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MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT

Kenya Informal Settlements Improvement Project II (KISIP II)

Vulnerable and Marginalized Groups Framework (VMGF)

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ACRONYMS

| | |
|----------|---|
| BP | Bank Policy |
| CoK | Constitution of Kenya |
| CSOs | Civil Society Organizations |
| 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 |
| FS | Feasibility Study |
| 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 |
| IPPF | Indigenous Peoples Planning Framework |
| KNCHR | Kenya National Commission on Human Rights |
| LA | Land Act 2012 |
| LAC | Land Administration Committees |
| LACT | Land Acquisition Compensation Tribunal |
| LRA | Land Registration Act 2012 |
| M&E | Monitoring and Evaluation |
| MDGs | Millennium Development Goals |
| ME&F | Ministry of Environment and Forestry |
| NT | National Treasury |
| MTR | Mid-Term Review |
| NEMA | National Environment Management Authority |
| NGO | Non-Governmental Organization |
| NLC | National Land Commission |
| NLP | National Land Policy |
| OP | Operational Policy |
| PAD | Project Appraisal Document |
| PAP | Project Affected Persons |
| PCT | Project Coordination Team |
| PDO | Project Development Objective |
| PIM | Participatory Impact Monitoring |
| PIM | Project Implementation Manual |
| PRA | Participatory Rural Appraisal |
| RAP | Resettlement Action Plan |
| RPF | Resettlement Policy Framework |
| RRA | Rapid Rural Appraisal |
| SA | Social Assessment |

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

List of Tables

Table 1: Indicative Counties with VMGs

Table 2: Potential Project Risks

Table 3: Potential Adverse Project Impacts and Mitigation Measures

Table 4: Indicative VMGs Consultation Matrix

Table 5: Vulnerable and Marginalized Groups Plan

Table 6: Grievance Redress Mechanism

Table 7: Monitoring Plan for VGMP

Annexes

Annex 1: Social Screening Form

Annex 2: Contents Vulnerable And Marginalized Groups Framework

Annex 3: Contents Of Vulnerable And Marginalized Groups Plan (VMGP)

Annex 4: Sample Terms Of Reference For Developing a VMGP

Annex 5: Sample Fact Sheet for VMGPs; VMGP Review – Fact Sheet For VMGPs

Annex 6: Three Point Rank Order System for VMGPs (Sample)

Table of Contents

| | |
|--|------------|
| ACRONYMS | iii |
| List of Tables | v |
| Table of Contents | vi |
| 1. Introduction | 9 |
| 1.1 Background | 9 |
| 1.2 Project Description | 9 |
| 1.2.1 Project Objectives | 9 |
| 1.2.2 Project Components | 9 |
| 1.2.3 Project Financing | 10 |
| 1.2.4 Project Activities | 11 |
| 1.2.5 Project Area..... | 11 |
| 1.2.6 Expected Project Benefits | 12 |
| 1.2.7 Implementation Arrangements | 13 |
| 1.2.8 Environmental and Social Requirements..... | 13 |
| 2. Vulnerable and Marginalized Groups (VMGs) | 15 |
| 2.1 Definition of VMGs | 15 |
| 2.2 VMGs in Kenya | 16 |
| 2.3 Vulnerable and Marginalized Groups Framework (VMGF) | 17 |
| 2.3.1 Objective of the Vulnerable and Marginalized Group Framework | 17 |
| 2.3.2 Methodology for Preparation of VMGF | 19 |
| 3. Policy and Legislative Framework on Vulnerable and Marginalized Groups | 21 |
| 3.1 National Policy and Legal Framework | 21 |
| 3.1.1 Constitution of Kenya, 2010..... | 21 |
| 3.1.2 Other National Policies and Laws..... | 22 |
| 3.2 International /UN Declarations/Treaties/Agreements | 24 |
| 3.3 World Bank’s Policy | 25 |
| 4. Potential Project Impacts | 26 |
| 4.1 Environmental Risks | 26 |
| 4.2 Social Risks | 26 |
| 4.2.1 Positive Impacts | 26 |
| 4.2.2 Adverse Impacts | 27 |
| 4.3 Other Risks..... | 28 |
| 4.4 Proposed Mitigation Measures | 29 |
| 5. Sub-Project Screening and Social Assessment (SA) | 32 |
| 5.1 Sub Project Investment Screening | 32 |
| 5.1.1 Screening Methodology | 32 |

| | | |
|------------|---|-----------|
| 5.1.2 | Screening Criteria..... | 33 |
| 5.2 | Social Assessment..... | 33 |
| 5.2.1 | Methodologies for Social Assessment..... | 34 |
| 5.3 | Process of Conducting SA | 35 |
| 5.3.1 | Literature Review:..... | 35 |
| 5.3.2 | Stakeholder Identification | 36 |
| 5.3.3 | Stakeholder Consultation | 36 |
| 5.3.4 | Impact Identification Including Long Term..... | 37 |
| 5.3.6 | Determination of Mitigation Measures | 37 |
| 5.3.7 | Development of strategies for participation of Vulnerable and Marginalized Groups | 37 |
| 5.3.8 | Strategies for inclusion of women and youth | 38 |
| 5.4 | Who Conducts the SA | 38 |
| 6. | <i>A Framework for Free, Prior, Informed Consultation</i> | 39 |
| 6.1 | Free, Prior Informed Consultation..... | 39 |
| 6.2 | The Elements of FPIC..... | 39 |
| 6.2 | FPI-Consultation Tools..... | 39 |
| 6.3 | Strategy for Participation and Consultation with VMGs | 40 |
| 6.4 | Decision on Sub-Projects | 43 |
| 7. | <i>Vulnerable and Marginalized Groups Plans (VMGPs).....</i> | 44 |
| 7.1 | Elements of a Vulnerable and Marginalized Groups Plan..... | 44 |
| 7.2 | Vulnerable and Marginalized Groups Plan | 44 |
| 8. | <i>Grievance Redress Mechanisms</i> | 47 |
| 8.1 | Overview..... | 47 |
| 8.2 | Grievance Redress Process..... | 48 |
| 8.3 | Establishment of Grievance Redress Committee..... | 48 |
| 8.4 | Use of Alternative Dispute Resettlement Mechanisms..... | 48 |
| 8.5 | Further Redress-Kenya Courts of Law | 49 |
| 8.6 | Grievance Log Documentation and Recording..... | 49 |
| 8.7 | Responding to complaints | 49 |
| 8.8 | Monitoring Complaints | 49 |
| 9. | <i>Implementation of the VMGF.....</i> | 51 |
| 9.1 | Phases of Implementing the VMGF..... | 51 |
| 9.2 | Disclosure Arrangements | 51 |
| 9.3 | Specific capacity-building for VMGs | 51 |
| 9.4 | Roles and Responsibilities..... | 52 |
| 9.4.1 | KISIP PCT | 52 |

| | |
|---|-----------|
| 9.4.2 Non-Governmental Organizations..... | 52 |
| 9.4.3 World Bank | 52 |
| 9.5 Budget | 53 |
| 10. Monitoring and Evaluation..... | 54 |
| 10.1 Mechanisms for monitoring, evaluation and reporting..... | 54 |
| 10.2 Monitoring and Evaluation Benchmarks..... | 55 |
| 10.3 Reporting..... | 55 |

1. Introduction

1.1 Background

The Government of Kenya is in consultation with the World Bank for consideration of the Kenya Informal Settlements Improvements Project II (KISIP II) to consolidate the gains made under KISIP I and enhance the benefits of the project to more people in informal settlements. This Second Kenya Informal Settlements Project (KISIP II) will build on the successes and lessons learned from KISIP I, but also introduce new interventions to deepen its overall impact. It will support the interventions that have been successful under KISIP I: tenure regularization, infrastructure upgrading, and institutional strengthening. In addition, the project will include activities to link vulnerable people (elderly, orphans, disabled, and others) of informal settlements to government programs aimed at reducing poverty and vulnerability, and to link at-risk youth to programs focused on building skills and creating opportunities for employment and self-employment. KISIP II will include activities to prevent crime and violence.

The proposed project objective is to enhance access to basic services and improve tenure security in urban informal settlements in Kenya. This will be achieved by investing in infrastructure based on plans developed in consultation with the community, by supporting planning, surveying and issuance of land documents for residents of informal settlements, and by strengthening capacity of county administrations to deliver on their mandates. KISIP II will have a wider coverage beyond the fourteen KISIP I Counties, to potentially cover the whole country¹.

1.2 Project Description

A more comprehensive description of the project is given in the Project Appraisal Document (PAD).

1.2.1 Project Objectives

The proposed project development objective is to improve access to basic services and tenure security of residents in participating urban informal settlements and strengthen institutional capacity for slum upgrading in Kenya. This will be achieved by investing in infrastructure based on plans developed in consultation with the community, by supporting planning, surveying and issuance of land documents for residents of informal settlements, and by strengthening capacity of county administrations to deliver on their mandates.

1.2.2 Project Components

The project has four components:

¹ For a more detailed project description, refer to the Project Appraisal Document

Component 1 (Integrated Settlement Upgrading): KISIP2 has built on the lessons learned from KISIP1 and has combined tenure regularization and infrastructure into one integrated upgrading approach to save both money and time, ensuring better coordination between the two interventions in a settlement and deepening the project's overall impact on the participating communities by supporting tenure regularization and infrastructure upgrading in the same communities. Thus, two main interventions have been identified under this component: (i) tenure regularization; and (ii) infrastructure upgrading. Settlements will benefit from one or both interventions depending on the initial condition of the settlement.

Under tenure regularization, KISIP2 will support the chain of activities required to regularize tenure for people living on uncontested public lands. Based on experiences of KISIP 1, the project will minimize displacement of residents in planning using 'adoptive' planning approach to minimize displacement of residents in informal settlements.

Under infrastructure upgrading, KISIP2 will support the same types of investments: roads, bicycle paths, pedestrian walkways, street and security lighting, vending platforms, solid waste collection and settlement sorting, stormwater drainage, water and sanitation systems, public parks, and green spaces. The menu will also include investments related to prevention of crime and violence, including but not limited to community centers. Most of the infrastructure will contribute to climate resilience and the project will have substantial climate change adaptation and mitigation co-benefits.

Component 2 (Socio-Economic Inclusion Planning): This component will support the development of community-level socio-economic plans. The plans intend to identify together with the communities their socio-economic needs and then address how best the needs can be met.

Component 3 (Institutional Capacity Development for Slum Upgrading): The Project will support institutional and policy development at national and county levels. Activities will include supporting the review of the 2005-2020 National Slum Upgrading and Prevention Strategy, the development of county-specific slum upgrading and prevention strategies, developing financing mechanisms for slum upgrading at county level, and developing strategies to plan for urban growth, prevent crime and violence and to ensure adoptive planning in informal settlements.

Component 4 (Program Management and Coordination): This component will finance activities of the NPCT and the CPCTs related to national and county-level project management and coordination, including planning, surveying, engineering, fiduciary (financial management and procurement), safeguards compliance and monitoring, monitoring and evaluation (M&E), and communication and community development.

1.2.3 Project Financing

KISIP2 is estimated to cost US\$165 million. The project will be financed through an IDA Credit of US\$150 million equivalent. The Government will add US\$15 million as counterpart financing. The Government will be responsible for budgeting for counterpart financing to cover some operating costs, and any compensation due to project-affected people. Compensation costs associated with proposed subprojects will be identified and budgeted for on an annual basis.

1.2.4 Project Activities

a) Tenure Regularization

KISIP2 will support the chain of activities required to regularize tenure for people living on uncontested public lands. The regularization process involves: (a) development of a local physical plan for the settlement which lays out infrastructure (roads, drainage, walkways and the like), and private plots; (b) surveying with physical placement of beacons to demarcate the plots as per the plan; (c) preparation and issuance of letters of allotment based on the survey plan; and finally (d) issuance of titles.

KISIP2 will follow the experience of KISIP1 to minimize displacement of residents by following an ‘adoptive’ planning approach. Adoptive planning is an approach that lays out infrastructure and plots in close alignment with the existing layout of the settlement. Under KISIP1, adoptive planning has reduced displacement by up to 85 percent in some settlements, compared with what would have occurred had the normal standards been applied. It is expected that use of the adoptive approach in KISIP II will result in minimal displacement and costs of compensation.

b) Infrastructure upgrading

KISIP2 built on the success of KISIP I in supporting an integrated package of investments to comprehensively upgrade settlements. KISIP2 will support the same types of investments: roads, bicycle paths, pedestrian walkways, street and security lighting, vending platforms, solid waste collection and settlement sorting, storm water drainage, water and sanitation systems, public parks, and green spaces. The menu will also include investments related to prevention of crime and violence, including but not limited to youth and community centres. Though, the infrastructure is planned within public land, the investments have potential to affect people’s assets and livelihoods.

1.2.5 Project Area

KISIP I was initially implemented in 15 towns located in 14 counties. Under revised guidelines, after mid-term review, the 15 counties were at liberty to propose activities in informal settlements in other towns within their jurisdiction. As a result, the number of towns participating in the project grew. In KISIP II, all the Counties are eligible to participate under a certain criterion.

In preparation for KISIP 2, KISIP1 financed the preparation of detailed designs and bidding documents for upgrading plans for 39 settlements in six counties (Nairobi, Kilifi, Kakamega, Kisumu, Nakuru, Mombasa). Implementation of the plans will ensure that KISIP2 is able to provide relatively quick and high-impact results. An additional 17–20 settlements in other counties will also benefit from infrastructure upgrading. However, not all counties will be able to access the funds, and clear criteria will need to be developed during preparation that allow selection to be made on technical grounds. Alternatively, the funds can be allocated for integrated settlement planning for tenure regularization and infrastructure, allowing the development of a pipeline for future investment.

All counties will be eligible for support for integrated settlement planning for tenure regularization and infrastructure. KISIP2 is expected to support about 74 settlements from KISIP1 (which have benefited from tenure regularization) with detailed designs and bidding documents for settlement upgrading plans. It will support an additional 75 settlements with integrated planning for both tenure regularization and infrastructure. All counties will be eligible for support under this component. However, detailed eligibility criteria will be established to ensure that the work has a high impact. Such criteria could include, overall population of the settlement, density of the settlement, and assurance that settlement is on government land, which the government is willing to release for tenure regularization.

1.2.6 Expected Project Benefits

The project's expected benefits will arise from investments in infrastructure and from tenure regularization. Although a cost-benefit analysis for KISIP1 investments has not yet been done, analysis done for similar investments in urban areas in Kenya and in other countries showed significant benefits for the types of investments KISIP1 and 2 are supporting. Examples are as below.

- 1. Benefits of investments in urban roads.** The benefits associated with improved roads are (a) travel time savings; (b) travel cost savings; (c) reductions in vehicle operating costs; (c) enhanced access to jobs, markets, health facilities schools, and other services at lower cost than otherwise available (reflected in enhanced land values); and (d) promotion of economic growth in the region through enhanced trade, increased efficiency, and higher productivity. The economic rate of return for urban roads under various World Bank-supported projects in Africa ranged from 18 to 33 percent.
- 2. Benefits of drainage systems.** Benefits include (a) reduced number of days of work lost due to flooding (b) reduced property damage (buildings, roads, furniture, appliances, household goods); (c) increased property values; (d) reduced loss of income from businesses whose hours are curtailed and access reduced; (e) improved travel times on streets that used to flood; (f) lower maintenance costs for vehicles; and (g) reduced costs of illness associated with exposure to polluted and stagnant water. Analysis done for the Kenya Municipal Program showed that investments in a drainage system that considered only reduced number of days lost from work generated an internal rate of return of 32 percent.
- 3. Benefits of investments in street lighting.** Benefits of street lighting include (a) increased perception of safety, (b) reduced accidents, and (c) increased ability to do business after dark. People interviewed for the beneficiary analysis of KISIP1 noted that they felt a greater sense of security at night and were now walking along streets with lights, rather than taking motorized transport to their destinations. Some participants pointed out that accidents between vehicles and between vehicles and pedestrians had declined. Some mentioned that business hours had expanded and that the appearance and livability of the urban center had improved.
- 4. Benefits of tenure security.** Benefits of tenure security include (a) increased investments in housing and businesses, (b) increased labor-force participation, (c) improved health due to reduced stress from fear of displacement and expropriation. People interviewed for the

beneficiary analysis of KISIP1 noted that they felt much reduced stress and were planning to invest in their properties.

1.2.7 Implementation Arrangements²

Implementation of KISIP will involve a three-tier institutional arrangement (National, County and Community).

- a) National level: The National Treasury (NT) will represent the GoK, and the Ministry of Transport, Infrastructure, Housing and Urban Development (MTIHUD) will be the main implementing agency. Within the MTIHUD, the project will be anchored in the State Department for Housing and Urban Development. A Project Coordination Team (PCT) has been established within the MTIHUD, which will be responsible for overall project coordination (including liaising with senior government officials and the Bank team). The national team will also be responsible for compiling interim financial reports and quarterly progress reports, based on inputs from the Counties. The national PCT will consist of a project coordinator, component heads, and specialists in key areas, including financial management, procurement, environment and social safeguards, community development, and monitoring and evaluation. The key personnel of the PCT have been appointed and have participated fully in implementation of KISIP1 and preparation of KISIP2.
- b) County level: The county governments will be the executing agencies of the project. They will establish County Project Implementation Units (PIUs) which mirror the PCT in personnel.
- c) Community level: Communities will form Settlement Executive Committees (SECs) to provide an interface between the communities and the project.

The three-tier institutional arrangement aims to: (a) lessen the approval layers for faster decision-making and efficient project implementation; and (b) utilize the constitutionally mandated governance structures at the national and county levels, to the extent possible. To enhance linkages and ownership of the project, the County governments will be fully involved in the decision-making process at the national level. In addition, County governments will be fully responsible for the decision-making and project implementation and oversight at county and community levels. The detailed roles and responsibilities of the national, county and community institutions will be provided in the Project Implementation Manual (PIM).

1.2.8 Environmental and Social Requirements

The KISIP II has triggered the following environmental and social safeguard policies of the World Bank: Safeguard OP 4.01, Environmental Assessment; and OP 4.12, Involuntary Resettlement. A precautionary approach will be taken in relation to OP 4.10, Indigenous Peoples,

² This will be updated once the PAD is finalized.

and OP 4.11, Physical Cultural Resources. This has necessitated the preparation of the following safeguard policy instruments which will be publicly disclosed:

- a) Environmental and Social Management Framework (ESMF)
- b) Resettlement Policy Framework (RPF)
- c) Vulnerable and Marginalized Groups Framework (VMGF)

In addition, a Stakeholder Engagement Framework (SEF) has been developed to provide guidance on making stakeholder engagement meaningful and effective and in accordance with international standards and practices.

2. Vulnerable and Marginalized Groups (VMGs)

2.1 Definition of VMGs

The Constitution of Kenya 2010 (Article 260) defines marginalized communities as:

- a) *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;*
- b) *A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;*
- c) *An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or*
- d) *Pastoral persons and 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 World Bank has agreed to use the term ‘*Vulnerable and Marginalized Groups*’ (VMGs) rather than “*Indigenous Peoples*”, thus a Vulnerable and Marginalized Group Framework/Plan (VMGF/P) is prepared instead of an Indigenous People Plan Framework/Plan (IPPF/P). The World Bank in OP4.10 defines indigenous people (similar to VMGs) as a “*distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:*

- (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to natural resources in these habitats and territories;*
- (iii) customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture; and*
- (iv) an indigenous language, often different from the official language of the country or region.*

VMGs generally include minority groups following traditional livelihoods, generally marginalized, and discriminated against by the wider society. Within the marginalized groups, some segments may also be more vulnerable than others: older persons, persons with disability, women, child and women headed-households, youth, mentally ill persons, and vulnerable children.

Some of the key factors that continue to affect and maintain the marginalization of VMGs communities include:

- a) Dispossession of ancestral lands including lack of access and/or no control or legal recognition of such land and other natural resources.
- b) A focus on modern agriculture versus preservation of livelihoods of hunter and gatherers and pastoralist groups.
- c) Limited access to education, resulting in inability to compete for employment opportunities.
- d) Unequal development of health care and other social infrastructure; and
- e) Limited access to justice and increased conflict and a deteriorating security situation and recurrent inter-ethnic conflicts.

2.2 VMGs in Kenya

Kenya is home to a number of groups who self-identify as Indigenous Peoples. Some of these are hunter-gatherers with some transitioning to agro-pastoralism, others nomadic or seminomadic pastoralists and other artisanal blacksmiths and fishing communities.²³In the absence of updated and reliable statistics, it is difficult to give precise demographic data of the various groups. Estimations vary greatly and depend on personal or institutional judgments of which group is considered as Indigenous Peoples in Kenya. Some experts have put the total population of groups that self-identify as Indigenous Peoples at around 1.5 million.

Indigenous Peoples (OP 4.10) will be triggered by proposed investment projects to be implemented under the KISIP. Since KISIP is countrywide in nature an initial screening indicates the presence of groups that meet the World Bank criteria for indigenous peoples who are likely to be present in or have collective attachment to the micro-project areas where component 1 and 2 might be implemented. While the exact sites of the sub-projects remain unknown at this point, a preliminary assessment indicates that since the project is to be implemented in urban areas, it is not likely that indigenous people who meet the criteria under OP 4.10 will be present and affected. This VMGF is developed as a precautionary measure to guide mitigating adverse impacts on the vulnerable and marginalized groups, should screening of any sub-project trigger OP 4.10.

From desk review, **Table 1** presents areas where VMGs are present.

Table 1: Indicative Counties with VMGs

| Region | County | VMGs that may be present in the County and could meet OP 4.10 |
|--------------|-------------------------------------|--|
| Eastern | Makueni, Meru, Kitui, Embu, | Waatha (Kitui) |
| Coast | Kilifi, Kwale | Waatha (Kilifi), Waswaka (Kilifi), Wakifundi (Kilifi), Makonde (Kilifi) |
| Central | Kirinyaga, Kiambu, Muran'ga | Dorobo (Kiambu) |
| Rift-Valley | Nakuru, Narok, Baringo, Samburu | Ogiek (Nakuru, Narok), and Endorois/Il-Chamus (Baringo), Ilkunono (Narok) |
| Western | Bungoma, Trans Nzoia, Nandi, Vihiga | Sengwer (Trans-nzoia), Ogiek (Bungoma, Trans-nzoi, Nandi), Tarik (Vihiga, Nandi) |
| South Nyanza | Kisii, Migori, Nyamira, Homa Bay | Noney |

In addition to OP 4.10, screening and profiling of marginalized communities and marginal groups will be done in line with the interpretation of Constitution of Kenya, 2010, section 260, which provides criteria that can be used as a basis for profiling of communities and groups that could possibly be identified as “Marginalized Communities” and “Marginalized Groups”. Where the KISIP confirms the existence of VMGs within sub-project operational area, it will carry out a social analysis and the process of FPIC, for purpose of ascertaining whether the respective VMGs broadly support the project. Where such broad VMGs support for the micro-project exist, as confirmed by the World Bank, KISIP will proceed to prepare VMGs for each micro-project site. However, site-specific verification is required given the fast pace of urbanization and social economic change in Kenya. Hence for that reason, the list provided here is indicative. A two-step process will be applied including (a) screening and (b) field verification.

2.3 Vulnerable and Marginalized Groups Framework (VMGF)

This Vulnerable and Marginalised Group Framework (VMGF) has been prepared with respect to the proposed Kenya Informal Settlements Improvement Project II (KISIP II) to be supported by the World Bank. Since the proposed project interventions will be implemented in areas where Indigenous Peoples (IPs) are present referred to in Kenya as Vulnerable and Marginalized Groups³ (VMGs the World Bank (WB) safeguard policy OP/BP 4.10 has been triggered and a VMGF prepared to guide the implementation of the project.

KISIP I did not have a Vulnerable and Marginalized Groups Framework (VMGF) and no groups that satisfy the criteria of OP 4.10 were affected by project activities. This is because the interventions were confined in informal settlements in urban areas, an unlikely location for the presence of VMGs. With an expanded scope of interventions and geographical scope under KISIP II, it is likely that groups that meet the criterion for vulnerable and marginalized may be impacted by the project. This VMGF is prepared as a precaution.

2.3.1 Objective of the Vulnerable and Marginalized Group Framework

WB 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 (IPs). For all projects that are proposed for World Bank financing and that affect Vulnerable and Marginalised Groups (VMGs), the Bank requires the borrower to engage in a process of Free Prior and Informed Consultation

³ Given particularities with respect to the term Indigenous Peoples in Kenya, the 2010 Constitution of Kenya uses the term “vulnerable groups” and “marginalized communities”. Since adoption of the Constitution in 2010, the GoK has requested that project instruments related to the implementation of OP 4.10 use the constitutionally-sanctioned terminology. 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.”

(FPIC) leading to broad community support. The Bank provides project financing only where FPIC results in broad community support to the project by the affected vulnerable and marginalised groups. Such Bank-financed projects include measures to:

- a) Avoid potentially adverse effects on the Indigenous Peoples' communities; or
- b) When avoidance is not feasible, minimize, mitigate, or compensate for such effects;
- c) Ensure that the vulnerable and marginalised people receive social and economic benefits that are culturally appropriate and gender as well as inter-generationally inclusive; and that the VMGF is based on FPIC with indigenous peoples leading to broad community support.

The objectives of the policy are to avoid adverse impacts on vulnerable and marginalised groups, secure broad community support for the project and to provide Vulnerable and Marginalized Groups (VMGs) with culturally appropriate benefits.

A Vulnerable and Marginalised Groups Framework (VMGF) is developed when a proposed project design is not yet finalised so that it is impossible to identify all of the impacts, as is required to prepare a Vulnerable and Marginalised Groups Plan (VMGP). This situation applies to all the related proposed sub-projects under KISIP. At the time of preparation of this VMGF the following issues were outstanding:

- (a) host sites for sub-projects had not yet been identified; and
- (b) those vulnerable and marginalised groups whose rights and livelihoods may be affected by the sub-projects had not yet been defined, as the location or alignment of the sub-projects were yet to be decided.

Although it is not envisaged at this stage of project conceptualization that vulnerable and marginalized groups that meet the criteria of Op 4.10 will be impacted by the project, since KISIP is an urban project where indigenous persons are unlikely to be resident, the preparation of a Vulnerable and Marginalised Groups Framework (VMGF) will ensure that the development process fully respects the dignity, human rights, economies, and culture of vulnerable and marginalised people should they be impacted. This will also ensure that KISIP sub-projects have broad community support from the affected vulnerable and marginalised people.

It should be noted that minimal, if any, negative impacts are anticipated as a result of the project. Most of the impacts anticipated will be positive for all communities, including for

VMGs. As a result, a key focus of the VMGF and the VMGPs will be to propose pro-active steps for such groups to benefit from the project. It is generally envisaged that the vulnerable and marginalized populations do not have access to these services in a similar way to other communities in Kenya.

The VMGF provides for the screening and review of the proposed sub-projects in a manner consistent with OP 4.10. The KISIP will integrate the VMGF recommendations into the project design of each sub-project.

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. At the same time, this policy, together with the Resettlement Policy Framework (RPF) and Environmental and Social Management Framework (ESMF) already prepared for this project, recognizes that VMGs should benefit from KISIP interventions.

This VMGF describes the policy requirements and planning procedures that KISIPP will follow during the preparation and implementation of sub-projects, especially those identified as occurring in areas where VMGs are present. The VMGF outlines the processes and principles of screening to determine if a proposed investment has impacts on vulnerable communities and 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 is conducted to determine if VMGs are present in the project investment area.

2.3.2 Methodology for Preparation of VMGF

This involved; -

- a) Literature review about the project and vulnerable and marginalized groups (VMGs) to gain a deeper understanding. Among the documents reviewed, included: World Bank Indigenous Peoples Operational Policy, OP 4.10; Other relevant VMGF documents prepared in Kenya for bank projects, Constitution of Kenya and various legislation touching on vulnerable and marginalised groups;
- b) Collation of baseline data on the Vulnerable and Marginalized Communities in Kenya including lifestyle, livelihood, history;

- a) Identification of positive and negative impacts of the proposed sub projects on the VMGs; Formulation of monitoring and evaluation plan.
- b) Stakeholder consultations.

3. Policy and Legislative Framework on Vulnerable and Marginalized Groups

3.1 National Policy and Legal Framework

3.1.1 Constitution of Kenya, 2010

The CoK, 2010, does not specifically use the term IP, it is nevertheless robust in articles that define vulnerability and marginalization, including issues that VMGs cite as the reasons for their self-identification. It also addresses social exclusion in general. Article 260 of the Constitution defines a “marginalized community” as: (a) 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;(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and 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 whole⁸.

Similarly, the COK, 2010, defines ‘marginalized group’ as: a group of people who, because of laws or practices, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4) which prohibits discrimination on the basis of ethnic or social origin, religion, conscience, belief, culture, dress or language. In addition, article 27(6) calls on the state to undertake, ‘legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination’. This article prohibits both direct and indirect discrimination.

Articles 56 and 260 of the Constitution are a clear demonstration of the intentions of the country to deal with the concerns of minority and marginalized groups: The definition of marginalized communities and groups by the COK, 2010, and the provisions for affirmative action programmes for minority and marginalized groups are efforts to provide a legal framework for the inclusion of minority and marginalized groups into mainstream development of the country. These articles present the minority and marginalized groups including groups that fit the OP 4.10 criteria as a unique category of certain segments of the Kenyan population that deserve special attention in order to bring them to par with the rest of the country.

The Constitution of Kenya requires the State to address the needs of vulnerable groups, including “minority or marginalized” and “particular ethnic, religious or cultural communities” (Article 21.3): The Specific provisions of the Constitution include: 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 7, 44.2 and 56); protection of community land, including land that is “lawfully held, managed or used by specific communities as community forests, grazing areas or shrines,” and “ancestral lands and lands

traditionally occupied by hunter-gatherer communities” (Article 63); promotion of representation in Parliament of “...(d) ethnic and other minorities; and (e) marginalized communities” (Article 100); and an equalization fund to provide basic services to marginalized areas (Article 204).

Kenya’s 2010 Constitution provides a rich and complex array of civil and political rights, socio-economic rights and collective rights that are of relevance to indigenous communities. While important, constitutional provisions alone are not enough. They require a body of enabling laws, regulations and policies to guide and facilitate their effective implementation. 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.

3.1.2 Other National Policies and Laws

Kenya’s legal and regulatory framework has inclusion of several provisions, policies and instruments that if well developed and implemented hold promise for addressing marginalization and inclusion of VMGs. These include:

- a) **The National Land Policy (NLP):** The NLP was endorsed in 2009 while the Land Act, Land Registration Act and National Land Commission Act were adopted in May 2012. According to the policy, a Community Land Act is scheduled to be adopted within five years of the enactment of the new Constitution, along with a number of other land related laws and regulations. The NLP includes a key policy principle for restitution of land rights of minority communities as a way of restoration and protection of land rights which were violated by colonial and post-colonial governments (articles 3.6.1.2 and 3.6.6 on restitution and land rights of minority communities respectively). The policy calls on the GoK to secure community land and to “document and map existing forms of communal tenure, whether customary or non-customary, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law” (article 3.3.1.2, paragraph 66).
- b) **The Forest Act of 2005 and Forest Policy of 2007** both provide some provisions for the customary rights of forest communities and community forestry: The Forest Act states, that “nothing in this Act shall be deemed to prevent any member of a forest community from using, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale” (Article 22), and “...may include activities such as ‘collection of forest produce for community based industries” (Article 47.2.e) under a license or management agreement. The Act defines a "forest community" as “a group of persons who: (a) have a traditional association with a forest for purposes of livelihood, culture or religion (Article 3). The Forest Policy recognizes the “traditional interests of local communities customarily resident within or around a forest” (paragraph 4.3).
- c) **The National Policy on Culture and Heritage (2009)** aims to promote and protect the cultures and cultural diversity among Kenya’s ethnic communities. This includes the

protection of indigenous languages, the expression of cultural traditions, knowledge, and practices, traditional medicines, and community rights.

- d) **Ministry of Education’s Sessional Paper No. I of 2005:** A Policy Framework for Education, Training and Research - Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century. This sessional paper establishes that the language of instruction shall be the mother tongue in lower primary school (classes 1-3) in the rural areas, and that a culturally sensitive approach must be used to address the learning needs of different communities – including the VMGs.
- e) **Policy Framework for Nomadic Education in Kenya (COK, 2010):** Free and mandatory education was introduced in Kenya in 2003. However, the pastoralist areas have continuously recorded a much lower enrolment and completion rates as compared to the rest of the country. The Government of Kenya formally adopted the Nomadic Education Policy in 2010 to boost education access to nomadic communities. The policy contemplates education terms based on seasons rather than calendar terms. The policy considers use of an academic calendar that would be flexible and factor in climatic conditions and patterns of nomadic livelihood. The policy provides for the development of curriculum that would be useful to pastoral lifestyle. The policy further proposes creation of a National Council for Nomadic Education.
- f) **National Policy for the Sustainable Development of Northern Kenya and other Arid Lands.** The policy states that the Government will put in place an institutional and legal framework for the development of Northern Kenya and other arid lands. The policy thus calls on the government to establish a range of institutions that will provide long-term continuity in Arid and Semi-Arid Land (ASAL) development, including a National Drought Management Authority and National Drought and Disaster Contingency Fund to increase responsiveness to drought, National Council on Nomadic Education, a Northern Kenya Education Trust, a Livestock Marketing Board, and a Northern Kenya Investment Fund.
- g) **Commission on Revenue Allocation**, mandated by Article 204 of the Constitution to earmark 0.5% of annual state revenue to the development of marginalized areas, in addition to 15% of national revenue for direct transfer to county governments. In implementing Article 59 of the Constitution, the government has created a) the Human Rights Commission b) the Commission on Administrative Justice and c) the Gender Commission.
- h) **Environment and Land Court Act, No. 19 of 2011** “hears and determines 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.

3.2 International /UN Declarations/Treaties/Agreements

African Commission on Human and Peoples Rights (ACHPR)⁴ - The Africa region has also taken important steps to recognize and apply the concept of Indigenous Peoples: The ACHPR, a sub-body of the African Union, adopted in 2005 the “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities¹¹.” The report recognizes the existence of populations who self-define as Indigenous Peoples, who are distinctly different from other groups within a state, have a special attachment to and use of their traditional land, and who experience subjugation, marginalization, dispossession, exclusion or discrimination because of their cultures, ways of life or modes of production different from those of the dominant society.

The ACHPR report concludes that these types of discrimination and marginalization threaten the continuation of Indigenous Peoples’ cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development. The report is the ACHPR’s official conceptualization of, and framework for, addressing issues pertaining to VMGs, and as such it is an important instrument for recognizing Indigenous Peoples in Africa, improving their social, cultural, economic and political situation, and for protecting their human rights. The report outlines the following key characteristics, which identify certain social groups as VMGs/IPOs in Africa:

- Their cultures and ways of life differ considerably from the dominant society
- Their cultures are under threat, in some cases to the point of extinction
- The survival of their particular way of life depends on access and rights to their lands and the natural resources thereon
- They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society
- They often live in inaccessible regions, often geographically isolated
- They suffer from various forms of marginalization, both politically and socially.

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⁴ See ACHPR, Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, Banjul & Copenhagen: ACHPR & IWGIA, 2005; and ACHPR, Indigenous Peoples in Africa: the Forgotten Peoples? The African Commission’s work on Indigenous Peoples in Africa, Banju I & Copenhagen: ACHPR & IWGIA, 2006.

⁵ E.g. the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples

that the African peoples who are applying the concept include mainly hunter-gatherers and pastoralists.

3.3 World Bank's Policy

The World Bank has a set of “Do No Harm” safeguard policies that are meant to protect Project Affected Persons (PAPs) from impacts and actions of Bank financed projects: Some of the World Bank’s development activities have significant impacts on the rights and livelihoods of VMGs, who worldwide constitute the “poorest of the poor and continue to suffer from higher rates of poverty, lower levels of education and a greater incidence of disease and discrimination than other groups” (World Bank 2010). Since the early 1980s the World Bank Group (WBG) has adopted a number of policies, designed to mitigate harm to indigenous peoples in WBG-financed projects (Mackay, 2005). These have been referred to as safeguard policies.

The World Bank Operational Policy/Bank Procedures Indigenous Peoples (OP/BP 4.10). The operational policy requirement that Bank-financed projects are designed not only to avoid adverse impacts but equally important to recognize that “the distinct identities and cultures of VMGs remain inextricably linked to the lands they inhabit and the natural resources they depend upon to survive”. The policy provides processing requirements for VMGs that include:

- (i) screening,
- (ii) social assessment, in consultations with communities involved,
- (iii) preparation of Indigenous Peoples Plan (IPP) or Indigenous Peoples Policy Framework (IPPF) and,
- (iv) disclosure.

It also requires the borrower to seek broad community support of VMGs through a process of FPIC before deciding to develop any project that targets or affects VMGs.

The World Bank, like the UN, has no definition of IP: because of the varied and changing contexts, in which VMGs live, and because there is no universally accepted definition of IP (paragraph 3), OP 4.10 presents a set of characteristics for identifying VMGs. For purposes of this policy, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

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

The preparation, implementation, and monitoring of this VMGF follows the provisions of the World Bank Operational Policy/Bank Procedures on Indigenous Peoples (OP/BP 4.10).

4. Potential Project Impacts

The KISIP sub-projects have a likelihood of precipitating a range of political and governance, institutional, environmental, social, economic, technological, technical skills, fiduciary related positive and negative impacts. The KISIP II is assigned EA category B, based on the screening during project preparation. There are no significant and/or irreversible adverse environmental and social issues anticipated from the investments to be financed under the Project. Civil works may lead to relatively minor air and water pollution during the construction phases and, once the works are completed, limited loss of non-critical animal and plant habitats.

4.1 Environmental Risks⁶

The envisaged environmental risks at project implementation include: (i) Air and water pollution during construction phase; (ii) construction wastes (iii) Noise and vibrations during construction, (iv) technical capacity to handle implementation and monitoring of the projects' safeguards instruments is limited and especially at county level.

The project impacts were assessed through a screening process and appropriate mitigation measures were proposed in the Environmental and Social Management Framework (ESMF). The ESMF also contains an environmental and social screening process, including impacts related to natural habitats, displacement and physical cultural resources, as well as mitigation guidelines at the micro-project level.

4.2 Social Risks

The main social risks are the potential displacement of people and livelihoods; and the likelihood of exclusion of the VMGs. The potential displacement impacts and mitigation measures have been detailed in the Project's Resettlement Policy Framework (RPF).

A key principle of the project is inclusion and therefore the VMGF will focus on how to ensure that VMGs are aware of the project and can participate. The VMGF includes:

- a) screening to determine presence of Vulnerable and Marginalized Groups (Indigenous Peoples per OP 4.10 criteria) in the project areas and, if present,
- b) measures to ensure they benefit from the project activities through the preparation of a Vulnerable and Marginalized Group Plan (VMGP).

4.2.1 Positive Impacts

⁶ For a more detailed description of the environmental impacts and proposed mitigation measures, refer to the project's Environmental and Social Management Framework (ESMF).

The positive impacts of the projects: improved tenure security, connectivity through roads and footpaths, improved drainage, water and sanitation, access to electricity and improved security in the settlements will also accrue to the VMGs. Moreover,

- a) VMGs would get an opportunity to integrate development model within their traditional economies towards livelihood improvement while preserving their identity and dignity,
- b) Targeted support on VMGs that is based on baseline survey will inform inclusive socio-economic benefits that are culturally relevant.
- c) Women groups among the VMGs will be able to access employment and income-generating activities.
- d) Understanding of VMGs by the county government and other development will:
 - Draw attention to the marginal status of the VMGs and
 - Attract development resources from alternative sources like the county development funds and other donor or development partners

4.2.2 Adverse Impacts

Permanent effects - Permanent effects could result in loss of use of property, vegetation, or land by the affected person as a result of the subproject activities. 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 mitigation is for KISIP to avoid the need for land acquisition and displacement of people. Where land acquisition is inevitable, the provisions in the RPF should be followed.
- Increase of infectious diseases like HIV/AIDS due to new interactions of communities, specifically “foreign” workers who will 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.
- Some of the sites chosen for sub-projects may be culturally important or sacred to VMGs. It will be essential to have consultations to address such concerns, and ways to avoid or mitigate adverse cultural impacts.
- Exclusion of VMGs from the project due to:
 - a) Limited understanding of VMGs by national and county government officers, and other stakeholders.
 - b) Language barriers due to low literacy and competence in national language
 - c) Cultural barriers that exclude women and youth from certain economic activities and assets
 - d) Livelihood style like pastoralism, hunting and gathering, fishing
 - e) Women on-farm and household chores
 - f) Logistical issues like remoteness, distance, and transport cost from and to VMG sites
 - g) Lack of institutional frameworks (saving and credit)
 - h) The remoteness of VMGs site might limit the market-oriented opportunities

- Transference of unsettled historical land injustices to KISIPP context. Overreliance on KISIPP to address historical marginalized and exclusion from the integrated social and economic life of Kenya as a whole

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

4.3 Other Risks

Other risks at the county level include:

- Weak capacity to implement and monitor safeguards at the county level as this is a recently devolved function. A training component is included into the project design targeting counties to address this as well training for communities and provision for the ESMF, RPF and VMGF to guide development of plans and legal requirements for national gender policy.
- Socio-cultural issues in some target communities hinder resource allocation/sharing, resource access and use, and equity issues in project implementation, particularly the inclusion of women and youth in decision making structures and access to project benefits. The project will require gender analysis as part of the consultation process and development of the action plan.
- Compensation for community land and/or donations of community land for investments may also be challenging. The project has prepared an RPF, which lays out the principles for compensation. As per the project design, the bulk of the investments are not likely to result in physical resettlement or land acquisition.

In addition to these above impacts the following risks have been envisaged as being likely to influence the outcome of project.

Table 2: Potential Project Risks

| Risk Category | Rating (High, Substantial, Moderate, Low) |
|---|---|
| Political and Governance | SUBSTANTIAL: The risk rating is based on current devolved structure of government. County governments now play the primary role of delivering infrastructure and planning. The capacity of county governments to deliver these services is currently inadequate. |
| Sector Strategies and Policies. | MODERATE: There is moderate risk of adverse impact on the project implementation stemming from sector strategies and policies. KISIP is consistent with the country's main urban development policies and strategies, but their coordination needs to be strengthened. |
| Technical Design of Project | MODERATE. The project design aims to address lack of access to services and land tenure in informal settlements. This risk relates to the capacity of county governments to design sub-projects. KISIP will supplement capacity with consultants. |
| Institutional Capacity for Implementation and | SUBSTANTIAL. This risk is related to the uncertainty regarding the county governments' capacity to sustain the |

| | |
|--------------------------|---|
| Sustainability | outcomes of KISIP beyond the project period. However, investing in capacity building at County level is among the top priorities. |
| Fiduciary | SUBSTANTIAL. The overall fiduciary environment has inherent weaknesses associated with inadequate financial management and procurement control systems primarily at county level. Detailed assessment of the financial and procurement system will be finalized during project appraisal. |
| Social Safeguards | MODERATE. Communities are highly influenced by the political and social conditions; thus decisions could be driven by political agenda. To minimize the possibility of certain groups being excluded from the sub-projects, a participatory targeting approach to identify and support VMGs, including IPs, will be adopted. |
| Environmental Safeguards | MODERATE. The project has triggered the OP 4.01. This risk will be mitigated using the screenings under the Environmental and Social Management Framework (ESMF), which will guide the preparation of micro-project specific Environmental Management Plans (EMPs). |
| Stakeholders | MODERATE. Counties selected to participate in the project may include those with IPs. Opposition from IP representatives is not uncommon in Kenya. Community members will be actively engaged in local level planning and implementation of project activities. |

4.4 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, KISIP will:

- Ensure that vulnerable and marginalized groups in general and their organizations are informed of activities selection, design, and implementation processes to seek input and to provide clarification.
- Carry out analysis of socio economic impacts of proposed sub projects on vulnerable groups through a transparent process with the free and informed participation of the affected communities.
- Ensure that the interventions do not unnecessarily and unintentionally exacerbate factors outside the scope of planned impacts;
- Screen the activities of 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;
- Be guided by the ESMF and RPF which spell out the principles of mitigation measures to address such negative impacts.
- Undertake the necessary tasks in order to adopt appropriate mitigation measures. The most important in this respect is consultation with the VMG communities, community

elders/leaders, civil society organizations like NGOs and others who have experience working with other vulnerable groups.

A summary of the potential adverse impacts of sub project investments under KISIP on VMGs and possible mitigation actions are highlighted in Table 3 and should be considered as a guideline in the development of investment specific VMGPs.

Table 3: Potential Adverse Project Impacts and Mitigation Measures

| Impact | Possible Actions | Responsibilities and Issues |
|---|--|-----------------------------|
| 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> | PCT |
| Increased risk of exposure to diseases such as HIV/AIDS and other communicable diseases | Disseminate public health messages and measures to combat spread of diseases | PCT Contractors |
| Physical/Economic Displacement of | No physical displacement of VMGs and thus exclude all sub projects screened and determined | |

| | | |
|--|---|-----|
| VMGs | to trigger displacement of VMGs Where resettlement is necessary, compensate the VMGs who are economically displaced | |
| Loss of traditional livelihoods | The project impacts will be minimal. | PCT |
| Encroachment on and degradation of land, territory and natural resources | The project will not likely encroach or degrade land or natural resources. Where temporary impacts occur they will be mitigated through the ESMF and RPF. | PCT |
| Participation of women and youth | KISIP executing agencies will ensure that consultations and information dissemination is gender- and inter-generationally appropriate | |
| Increased marginalization and exclusion of the VMGs | a) Adequate communication and engagement framework to ensure VMPs voices are heard b) A functional and effective Grievance Redress Mechanism. c) Disclosure: KISIP will ensure that all project design frameworks and consecutive processes and activities disclosed in culturally appropriate and accessible manner using FPIC guidelines stipulated in this document. d) Capacity Development of VMGs and Stakeholders: KISIP will finance and support the development of and training on standardized training modules. | PCT |

5. Sub-Project Screening and Social Assessment (SA)

5.1 Sub Project Investment Screening

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

Screening will be done in early in sub project preparation to determine whether VMGs 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 existing administrative structures of the County up to the settlement level will be used to inform the vulnerable and marginalized communities about the proposed sub project and arrange for consultative meetings. Settlement Executive Committee members, VMG leaders will also be involved in dissemination of information about the meetings. Local radio stations may be used to communicate the meeting dates, venues, and purpose.

To ensure inclusive participation:

- a) Meetings may be conducted in indigenous languages
- b) 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.
- c) Provide adequate notice for the meetings and allow time for consensus building, and the articulation by VMGs of their views and preferences.
- d) Ensure the time chosen for the meetings is appropriate for majority of the VMGs to attend.

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

5.1.1 Screening Methodology

Screening will be done using a screening check list in a collaborative and consultative approach. The KISIP Environmental and Social Specialists will prepare the screening forms in

collaboration with the implementing Counties for the specific sub project considered for implementation. A sample screening form is shown in **Annex 1**.

The criteria for screening will use both the OP 4.10 criteria of VMGs and the GOK definition. If the results show that there are VMGs in the zone of influence of the proposed sub-project, a Social Assessment (SA)/analysis will be undertaken.

5.1.2 Screening Criteria

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

During this visit, the screening team will undertake screening of the VMGs with the help of the community leaders and local authorities. The screening will cover the following aspects:

- a) Name(s) of VMGs in the area;
- b) Total number of VMGs in the area;
- c) Percentage of VMGs to that of total area/locality population
- d) Number and percentage of VM households along the zone of influence of the proposed subproject.
- e) Any land acquisition required from any VMGs for the subproject?
- f) If so, any alternatives to avoid land acquisition?
- g) Will a VMGPs be required if a subproject passes through any VMG?
- h) If no, why?

5.2 Social Assessment

If, based on the screening, the KISIP concludes that VMGs are present in, or have collective attachment to, the project area; a social assessment will be undertaken 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 KISIP will prepare detailed Terms of Reference (ToR) for the social assessment study once it is determined that VMGs are present in the project area. Annex 4 contains draft sample ToRs for the development of a VMGPs.

The social assessment will also identify if the proposed investment will involve change in use or management of commonly held properties in the community as well as involving the commercial development of natural and cultural resources on lands or territories that VMGs traditionally owned, or customarily used or occupied. The social assessment will ensure free, prior and informed consultation with the VMGs during project planning and implementation. It will ensure that mitigation of potential adverse impacts, deriving from project activities, will

be based on a participatory and consultative process acceptable to the World Bank and the VMGs themselves.

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

- a) Conserve and sustainably use land and other natural resources that impact on VMGs and other communities
- b) Mitigate any possible adverse impacts
- c) Be socially and culturally acceptable to the VMGs and economically feasible Be institutionally feasible: Local institutionally capacity should be adequate to take up activities
- d) Be environmentally sustainable and avoid detrimental impacts from those activities that cannot be mitigated
- e) Be supported by the VMGs and other communities through participatory consultation • Be supported by training and capacity building if necessary to enhance VMGs and community development

5.2.1 Methodologies for Social Assessment

Combined qualitative and quantitative analysis method

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

Comparative analysis method

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

Stakeholder analysis method

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

Participatory assessment

Participatory assessment is a method that involves all stakeholders in SA. The key points include listening to all stakeholders' opinions respecting all participants, showing interests in their knowledge, speeches and behaviours, 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: a) socioeconomic survey; b) institutional analysis; c) social gender analysis; d) social impact analysis; e) poverty analysis; and f) social risk assessment.

5.3 Process of Conducting SA

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

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

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

5.3.1 Literature Review:

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

5.3.2 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 sub-projects investment where there is a likelihood of VMGs being affected and the stakeholder mapping process will ensure that all the interested and affected stakeholders are identified and included in the social assessment process including impact identification and mitigation.

5.3.3 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 leaders in collaboration with KISIP 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
- 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 KISIP
- Traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully

- There is mutual understanding and respect between the KISIP 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.

5.3.4 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 should consider the long-term impacts as well.

5.3.6 Determination of Mitigation Measures

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

5.3.7 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;

- a) The VMGs are aware of the project and its impacts
- b) Aware of any restrictions and negative impacts
- c) Can discuss compensatory measures
- d) Provide support to VMG participation arrangements in the project

- e) Are aware of the GRM and
- f) Provide broad community support

Sub project activities selected should ensure that the VMGs do not: Face further physical and economic displacements from land and other natural resources traditionally utilized by them as source of livelihood and basis for their cultural and social system.

5.3.8 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 KISIP 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 KISIP and executing agencies will have to consider and apply the following strategies in order to avoid many of these problems associated with VMGs:

- Confer with the VMGs at the outset on how they wish to be engaged
- Understand and respect local entry protocols as they relate to permission to enter a community and access traditional lands
- Commit to open and transparent communication and engagement from the beginning and have a considered approach in place
- Ensure that all representatives of the KISIP staff carrying out the specific sub project investment 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.

5.4 Who Conducts the SA

The social assessment (SA) will be undertaken by the social consultants who will be recruited by the KISIP as part of developing the Vulnerable and Marginalized Groups Plan (VMGP). The TOR for the work will be shared with World Bank for clearance. The SA consultants will gather relevant information from separate group meetings: Discussions will focus on sub-Project impacts, positive and negative; and recommendations for design of subproject. The social consultants will be responsible for carrying out the SA, analysing the SA, and for leading the development of the VMGP the VMGs, project engineers, and other staff.

6. A Framework for Free, Prior, Informed Consultation

6.1 Free, Prior Informed Consultation

The WP 4.10 requires that a process of free, prior, informed and accessible consultation leading to broad community support, with the affected vulnerable and marginalized communities throughout the KISIP design and implementation process. The (FPIA-Consultation will be used in conjunction with the ESMF/P and RAF/P to ensure that any potential negative impacts are avoided, minimized and/compensated, and further that they share benefits accruing from KISIP and micro-project.

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

The consultation process will ensure that any negative impact on the youth and differently abled in the VMG area is addressed and they as well share benefits accruing from the KISIP and its sub-projects. FPIC of the vulnerable and marginalized communities will be conducted at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project.

6.2 The Elements of FPIC

- a. **Free** – people are able to freely make decisions without coercion, intimidation or manipulation
- b. **Prior** – sufficient time is allocated for people to be involved in the decision-making process before key project decisions are made and impacts occur
- c. **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)
- d. **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.

6.2 FPI-Consultation Tools

KISIP will utilize an evidenced approach and tools to ensure FPIC is observed throughout the life of project. The proposed FPIC tools will include stakeholders' attendance lists, photographic evidences and minutes and/or back-to-office report.

6.3 Strategy for Participation and Consultation with VMGs⁷

Participation of VMGs in selection, design and implementation of the subprojects will largely determine the extent to which the VMGP objectives would be achieved. To ensure benefits have as wide a reach as possible and where adverse impacts are likely, the KISIP 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, the VMGP will follow a timetable to consult indigenous people communities at different stages of the Project program cycle, especially during preparation and implementation of the VMGPs. The primary objectives would be to examine the following:

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

Consultations will be carried out broadly in two stages. First, prior to final selection of any subproject located in an area inhabited by VMGs, the KISIP will consult the VMGs about the need for, and the probable positive and negative impacts associated with the expansion/renovation works. Second, prior to detailed impact assessment, ascertain how the VMGs in general perceive the need for undertaking physical works for the subproject and gather any inputs/feedback they might offer for better outcomes, which would eventually be addressed in VMGPs and design of the physical works.

The VMGPs communication strategy will:

- Facilitate participation of VMGs with adequate gender and generational representation; customary/traditional VMG organizations; community elders/leaders; and civil society organizations on VMGs development issues and concerns.
- Provide them with 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 and any inputs/feedbacks offered by VMGs; and an account of the broad community support by VMGs

The EA will assess the detailed impacts at household and community levels, with a particular focus on the adverse impacts perceived by VMGs and the probable (and feasible) mitigation and community development measures. To ensure continuing informed participation and more focused discussions, the communication strategy will provide affected VMGs with the impact details of the proposed project 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 focus on the

⁷ See KISIP Stakeholder Engagement Framework for a more detailed discussion.

households directly affected. Consultation stages, probable participants, methods, and expected outcomes are suggested in the VMGs consultation matrix below.

Table 4. Indicative VMGs Consultation Matrix

| Consultation Stages | Stages Consultation Participants | | Consultation | Expected |
|---|--|---|--|--|
| | Project Authority | VMGs community | Method | Outcome |
| Reconnaissance & ground verification of project sites | KISIP , project consultants (Social Scientist) and other stakeholders | VMGs, including organizations, community leaders/elders | Open meetings & discussions, visit of proposed subproject sites, IP settlements & surroundings | First-hand assessment of VMGs' perception of potential social benefits and risks, and prospect of achieving broad base support for the civil works |
| Screening of the proposed sub projects | KISIP , Consultants(Soci al Scientists) & Other stakeholders | VMGs, including likely affected IPs, IP organizations, community leaders/elders, key informants | Open meetings, focus group discussions, spot interviews, etc. | Identification of major impact issues, feedback from VMGs and would-be affected persons for the civil works |
| In-depth study of risks and benefits taking into consideration, inter alia the conditions that led to community consensus | KISIP , project consultants (Social Scientist), NGOs / CBOs, Other knowledgeable persons | Would-be affected VMGs, VMGs organizations, Community leaders/elders, key informants | Formal/inform al interviews; focus group discussions; hotspot discussion on specific impacts, alternatives, and mitigation; etc. | More concrete view of impact issues & risks, and feedback on possible alternatives and mitigation and development measures |
| Social Assessment/analysis | KISIP , project Consultants(Soci al Scientist) | Adversely affected Individual VMGs/househol ds | Structured survey questionnaires covering quantitative & qualitative information | Inputs for VMGP, and identification of issues that could be incorporated into the design |

| | | | | |
|-------------------------------------|---|--|---|--|
| | | | | delivery |
| Preparation of civil works and VMGP | KISIP , project consultants (Social Scientist) and Other stakeholders | VMGs, organizations, Community leaders/elders, adversely affected VMGs | Group consultations, hotspot discussions, etc. | Preparation of VMGP, and incorporation of SA inputs into engineering design to avoid or minimize adverse impacts, and VMGs development program |
| Implementation | KISIP , Consultants(Soci al 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 | KISIP consultants (Social Scientists), NGOs & CBOs | VMGs organizations/ groups and individuals | Formal participation in review and monitoring | Identification & resolution of implementation issues, effectiveness of VMGP |

Where the project affects VMGs, the PCT will engage in FPIC with them. To ensure such consultation, the PCT:

- a) Establishes an appropriate gender and inter-generationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the implementing structures, the VMGs, the VMGOs if any, and other local Civil Society Organizations (CSOs) identified by the affected VMGs
- b) Uses consultation methods appropriate to the social and cultural values of the affected VMGs and their local conditions and, in designing these methods, gives special attention to the concerns of VMGs women, youth, and children and their access to development opportunities and benefits; and
- c) Provides the affected VMGs with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected VMG communities) in a culturally appropriate manner at each stage of project preparation and implementation.

6.4 Decision on Sub-Projects

In deciding whether to proceed with respective micro-project, the PCT will ascertain, on the basis of social analysis, FPIC, whether the affected VMGs communities provide their broad support to the project. Where such support will be provided, the PCT will prepare a detailed report that will document:

- a) The findings of the social assessment;
- b) The process of FPIC with the affected VMG communities;
- c) 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;
- d) Recommendations for FPIC with and participation by VMGs during project implementation, monitoring, and evaluation; and
- e) Any formal agreements reached with VMGs and/or the VMGOs.

The PCT will then submit the social assessment report for inspection by the World Bank and advice based on the outcome of the FPIC with the VMGs as a basis for determining whether there is such report.

7. Vulnerable and Marginalized Groups Plans (VMGPs)

This VMGF contains specific measures to ensure that the VMGs receive social and economic benefits that are culturally appropriate, including measures to enhance the capacity of the project implementing agencies and other stakeholders. This VMGF calls for the preparation of a VMGP for each micro-project screened and found to be implemented in areas where VMGs are present or have a collective attachment. The VMGP will be prepared through a consultative process.

7.1 Elements of a Vulnerable and Marginalized Groups Plan

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

- a) A summary of a scale appropriate to the project, of the legal and institutional framework applicable to Indigenous Peoples. Relevant baseline information on the demographic, social, cultural characteristics of the affected Indigenous Peoples' communities, and the natural resources on which they depend within project affected area.
- b) A summary of the social assessment findings
- c) A summary of the framework and results of the FPIC with the affected VMGs that was carried out during project preparation and that led to broad community support for the project.
- d) 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.
- e) When potential adverse effects on VMGs are identified, appropriate action plans of measures to avoid, minimize, mitigate, or compensate for these adverse effects.
- f) The cost estimates and financing plan for the VMGP. 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 resolution of grievances at lowest levels possible; the availability of judicial recourse and customary dispute settlement mechanisms among the VMGs.
- g) 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 FPIC with the affected VMGs.

7.2 Vulnerable and Marginalized Groups Plan

The action plan will consist of a number of activities and will include mitigation measures of potentially negative impacts, modification of sub-project design, and development assistance. Where there is land acquisition in VMGs, the Project will ensure that their rights will not be violated and that they be compensated for the use of any part of their land in a manner that is culturally acceptable to them. The compensation will be done in compliance with OP 4.12, and Op 4.10.

Table 5: Vulnerable and Marginalized Groups Plan

| Issues | Activity | Responsibility | Indicators |
|--|--|---|--|
| Screening | Carry out an inventory of VMGs in the proposed sub project operation areas | KISIP PCT /VMGs | |
| Vulnerable and Marginalized Groups Orientation and Mobilization | Reconnaissance survey Community meetings | KISIP / 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 | KISIP | Information from consultations verified by VMGs and VMGOs as correct and a true representation of their needs and priorities |
| Mapping of community resources critical to VMGs which could benefit from the project | Baseline Surveys | KISIP and VMGOs | Community transect reports Information from consultations verified by VMGs and VMGOs as correct and a true representation of natural, cultural and social, technical resources critical to their survival |
| Development of strategies for participation of VMGs and mitigation measures | Social Screening | KISIP and executing partner agencies and VMGOs | Activities implemented respect the conditions and do not leave the VMGs worse off than they were. Activities respect the rights, culture and dignity of the VMGs |
| Carry out VMGP(s), if the need arises | If the inventory documents that the proposed sub projects might impact on the indigenous peoples: carry out VMGPs Carry out training and provide backstopping | KISIP PCT and VMGs | The VMGPs are accepted by the GoK, the World Bank and the VMGs |
| Capacity Building | Trainings/Information dissemination on policy | KISIP and executing partner agencies and | VMGs and VMGOs aware of policy and project requirements. |

| | requirements for VMGs and VMPOs | VMGOs | |
|--|---|--|---|
| Representation of VMGs in decision making organs | Ensure Representation of VMGs in relevant project implementation bodies | KISIP and executing partner agencies and VMGOs | Active participation of VMGs in forums VMGs and M&E indicate that representation is satisfactory to the VMGs |
| Participatory M&E with VMGs | Internal M&E External M&E | KISIP and executing partner agencies and VMGOs | M&E reports accessible to VMPs and implementing agencies Mechanism for feedback into VMGF in place and implemented |
| Training and Capacity Building for implementation of VMGPF | Training of staff from partner executing agencies and VMG Organizations | KISIP and executing partner agencies | Participants are able to implement VMGF |

8. Grievance Redress Mechanisms

8.1 Overview

KISIP will establish a mechanism to receive and facilitate resolution of affected VMGs concerns, complaints, and grievances about the project's safeguards performance at each micro-project having VMGs impacts. The Grievance Redress Mechanism (GRM) will be specific to addressing the concerns of the VMGs. The grievance redress mechanisms should be designed with the objective of solving disputes at the earliest possible time and at the lowest levels where the VMGs reside for quick resolution. The traditional dispute resolution structures used by VMGs will be used as the first step in resolving grievances.

The VMGs 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, 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.

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:

- a) Establishing a project investment in the absence of broad community support
- b) Inadequate engagement or decision-making processes
- c) Inadequate or inequitable compensation for land
- d) Inequitable distribution of benefits
- e) Broken promises and unmet expectations of benefits
- f) Failing to generate opportunities for employment, training, supply or community development
- g) Environmental degradation
- h) Disruption to amenities and lifestyle
- i) Loss of livelihood
- j) Violation of human rights
- k) Social dislocation

In addition, however, there are some contextual factors that have particular salience for vulnerable and marginalized people and their relations with sub project investments. For example, a lack of respect (perceived or actual) for indigenous customary rights or culture, history and spirituality, is likely to trigger a strong reaction. Similarly, issues around access to and control of land and the recognition of sovereignty are very important for many VMGs and can lead to serious conflict if they are not handled sensitively and with due respect for the rights of affected groups.

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

The grievance procedure does not replace existing legal processes. Based on consensus, the procedures will seek to resolve issues quickly in order to expedite the 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.

8.2 Grievance Redress Process

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

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 KISIP should facilitate access by maintaining and publicizing multiple access points to complaint mechanisms, such as at the project site and in key locations within communities, including remote communities.

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

8.3 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. The composition of the Committees will include representatives of the VMGs, women, youth, local NGOs/CBOs, and local administration.

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. 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.

8.4 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, traditional leaders play a leading role in solving disputes in communities through 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. 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 the KISIP.

8.5 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.

8.6 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 KISIP and executing partner agencies and copies of the records kept with all the relevant authorities at the County, Sub County and Village level and will be used in monitoring of complaints and grievances.

In each sub project investment, the KISIP Community Liaison Officer, 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.

8.7 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.

8.8 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 Community 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.

9. Implementation of the VMGF

9.1 Phases of Implementing the VMGF

The VMGF will be implemented in three phases:

- I. **County and VMG sites disclosure of the VMGF:** This will entail sharing the VMGF details through county forums and specific VMG sites. During this disclosure forums and meetings additional comments and views will be gathered and included in the VMGP design process as well as ensuring broad support of the KISIP by the county government and VMGs. Continued disclosure will be required as the VMGF has been disclosed at the national level and there remains many stakeholders from counties and community levels who are not been able to attend this disclosure forum.
- II. **Development of standardized Capacity Development Manuals.** The manuals will be developed to include the consultation process; Participatory Impact Monitoring (PIM), conflict redress process and grievance redress mechanism.
- III. **Capacity Development and Coaching of Relevant Stakeholders:** Capacity development and coaching activities will entail training session for various stakeholders such as KISIP PCT, County KISIP, SECs, VMGs NGOs, CBOs etc. In addition, during the VMGF implementation coaching session will be mounted on the project activities to ensure any negative impact on the VMGs are mitigated and/or avoided and that they share benefits that accrue from the KISIP.

9.2 Disclosure Arrangements

This VMGF and micro-project VMGPs will be made available to the affected VMGs in an appropriate form, manner, and language. Various project design, launching, implementation, monitoring and evaluation, and implementation completion sessions will be disclosed and/or communicated throughout the project phase. 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 micro-project VMGP will be disclosed to the affected VMGs with detailed information of the micro-project. 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: Offices of the MTIHUD; Sub County or County Office; and any other local level public offices. Electronic versions of the framework as well as the VMGPs will be placed on the official website of MTIHUD and the official website of Bank after approval and endorsement of the VMGF and each VMGP by the Bank.

9.3 Specific capacity-building for VMGs

As the target groups become clearer and awareness of the social and economic inclusion principle of the project is widely shared, the VMGs members will be invited to participate in training and capacity building sessions. The VMGs may have specific capacity building needs, and dedicated skills training funded through potentially dedicated funding. Youth from the VMGs like in other communities may need separate training programs, tailored to their needs and lifestyle.

KISIP will develop a training program targeting relevant project actors at the national, county, sub-county and community levels with each target with relevant training module and knowledge, skills and practice areas.

- a) Nation and County Institutions: The institutions to be trained will include: National and County PCTs.
- b) Settlement Executive Committees (SECs), Grievance Redress Committees, CSO, NGO, FBO's among others.
- c) VMGs: The training will focus on whole community with awareness creation session and the VMGs CIGs with the respective training modules.

Terms of Reference and the selection process for facilitators and trainers will ensure that candidates who can deliver training modules in an inclusive way to be hired. Also, language and tools to be used in documents and training should factor in potential barriers these media can pose to the participation of certain excluded groups in capacity building measures. The county government should explore the possibility and ensure the language and modality of training provision would not exclude certain groups of members.

9.4 Roles and Responsibilities

9.4.1 KISIP PCT

KISIP PCT specifically the environment and social safeguard specialists will remain responsible for:

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

9.4.2 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.

9.4.3 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 implementation, the Bank will also conduct field monitoring and evaluation. The Bank will also approve the VMGF.

9.5 Budget

The costs for the implementation of VMGPs will be financed by KISIP. At this stage, it is not possible to estimate the exact number of VMGs who may be affected under KISIP since the technical designs and details of all investments have not yet been finalized. It is therefore not possible to provide a budget for the total cost of VMGP that may be associated with KISIP 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.

The following is an indicative budget for each sub-project which may be revised once the VMGP is completed.

| No. | Activities | Approx. cost (USD) |
|-----|---|--------------------|
| 1 | Preparation of VMGP | 10,000.00 |
| 2 | Sensitization/Awareness creation of stakeholders at National, County and investment /community levels | 60,000.00 |
| 3 | Capacity building (technical staff, SECs, GRCs, and VMGs) | 50,000.00 |
| 4 | Disclosure costs for VMGPs | 10,000.00 |
| 5 | Mitigation measures: Targeted support to the VMGs | 150,000.00 |
| 6 | Stakeholders trainings/ consultation forums on VMGF | 50,000.00 |
| 7 | Monitoring and evaluation of the implementation of VMGP | 50,000.00 |
| 8 | Annual VMGPs audit | 20,000.00 |
| 9 | Establish/Operationalize SEC and GRM Committees | 10,000.00 |

10. Monitoring and Evaluation

10.1 Mechanisms for monitoring, evaluation and reporting

All project results indicators will be disaggregated by gender to monitor women’s participation in the project interventions. The project will also enhance inclusion of vulnerable hard-to-serve female-headed households, child-headed households those living in the targeted counties or those from marginalized communities of Kenya.

The implementation of VMGPs will be monitored. The PCT will establish a monitoring system involving the project staff at national and county level, as well as community groups of VMGs to ensure effective implementation of VMGP. A set of monitoring indicators will be determined during VMGP implementation and will be guided by the indicators contained in the VMGF document. The project support consultants will carry out monitoring, as will the World Bank social staff. Appropriate monitoring formats will be prepared for monitoring and reporting requirements.

The PCT and NGOs will collect baseline data including qualitative information and analyse the same to assess the impacts of the project on groups that meet the OP 4.10. The experts will advise on compliance issues and if any significant issues are found, the PCT will prepare a corrective action plan or an update to the approved VMGP. The PCT will follow up on implementing the corrective actions to ensure their effectiveness.

For any sub-project found to have significant adverse impacts on VMGPs, external experts or NGOs will be engaged by the PCT to verify monitoring information of the VMGP for those sub-projects.

Table 7: Monitoring and Evaluation Indicators for VMGF

| Issues | Indicator | Responsibility | Data Sources |
|---|--|--|--|
| Accessibility of project benefits to VMGs | Number of VMG households benefitting from project interventions | KISIP | Reports |
| Capacity Building for implementation of VMPPF | Number of individuals & institutions trained | KISIP | Training reports |
| Vulnerable and Marginalized Groups Orientation and Mobilization | Number of VMGs meetings; Number of VMGs sensitized | KISIP, 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 | KISIP, 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 | KISIP, Vulnerable and Marginalized Groups Organizations | Baseline survey reports Community transect reports |
| Development of strategies for | Number of projects passed by social | KISIP, Vulnerable and Marginalized | KEMP/ PIU reports |

| | | | |
|---|---|---|-------------------------------|
| participation of VMGs and mitigation measures | screening Number of sub projects implemented | Groups Organizations | Implementing agencies reports |
| Capacity Building | Types of training Number of Trainings Attendance by VMGs | KISIP, 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 | KISIP, Vulnerable and Marginalized Groups Organizations | VMGO reports |
| Participatory M&E with VMG | Internal M&E External M&E | KISIP, Vulnerable and Marginalized Groups Organizations | |
| | | | |

10.2 Monitoring and Evaluation Benchmarks

Monitoring Indicators: 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;
- (iii) economic status of VMGPs in comparison with pre-project condition
- (iv) status of VMGs as identified in the SA;
- (v) any disadvantaged condition to VMGs that was not anticipated during the preparation of VMGPs, that required corrective actions; and
- (vi) grievance redress issues. The VMGP will collect required data/information and regularly analyse project outputs and impacts considering impact on VMGs, and semi-annually report the results to the Bank.

10.3 Reporting

Annual progress reports will be prepared by the PCT and the preparation of the progress reports will be supported by the environmental and social safeguards specialists in the project at the county and community levels. These reports will be submitted to the Bank.

ANNEXES

ANNEX 1-SOCIAL SCREENING FORM

| SOCIAL SCREENING FORM FOR KISIP ACTIVITIES | |
|--|--|
| A. BACKGROUND INFORMATION | |
| A1.Type/description/justification of proposed activity | |
| A2. Location of activity | |
| A3. Duration of activity | |
| A 4. Focal point and person for activity | |
| B. EXPECTED BENEFITS | |
| B1. Benefits for local people | |
| B2. Benefits to Vulnerable and Marginalized Groups (VMGs) | |
| B3. Total Number of expected beneficiaries | |
| B4. Total Number of expected Vulnerable and Marginalized Peoples beneficiaries | |
| B5. Ratio of B4 and B5; Are benefits distributed equitably? | YES / NO If No, state remedial measures |
| C. POTENTIAL ADVERSE SOCIAL IMPACTS | |
| C1. Will activity entail restriction of access of VMP to lands and related natural resources | YES / NO If YES exclude from project |
| C2. Will activity entail commercial development of natural and cultural resources critical to VMGs | YES / NO If yes exclude from project |
| C3. Will activity entail physical relocation of Vulnerable and Marginalized Peoples | YES / NO If yes exclude from project |
| D. CONSULTATION WITH IP | |
| D1. Has VMP orientation to project been done for this group? | YES / NO |
| D2. Has PRA/RRA been done in this area? | YES / NO |
| D3. Did the VMP give broad support for project | YES / NO |

Prepared by: _____ **Verified by:** _____

Date: _____ **Date:** _____

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

ANNEX 2- CONTENTS VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK

The Indigenous Peoples Planning Framework (IPPF) sets out:

- (a) The types of programs and subprojects likely to be proposed for financing under the project.
- (b) The potential positive and adverse effects of such programs or subprojects on Indigenous Peoples.
- (c) A plan for carrying out the social assessment for such programs or subprojects.
- (d) A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of project preparation and implementation (see paragraph 10 of this policy).
- (e) Institutional arrangements (including capacity building where necessary) for screening project-supported activities, evaluating their effects on Indigenous Peoples, preparing IPPs, and addressing any grievances.
- (f) Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.
- (g) Disclosure arrangements for IPPs to be prepared under the IPPF

ANNEX 3-CONTENTS OF VULNERABLE AND MARGINALIZED GROUPS PLAN (VMGP), OP 4.10

VMGs 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.

ANNEX 4: SAMPLE TERMS OF REFERENCE FOR DEVELOPING A VMGP

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

A. Executive Summary of the Vulnerable and Marginalized Groups Plan

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

B. Description of the Project/Background Information

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

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

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

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

C. Social Impact Assessment

4. This section should among others entail:

(i) Review of the legal and institutional framework applicable to indigenous people in the project context where relevant.

(ii) Provide baseline information on the demographic, social, cultural, and political characteristics of the affected Vulnerable and Marginalized Groups (VMGs); the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.

(iii) Identify key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with VMGs at each stage of project preparation and implementation, taking the review and baseline information into account.

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

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

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

Information Disclosure, Consultation and Participation

5. This section of the ToR should:

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

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

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

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

(v) Confirm disclosure of the draft and final 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.

ANNEX 5; SAMPLE FACT SHEET FOR VMGPs; VMGP REVIEW
To be filled by PCT and World Bank as part of review and monitoring

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

| | |
|-------------------------------|---|
| Last Update: [11/20/ 2008] A. | PROJECT DATA AND RECOMMENDED ACTIONS |
| Reviewer: | Date of Mission: |
| Country: | Project Loan Amount: |
| Project title: | Total Project Cost: |
| Project ID: | Appraisal Date: |
| IPP #: | Effectiveness Date: |
| Task Manager: | Closing Date: |
| Environment Spec. | Last PSR/ISR |
| Social Spec. | |
| MTR | Last Aide Memoire |

REVIEW SUMMARY (Based on Desk and Field Review)

Issues / Observations

Proposed Actions (short term / long term, for TTL, SD, etc.)

B. SAFEGUARD IDENTIFICATION AND COMPLIANCE AT PREPARATION

1 Environmental Safeguard Classification:

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

Applicable

Source

Environmental Assessment (OP/BP 4.01)

Natural Habitats (OP/GP 4.04)

Forestry (OP 4.36)

Pest Management (OP 4.09)

Cultural Property (OP 4.11) – OPN 11.03

Indigenous Peoples (OP 4.10)

Safety of Dams (OP/BP 4.37)

Projects in Disputed Areas (OP/BP 7.60)

Involuntary Resettlement (OP 4.12) – OD 4.30

Projects on International Waterways (OP/BP 7.50)

3 Project Objective and Components

Project Objectives

Project Description

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

C. SOCIAL MANAGEMENT PLANS AT PREPARATION

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

SCREENING

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

SOCIAL ASSESSMENT

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

Has the legal framework regarding IPs been described?

Have benefits/ adverse impacts to IP groups been identified?

CONSULTATION, PARTICIPATION, COMMUNITY SUPPORT

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

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

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

INDIGENOUS PEOPLES PLAN

Is there a specific action plan (implementation schedule)?

Does the IPP include activities that benefit IP?

Are activities culturally appropriate?

Have institutional arrangements for IPP been described?

Is there a separate budget earmarked for IPP?

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

Has a complaint/conflict resolution mechanism been outlined?

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

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

What's missing: _____

SPECIAL CONSIDERATIONS

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

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

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

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

1 Social Safeguards

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

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 List of Attachments |
| - Key People Met |
| - photos |
| -etc. |
| G. FEEDBACK FROM TTL / SD |
| - Date of feedback received |

ANNEX 6; THREE POINT RANK ORDER SYSTEM FOR VMGPS (SAMPLE) To be filled by KISIP/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 | | |

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| 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 |

