient time should be allocated for them to understand and deliberate on the potential risks and opportunities of projects and their potential role in the processes.

It is important to disseminate accurate information through awareness-raising activities in simple and understandable languages. This can take the form of a series of consultations

and community seminars as required by indigenous peoples' representatives and communities. Only after most of VMGs are informed and an independent process of collective decision-making by the bodies and concerned indigenous communities are undertaken shall a collective decision be made. The collective decision agreed shall be respected and upheld. Likewise, sustained engagement with VMGs shall be established based on the decision of the community/ies.

Forms of information dissemination that are most effective to the level of understanding of the VMGs :

- Info-posters
- Songs/role plays/dramas
- Comics/illustrations
- Video documentaries
- Booklets/briefing papers/leaflets
- Community radio
- Websites
- Country reports

Information should be in their local languages (simple and understandable to indigenous communities). In addition, sufficient time should be provided to them for better understanding.

8.3 Participation and Engagement of VMGs

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 IFPPP/PIU 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, Contracting Authorities will follow a timetable to consult VMGs 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:

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

Consultations will be carried out at key stages. First, prior to final selection of any subproject located in an area inhabited by VMGs, the IFPPP /PIU 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 social assessment, to 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; immediately prior to and during implementation; and during M&E.

The Contracting Authority will:

- 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.
- 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.
- 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 Contracting Authorities 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 Contracting Authority 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 VMGs 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. This will be affirmed with the VMGs as necessary.

Table 4. VMGs Consultation Matrix

Consultation Stages	Consultation Participants		Consultation	Expected
	Project Authority	VMGs Community	Method	Outcome
Reconnaissance and ground verification of existing and location/sites for sub projects	IFPPP/PIU, 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
Screening of the proposed sub projects	IFPPP/PIU, APs Consultants (Social Scientists) &	VMGs, including likely affected IPs, IP organizations,	Open meetings, focus group discussions, spot interviews, etc.	Identification of major impact issues, feedback from VMGs and

	other stakeholders	community leaders/elders, key informants		would-be affected persons for the civil works
In-depth study of risks and benefits taking into consideration, inter alia the conditions that led to community consensus	IFPPP/PIU, 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
Social Assessment	IFPPP/PIU, 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
Preparation of civil works and VMGP	IFPPP/PIU, 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
Implementation	IFPPP/PIU, 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
Monitoring & Evaluation	IFPPP/PIU, APs, consultants (Social Scientists), NGOs & CBOs	VMGs organizations/ groups and individuals	Formal participation in review and monitoring	Identification and resolution of implementation issues, effectiveness of VMGP

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

1. The project needs to accommodate the most vulnerable and destitute members of VMGs, especially those who have been living in the project area.
2. 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;
3. Assist members of VMGs' to develop their capacity and capability to enable them to participate in proposed sub projects;

4. Explore avenues for creating employment opportunities for VM women and managing labour influx;
5. The project should ensure adequate resources and technical support for the implementation of the action plan for VMGs’.
6. At all stages, culturally appropriate communication methods (verbal and nonverbal, in local language) should be used to ensure meaningful consultation.
7. 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 VMGP
- 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. The GRM should ensure that grievances are addressed at the lowest level possible, to avoid small complaints from snowballing into unmanageable issues.

Vulnerable and marginalized local communities and stakeholders may raise a grievance at all times to the IFPPP/PIU 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 access to amenities and to lifestyles*
- *Loss of livelihood*
- *Violation of human rights*
- *Social dislocation*
- *Failure to Recognize legacy issues and Historical grievance.*

In addition, however, there are some contextual factors that have particular significance for vulnerable and marginalized people and their relations with sub project investments. For example, a lack of respect (perceived or actual) for customary rights or culture, history and spirituality. Similarly, issues around access to and control of land and the recognition of historical injustices and legacy issues around sovereignty are very important for many VMGs should be 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. A clear time schedule will be defined for resolving grievances, ensuring that they are addressed in an appropriate and timely manner, at the lowest level, 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.

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 IFPPP/PIU 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 Contracting Authorities, in consultation with VMGs or their representative organisations, 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) where necessary.

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 Natural Resources, Ministry of Youth and Gender, Ministry Culture and National Heritage etc.
8. Consultants (social specialists)
9. Representative from the Contracting Authority e.g. Social Development Specialist

9.2.2 Community Grievance Redress Management Committee

At the project site level, an all community led and instituted GRM committee, excluding the government and other stakeholders, will be established to act as the first level of grievance redress and the link between the communities and the sub project steering committee. This community committee will comprise of:

- Women VMG representative
- Youth VMG representative
- Elder VMG representative
- Men VMG representative
- Business VMG representative
- VMG representative for persons with disability

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 mechanism 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 the traditional leaders via the GRC solve all disputes in communities after a thorough investigation of the facts. The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances.

Marginalized and vulnerable communities will be provided with a variety of options for communicating issues and concerns, including in writing, orally, by telephone, over the internet or through more informal methods as part of the grievance redress mechanism. In the case of marginalized groups (such as women and young people), a more proactive approach may be needed to ensure that their concerns have been identified and articulated. This will be done, for example, by providing for an independent person to meet periodically with such groups and to act as an intermediary.

Where a third-party mechanism is part of the procedural approach to handling complaints, one option will be to include 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 Contracting Authorities in the IFPPP-AF 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.

9.2.3 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, t leaders solve all disputes in communities after a thorough investigation of the facts using the services of local officials. The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances. All attempts would 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 district authority, who will in turn inform and consult with IFPPP/PIU.

9.2.4 Further Redress: Kenya Courts of Law

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

9.2.5 Environment and Land Courts

The Constitution of Kenya (CoK) has further provided for specific courts to deal with land and environment (Land and Environment Courts) that are charged with playing a vital role in reconciling environmental and land related disputes and these courts will serve as the ultimate stop in the event of disputes or complaints that cannot be resolved through other alternative means. In case of grievances related to environment or land, the VMGs will be free to have recourse to this court.

9.2.6 World Bank's Grievance Redress Service

Communities and individuals who believe that they are adversely affected by a World Bank (WB) supported project may submit complaints to existing project-level grievance redress mechanisms or the WB's Grievance Redress Service (GRS). The GRS ensures

that complaints received are promptly reviewed in order to address project-related concerns. Project affected communities and individuals may submit their complaint to the WB's independent Inspection Panel which determines whether harm occurred, or could occur, as a result of WB non-compliance with its policies and procedures. Complaints may be submitted at any time after concerns have been brought directly to the World Bank's attention, and Bank Management has been given an opportunity to respond.

For information on how to submit complaints to the World Bank's corporate Grievance Redress Service (GRS), please visit <http://www.worldbank.org/GRS>. For information on how to submit complaints to the World Bank Inspection Panel, please visit www.inspectionpanel.org. It is however recommended that a project level grievance mechanism that has been agreed upon by all stakeholders is put in place early, to avoid small matters snowballing into conflicts that may lead to delayed disbursement and implementation.

9.2.7 Complaint Pattern

If a complaint pattern emerges, IFPPP/PPPU Contracting Authorities, Sub County and County administrations, with the traditional leaders will discuss possible re-mediation. 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. IFPPP-AF, county and local 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 VMGPs 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 local, traditional and corporate ways of resolving problems into the complaints mechanism. Systems and procedures must adequately reflect VMGs preferences for direct or indirect interaction, negotiation, debate, dialogue, and application of indigenous traditional management and/or ceremony, with external agents to ensure mutually acceptable processes and outcomes.

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

9.2.8 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 IFPPP/PPPU and CA and copies of the records kept with all the relevant authorities at the County, Sub County and Village level and will be used in monitoring of complaints and grievances.

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

- *Date the complaint was reported;*
- *Date the grievance log was uploaded onto the project database;*
- *Date information on proposed corrective action sent to complainant (if appropriate);*
- *The date the complaint was closed out; and*
- *Date response was sent to complainant.*

Responding to complaints

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

Understanding root causes

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

9.2.9 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 VMGs within project impact areas. M&E should be based on free, prior and informed consultation with the VMGs who should play an integral role in its implementation.

All monitoring activities will principally remain the responsibility of the Contracting Authorities. Each Contracting Authority of the IFPPP-AF 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 IFPPP/PIU.

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 IFPPP-AF 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 PPPU and CA will institute an administrative reporting system that will:

- *Provide timely information about all grievances arising as a result of IFPPP-AF activities;*

- *Identify any grievances that have not been resolved at a local level and require resolution through the involvement of the IFPPP/PIU;*
- *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 IFPPP each year and presented to VMGs for feedback etc., before being handed over to the VMGF-committees at district 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 IFPPP /PIU and the World Bank.

Every year an independent external evaluation will be carried out to further crosscheck the quality and to guarantee that the VMGs' dignity, human rights, economies, and cultures are respected by the IFPPP, 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 district 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 district 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 IFPPP-AF /VMGF

Issues	Indicator	Responsibility	Data Sources
Capacity Building for implementation of VMGF	Number of individuals & institutions trained	IFPPP/PIU	Training workshops reports
Vulnerable and Marginalized Groups Orientation and Mobilization	Number of VMGs meetings; Number of VMGs sensitized	IFPPP/PIU 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	IFPPP/PIU 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	IFPPP/PIU Vulnerable and Marginalized Groups Organizations	Baseline survey reports Community transect reports
Appropriateness of affected assets valuation and compensation	List of compensation List of valuation Bank statements	IFPPP/PIU Vulnerable and Marginalized Groups Organizations	List of compensation List of valuation Bank statements
Development of strategies for participation of VMGs and mitigation measures	Number of projects passed by social screening Number of sub projects implemented	IFPPP/PIU Vulnerable and Marginalized Groups Organizations	IFPPP/PIU reports Contracting Authorities reports
Capacity Building	Types of training Number of Trainings Attendance by VMGs	IFPPP/PIU 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	IFPPP/PIU 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	IFPPP/PIU Vulnerable and Marginalized Groups Organizations	

II DISCLOSURE ARRANGEMENTS FOR VMGPs

The World Bank disclosure policies require that VMGP reports for sub projects are made available to project affected groups, local NGOs, and the public at large. Public disclosure of ESIA documents is also a requirement of the Kenya environmental procedures. NT in collaboration with Contracting Authorities will make available copies of this VMGF on the respective websites and offices of the ministries.

II.1 Communication Framework

In regard to ensuring compliance with the banks' safeguards, the IFPPP/PIU has recruited a safeguard specialist. The specialist will provide technical support and ensure compliance with the VMGF by coordinating and working with the executing institutions in the IFPPP-AF. This communication framework elaborates principles, strategies and structures on how the IFPPP-AF 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 NT, IFPPP/PIU representative, County and Sub County representative and a representative from the VMGs. In addition, in each affected County, sector ministries including Environment and Natural Resources, Lands, Gender, Sports, Culture and Social Affairs will also be in this committee. This committee will provide a linkage between IFPPP, the VMGs and the County/sub 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 IFPPP 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 IFPPP/PIU.

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.

II.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 IFPPP/PIU 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 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 NT 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 IFPPP/PPPU

IFPPP/PPPU 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*

11.3.2 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.

11.3.3 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 IFPPP.

12 VMGP IMPLEMENTATION BUDGET

All costs for implementation of VMGP will be financed by the IFPPP-AF. 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 mainly includes costs for skills development and 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 IFPPP/PIU staff. In summary, there will be adequate budgetary provisions to implement any VMGP where necessary for the sub project development. The Government of Kenya will finance all the cost of the VMGP.

At this stage, it is not possible to estimate the exact number of VMGs who may be affected under IFPPP-AF since the technical designs and details of all investments have not yet been finalized. It is therefore not possible to provide an estimated budget for the total cost of VMGF that may be associated with IFPPP-AF implementation.

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

Table 6: Indicative Budget

	Indicative Budgetary Item	Unit cost (USD)
1.	Stakeholders trainings/ consultation forums on VMGF	50,000
2.	Monitoring and evaluation studies on the implementation of VMGPs under IFPPP-AF	50,000
3.	Evaluation of Livelihood empowerment programs under IFPPP-AF	100,000
4.	IFPPP/VMGPs training manual	50,000
5.	Annual VMGPs audit	20,000
	Total	270,000.00

13 REFERENCE

1. Anderson, Dave (2002) *Eroding the Commons: The Politics of Ecology in Baringo, Kenya, 1890-1963*; James Currey.
2. Anonymous (2001). *Ogiek: Evicted and displaced*. *Nomadic News* 2001(1):17.
3. Anonymous (n.J.) *The Ogiek of Kenya*. <http://www.ogiek.org/indepth/Ogiek.pdf>.
4. African Commission's Working Group of Experts on Indigenous Populations & Communities ACHPR 2005: 114).
5. Blackburn, R. (1974) *The Ogiek and their History*, *Azania* vol 9:132-153.
6. Blackburn, R. (1976) *Ogiek history*. In B. A. Ogot (ed.), *Kenya before 1900*. Nairobi: East African Publishing House.
7. Blackburn, R. (1982) *in the land of milk and honey*. In E. B. Leacock and R. B. Lee (eds.), *Politics and history in band societies*, pp. 283-305. Cambridge: Cambridge University Press.
8. Coldham, S. 1978. *The effect of registration of title upon customary land rights in Kenya*, *J. African Law*, 22(2): 91 - 111.
9. *Constitution of Republic of Kenya, 2010*
10. Francis, Paul & Amuyunzu-Nyamongo, Mary (2005) *Bitter harvest: The social costs of state failure in rural Kenya*. Paper presented at the workshop "New Frontiers of Social Policy: Development in a Globalizing World" Arusha/Tanzania 12th - 15th of December, 2005.
11. *ERMIS Africa Ethnographic Survey of Marginalized Groups, 2005-2012*
12. Gloor, Rolf (1986), *Il Chamus - Njemps*; Zetzwil, Switzerland: Schüch-Verlag, 1986
13. Gloor, Rolf (1986) *Il Chamus - Njemps*; Zetzwil, Switzerland: Schüch-Verlag, 1986
14. *Government of Kenya, 2012, Land Act, Government Printers*
15. *Government of Kenya Kenya's Vision 2030*
16. Huntingford, G. W. B. (1929). *Modern hunters: some account of the Kamelilo-Kapchepkendi Dorobo (Ogiek) of Kenya colony*. *Journal of the Royal Anthropological Institute* 59:333-76.
17. Huntingford, G. W. B. (1954). *The political organization of the Dorobo*. *Anthropos* 49:123-48.
18. *World Bank Indigenous Peoples Policy OP. 4.10*
19. *World Bank Country Partnership Strategy (CPS) for Kenya (March 2010-2012)*.
20. *World Bank 2011, Implementation of the World Bank's Indigenous Peoples Policy A Learning Review (FY 2006-2008)*
21. *UN Human Rights and Indigenous Issues: 92 Organization for the Development of Lamu Communities*

I4ANNEXES

14.1 Participants List (Vulnerable and Marginalized Groups)

See separate annex

14.2 ANNEX 2. ISSUES RAISED DURING CONSULTATION

Consultations on the VMGF for IFPPP AF: February 1, 2017 The Nairobi Safari Club

Issue	Question/Comment	Response
Comments, Questions on the Overall Presentation on PPP		
Regulatory and legal framework for PPP	<ul style="list-style-type: none"> If they are not ready, will the project still go on? 	The project is guided by the PPP Act and other policies such as the WB safeguards
Project preparation timeframe	<ul style="list-style-type: none"> Since 2013 to date, no projects on the ground yet? Preparation time is too long – already five years are gone. How can you fast track it 	Not yet. There are clearly laid down preparation process before a bankable project can be achieved
Energy auction	<ul style="list-style-type: none"> Why Energy Auction 	To identify the lowest bidder with highest technical capability
Identification and implementation of PPP projects	<ul style="list-style-type: none"> Can communities initiate a PPP project? Can the counties do their own PPPs as a way of fast tracking implementation at the county level Who qualifies to participate in PPP, e.g. will it only be outsiders or will Kenyan investors also participate 	Contracting Authorities (e.g. a Ministry, parastatal) or a County Government. But communities are free to propose through the concerned Ministry or County Government
Additional Financing for the PPP project	<ul style="list-style-type: none"> It seems that some Counties are not included in possible pipeline projects – can we add 	<ul style="list-style-type: none"> The National Treasury does not generate project ideas; it is the ministries and county governments. Successful ones are taken back to either the ministry or county government for implementation National Treasury is a facilitator. The only idea generated by the National treasury is to find finances for project preparation on behalf of the ministries or county

		government.
IPs representation at the PPP Committee	<ul style="list-style-type: none"> • Constitution of Kenya calls for affirmative action, so IPs should be directly represented in the PPP Committee to be always available to give advice on VMG issues • There are 4 slots in the PPP Committee for representation of non-government stakeholders. We propose that one is given to VMGs representative 	The PPP institutional structures are a creation of Parliament. The National Treasury representative (Safeguards Focal Point) will forward the recommendation but cannot promise that the law will be amended. What is for certain is that the IPs will be consulted as and when necessary since we have your names
The Proposed Steering Committee	<ul style="list-style-type: none"> • The proposed steering Committee has four slots for non-government stakeholders. This should be filled by people who are independent of government for better representation of non-government stakeholders and robustness in decision-making. • One of the four slots should be IP given to IPs. • The IP representative would be recommended by the IP network and appointed by the CS 	
Open Discussions: Questions, Comments on VMGF/IP Issues		
Adherence to safeguard instruments	<ul style="list-style-type: none"> • What happens if the financier does not adhere to safeguards requirements, do we have legislation that deals with safeguards? 	<ul style="list-style-type: none"> • Kenya has legislation on safeguards. • In addition, during preparation, international safeguards best practices, and for this project, the World Bank's safeguard policies are taken into

		<p>account.</p> <ul style="list-style-type: none"> • It is expected that the private financier or government will adhere to the implementation of safeguard instruments developed under the preparation phase of this project
<p>Free, Prior and Informed Consultations and representation of VMGs</p>	<ul style="list-style-type: none"> • At what point do VMG representatives come in? • What is the critical control point for discussion the issues of IPs, e.g. with regard to projects that have gone through feasibility studies, how do IPs come in to make their contribution? • At what point are the communities consulted during the project cycle • During critical consultation stages, go to the real people, not just their representatives and avoid getting involved into the local politics • Need for a national IPs body that is co-opted into the project cycle from feasibility • IPs are unique stakeholders; can they be presented at the PIU? 	<ul style="list-style-type: none"> • Consultations happen at various levels, starting from feasibility study, through to design, Social Assessment, VMGP or RAP preparation, implementation and monitoring phases. • IPs have various opportunities to be involved through their various structures (voices) at the community, county and national levels. E.g. at the national level, there is the Forest People’s body whose establishment was facilitated by the Bank which brought government and IPs together on NRM issues. <p>This body could be expanded and mandated to engage with the PPP Committee to get to know the various stages of the project, and pass on the information to the county and community level IP representatives to enable engagement at all levels.</p>

Recognition of VMGs	<ul style="list-style-type: none"> • We have issues of recognition; government needs to recognise us • The challenge is that issues of VMGs are not seen as important in projects since the project proponents see them as add-ons, not to be captured early as there is no incentive to do so 	In Bank financed projects, issues of VMGs are taken seriously
GRM/ADR	<ul style="list-style-type: none"> • Mostly men sit in the ADR, could women be incorporated 	2/3 gender rule should be applicable here too
Benefit sharing	<ul style="list-style-type: none"> • Government continues to implement projects in IP territories that have impact on their natural resources but there is no benefit sharing 	<ul style="list-style-type: none"> • Depending on the nature of impact a Bank financed project will have either a RAP, ARAP or VMGP plus livelihoods restoration as mitigation measures • However, benefit sharing from natural resources requires legislation by the government to clearly indicate how the benefit sharing should be done between national and county governments and communities
legality of the safeguard instruments	<ul style="list-style-type: none"> • Are they binding? • What happens if the government fails to honour their commitment 	<p>Yes. Through the Financing Agreement in which the government commits to fulfil all safeguards requirements and instruments</p> <p>There are various levels of grievance redress mechanism within the country – from the community, GRM systems, ADR, GRM systems of the country – to the WB GRS and Inspection Panel. These</p>

		are available to be explored by project stakeholders, including VMGs
Use of different terminologies by the government when implementing Bank or UNDP financed projects	<ul style="list-style-type: none"> • Main challenge is the government seems to have adopted a project approach to IP issues rather than Policy approach. For example, we have situations where the government uses the term “consent” when implementing UNDP supported projects, and “consultation” when implementing Bank financed projects. This is confusing to IPs where is the convergence? • Can this project support the government to prepare a policy framework for IPs 	<p>Need for policy and legal frameworks of dealing with IPs which is above the individual financing agency policies</p> <p>The issue is being addressed by NGECC and already a working committee composed of IP reps, NGECC and other commissions</p> <p>They have gone around the country and are in the process of producing a report</p>
Identification of the vulnerable	<ul style="list-style-type: none"> • Even among the hunter-gatherer and pastoralist communities, there are vulnerable groups 	In any given community, there is always a group that is more vulnerable. These should be identified and captured by the Social Assessment
List of IP communities prepared by ERMIS	<ul style="list-style-type: none"> • Who generated this list. It has gaps (people are not seeing their community) 	<ul style="list-style-type: none"> • The list is indicative and should be treated as a working document. • The National Gender and Equality Commission that is currently working to identify all VMGs in the country may have a more robust list soon
Legality of the terminology the VMG terminology	<ul style="list-style-type: none"> • Article 25 and 26 of the Constitution of Kenya, 2010 talk about international conventions adopted by Kenya. These conventions recognise the term IP, and this is the term that should be used in Kenya. • Article 100 and 260 talk about marginalized communities 	VMG is the terminology that has been agreed between the government and the Bank owing to claims by all Kenyans that they are indigenous. Nevertheless, the all the requirements of OP 4.10, including the four identification criteria, remain intact.

	and marginalized groups. Better to use marginalised communities instead of groups.	
Specific Comments on the VMGF Document		
Pg 16 Screening procedures	This is important for those who have been evicted	Should be noted that provided a community have claims to an area, this should be recognised regardless of whether they live there or not
Pg 20	On monitoring	IPs to be actively involved
Pg 21	VMGF Budget?? – money from government	The budget will be for the VMGP
Pg 45	Can funds under this project be used to support government to come up with IP specific policies	
Pg 60 6.2.1	Project Steering Committee for sub-projects	This is the contact with the community – yet out of about 10, only 2 or three are community. Should be half-half But another layer at the community level equivalent to the NRM VMGCC to provide a community perspective
Community Land Act	Says that in case of community land, a project will only be implemented when the community concerned has agreed directly with the investor – is this still treated under OP4. 12	In the case of Bank financing, the laws of the land governing land acquisition will be diligently followed, and if found to be inadequate, then the Bank policy on involuntary resettlement would be used Include a note that indicates that land issues would be dealt with under OP 4.12
GRM mechanism 9.2.1	Community needs better representation	Community GRM, then half-half at the 2 nd layer
Comments on adequacy of the VMGF		
The purpose of Bank	It is clear that WB is only	

financing for this project	supporting preparation, not implementation of any sub-project	
VMGF	<p>Is robust and has very good provisions on IP issues</p> <p>Document is robust and informative and if implemented as is, should take the VMGs forward</p> <p>Is there a component for capacity building for counties</p>	<ul style="list-style-type: none"> • Implementation of VMGF will depend on the location of sub-projects. Those that are in VMG areas will be subjected to the provisions of this VMGF • Capacity building of communities and their representatives is at the sub-project level and should be included in the VMGP if it is a priority of the VMGs
Facilitation of IPs during implementation of the current project	Most time, IPs are unable to take advantage of this information because we don't have resources to move around. We should be facilitated to be able to move around	The current project is only doing preparatory work. In this regard the feasibility study and design experts are the ones to come to the people. Should they wish to consult stakeholders in a workshop-like forum, they should be able to bear the costs
Adequate time to enable VMG representatives prepare for the consultations such as this one	Next time, give us adequate time; also, send document in advance If a feasibility study is being conducted in our area, do let us know	
Next steps		
Document will be updated, then submitted to the RSA for concurrence and clearance. This will be followed by disclosure, in country and then World Bank's infoshop.		

I 4.3 PROPOSED NATIONAL PIPELINE PROJECTS TO BE SUPPORTED UNDER IFPPP-AF

S/NO	Project	Project preparation phase to be supported	Estimated Cost (US\$ '000)
National Government			
1	Energy Auction projects	FS + Procurement	3,500
2	300 Bed Private Hospital	Procurement	1,500
3	Nairobi Commuter Rail	FS + Procurement	2,500
4	JKIA Greenfield Terminal	FS + Procurement	3,000
5	Tourism Information Center	FS + Procurement	2,100
	TA for 2 nd Wave Tollroads:		
6	Thika -Nanyuki - Lewa	FS + Procurement	7,500@1,500ea
7	Mau Summit - Eldoret - Malaba		
8	Mau Summit - Kisumu		
9	Mombasa - Malindi		
10	Ring Roads -Nairobi		
11	2 nd Umbrella Student Hostels Program		4,000
	Sub-total		24,100
County Government			
1	Nairobi Bulk Water Supply	Procurement	1,500
2	Murangá Water Supply	Procurement	1,500
3	Nakuru Solid Waste Management	Procurement	2,000
4	Potential Affordable Housing projects within the counties- Other counties to be considered other than Nakuru	FS + Procurement	2,400
5	SWM, Health Services, Water Supply, County Roads, Agriculture, County markets	FS + Procurement	3,000
	Sub-total		10,400
	Contingency		4,500
	Total		39,000

14.4 ANNEX 2-SOCIAL SCREENING FORM

To be filled by IFPPP/PIU Team

SOCIAL SCREENING FORM FOR IFPPP-AF 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 If yes exclude from project	<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.

14.5 ANNEX 3- CONTENTS VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK

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

14.6 ANNEX 4-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) 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.

14.7 ANNEX 5: 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;
- Ares 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:

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

L. Schedule and Deliverables

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

M. Technical Proposal Contents

The ToR should require a technical proposal that at least:

5. Demonstrates that the Consultant understands the overall scope and nature of the VMGP preparation work, and what will be required to respond satisfactorily to each component of the ToR;
6. Demonstrates that the Consultant and his proposed team have relevant and appropriate experience to carry out all components of the ToR. Detailed curriculum vitae for each team member must be included;

7. Describes the overall methodology for carrying out each component of the ToR, including desk and field studies, and data collection and analysis methods; and
8. Provides an initial plan of work, outputs, and staff assignments with levels of effort by task.

N. Budget and Payments

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

14.8 ANNEX 6- SELECTED PROFILE OF SOME VULNERABLE AND MARGINALIZED GROUPS IN KENYA

Below are some selected profiles of groups GoK recognizes as vulnerable and marginalized and which have in the past triggered the Bank's OP 4.10 policy criteria for determining indigenosity - through the social assessment at the subproject level.

14.8.1 Sengwer

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

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.

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.

The Embobut forest in the Marakwet district 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

The situation of the Sengwer of the Kapolet forest is not much better. Presently there are 487 Sengwer households living in this settlement scheme in the Kapolet forest (in total over 3,000 acres. 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: There are conflicts with cattle rustlers.

14.8.2 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 former **Turkana District** 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 district 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 districts, 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 district 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. 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

14.8.3 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 migrated southwards into Kenya due to frequent conflicts with the Oromo tribe over pasture and water for their animals

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

Location in the Country: Eastern Province, Marsabit District, between Lake Turkana and Marsabit Mt. The primary towns include Marsabet, Laisamis, Merille, Logologo, Loyangalani, Korr, Kamboi, Ngurunit, and Kargi.

14.8.4 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 District, Lake Baringo south and east shores; Rift Valley Province (Chamus), Baringo District

Livelihood: Gabra are pastoralists who keep and depend on cattle, sheep, goats, donkey, and camels. They solely rely on access to water and pastures for the survival of their livestock. 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.

14.8.5 *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 District 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 districts, 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. 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 Jubbah in Somalia and Region five (5) of Ethiopia.

14.8.6 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. 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 districts

Livelihood:

The Maasai are cattle and goat herders, their economy almost exclusively based on their animal stock, from which they take most of their food: meat, milk, and even blood, as certain sacred rituals involve the drinking of cow blood. Moreover, the huts of the Maasai are built from dried cattle dung. Natural Environment: The ability to graze their cattle over large territories, for example, has diminished considerably in recent years, due to increased urbanization.

14.8.7 Ilchamus

They are originally a pastoralist people who used to live on the mainland but have migrated 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. 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.

14.8.8 Aweer/Boni

The Aweer are a remnant hunter-gatherer group living along the Kenyan coast in Lamu District on the mainland. The Boni people are found in Northeastern Kenya's district of Ijara and Lamu district. Their population is about 4,000. They are nomadic hunter-gatherer tribe of mainly Cushitic origin with a unique characteristic. The community sources its subsistence from forest products such as honey, wild plants/fruits for consumption and medicinal purposes. They're concentrated mainly in Witu, Hindi and

Kiunga divisions. Their population is about 4,000, compared to 25,000 half a century ago.¹⁶ 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. However, with the gazettement of all the forest by the government this has become a source of conflict. The Boni people are known for their unique tradition of whistling to birds that guide them to honey.

Location in the Country: Coast Province, behind Lamu, and Tana River districts in forests; North-Eastern Province, Garissa District. The Aweer/Boni are also best known for its unusual practice of using semi-domesticated birds to find honey, with whistling signals.

The Boni People. The Boni people are found in Northeastern Kenya's district of Ijara and Lamu district. Their population is about 4,000. They are nomadic hunter-gatherer tribe of mainly Cushitic origin with a unique characteristic. The community sources its subsistence from forest products such as honey, wild plants/fruits for consumption and medicinal purposes. They're concentrated mainly in Witu, Hindi and Kiunga divisions. Their population is about 4,000, compared to 25,000 half a century ago.¹⁷ 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. However, with the gazettement of all the forest by the government this has become a source of conflict. The Boni people are known for their unique tradition of whistling to birds that guide them to honey.

14.8.9 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.

Location in the Country: Rift Valley Province, Baringo and West Pokot districts

Livelihood: 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. Currently, Pökoot are semi-nomadic, semi-pastoralists who live in the lowlands west and north of Kapenguria and throughout Kacheliba Division and Nginyang Division, Baringo District. These people herd cattle, sheep, and goats and live off the products of their stock. The other half of the Pökoot are agriculturalists who live anywhere conditions allow farming. Mixed farming is practiced in the areas of

¹⁶ (Source: Organization for the Development of Lamu Communities (ODLC).

¹⁷ (Source: Organization for the Development of Lamu Communities (ODLC).

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. In addition to cattle, both groups have some goats, sheep and a few donkeys or camels.

14.8.10 Endorois

Endorois community is a minority community that was living adjacent to Lake Baringo and has a population estimated to be of about 20,000 – 60,000 peoples.

The act of gazetting and, therefore, dispossession of the land is central. 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. In 1973 Government of Kenya gazetted land around the Lake as a park. The Endorois challenged the gazettment at the ACHPR Commission and won the case.

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

14.8.11 Watha

The Watha (a few thousands) who live dispersed in the southern coastal areas of the Coast region, the people are traditionally hunters and gatherers. In Malinda district a Watha community is found in four divisions (i.e. Malindi, Langobaya, Marafa and Magarini). In Tana River district the Watha are found in Sombo and Laza divisions while in Mandera the Watha are found in Central division. The population of Watha community in the districts is estimated at approximately 30,000 persons (only 2.7% of the entire Malindi, Mandera and Tana River population), however it is difficult to know as they are dispersed across a number of counties. Their main livelihoods used to be hunter gatherers residing in forest but with the protection of forest their survival or coping strategies include peasant agro-pastoral activities, burning and selling of charcoal. 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.

14.8.12 The Bajuni.

The Bajuni are found in the North Eastern Coast of Kenya and principally inhabit the tiny [Bajuni Islands](#) in the [Indian Ocean](#). However, they also traditionally reside in [Kenya](#), mainly in [Mombasa](#) and other towns in that country's [Coast Province](#). The Bajuni people collectively refer to themselves and are known as *Wabajuni*. They speak [Kibajuni](#), a dialect of the [Bantu Swahili language](#). They are estimated to be about 69,110.¹⁸ The population's members trace their origins to diverse groups; primarily coastal [Bantu](#) and [Khoisanoid](#) hunter-gather groups, as well as later additions such as [Arab](#), [Persian](#) and [Cushitic](#) immigrants. Today many Bajuni are mostly Shafite [Muslims](#). The Bajuni are traditionally fishermen and sailors. Some also pursue other trades such as [metalwork](#)

¹⁸ 2014. *Ethnologue: Languages of the World, Seventeenth edition*. Dallas, Texas: SIL International. Online version: <http://www.ethnologue.com>.

14.9 ANNEX 7; SAMPLE FACT SHEET FOR VMGPGS; VMGP REVIEW – FACT SHEET FOR VMGPGS

To be filled by IFPPP/PIU Team and World Bank as part of review and monitoring

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

Last Update: [11/20/ 2008] A.	PROJECT DATA AND RECOMMENDED ACTIONS
Reviewer:	Date of Mission:
Country:	Project Loan Amount:
Project title:	Total Project Cost:
Project ID:	Appraisal Date:
IPP #:	Effectiveness Date:
Task Manager:	Closing Date:
Environment Spec.	Last PSR/ISR
Social Spec.	
MTR	Last Aide Memoire
REVIEW SUMMARY (Based on Desk and Field Review)	
Issues / Observations	
Proposed Actions (short term / long term, for TTL, SD, etc.)	
B. SAFEGUARD IDENTIFICATION AND COMPLIANCE AT PREPARATION	
1 Environmental Safeguard Classification:	
2 Safeguard Policies Triggered at Preparation According to the ISDS, EDS, ESDS, PAD: Applicable	
Source	
Environmental Assessment (OP/BP 4.01)	
Natural Habitats (OP/GP 4.04)	
Forestry (OP 4.36)	
Pest Management (OP 4.09)	
Cultural Property (OP 4.11) – OPN 11.03	
Indigenous Peoples (OP 4.10)	
Safety of Dams (OP/BP 4.37)	
Projects in Disputed Areas (OP/BP 7.60)	
Involuntary Resettlement (OP 4.12) – OD 4.30	
Projects on International Waterways (OP/BP 7.50)	
3 Project Objective and Components	
Project Objectives	
Project Description	
4 Social Safeguard Triggers: Are there any social safeguard policies which should have been triggered but were not?	
C. SOCIAL MANAGEMENT PLANS AT PREPARATION	
This review is based on IPP PAD SA RAP ISDS (check all that applies)	
SCREENING	

Have all IP groups in project area been identified (is screening by the Bank adequate)?
SOCIAL ASSESSMENT
Has a social assessment taken place (is baseline data given)? Provide summary of social assessment.
Has the legal framework regarding IPs been described?
Have benefits/ adverse impacts to IP groups been identified?
CONSULTATION, PARTICIPATION, COMMUNITY SUPPORT
Have IPs been involved in free, prior and informed consultation (at the project's preparation stage)? Are there any records of consultations? Is there a description of steps for increasing IPs participation during the project implementation?
Does the project have verifiable broad community support (and how has it dealt with the issue of community representation)?
Is there a framework for consultation with IPs during the project implementation?
INDIGENOUS PEOPLES PLAN
Is there a specific action plan (implementation schedule)?
Does the IPP include activities that benefit IP?
Are activities culturally appropriate?
Have institutional arrangements for IPP been described?
Is there a separate budget earmarked for IPP?
Are there specific monitoring indicators? If yes, are these monitoring indicators disaggregated by ethnicity?
Has a complaint/conflict resolution mechanism been outlined?
Disclosure: Were IPP/IPPF disclosed at the <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: _____
SPECIAL CONSIDERATIONS
If applicable, what considerations have been given to the recognition of the rights to lands and natural resources of IPs
If applicable, what considerations have been given to the IP sharing of benefits in the commercial development of natural and cultural resources?
Does the project involve the physical relocation of IPs (and have they formally agreed to it)? If yes, has the project prepared a resettlement instrument (resettlement policy framework, process framework, resettlement action plan)?
D. IMPLEMENTATION AND SUPERVISION (Based on initial desk review and verified by field assessment)
1 Social Safeguards
a. Have issues (anticipated and unexpected) been monitored and reported systematically in Aide Memoires and ISRs? Have appropriate actions been taken?
b. Were social specialists included in supervision missions and how often?
c. What are the project impacts on IPs culture, livelihoods and social organization?

d. In terms of consultation process, are there ongoing consultations with the IP communities? Are there records of carried out consultations?
e. Have any social risks been identified? Have appropriate risk management strategies/actions been recommended to the Borrower?
f. Are IPOs (beyond the community level) actively engaged throughout the life of the project?
g. Does the project contribute to the respect of IP rights as recognized by the country's legal and policy systems?
2. Effectiveness
a. Are IPPF and/or IPP implemented satisfactorily? Are they effective? Is funding adequate?
b. In relation to the implementation of IPPF/ IPP, were problems identified, if any? If yes, how were they resolved by the Borrower?
Effectiveness of Monitoring Program
3.1 Has the monitoring program been adequately supervised? Are performance indicators effective?
3. Effectiveness of Institutional Responsibilities/Training as outlined in the project documents
4. Effectiveness of relevant Legal Covenants: Is compliance with legal covenants being adequately supervised?
E. SITE VISIT(s) - Date - Location
1.1 Activity
1.2 Observations
F. OVERALL ASSESSMENT (including desk and field reviews)
1 Overall Assessment and Risk Rating
1.1 To what extent is the OP4.10 relevant in delivering effective development to IP?
1.2 To what extent has OP4.10 (and previously OD4.20) been applied and how?
1.3 To what extent has OP4.10 been efficacious (cost effective) in achieving its objectives?
2 Recommendations
3.1 Project specific
3.2 Country / Program specific
3 <i>List of Attachments</i> - <i>Key People Met</i> - <i>photos</i> -etc.
G. FEEDBACK FROM TTL / SD - Date of feedback received

14.10 ANNEX 8; THREE POINT RANK ORDER SYSTEM FOR VMGPS

To be filled by IFPPP/PIU Team and World Bank as part of review and monitoring

Criterion	Points	Explanation
Screening		
1. Have all IP groups in project area been identified (is screening adequate)?	0	Not stated
	0.5	The names of some groups have been mentioned; baseline survey has been proposed; Aggregates all groups together
	1	Detailed description of all indigenous groups is given
Social Assessment		
2. Has a social assessment been done (Is baseline data given)?	0	Not stated
	0.5	Proposed to collect all relevant data - no specifics; data briefly stated; or not updated, data not disaggregated
	1	Disaggregated population data of IP; relevant socio-economic indicators have been stated; data that needs to be collected are listed;
3. Has legal framework been described?	0	Not stated
	0.5	Brief mention of framework given
	1	Constitutional provisions, legal statutes and government programs in relevant sectors related to indigenous peoples stated
Have benefits/ adverse impacts to IP groups been identified?	0	Not Discussed
	0.5	Potential impacts have been briefly discussed
	1	Potential positive and negative impacts identified and discussed
Consultation, Participation, Community Support		
Have IP been involved in free, prior and informed consultation at the project implementation stage? Are there any records of consultation?	0	Not determinable
	0.5	Brief mention that consultations have taken place; no details provided
	1	Detailed description of process given; appropriate methods used, interlocutors are representative
Does project have verifiable broad community support (and how has it dealt with the issue of community representation)?	0	Not stated
	0.5	States that IP groups will be involved in preparing village/community action plans; participation process briefly discussed
	1	Detailed description of participation

		strategy and action steps given
7. Is there a framework for consultation with IPs during the project implementation?	0	No
	0.5	Passing mention
	1	Detailed arrangements
Indigenous People Plan		
8. Is there a specific plan (implementation schedule)?	0	Not stated
	0.5	Flexible time frame (activities need to be proposed); given activity wise; year-wise distribution; mentioned but integrated into another project document (RAP, etc.); no separate treatment; combined with RAP;
	1	Detailed description given
9. Does the IPP/IPDP include activities that benefit IP	0	Not stated
	0.5	Activities stated but not detailed
	1	Activities clearly specify
10. Are activities culturally appropriate?	0	Not stated
	0.5	Cultural concerns noted but not explicit
	1	Activities support cultural norms
11. Have institutional arrangements for IPP been described?	0	Not stated
	0.5	Mentioned but integrated into another project document RAP, etc.); no separate treatment
	1	Detailed description of agencies involved in implementation of plan, including applicable IPO's or tribal organizations.
12. Is a separate budget earmarked for IPP?	0	Not stated
	0.5	Mentioned but integrated into another project document (RAP, etc.); not broken down activity-wise
	1	Detailed description given
Are there specific monitoring indicators?	0	Not mentioned
	0.5	Proposed that monitoring indicators shall be designed later; Project outcomes that need to be monitored are stated
	1	Monitoring indicators disaggregated by ethnicity
Has a complaint/conflict resolution mechanism been outlined?	0	Not mentioned
	0.5	Passing mention of mechanism in document
	1	Detailed description and few concrete steps of mechanism given

Were the Indigenous Peoples Plan or Framework (IPP/IPPF) disclosed in Infoshop and in Country in an appropriate language?	0	No
	0.5	Disclosed in Infoshop
	1	Detailed Summary in appropriate form, manner and language
Special Considerations		
If applicable, what considerations have been given to the recognition of the rights to lands and natural resources of IPs?	0	None
	0.5	Passing mention
	1	Detailed considerations
17. If applicable, what considerations have been given to the IP sharing of benefits in the commercial development of natural and cultural resources?	0	None
	0.5	Passing mention
	1	Detailed considerations
18. Does the project involve the physical relocation of IPs (and have they formally agreed to it)?	0	No resettlement unless with their prior consent
	0.5	Only within traditional lands or territories
	1	Yes, physical relocation outside their traditional territories with no compensation or consent