

REPUBLIC OF KENYA



**PROPOSED DEVELOPMENT, OPERATIONS  
AND MAINTENANCE OF THE NAIROBI -  
NAKURU – MAU SUMMIT (A8) HIGHWAY  
(PPP) PROJECT**

**IMPLEMENTING AGENCY**



**Kenya National Highways Authority**

*Quality Highways, Better Connections*

**VULNERABLE AND MARGINALIZED GROUPS  
PLANNING FRAMEWORK (VMGPF)**

**June, 2019**

## Table of Contents

Table of Contents .....	2
1 INTRODUCTION .....	4
1.1 Background of the Project .....	4
1.2 Project Description.....	4
1.3 BACKGROUND AND PURPOSE OF THE VMGF.....	7
1.4 POTENTIAL POSITIVE AND ADVERSE IMPACTS OF PROJECT ON VULNERABLE AND MARGINALIZED GROUPS .....	9
Risk Significance .....	16
1.5 FRAMEWORK FOR ENSURING FREE, PRIOR, AND INFORMED CONSULTATIONS WITH VULNERABLE AND MARGINALIZED GROUPS .....	17
Consultations with IPs for the preparation of this VMGF.....	17
• Ogiek Welfare Council .....	18
1.6 SOCIAL ASSESSMENT AND CONSULTATION .....	23
Specific Social assessment.....	23
2.1 LEGAL FRAMEWORK .....	24
2.1.1 The World Bank’s OP 4.10 and Performance Standard 7 on indigenous people .....	24
2.1.3 Kenya laws.....	24
3.0 INSTITUTIONAL FRAMEWORK FOR VMGF/VMGP IMPLEMENTATION .....	26
3.1 Outline Vulnerable and Marginalized Groups Plan.....	26
3.2. Role of different actors .....	27
4.0 GRIEVANCE REDRESS MECHANISM .....	30
4.1 The proposed levels of Grievance Redress Committees.....	30
4.3 Awareness raising on the GRM .....	33
5. MONITORING AND REPORTING.....	34
6. DISCLOSURE ARRANGEMENTS FOR THE VMGF AND VMGPs .....	35
7. BUDGET .....	36
ANNEXES .....	37
7. Consultant’s Qualifications .....	51
8. Services, Facilities and Tools .....	52
<b>OP 4.10 - Indigenous Peoples.....</b>	<b>53</b>
<b>OP 4.10, Annex A - Social Assessment.....</b>	<b>59</b>
<b>OP 4.10, Annex B - Indigenous Peoples Plan .....</b>	<b>59</b>

## Abbreviations and Acronyms

CA:	Contracting Authority
ESIA:	Environmental and Social Impact Assessment
GRM:	Grievance Redress Mechanism
GoK:	The Government of Kenya
IFPPP:	Public Private Partnerships Project
ILEPA	Indigenous Livelihoods Enhancement Partners
IPs:	Indigenous People
KeNHA:	Kenya Highways Authority
MPIDO	Mainyoito Pastoralists Integrated Development Organization
OPDP	Ogiek Peoples Development Program
PDNK:	Pastoralist Development Network, Kenya
PPP:	Public Private Partnership
RAP:	Resettlement Action Plan
VMGF:	Vulnerable and Marginalized Group Framework
VMGs:	Vulnerable and Marginalized Groups
VMGP:	Vulnerable and Marginalized Group Plans
WB:	World Bank

# **1 INTRODUCTION**

## **1.1 Background of the Project**

The Government of Kenya (GoK) has embarked on a strategic program to attract private investment in the infrastructure sector through Public Private Partnership (PPP) mechanism and to create an enabling environment for the same. To facilitate this program and as part of the preparation of a pipeline of financially viable PPP projects, the GoK is receiving support in packaging social and environmental safeguards documents as well as other preparatory activities, from the World Bank.

Accordingly, the GoK, under the provisions of the PPP Act of 2013, represented by the Kenya Highways Authority (KeNHA), defined as the Contracting Authority (CA), with technical assistance from the Public Private Partnership Unit (PPPU) at the National Treasury, wishes to award the Project for the Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) basis, Nairobi-Mau Summit A8 Highway (175 km) into a 4 (four) lane dual carriageway and in the due course its further development into a 6 (six) lane carriageway in sections depending upon traffic volumes; strengthening of 57.8 km of the A8-South highway between Rironi and Naivasha via Mai Mahiu through competitive bidding under the PPP Act 2013 as a Concession Agreement to a Special Purpose Vehicle (SPV) to be created by a Private Concessionaire.

This Project forms part of the Trans-African Highway (Northern Corridor), part of the main transport route serving East and Central African Countries through the Indian Ocean seaport of Mombasa. The concession agreement shall provide among others, specifications for the scope of work, provisions for tariff rate setting and adjustments, and may include a minimum revenue guarantee by GoK.

## **1.2 Project Description**

The proposed Project is an expansion and improvement of the existing Nairobi-Nakuru-Mau Summit road. It is part of the A8 highway and of the Northern Corridor that connects the Port of Mombasa via Nairobi to Malaba at the border with Uganda and onwards to Kampala. The Northern Corridor is the busiest and most important transport corridor in East and Central Africa, providing a gateway through Kenya from Mombasa Port via road, rail and pipeline to the landlocked countries of Uganda, Rwanda, Burundi, South Sudan and Eastern DR Congo.

The A8 and A8 South road connections have a challenge to accommodate the ever-increasing traffic leading to extended travel times and worsening road safety. The slow-moving heavy goods vehicles that do not have the power to maintain their speed in the hilly terrain, slow down the traffic which leads to dangerous situations when overtaking. The main risks are lack of barriers, poor condition of vehicles, poor driving techniques and inclement weather.

To address these problems, the Government of Kenya (GoK), through KeNHA as the CA has undertaken to improve the road safety and quality, through a PPP scheme. Towards this end, the project has been designed under a 30-year DBFOMT arrangements. The total cost is estimated at about US\$700 million, to be financed by a private Concessionaire. The private Concessionaire, through a special purpose vehicle (SPV) is expected to undertake the widening, improvement, and operations and maintenance of the highway, which is separated into the following segments:

- a) Widening of 175km of the A8 highway between Rironi and Mau Summit and turning it into a four-lane dual carriageway, including operation and maintenance;
- b) Strengthening of 58km of the A8-South highway between Rironi and Naivasha, including operation and maintenance;

The concession agreement shall provide among others, specifications for the scope of work, provisions for tariff rate setting and adjustments, and may include a minimum revenue guarantee by GoK.

### **Project components**

The proposed dualling component of A8 from Rironi to Mau Summit involves additional two lanes on one side, service roads for selected township areas and track for non-motorized traffic in built up areas as per design. Strengthening of A8 south (Rironi-Mai Mahiu–Naivasha) will involve improvement of pavement and rehabilitation of shoulders for the existing carriageway.

The Project road is proposed to be upgraded to higher standards along with provisions for local and non-motorized traffic through service roads, cycle tracks and pedestrian facilities like footpaths and foot over bridges wherever necessary.

The design has proposed 3 interchanges, 3 pedestrian overpasses, 35 underpasses (pedestrian/cattle), 3 vehicular underpasses, 2 railway overpasses and 4 railway underpasses along with 1 foot over bridges which are proposed to be retained and widened along with major rehabilitation and repair works. From the consultations done with Vulnerable and Marginalized Groups (VMGs), the concessionaire shall be advised to redesign the road with a view to including pedestrian overpasses and to entirely avoid the pedestrian underpasses so as to address security concerns raised by VMGs who view underpasses as sites for muggings, assault/attempted rape of women and girls, and other petty crimes. This shall be advised and done in consultation with the residents /communities around the identified sites.

### **Pedestrian Crossing Facilities**

Pedestrian crossing facilities are provided at the urban locations where heavy pedestrian crossings were observed along the project road. Foot over bridges are provided for the safety of the pedestrians crossing the project road. Elevated corridor for Nakuru town is one of the major structures proposed in the recommended option. A six-lane viaduct shall be built over the existing road to cater for the through traffic and existing road under the viaduct to cater for the local traffic.

### **Bus Stops, Footpaths, Cycle Tracks**

The locations of existing bus bays as provided in the inventory are proposed to be retained after the development of the existing highway. Bus bays shall be provided at all the prominent locations of urban settlements/major road crossings etc. or where engagement shall in consultation with the relevant county governments verify the need to support existing markets. Foot path and cycle tracks has been provided in the urban sections of Nakuru Town which are tentative, and provisions may have to be made in the future stage of the project as per the minimum design provision drawn up in output specifications.

## **Lighting Facilities**

Most of the project road passes through rural areas and does not require any continuous night lighting facilities apart from some of the major intersections; however retro-reflective road furniture is to be provided all throughout the project road. Fewer sections of the project road pass through built-up sections/urban locations for which lighting facilities are already provided. It is therefore, proposed to provide street lighting in the following sections of the above roads which are passing through the Urban locations of Naivasha, Gilgil, Kikopey, Nakuru, Salgaa, Molo and Mau Summit.

## **Wildlife Crossings**

Wildlife crossings shall be provided, and fencing is recommended to guide the animals to cross at the designated crossings. These wildlife crossings have been identified by the feasibility study consultant and an independent biodiversity expert firm (The Biodiversity Consultancy) was engaged to undertake critical habitat screening and the report together with the study undertaken by Kenya Wildlife Service (KWS) who also conducted independent studies on the same has proposed different locations for wildlife crossing.

## **Road Furniture and Road Signs**

Road furniture forms an important consideration in the design of roads. A detailed study of the road has been done and safety measures like retaining wall/breast wall and crash barriers/guard rails.

Road furniture shall include: -

- Directional informatory signs
- Regulatory signs
- Warning signs
- Road markings
- Road signs

## **Other project components**

There are a number of project components whose locations are not known and will only be determined by the private concessionaire. These components will be funded by the project and are not considered to be associated projects but part of the project with the locations and designs still lacking. They include among others:

- Material sites
- Rest Stop stations
- Construction and workers camp
- Workers accommodation camps
- Batching plants, asphalt mixing plants, crushing plants, and storage facilities sites.

The VMGs have indicated that, should their areas be found to be the appropriate locations for any of these facilities, they will be ready and willing to negotiate with the concessionaire on the best terms and conditions on a willing-buyer/willing-seller<sup>1</sup> basis for the use of their areas for the same. This process will involve free, prior and informed consultation that will be overseen by KeNHA

---

<sup>1</sup> According to PS5, willing buyer-willing seller refers to “market transactions in which the seller is not obliged to sell, and the buyer cannot resort to expropriation or other compulsory procedures sanctioned by the legal system of the host country if negotiations fail”.

## Summary of the project main features

- a) Rehabilitation and upgrading to 4-Lane Road with geometric improvement and six lane structures.
- b) Capacity Augmentation from 4-Lane to 6-Lane highway as per augmentation schedule/plan for each homogenous section at a future date for areas where traffic studies show the need to increase the capacity.
- c) Construction of new semi-rigid pavement and improving existing road by overlay with asphalt concrete/bituminous concrete and surface dressing.
- d) The provision of service road /slip road near town stretches within the existing road reserve.
- e) Provision of climbing lane at steep gradient locations based on prevalent standards.
- f) Provision of protection work as metal guard rail and breast at high embankments and escarpment locations.
- g) Improvements of major and minor junctions at grade level.
- h) Construction of interchange in major junctions
- i) Provision of flyover cum viaduct of 2.6 km length in Nakuru Town
- j) Construction of wildlife and livestock crossing points, with the latter being undertaken in consultation with, in particular, the Maasai pastoralist community.
- k) Establishment of workers' accommodation camps
- l) Establishment of construction operation sites
- m) Establishment of material sites
- n) Establishment and construction of Toll Stations
- o) Establishment and construction of Road Side Stations
- p) Establishment and construction of Parking Bays

## 1.3 BACKGROUND AND PURPOSE OF THE VMGF

### Background

WB OP 4.10 on Indigenous People (IPs) 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 – also referred to by the Government of Kenya as Vulnerable and Marginalized Groups (VMGs). This reference maintains the letter and spirit of OP 4.10. For all projects that are proposed for Bank financing (including Guarantee projects) and affect VMGs, the Bank requires the borrower to engage in a process of free, prior, and informed consultations with them. The policy is triggered when it is determined that the WB financed project might have an impact on the IPs or VMGs. In such cases, the Bank-financed projects must include measures to:

- a) Assess the VMG presence in, or collective attachment to the Project Area;
- b) Determine the potential positive and adverse effects of project activities on VMGs, including but not limited to impacts on seasonal livestock grazing patterns;
- c) Propose design and other measures to avoid or minimize adverse impacts on VMGs and where it is not possible to avoid or minimize impacts, or where residual impacts remain after minimization, to mitigate and/or compensate for any adverse impacts of the project on VMGs (e.g. provision of optimal locations for livestock crossings and compensation for borrow pits and other ancillary facilities);
- d) Ensure that the VMGs/IPs receive a social and economic benefit that is culturally appropriate and gender as well as inter-generationally inclusive;

- e) Ensure that the above and any subsequent stage of project preparation and implementation is based on free, prior and informed consultations that results in broad community support for the project by the affected VMGs/IPs;
- f) Guide the preparation of Vulnerable and Marginalized Groups Plans (VMGPs) for any project elements or facilities such as quarry sites or worker camps, whose location and impacts on IPs/VMGs are not yet known;
- g) Clearly spells out the mitigation and/or compensation measures for any adverse impacts on VMGs as a result of project actions;
- h) Clearly spell out the culturally appropriate benefits to VMGs from the project.

### **Purpose of the VMGF**

The purpose of the VMGF is to ensure that the project implementation process respects the dignity, human rights, economies and cultures of the IPs and that the project will engage the affected communities through free, prior and informed consultations throughout the life of the project on all matters that concern them. The framework presents a guide on the process to be used in the preparation of a Vulnerable and Marginalized Groups Plan (VMGP), through which benefits will be extended to the communities as appropriate, during project implementation.

As KeNHA embarks on a strategic program to attract the private investment, the indigenous households and communities will be potential beneficiaries of the road project. From the ESIA study undertaken for this project, it became clear that the indigenous people are present in areas traversed by the road project. Consultations with VMGs in January, March and April 2018, and again in March 2019, confirmed that the road project will affect some VMG communities, mainly the Maasai pastoralists who graze their livestock on a migratory route to other areas on both sides of the road project. Potential project impacts are discussed below, but as a key mitigation measure, the project will involve establishment of livestock crossings and pedestrian crossings to address the migratory road crossing concerns of the pastoralist communities and the safety concerns of both the Maasai and other communities who were consulted for the preparation of this VMGF. It is also anticipated that there will be establishment of material sites, workers' accommodation camps, batching plants, and asphalt plants among others, whose locations are not yet known at this stage of project preparation. However, should any of these facilities be located in the VMGs areas, engagement with VMGs shall be guided by the provisions of this VMGF and compensation for such sites in accordance with the PS5 guidance on the willing seller-willing buyer principle.

This VMGF has been prepared to guide KeNHA and the concessionaire in undertaking, free, prior and informed consultations with the VMGs in order to take their concerns into account in the grievance redress mechanism establishment, as well as preparation of a potential Vulnerable and Marginalized Group Plan (VMGP) all leading to a more sustainable and broad community supported project. The construction of the road project is associated with potential social risks on different groups along the project traverse. This framework has been developed to establish guidelines for actions to taken by KeNHA, and the Concessionaire during the detailed project design and implementation.



## **1.4 POTENTIAL POSITIVE AND ADVERSE IMPACTS OF PROJECT ON VULNERABLE AND MARGINALIZED GROUPS**

### **Vulnerable and Marginalized Groups (VMGs) in the project area**

During the Environment and Social Impact Assessment Study, it became apparent the VMGs might be found in the project area and this triggered the World Bank's OP 4.10, Indigenous People. The potential VMGs screened during the ESIA study include the Maasai and the Ogiek whose presence in the project's footprint required further verification from the ground.

Pastoralist communities in Kenya are categorized by the World Bank's OP 4.10 and the Constitution of Kenya, 2010, as vulnerable and marginalized groups. The VMGs that have been identified as those who would potentially be impacted by the project are the Maasai pastoralists. They were found to be located in small seasonal settlements between Eburru Turn off, just after Gilgil on the Nairobi-Nakuru-Mau Summit alignment (on the 175KM A104 road between Rironi (in Kiambu county) and Mau Summit (in Kericho county) and in the areas between Mai-Mahiu and Naivasha on the 58 km of the A8 South Mai Mahiu road between Rironi and Naivasha (in Nakuru county). In these areas, the Maasai graze their livestock in private ranches, conservancies and Mt. Longonot National Park. In these locations, some of which are traversed by the project road, the Maasai are known to graze their livestock on land that is privately owned but on both sides of the current highway.

*The ESMP that is included in the ESIA indicated that the Maasai and Ogiek VMGs may be present along the Nakuru-Mau Summit section, in the Mau area. As a result, a representative of Ogiek IPO – along with Maasai IPOs - were invited to the national level IPO consultations that was undertaken in January and March, 2018, as part of the preparation of this VMGF. Following consultations with them, the national level Maasai and Ogiek IPO representatives advised KeNHA to consult directly with the Ogiek and Maasai communities in order to obtain their direct support for the project. It was therefore agreed that the Ogiek and Maasai IPO representatives would help KeNHA to organize for consultations with their respective communities who may either be living along the project road or who may otherwise be impacted by the proposed expansion of the road project.*

The Maasai are traditionally nomadic pastoralists who travel far and wide with their livestock, and who cross the project road seasonally, from as far as Narok county, in search of water and pasture on both sides of the road. On the other hand, the Ogiek are traditionally hunter/gatherers, who survived mainly on wild fruits and roots, game hunting and traditional bee keeping. Their name, 'Ogiek', literally means 'the caretaker of all plants and wild animals'.

*The proposed toll road project has no adverse direct impacts on the Ogiek and Endorois communities: Following their mobilization by their IPO representative, initial consultations with the Ogiek community was done on April 19, 2018 at Wiilies Resort near Salgaa trading center. This was in response to the ESIA finding which stated that the Ogiek might potentially be present in the toll road project area, and advise by their IPO representative to consult with them directly in order to secure their support for the project. During the consultations, 9 (nine) (number) participants out of a total of 18 (eighteen) (number) were Ogiek while 1 (one) (number) represented the Endorois community. During the second consultative meeting held on 14<sup>th</sup> March 2019 at Nakuru, out of the total of 23 participants, 13 were Ogiek, and 2 were Endorois. The rest of the participants at both meetings were non-VMGs. Participants at the community meetings were drawn from Kuresoi, Tinet, Mariashoni, and Nessuit locations. None of these locations is close to the project site, as shown in Table 1, below.*

The main purpose of the March 2019 consultations was for KeNHA to ascertain the locations of the Ogiek and Endorois VMGs in relation to the project site, with a view to determining if the project – which is being implemented on KeNHA’s existing Right of Way (RoW) – would have any direct impacts on them, especially on their livelihood strategies. As shown in Table 1 below, participants were drawn from locations that are over 20 Km away from the project’s footprint and there was therefore a clear indication that the two communities – Ogiek and Endorois - would not be directly impacted or have direct interactions with the project.

Table 1: Ogiek and Endorois areas in relation to the project road

Location/Area	Group	Distance from project road
Mariashoni (in Mau East, Molo Sub County, Nakuru County)	Ogiek	24 Km
Nessuit (Mau Forest, Njoro Sub County, Nakuru County)	Ogiek	25km
Maji Mazuri (in Lembus, Londiani, in Baringo County)	Ogiek and Lembus	23km
Tinet (in South Western Mau forest, Kuresoi Sub County, Nakuru County)	Ogiek	25 km
Maji Mazuri (settlers in Baringo county who used to live and work in Koibatek forest)	Ogiek and Endorois	23km

Further, the consultations revealed that the former communities that lived in the Mau forest have been over time assimilated by the neighbouring communities. On further verification undertaken on the ground through stakeholder consultations on 14<sup>th</sup> March 2019 at Grill Place Nakuru, it was confirmed that the areas occupied by the Ogiek community in the past was in Tinet, in Mau Forest in Nakuru County and now they can be found in Maji Mazuri, Baringo County, areas which are about 23-25km away from this road project. It was further noted that the Ogiek community were relocated from some parts of Mau forest and by the time of the consultations, they could be found in Baringo, while some had relocated to other places which are outside the project foot print (e.g. Maji Mazuri where they some of them relocated to, is about 23km away from the project area).

There was an ongoing court case between the Ogiek community and the Kenya Forest Service at the time of consultations for this VMGF. Nevertheless, even if they were to be allowed back into the forest, the project is being implemented in the existing ROW and hence would have no impact on their culture, dignity and livelihoods as no resources for road construction are extracted from forests. The project ROW is already owned by KeNHA and is not being changed as the proposed PPP road project will follow the existing alignment which has an adequate road reserve.

Due to the above reasons, there is no anticipated direct project impacts on the Ogiek or Endorois VMGs. Nevertheless, should ancillary facilities be located in areas where the Ogiek or Endorois live, then the guiding principles set out in the Project Impacts section below will apply to them in as much as they will apply to their Maasai counterparts.

On their part, the Maasai VMGs will directly be impacted by the project, specifically in their need to cross the road from both sides, seasonally, in search of water and pasture. Following the confirmation that the Ogiek and Endorois VMGs will not be directly impacted by the project, this VMGF has therefore been prepared to guide KeNHA and the concessionaire in their dealings and

relations with the Maasai VMGs during the detailed design and implementation phases of the project.

All proposed project sites (including ancillary facilities) will be screened for direct and indirect adverse impacts on VMGs and whenever feasible sites presenting such impacts will be avoided. However, if, due to lack of other viable alternatives, the concessionaire is ultimately authorized by KeNHA to establish the Ancillary facilities in areas occupied by the Maasai, or the Ogiek or Endorois communities, then the Concessionaire with supervision by KeNHA will follow the guiding principles outlined below to fully and comprehensively mitigate impacts associated with the project on these VMGs. In addition, site specific SAs will be conducted for any ancillary facilities located in the VMGs areas and recommendations included in the VMGP that will be prepared for the project to further cushion them from negative impacts.

### **Impacts of the project on the VMGs**

*Potential positive impacts:* The road project is associated with possible entitlements and benefits which include the following among others:

- a. Temporary employment opportunities for both skilled and semi-skilled labour for the local communities thereby enhancing their standards of living.
- b. Increased business/ income generating opportunities for small and medium scale traders such as hotel and shop owners, food vendors, among others especially during construction phase
- c. Prior and informed consultations on project activities as a requirement for consultations in any public project under the World Bank's OP 4.10 and the Kenyan Law on public participation.
- d. Enhanced road safety and reduction of road accidents as a result of establishments of agreed, safe and sustainable livestock crossings whose locations will be agreed with the Maasai VMGs.

*Potential negative impacts:* In addition to the above positive impacts, the assessment undertaken during the ESIA study anticipated potential negative impacts related to the project and proposed mitigation measures. These findings were shared with national-level VMGs organizations and local-level VMG communities directly. Their feedback and inputs have been reflected in this framework. Findings from the ESIA and stakeholder consultations on potential negative impacts include:

- a. The project may have adverse impacts on wildlife and livestock crossings. To mitigate against these impacts, the design has proposed wildlife and livestock crossings which shall be provided by the project to guide the animals to cross at designated crossings. Livestock crossings will be identified and confirmed through a detailed study in consultation with the VMGs. Consultations with VMGs for the identification of preliminary livestock crossing sites were undertaken during consultations with them as part of the preparation of this VMGF, and the following were the proposed sites:
  - Mai Mahiu (to connect slaughter house and the market)
  - Monkey corner
  - Keroiro
  - Buda
  - Ngubi (Police Patrol base)
  - Keeya River
  - Obunda restaurant
  - Jikaze IDPs
  - Hillstop

- Longonot Railway
- Brokers
- Tanki area
- Kwa Dam access to Oasis water drinking point
- Kwa kanio
- Mirella Railway
- Maili mbili (highly residential)
- 2km before Gilgil town
- Kambi somali
- Kariandusi

It should be noted that KeNHA and the concessionaire will undertake further consultations and field visits to clarify and confirm these sites during detailed designs by the concessionaire, and during the implementation phase of the project to increase the benefits to the communities impacted by this project. To ensure their continued participation during the implementation phase, VMGs will be encouraged to undertake implementation monitoring to ensure the agreed measures are implemented as designed.

- b. Establishment of project components and associated ancillary facilities by the concessionaire in VMG areas may lead to the physical and/or economic displacement of the Maasai, or in exceptional cases, the Ogiek or Endorois, in particular temporary loss of, or restricted access and exploitation of their land and access to natural or communal cultural resources including grazing land and water points. In particular, the IPOs identified destruction of fodder by trucks and dust around the ancillary facilities sites, and potential negative impact on a specific livestock watering point near Eburru. *Ancillary facilities sites are not yet identified but will be identified by the private concessionaire.* To mitigate against negative impacts associated with ancillary facilities, the following measures and guiding principles will be adhered to by the concessionaire with supervision by KeNHA:
  - i. Should any of the ancillary sites be located in the VMG areas, meaningful free prior and informed consultation (FPIC) with the respective VMGs communities on the terms and conditions for use of their land for project activities will be undertaken by the concessionaire under the oversight of KeNHA, and in line with this VMGF.
  - ii. Temporary leasing of VMG lands for the establishment of ancillary facilities will only be allowed on a willing seller-willing buyer basis (see footnote 1). In addition, the agreements between the VMGs and the concessionaire for temporary use of their land will include clauses/conditions for the restoration of the sites after construction, to enable the VMGs continued enjoyment of their lands, and to avoid any post construction harm to the affected communities.
  - iii. Potential impacts on water – especially the borehole that was identified by IPOs as being potentially in the ROW – as well as impacts on air and noise pollution will be analyzed during implementation. In this regard, the concessionaire will prepare separate EIAs for camp site, borrow pits, crusher sites and quarry sites. Mitigation measures will be based on the findings of these specific ESIA's, and will be implemented by the concessionaire with KeNHA's supervision.
  - iv. As proof of adherence to the willing seller-willing buyer principle, the concessionaire will document and submit to KeNHA a report detailing the process of acquisition of land use/leasing for ancillary facilities including FPIC and the agreement with the affected community which includes adequate compensation and site restoration

measures. In this regard, the concessionaire, with oversight from KeNHA's approved social specialists, and in consultation with the VMGs will be required to:

- Prepare a VMGP to be implemented by the concessionaire and supervised by KeNHA. In addition to agreed use of VMG land, the VMGP will outline: (i) compensation and conditions for restoration of sites; (ii) a stakeholder engagement and communication plan; (iii) a GRM; (iv) a benefit sharing plan (e.g. on issues of employment, sharing of such resources as water); and, (v) plans for Labor Influx and GBV awareness and management.
- v. In addition to implementing the willing seller-willing buyer principle, the concessionaire, with supervision and guidance by KeNHA, will implement all necessary measures, including those established in the VGMPs, to ensure no harm is caused to neighboring households, families or communities who are not party to the willing seller-willing buyer agreements. To guard against negative impacts on such PAPs, the concessionaire will provide for preventive mitigation measures such as fencing off of site, prominently displaying signages in accessible language warning people of the danger areas, sensitization of communities against interaction with ancillary facility sites, etc. and will implement the VGMP.
  - vi. All agreements between the concessionaire and the VMGs communities will be implemented in culturally appropriate ways and reflected in a VGMP. In this regard, KeNHA will require the concessionaire to have as one of its staff, a social specialist with expertise in VMGs socio-cultural norms and experience in PS7, FPIC approach, to ensure that relations with VMGs and benefit sharing activities, are culturally appropriate.
  - vii. KeNHA will prepare the VGMPs (with support from the Concessionaire and its consultants where required) and ensure that they are implemented and that these guiding principles are adhered to by the concessionaire.
- c. Another issue identified by the IPOs as a potential negative impact during construction is labor influx. To mitigate against labor influx impacts, a labor management plan will be developed by the project concessionaire and as much as possible, the majority of unskilled and semi-skilled labor will be sourced locally, from around the project area to ensure there is minimal impact on the socio-cultural dynamics of the potentially affected communities. Employment of local labor people into the unskilled and semi-skilled labor categories will be considered the need for gender balance in such employment to ensure that both men and women, especially the youth, have equal chance of benefiting from the project.
  - d. On the destruction of fodder, the concessionaire will, as part of the identification of ancillary site, assess the current usage of the area and if it is confirmed that the identified site is currently being used as a grazing area, then either another site will be identified, or an agreement reached between the concessionaire and the affected VMG community on a culturally appropriate and acceptable mitigation measure. KeNHA, in its supervisory role, will ensure that such measures are fulfilled by the concessionaire.
  - e. On impacts on water bodies, the concessionaire will be required to have their own water facilities, with a water sharing plan for any pre-existing facilities detailing how the impacted communities will access such a water facility during construction. Such a facility will be handed over to the community after construction of the highway is completed. On the other hand, should the concessionaire find it necessary to use the borehole identified by the IPOs as being within the ROW, or to do away with it because it is in the ROW, the Concessionaire

will provide another water facility approved by KeNHA and the affected VMGs dedicated to the impacted VMGs for their use.

The above are the known potential impacts identified in the ESIA and by the VMGs and IPOs during consultations with them in preparation of this VMGF. Should additional impacts be identified during the detailed ESIA by the concessionaire, then additional proposed mitigation measures will also be included in the VMGP. For all impacts identified, a VGMP will be prepared by KeNHA in collaboration with the concessionaire and reflecting the consultations and agreements reached with the affected VMGs. KeNHA will be responsible for ensuring the satisfactory implementation of the VGMP by exercising its contractual and supervisory authority to require the Concessionaire to implement it.

### **Linking the VMGF to the Bid Stage ESAP**

The above anticipated project construction risks and impacts on VMGs that are likely to arise during the project implementation process and related mitigation measures are presented in Table 2 below. Additional potential risks and impacts on VMGs, and related mitigation measures, can also be identified by KeNHA in consultation with the VMGs in accordance with item 4 of the bidding stage ESAP. According to item 4 of the ESAP, implementation of the VMGF will include:

- (a) carrying out the relevant social assessment before the commencement of works;*
- (b) conducting informed consultation and participation processes with the affected VMGs at each stage of project implementation starting before finalization of design;*
- (c) conducting a consultation process with VMGs in the Project area, before finalization of project design, to confirm migration corridors and locations for crossing the road with livestock as part of their normal grazing patterns;*
- (d) KeNHA ensuring that locations of livestock crossings and other necessary actions to increase effectiveness of such crossings in mitigating impacts on VMGs will be implemented by the concessionaire as part of project design, and that KeNHA, in coordination with the concessionaire, further consulting the VMGs on the siting of the agreed livestock crossings if there are any changes during the construction phase;*
- (e) Preparing and implementing any VMGPs that may be required for the Right of Way (addressing impacts from restrictions of livestock crossings, and economic displacement of grazing lands) and any other project facilities or activities, whenever impacts on VMGs are identified as these facilities and activities are defined by the concessionaire.*

In line with the ESAP, therefore, the proposed VMGP(s) to be prepared and implemented by KeNHA will clearly identify the specific livestock crossing points that will have been agreed upon in consultation with the VMGs and the concessionaire, and will include all mitigation and benefit sharing measures related to impacts on VMGs. On the other hand, other impacts such as economic and/or physical displacement of small-scale traders currently selling their wares and merchandise on the ROW, have been addressed in the RAP that has been prepared for this project in line with the World Bank's OP 4.12.

**Table 2: Potential impacts on VMGs**

Impact	Mitigation
<p>During the construction phase, as a result of increased movement of construction machinery and vehicles along the project alignment, livestock related mortalities/accidents are likely to increase especially when the Maasai seek pasture and water entailing crossing of the highway.</p>	<p>Mitigation will be provided through safety officers, restricted access to active/working sites, provision of adequate speed calming measures at animal crossing sites at grade, provision of crossings post project for animal movement.</p>
<p>Competition over existing water resources between the Maasai for livestock and the project's work force</p>	<p>KeNHA will require the concessionaire to explore and exploit alternate sources of water, e.g. sinking of private boreholes, construction of water pans etc. to ensure there is no or minimal competition for water resources and no related adverse impacts. Where appropriate, such resources or facilities will be shared with the VMG communities through an agreed plan. After construction, such facilities will be handed over to the VMGs as a direct project benefit to them</p>
<p>Cultural erosion and GBV related risks as a result of mingling between the project work force and the Maasai could also be potential areas of negative impact.</p>	<p>The concessionaire will adopt all measures available to avoid gentrification and loss of cultural values and GBV related risks. Among these will be: (i) a Labor Influx Management Plan; (ii) Codes of Conduct (CoC) for project workers (with attendant sanctions for violation); and, (iii) Child Protection policy/strategy. There will also be sensitization of both the workers and communities on the consequences of the violations of the CoC. Similarly, the concessionaire will be required to prepare a stakeholder engagement plan (SEP) that clearly spells out the culturally appropriate ways for consultations with VMGs using the FPIC approach. Another mitigation measure will be the identification, assessment and establishment of a survivor centered GBV/SEA response pathway for ensuring that GBV/SEA survivors are provided with an all-inclusive and timely medical, psychosocial/emotional, legal and other form of support as needed. Finally, KeNHA will require the concessionaire to prepare a GRM, in consultation with VMGs for addressing any GBV/SEA related grievances against project workers</p>
<p>Permanent acquisition of the land or other assets (including grazing land) owned by the Maasai.</p>	<p>The proposed highway expansion project will not lead to permanent acquisition of land or other assets (including grazing land) owned by the Maasai in view of the fact the highway is aligned along the current ROW and therefore there are no involuntary resettlement related impacts on the Maasai as a result of the highway expansion.</p>
<p>The establishment of other project components</p>	<p>These sites are not yet identified and will be</p>

<p>and associated facilities by the concessionaire may however lead to the physical and economic displacement of the Maasai including loss of, alienation or denial of access and exploitation of their land and access to natural communal cultural resources including grazing land and water points.</p>	<p>determined by the private concessionaire and hence the associated risks cannot be predicted. Nevertheless, should such sites be deemed to be necessary and feasible in VMG areas, the VMGs have - during consultations with them for the preparation of this VMGF - indicated their willingness to discuss/negotiate with the concessionaire on the terms and conditions for having such facilities in their areas. The principle of willing buyer willing seller will apply according to PS5 as highlighted in footnote 1. The conditions for such temporary sale or lease of land will include measures for the restoration of sites; mitigation of harm to site neighbors during the use of such sites by the concessionaire and adequate compensation terms for all affected assets. Any such agreements will have to be approved by KeNHA and will be accompanied by a VGMP.</p>
<p>The A8 south-Mau summit road traverses a grazing zone on both sides of the road coupled with a narrow and steep escarpment. This may result in accidents for livestock and herders crossing the road from one side to the other</p>	<p>The road design will consider livestock crossings to mitigate accidents</p>

***Risk Significance***

The risk significance to the Maasai is likely to be low in nature, short term in terms of duration (construction), and highly unlikely to occur with respect to land acquisition for the expansion of the highway. The highway expansion is limited to the current ROW owned by KeNHA and will not lead to displacement of the Maasai. The Maasai in the neighbourhood of project highway are only limited to the Eburru and Longonot areas. The risk is on livestock crossing points establishment to access pasture and water points on either side of the highway. The risk magnitude is likely to rise if the other project components like quarries whose locations are not known as yet are sited in areas where the Maasai reside or graze their cattle.

The project will involve establishment of facilities to be owned by private concessionaire and Concessionaire’s sub-contractors. The location of these establishments which may include among others the material sites, workers’ accommodation camps, batching plants, and asphalt plants are not known at this point. The sites will be determined by the private concessionaire. Regardless of the location of the establishments, any impacts they may have on VMGs will be analyzed and mitigated should they occur through preparation and implementation of a full VMG Plan by KeNHA in collaboration with the concessionaire and in consultation with the VMGs. In particular, in addition to minimization and proper compensation for any temporary or permanent land take or land use change, KeNHA and the concessionaire will give special consideration to preventing project related risks related to Labour Influx such as teen pregnancies, school dropouts by both boys and girls, sexual exploitation and abuse (SEA), gender-based violence (GBV), impacts on cultural aspects of given communities, child labor among others.



This VMGF provides a guide on how to mitigate the negative impacts to the vulnerable groups and enhance the positive impacts through targeted free, prior and informed consultations.

## **1.5 FRAMEWORK FOR ENSURING FREE, PRIOR, AND INFORMED CONSULTATIONS WITH VULNERABLE AND MARGINALIZED GROUPS**

OP 4.10 requires that when the project affects indigenous people, free, prior, and informed consultations should be undertaken during project preparation and implementation phases. For this reason, a key principle of this VMGF is the inclusion of the VMGs in all the project's processes, and in this regard, a participatory approach, the free, prior and informed consultations process as prescribed by the World Bank's OP 4.10 - has been adopted in preparation of this VMGF to enhance broad community support and promote sustainable development. The same approach will be applied by the project in its relations with the Maasai and any other VMGs throughout its life.

This framework seeks to ensure that VMGs are informed, consulted and are enabled to participate in the design and implementation processes of the project. Consultations have been undertaken for the preparation of this VMGF and will continue during design, implementation and the other phases of the project. To facilitate effective participation of VMGs in the project, KeNHA in collaboration with the concessionaire will provide information in advance, as well as translation into local VMG language, when needed, of any material to be used in consultations. Public meetings, individual consultations, focus group discussions among many other consultation and communication models will be utilized to effectively consult with and engage the affected person(s). A feedback matrix on issues generated in meetings will form part of subsequent meetings for accountability.

### ***Consultations with IPs for the preparation of this VMGF***

A total of six consultations (including one information session) were undertaken in preparation of this VMGF, two with representatives of Indigenous Peoples Organizations (IPOs), two with Maasai IPs and two with Ogiek and Endorois IPs.

The information session with the representatives of the national-level Indigenous Peoples organizations (IPOs) along the project corridor was undertaken on 25<sup>th</sup> January 2018 at Sarova Panafric Hotel in Nairobi. The meeting aimed at providing information to the IP representatives to enable them to understand the project so as to give informed feedback to the KeNHA on any areas they perceived as necessary for consideration. The participants, drawn from 9 VMG organizations agreed that targeted community level consultations with the VMGs communities would need to be undertaken both during the preparation and implementation phases of the project. After this, the first consultation with IP representatives was held on March 19, 2018, with the aim of getting feedback from them on the ESIA findings in relation to IPs and to seek their guidance on how to conduct and who to invite to the community-level consultations.

The draft ESIA was provided by email in advance to encourage an informed discussion and specific feedback to be incorporated. Finally, consultations were held with Ogiek and Endorois IPs from various villages along the A8 road – Rironi-Nakuru-Mau Summit – on April 19, 2018 and on 14<sup>th</sup> March 2019 and with the Maasai IPs from various villages on the A8 South road (Rironi-Mai Mahiu-Naivasha) on April 20, 2018 and on 14<sup>th</sup> March 2019. Table 3 below provides a summary of the key common issues and concerns from the various consultative meetings and commitments by KeNHA on actions to be undertaken by KeNHA in collaboration with the concessionaire and by KeNHA as the project proponent. Details of the issues from the individual meetings and responses provided by KeNHA are attached in Annex 1.

The IPOs and VMGs who were mapped out as key stakeholders in this VMGF include the following:

- PDNK; Pastoralist Development Network, Kenya
- Minority Rights Group
- ILEPA-Indigenous Livelihoods Enhancement Partners
- OPDP- Ogiek Peoples Development Program (OPDP)
- Ogiek Welfare Council
- MPIDO-Mainyoito Pastoralists Integrated Development Organization
- Narasha Community
- Maasai Community
- Ogiek Community

**Table 3: Key issues from the Consultative meetings with IPOs and IPs, and commitments by KeNHA**

<i>Issue</i>	<i>Concern</i>	<i>Suggestions by IPOs and IPs</i>	Actions to be taken by KeNHA in coordination with Concessionaire	Action to be taken by KENHA
Consultations and information disclosure	Without advance information to IPs and IPOs about project matters and without access to relevant project documents, IPs are unable to make informed decisions	Provide advance information to IPs/IPOs on project matters and disclose project information to them to facilitate informed decision-making Consultations and project documents should be in a language that the IPs can understand Consultation process should be inclusive and differentiated	In consultation with IPs (and other stakeholders), prepare a Stakeholder Engagement Plan (SEP) that clearly stipulates how IPs will be consulted in a culturally appropriate and gender and intergenerationally inclusive manner on issues that are of concern to them	Monitoring of activities and provision of information and technical support to IPs to achieve desired outcomes
Design issues: Livestock crossing Pedestrian crossing, drainage system, road signage	Are there adequate and safe provisions for animal and pedestrian crossings	Make adequate and safe provisions for animal and pedestrian crossings, signage, and drainage runoff channels	in agreement with the VMGs on locations, include the required structures in the design and implement the same according to the design	Monitoring the implementation of the agreed interventions to ensure they are implemented according to agreed design and locations
Water usage by	Competition for		Explore and exploit	Ensure water

VMGs, road construction and road workers	water resources		alternative sources of water; prepare a resource sharing plan in consultation with the VMGs	sharing plans are implemented where any facility is shared to avoid competition or harm to the VMGs
Location of ancillary facilities such as material sites, workers' camps etc.		Consider establishment of these sites in their areas only on a willing buyer willing seller basis	Consultation with IPs on suitable locations and agreement on benefits to be accrued by the IPs	Sensitize VMGs on the meaning of willing seller-willing buyer principle, and the fact that they are not obligated to sell or lease their land should negotiations with the concessionaire fail
CSR activities by the Concessionaire*		Provide means of engaging with the concessionaire to secure and agree on possible CSR activities	Ensure Concessionaire provides CSR as per agreement	Oversee commissioning and handing over of CSR outputs to community
Employment and labor relations		Provide employment to the IPs	Consider IPs for preferential treatment in local employment for skilled and semi-skilled labour as well as for non-skilled labor	Recommend to the concessionaire the need to prioritize VMGs for local skilled and semi-skilled labour, as well as non-skilled

**Table 4: Details of the 1<sup>st</sup> meeting held with IPOs**

Date	Venue	Time	Participants		Institutions/ communities represented
			Males	Females	
25 <sup>th</sup> January 2018	Sarova Panafric Hotel Nairobi	9.30am	14	5	MPIDO, PDNK, SCL, OGIEK W. COPDP, ILEPA, MRG, Delamere, KeNHA, World Bank, ICT, Charles & Barker

## 2<sup>nd</sup> IPOs consultative forum

The second IPOs representatives meeting was held on 19<sup>th</sup> March 2018 at Silver Springs Hotel Nairobi. The consultative meeting aimed to give the representatives an opportunity to share their feedback on the submitted ESIA report as well as help in mapping out the IP communities representatives for further engagement during the project preparation and implementation phase. More details of the meeting are attached in annex 2.

**Table 5: Details of the meeting**

Date	Venue	Time	Participants		Institutions/ communities represented
			Males	Females	
19 <sup>th</sup> March 2018	Sarova Panafric Hotel Nairobi	10.30am	11	5	PDNK, OGIEK W. C, ILEPA, MPIDO, OPDP, EWC, KeNHA, World Bank, PPP unit, Charles & Barker

## Community level consultations with community member's representatives

Community level consultation meetings were undertaken on 19<sup>th</sup> and 20<sup>th</sup> April 2018 and on 14<sup>th</sup> March 2019 to provide the VMGs with the opportunity to air their views, opinions and concerns regarding the project.

Table 6: Details of the meetings

Date	Venue	Time	Participants		Community represented
			Males	Females	
19 <sup>th</sup> April 2018	Willies Resort (on the Nairobi Nakuru Road)	12.00pm	16	6	Ogiek and Endorois
20 <sup>th</sup> April 2018	Mt Longonot Transit Hotel Mai Mahiu	10.00am	18	9	Maasai
19 <sup>th</sup> March 2019	Mt Longonot Transit Hotel Mai Mahiu	10.00am	31	9	Maasai
19 <sup>th</sup> March 2019	Grill Park Hotel Nakuru	3.30pm	14	9	Ogiek and Endorois

## Consultations with VMGs and information disclosure<sup>2</sup> on underpass livestock crossings

As part of project implementation, a targeted stakeholder engagement plan and communication strategy for consultations with key project stakeholders including VMGs will be developed by KeNHA in coordination with the Concessionaire. The VMG mapping will enable both KeNHA and the concessionaire to develop a practical strategy for culturally appropriate engagements with them through free, prior and informed consent (FPIC) as stipulated under OP 4.03. FPIC consultations during the implementation phase will begin during the detailed ESIA and design studies to be undertaken by the concessionaire and will continue during the preparation of the VMGP based on the ESIA findings, and on the provisions of this VMGF as well as the WB guidelines. While potential locations of underpass livestock crossings have been proposed by the VMGs and are included in this

<sup>2</sup> While consultation requirements under this VMGF will be applied as per OP4.10, additional requirements might be applicable for activities in which IFC is involved.

VMGF, these will be affirmed and agreed upon through FPIC consultations with the VMGs after which, they will be included in the VMGP to be prepared by KeNHA in collaboration with the concessionaire. Although the VMGs would have participated in the preparation of the VMGPs, the full VMGP will still be disclosed in accessible venues and language to avail it to them as a reference material during the construction phase. All consultations with VMGs, whether undertaken by KeNHA or the concessionaire with KeNHA oversight, will apply the FPIC principles.

### **Consultations and information disclosure on ancillary facilities**

The concessionaire will undertake screening for potential sites in which to establish ancillary facilities including material sites, workers camps, borrow pits, waste disposal etc. Once the screening for the ancillary facilities has been undertaken and different sites are found to be located in areas where the VMGs are present (whether Masaai, Ogiek or Endorois): 1) KeNHA will evaluate the sites and determine if they are feasible and necessary or if alternatives are available which would be better for the VMGs; and 2) the existing traditional and administrative structures will be used to inform the VMGs of the project, the potential sites for ancillary facilities and the conditions and modalities for acquiring use of such sites by the concessionaire on a willing seller-willing buyer basis. The Concessionaire, with KeNHA's oversight, will undertake the free, prior and informed consultations process for the temporary use of such sites under a lease or similar arrangement. KeNHA in collaboration with the private concessionaire will facilitate and plan the consultative meetings with members of the vulnerable groups through FPIC in order to agree on conditions of the willing seller-willing buyer arrangements, including conditions for mitigation measures for impacts associated with the use of such facilities. Some of the impacts identified by the IPOs in this regard include dust, noise and destruction of fodder at such sites. All agreements reached, including conditions for the restoration and restitution of sites and mitigation measures to protect neighboring households/communities from harm, will be in writing in the form of a VMGP and will be binding upon the Concessionaire (who will implement), and KeNHA (who will monitor and supervise).

The FPIC and other participatory approaches will be used for consultations with VMGs for the identification and analysis of project risks and impacts (both positive and negative) that are related to the establishment of ancillary facilities. The mitigation hierarchy to avoid, minimize, mitigate or compensate for the adverse impacts will be agreed upon between VMGs the concessionaire and KeNHA.

Special emphasis will be considered to ensure gender and intergenerational inclusion of VMGs in the consultation process. The role of the youth and women should not be assumed, as may be the case in the existing traditional structures of decision-making process. During further assessment, KeNHA in coordination with the concessionaire will include any specific youth and women inputs using the appropriate strategies which may include among others small focus group discussions with these groups.

KeNHA in coordination with the concessionaire will ensure; a). VMGs are informed from the onset, b). Understand and respect the community entry point protocols or traditional systems which include the well-defined community leadership headed by the location chairman elected by the community members, c). Ensure open and transparent communication, and d). Be culturally, gender and intergenerationally sensitive, including differentiated consultations with men, women and youth, as appropriate.

In order for KeNHA (with WB non-objection) to approve implementation by the Concessionaire of Project establishments/facilities in the VMGs locations, the respective VMGPs will be prepared and

will document the findings of the assessment as well as include the process of free, informed consultations, include the mitigation measures and document the agreements made with the VMGs. The VGMPs after incorporating community views and after approval by WB will be widely disclosed to the affected VMGs through public consultation meetings. In addition, the VMGF and VMGPs will be made available at the local level in accessible locations and language.

## 1.6 SOCIAL ASSESSMENT AND CONSULTATION

### **Evaluation of sites outside ROW that might be used by Concessionaire**

The ESIA that has been prepared, and the consultations undertaken by KeNHA in preparation of this VMGF have confirmed that Maasai VMGs are present in the project area in so far as they seasonally cross the project road from both sides in search of water and pasture for their livestock. To mitigate impacts related to livestock crossings, the concessionaire, under the supervision of KeNHA, will implement the provisions of this VMGF. However, should activities or facilities extend outside the existing KeNHA ROW into areas where IPs are residing or have collective attachment, then KeNHA in coordination with the concessionaire social experts will undertake the screening and consultations to determine if the groups within the affected areas meet the threshold for consideration as Vulnerable and Marginalized Groups, and document this process in screening forms. If findings from the evaluation show that VMGs are within the project area of influence, then site specific social assessment will be undertaken for those areas in consultation with the affected VMGs in order to evaluate the actual and potential positive and adverse impacts on VMGs. Findings will inform the final decision on use of the site and if going forward with such use, prepare a VGMP.

The KeNHA implementation team, along with the Concessionaire and WB experts, will visit all the VMGs settlements which might be affected by the project or those who may be near the identified project sites, starting with the settlements that have already been identified by KeNHA for the preparation of this VMGF. Targeted consultation meetings will be organized and held with the selected communities/groups and their leaders and local authorities to share information and get views/concerns on the proposed establishment(s)/facilities, as per the mapped-out stakeholders presented in the consultation chapter.

#### *Specific Social assessment*

KeNHA will procure the services of a SA/VMGP consultant to undertake the site-specific SA and prepare the respective VMGPs. The following will be considered during the preparation of the site-specific social assessment, proportional to the potential impacts of the project.

1. KeNHA – through the SA consultant - in coordination with the concessionaire will undertake baseline survey outlining the demographic, social, cultural and political characteristics of the VMGs, land ownership dynamics, and resources the VMGs depend on.
2. Identification of key stakeholders and establishment of an appropriate gender and intergenerationally sensitive and meaningful consultative process that will include consultations with men, women, youth & people with disability at different stages of project preparation and implementation.
3. Where the project affects VMGs, undertake meaningful and culturally appropriate consultations in assessing the potential impacts of the project using the free, prior and informed consultations process.
4. Through the free, prior and informed consultations with the VMGs, identify and recommend mitigation measures to be put in place to minimize, mitigate or compensate the negative effects and to ensure VMGs are not left worse than they were before the project commencement and ensure they receive culturally appropriate benefits under the project.
5. Where applicable, identification of livelihood restoration or enhancement activities that needed in order to meet the needs of the VMGs in terms of livelihood restoration, and where feasible, enhancement.

## 2 LEGAL FRAMEWORKS

### 2.1 LEGAL FRAMEWORK

This section presents the legal framework in relation to the Vulnerable and Marginalised Groups.

#### *2.1.1 The World Bank's OP 4.10 and Performance Standard 7 on indigenous people*

The World Bank's Performance Standard 7 and OP 4.10 on Indigenous Peoples (IPs) recognize that VMGS/IPs, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalized and vulnerable segments of the population. IPs are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat. As a consequence, IPs may be more vulnerable to the adverse impacts associated with development projects than non-indigenous communities. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and diseases.

To manage the risks associated with the VMGs, the responsible authorities should:

- Provide for measures to ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples;
- Provide for measures to ensure the anticipation and avoidance of adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts;
- Provide for measures to promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
- Provide for measures to establish and maintain an ongoing relationship based on Informed Consultation and Participation with the Indigenous Peoples affected by a project throughout the project's life-cycle; and Provides for measures to respect and preserve the culture, knowledge, and practices of Indigenous Peoples.

#### *2.1.3 Kenya laws*

While the term "Indigenous Peoples" is not used explicitly in the Kenyan laws, the legal framework recognizes particular concerns and rights of minorities and marginalized groups. Article 260 of the Constitution of Kenya, 2010, defines a marginalized community as:

"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;  
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;  
An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

Pastoral groups 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" (Article 260; emphasis added).

The Constitution of Kenya adopted in 2010 requires the State to address the needs of vulnerable groups, including "minority or marginalized" and "particular ethnic, religious or cultural communities" (Article 21.3). Specific provisions 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 (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” (63); promotion of representation in Parliament of “...(d) ethnic and other minorities; and (e) marginalized communities” (100); and an equalization fund to provide basic services to marginalized areas (Article 204).

To actualize 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.

Overall, there are no significant gaps/differences between OP 4.10 and the various national laws, especially the new Constitution. In Kenya groups and communities who identify themselves as indigenous peoples are mainly the traditional pastoralists and hunter/gatherers as well as small farming communities, hence the identification of the Maasai pastoralists as the VMGs who may be potentially affected by this project.

Among the Maasai community, there exist the local community leadership protocols or traditional leadership systems to be observed among the Maasai community which include local level arrangements with each village being administered by a council of elders headed one of the Elders chosen according to specific traditional criteria, rather than the formal government system where a village is headed by a village headman (known in Swahili as “Nyumba Kumi”). Their administrative and socio-cultural dynamics of VMGs have established and specified ways for dealing with matters for each VMG community group. The concessionaire will be expected to identify and understand such dynamics in order to prepare culturally accepted consultation and communication strategies for dealing with VMGs in the project area.

### 3.0 INSTITUTIONAL FRAMEWORK FOR VMGF/VMGP IMPLEMENTATION

Project financing and implementation will be managed through a private concessionaire. However, KeNHA retains the responsibility for VMGF and VMGP preparation and implementation in close collaboration with the concessionaire. In this regard, KeNHA will work closely with the private concessionaire's social experts with a view to mainstreaming social safeguard issues into the concessionaire's activities, including but not limited to e.g. the preparation and implementation of the concessionaire's stakeholder engagement plan, employment plan, a grievance redress mechanism and GBV/SEA prevention plan. While KeNHA retains the overall responsibility for the VMGF and VMGP preparation and implementation, nevertheless, KeNHA and the concessionaire will clearly spell out their respective roles for VMGP implementation and supervision by KeNHA in the VMGP itself.

#### *3.1 Outline Vulnerable and Marginalized Groups Plan*

KeNHA in coordination with the private concessionaire will prepare and implement a VMGP that will include all agreed mitigation measures for project impacts on VMGs, including areas that require establishment of the project ancillary facilities when identified as part of the screening by the concessionaire and approved by KeNHA. The VMGP will be prepared based on the findings of the site-specific social assessment in accordance with the provisions of Annex B of OP 4.10 and the provisions of this VMGF. It will be approved by the WB in accordance with this VMGF and the requirements of Annex B of OP 4.10. At a minimum, the VMGP will: (i) identify VMGs that are present in the project's area of influence (in particular Maasai), and in areas where ancillary facilities may be located, which could include the Masaai, Ogiek and Endorois areas; (ii) clearly state the free, prior and informed consultations with the VMGs and stakeholder engagement actions that will target VMGs located in the project's area of influence and in areas where ancillary facilities are to be located; (iii) propose mitigation measures that are commensurate with the impacts identified, as part of the concessionaires comprehensive ESIA, the SA and the FPIC processes; (iv) specify interactions with relevant authorities and other stakeholders on matters pertaining to VMGs. The plan will also include any additional support that may be agreed upon between the VMGs and the concessionaire, e.g. CSR activities. The plan will be developed in accordance with this framework. Below is the detailed - anticipated - outline of the VMGP(s) that might be prepared for this project.

- a. A summary of the findings of the review, on a scale appropriate to the project, of the legal and institutional framework applicable to VMGs/IPs, undertaken as part of the social assessment.
- b. A summary of the findings of the social assessment that includes baseline information on the demographic, social, cultural, and political characteristics of the affected VMGs/IPs' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend
- c. The potential adverse and positive effects of the project (with focus on the specific facilities) and the respective required mitigation measures.
- d. A summary of the results of the free, prior, and informed consultation with the affected VMGs that was carried out during the social assessment and that led to broad community support for the project.
- e. A framework for a culturally appropriate process for ensuring free, prior, and informed consultation with the affected VMGs during project implementation
- f. Propose mechanism for management of grievance redress
- g. An action plan of measures to ensure VMGs are identified; project impacts assessed, and mitigation measures implemented to avoid, mitigate, or compensate the adverse impacts.

Among the anticipated measures to be included in the VMGP are:

- i. Identification of livestock crossing sites in consultation with the VMGs and inclusion of agreed crossings in final Project design,
- ii. How relevant project information will be disclosed to VMGs during project implementation,
- iii. Consultation with VMGs on the location of ancillary facilities should VMG areas be needed for any such facilities and any compensation or mitigation measures,
- iv. Provisions in item 4 (a)(b)(d) and (e) of the ESAP as outlined in this VMGF (see the section “Linking the VMGF to the Bid Stage ESAP)
- v. Inclusion of signage at appropriate locations,
- vi. Consultations on water sharing plans if applicable,
- vii. As part of the protection of the VMGs culture, the concessionaire will prepare a SEP, a GRM, a GBV/SEA management plan as well as CoC for workers in consultation with the VMGs. VMGs will be encouraged to seize the opportunity during consultations for the preparation of these plans to ensure their concerns are captured in the plans and integrated in the VGMPs.
- viii. Provisions for free, prior and informed consultations during project implementation (including differentiated consultation strategies for women and youth,
- ix. Consultations on employment matters,
- x. Inclusion of VMGs in the KeNHA project’s GRM,
- xi. CSR activities - if any - by KeNHA and/or the concessionaire
- xii. Preparation and implementation of accessible procedures for receiving and management of grievances arising from the VMGs. The procedure should consider the existing cultural and legal systems for management of the grievances.
- xiii. Putting in place, mechanisms and benchmarks appropriate for monitoring, evaluating and reporting on the implementation of the plan. Monitoring and evaluation systems should include arrangements for free, prior and informed consultations.

### **3.2. Role of different actors**

*Ministry of Transport and Infrastructure:* Through KeNHA, the ministry will provide overall coordination of the project which will include overall responsibility for safeguards due diligence and compliance monitoring. In this regard, KeNHA will play its supervisory and implementation roles for the VMGF and VMGP in close collaboration with the concessionaire.

*The concessionaire:* The private Concessionaire will be responsible for financing, preparation and implementation of the project and sub projects. The preparatory activities of the concessionaire leading to project implementation will include a detailed ESIA study and the preparation of a detailed design. As part of these two activities, the concessionaire will engage VMGs through FPIC, in the affirmation of the number and location of livestock crossings based on the crossings that have been identified by the VMGs and included in this VMGF. Based on the needs of the VMGs, additional sites can also be identified at this stage. Similarly, the concessionaire will also identify and purchase/lease sites for ancillary facilities such as borrow pits, workers camps, quarry sites etc. Through FPIC, the concessionaire will engage VMGs in agreeing on the location of such ancillary facilities sites if these are found to be feasible in VMGs areas, taking into consideration the impacts associated with such sites. Such consultations will include agreements on mitigation and restoration measures for impacts associated with ancillary facilities/activities – including, without limitation, fodder destruction, noise, dust etc. and conditions for the temporary use of such sites on a willing seller-willing buyer basis, while being cognizant of impacts on people or communities who may not be party to such agreements.

*KeNHA*: For purposes of this VMGF, KeNHA in collaboration with the private concessionaire will be responsible for the following key aspects:

1. Undertake reconnaissance and verification of the proposed project site;
2. Screening to identify the major risks and impacts and obtain feedback from the VMGs and approve (or not) use of proposed sites;
3. Conduct a site-specific social assessments to identify the risks, adverse impacts and benefits of the project, including the ancillary facilities sites, and how the issues can be incorporated to guide community-based interventions;
4. Undertake free, prior and informed targeted consultative meetings, discussions, visits to the project site and surrounding settlements, with the VMGs;
5. Preparation and implementation of the VMGP in consultation with the Concessionaire based on this VMGF, the Concessionaire's ESIA findings on impacts on the VMGs and related mitigation measures, the site-specific SAs and FPIC process;
6. Provide dedicated social staff, through KeNHA's Environment and Social Safeguards department to take lead in the for the supervision of SA and VMGP consultant and in the implementation of VMGPs in close collaboration with the concessionaire.
7. Determination of the Concessionaire's obligations to VMGs and supervision of their implementation;
8. Establishment and operationalization of a GRM in consultation with, and membership from VMGs and the Concessionaire;
9. Prepare reports on project outputs and impacts after data collection on the key project impact areas;
10. In consultation with the Concessionaire and the VMGs, identify impact indicators for monitoring and evaluation of VMGP implementation.

**Local level stakeholders:** To achieve sustainable development, the local level stakeholders who include among others the local administration, VMGs Organizations already mapped out - Pastoralist Development Network, Kenya, Indigenous Livelihoods Enhancement Partners, Minority Rights Group, Narasha Community, and MPIDO-Mainyoto Pastoralists Integrated Development Organization - will be involved in the following activities in relation to the VMGs:

- Disseminate of project information;
- Mobilization of the VMGs for consultation forums;
- Form part of the Grievance redress committees;
- Create awareness on existing systems for management of local grievances.

**Roles of KeNHA and the Concessionaire in coordination and collaboration with each other**

1. KeNHA, in collaboration with the concessionaire, will lead consultations with, and information disclosure to VMGs (and other stakeholders) on the social aspects of the project. This will include the preparation by KeNHA, of a stakeholder engagement plan clearly indicating how VMGs will be consulted on a free, prior and informed basis, as well as the agenda for consultation.
2. KeNHA, in close collaboration with the concessionaire, will lead consultations with VMGs on suitable livestock crossing locations and agreement on benefits to be accrued by the VMGs among others, including employment opportunities and representation in structures that will be established for the project, in particular, the GRM.
3. Concessionaire in consultation with, and under the supervision of KeNHA, will provide pedestrian crossings as well as make adequate and safe provisions for animal and pedestrian crossings, signage, drainage runoffs channels in the final design.

4. KeNHA in collaboration with the Concessionaire to screen and approve (with WB non-objection) ancillary sites that affect VMGs.
5. Concessionaire to undertake engagements for the establishment of ancillary facilities such as material sites, workers' camps in the VMG areas if applicable. These will be considered on a willing buyer willing seller basis and in accordance with this VGMF. KeNHA will supervise this process and approve the final arrangements.
6. KeNHA and the concessionaire will lead consultations with VMGs (if necessary) on water sharing for use of existing water sources and also explore other sources of water for road construction. For water facilities shared with the local community, water sharing plans to be prepared and implemented to avoid conflicts.
7. KeNHA will provide dedicated staff under Environment and Social Safeguards to provide support and oversight for the preparation and implementation of any VMGPs.
8. The concessionaire will appoint social consultant/staff who will work with KeNHA in the joint consultations with VMGs where necessary, (e.g. consultations on sharing of resources) and who will be responsible, with KeNHA's supervision, for the implementation of the VMGP aspects that are determined (in the VMGP itself) to be the responsibility of the Concessionaire.
9. Where impacts on VMGs on any sites are identified, the Concessionaire will also appoint a social assessment consultant with the guidance of KeNHA. The consultant will be responsible for undertaking the social assessment and preparing the VMGP in accordance with this VGMF.

All plans including VGMPs must be approved by KeNHA in accordance with this VGMF and with WB non-objection, prior to initiation of activities in the corresponding sites/areas.

## **4.0 GRIEVANCE REDRESS MECHANISM**

To enable proper redress of grievances arising during project implementation, accessible procedures are required to ensure the aggrieved VMGs have a channel to lodge their complaints. In the development of the grievance system, the existing socio-cultural and administrative grievance structures will be considered. It should be noted that, the established grievance redress should not replace the existing legal systems. The project level GRM will seek to resolve all the project grievances raised, first, at the lowest level possible. Every effort to resolve grievances at the lowest community level is highly recommended as it allows prompt redress of grievances and further prevents grievances that may go through lengthy, cumbersome process and leave the aggrieved person/s dissatisfied despite the benefits that would accrue from the project for the community. In the second place, aggrieved VMGs will escalate their project-related grievances to KeNHA should they feel unsatisfied by community level redress outcomes. Finally, grievances that are not satisfactorily resolved by the community and KeNHA level GRM will be subjected to mediation by a mediator that is identified and acceptable to all parties. However, should the established grievance procedure fail, including mediation, the aggrieved party can seek legal redress in accordance with the various justice avenues in Kenya.

Among the Maasai Community and other VMGs, common conflicts and grievances are resolved through the local traditional leadership systems – the Council of Elders - comprising of the Village Chairman and village elders. From the consultation meetings held with the VMGs, establishment of local GRM system in which the Maasai VMGs are represented, was preferred as an important channel to address the community concerns.

Taking the above into consideration, the framework proposes a three-tier project level GRM process with the lowest level being the community GRM committee and the middle tier being the Sub County GRM Committee with KeNHA and concessionaire representation. The third tier of the GRM will be a neutral Mediator agreed upon by the concerned parties. The aggrieved party will be informed about the available legal channels or and human rights institutions in Kenya such as the Kenya National Human Rights and Equality Commission or the Commission on Administrative Justice (the Ombudsman), as well as about the World Bank’s Grievance Redress System and the Inspection Panel. At any time, or should mediation fail to resolve the matter, the aggrieved party may opt to pursue a course justice of their choice.

Community GRM will be established at the local community level and act as a link between the community and the Sub County level committee. The composition of this committee will include women VMGs, youth VMGs, elder VMGs, Man VMGs. The committee will be involved in grievance management as need arises and its establishment, agreement on its exact roles, and its operationalization, will be undertaken during VMGP preparation phase. KeNHA will ensure that VMGs are represented in the Sub County or middle level grievance committee. This being a linear project, the road corridor will be segmented into practically manageable geographical areas for ease of grievance redress and management.

### ***4.1 The proposed levels of Grievance Redress Committees***

#### **1<sup>st</sup> level, Community GRM committee**

Grievances related to the project that affect the community will first be addressed at this level.

## **Committee composition**

This level committee should consider members drawn from the following.

- Chief of the affected area
- Women VMG representative
- Youth VMG representative
- Elder VMG representative
- Man VMG representative
- Project sociologist or community Liaison Officer as an ex officio member to support the committee
- Concessionaire representative will be co-opted whenever needed

## **Anticipated Roles of the 1<sup>st</sup> level committee shall include**

- Hear the grievances of the aggrieved community, or community member and provide an early solution to those they are able to, which may range from consideration for employment, sharing of public assets and benefits among others as they may arise during the project lifecycle.
- Immediately communicate serious concerns that require attention of other committee levels
- Inform the aggrieved parties about the progress of their grievances and the decisions made at different level committees

## **2<sup>nd</sup> level, Sub County GRM Committee**

This committee will address grievances that may be escalated to this level and are beyond the management by the 1<sup>st</sup> level community grievance committee.

## **Committee composition should consider the following**

- National Coordination, Deputy County Commissioner, Assistant County Commissioner, locational chief
- Representation of the County Government
- VMGs representatives chosen from the first level committee
- Community Liaison officer or project sociologist
- Concessionaire representative
- KeNHA representative
- Representatives of VMG organizations and any other member as will be firmed up in consultation with VMGs during preparation of the VMGP

The committee will meet as dictated by the number and timing of registered grievances that have been referred to it for consideration

## **3<sup>rd</sup> level, Mediation**

This is the final project level GRM. Parties to the complaint will agree on a neutral Mediator who will try to resolve outstanding grievances that have not been resolved by the first two levels through mediation.

## Legal redress

Finally, at any time, or should all three-project level GRM fail to resolve the complaint, the aggrieved party will be free to seek resolution through other avenues including Kenya's legal system. This will not be considered part of the project level GRM.

## The World Bank's GRM system

Utilizing the above systems will not bar any aggrieved person or community in accessing the World Bank's grievance redress mechanisms, including the GRS and Inspection Panel.

## Procedure

KeNHA in collaboration with the concessionaire will establish a mechanism to receive and facilitate grievance management of the affected VMGs and create awareness among the VMGs on the grievance procedure, types of grievances that can be submitted and the available options for raising their grievances. The grievance redress procedure will have a timeline to ensure the issues are addressed without delay.4.2 Grievance Redress process.

The procedure for managing grievances is proposed to be as follows:

- i. *Registration of grievances:* The affected person will be free to file his/her grievance, relating to any issues associated with the project in writing, phone call, suggestion box, SMS or in person, and in a language he/she is comfortable with including his/her mother tongue, Swahili or English, to the grievance committee. They can also channel their grievances to the Committee through the chief or the project community liaison officer who will form part of the community level GRM committee. A record of all grievances received will be documented by the grievance officer in a grievance log shared with KeNHA. The grievance log will be updated from time to time and the will be used to monitor grievance resolution. The grievance log will contain records on the name of the complainant, date complaint was received, contacts of the aggrieved, nature of complaint, and action to be undertaken. Timeline: up to 3 days.
- ii. *Acknowledgement:* The Aggrieved party will be furnished with a stamped copy of the grievance form as evidence of receipt. Timeline: 1day, following the lodging of the complaint.
- iii. *Sorting and investigation:* The Concessionaire Grievance's Officer will sort the various grievances (within 48 hrs) and allocate them to the grievance committee which will investigate and report back with findings. The grievance committee members will be responsible for undertaking investigation and analysis of the reported grievances to enable understanding of the complaints and suggest grievance resolution within the shortest time possible. The Committee will work out with support from the CLO, their mode of handling the grievance at hand, depending on its nature, but examples could include listening to the aggrieved party, identifying and interviewing witnesses if applicable and suggesting to the aggrieved party the possible modes of resolving the matter. Timeline: 3-7 days.
- iv. If the aggrieved party agrees to a proposed resolution mode, then the resolution is implemented and if the aggrieved party is satisfied, then the grievance is logged as completed and the matter is closed. A matter that is not successfully closed at the first tier is submitted to the second tier, together with the investigation report and recommended mode of resolution by the first tier. Finally, a grievance that fails to be satisfactorily addressed by the second tier will be recommended for mediation, which is the final tier in the project level GRM.



- v. *Response of the different Redress Committees:* Each Committee will review the claim, together with the investigation report and inform the claimant if it is valid or not valid, and the redress actions that will be taken. This should be undertaken within 14-21 days. (Participants at the consultation meetings with VMGs suggested that IPO representatives be a part of the GRM Committee, and that they should participate in the monitoring of the implementation of the GRM resolutions. This suggestion will be taken into consideration during the establishment of the GRM, in consultation with the IPOs and the VMGs. The IPOs will decide how they will participate in the Committee and in the monitoring of the Committee's resolution.

#### **4.3 Awareness raising on the GRM**

Continous consultations and sensitization of the affected persons and the community is crucial in reducing grievances that may arise from the project. It is therefore recommended that a GRM awareness campaign and a strategy to reach out to the VMGs groups be developed. The framework requires that the VMGP to be developed should describe the objectives, scope and mechanisms of the grievance redress, which will be available to any person (such as community residents, local businesses or others who consider themselves affected by project activities). This will enable them to readily and efficiently communicate their grievances.

Important messages that will need to be conveyed and reinforced over time by project implementation team:

- There is no financial charge for making a complaint.
- Grievances are welcome because they help improve project policies, systems, and service delivery.
- Grievances will be treated confidentially

This framework requires that the GRM should have provision for monitoring and evaluation which will help in tracking grievance resolution processes and outcomes. It is anticipated that members of the IPOs along the project area will assist the communities to internalize the project implications and create a sense of public ownership of the project process.

Grievance management process will be continuous until the project is completed with the consultations and meetings diminishing in frequency as the emerging issues are resolved. The designated grievance officers in conjunction with the project team will continue to work with the community on VMGP during the project implementation. Appropriate display materials to assist in the sensitization process to be utilized and continuous awareness creation and education of the local population on the grievance mechanism established for the project is recommended.

## **5. MONITORING AND REPORTING**

Monitoring of the beneficial and adverse impacts of the project on the affected communities and groups should be participatory. KeNHA in coordination with the concessionaire will establish a monitoring system involving the project implementation team, key stakeholders, County governments as well as representatives of the VMGs to ensure effective implementation of the VMGF and VMGP. KeNHA, in coordination with the concessionaire, will undertake identification of impact indicators for monitoring and evaluation of VMGP. Some of the monitoring indicators will include among others (a). Consultation processes (b). Grievance redress issues, (c). Capacity building, (d). Status of the VMGs and comparison with pre-project phase, among other indicators.

For sub projects with adverse impacts on the VMGs, external experts may be engaged to undertake monitoring and evaluation who will advise on compliance with mitigation of any adverse impact.

The Concessionaire will report to KeNHA monthly on implementation of its VGMP/P obligations and will integrate this information in Reports on project output and impacts prepared by the concessionaire after data collection on the key project impact areas. The implementation team will be required to regularly collect data on the above monitoring indicators and analyze the outputs and impacts on an annual and semi-annual basis and report on the progress. KeNHA will prepare a quarterly report on VGMP/P implementation based on the Concessionaire's reports and the results of participatory monitoring and continuous engagement with IPs. This report will include reporting on GRM cases and their status.

## **6. DISCLOSURE ARRANGEMENTS FOR THE VMGF AND VMGPs**

This VMGF will be made available to the affected groups, stakeholders and to the general public. World Bank policies and the government of Kenya recognize disclosure of public information as a constitutional requirement regarding information sharing on the concerns or the interest of the public. This VMGF and site specific VMGPs will be made available to the affected VMGs in an appropriate form, manner and language. The framework proposes that disclosure should consist of public/community meetings to disclose the Framework/plan to the local community. After approval by World Bank, the document will be made available to the public in an accessible manner. Electronic versions of the framework will be placed on KeNHA website and external website of WB after approval. Similarly, each VMGP will be disclosed to the affected VMGs through public consultation meetings and made available at the local level using the language understandable by the VMGs. Use of existing local offices where the VMGs can access the document is also recommended. The VMGP will also be disclosed in the external website of the World Bank. This framework will be disclosed to the VMGs after approval by World Bank.

## 7. BUDGET

The implementation and monitoring costs of the VMGF and VMGP(s) will be built into the project budget. These will include costs to be borne by KeNHA in undertaking social assessment, stakeholder consultations during VMGP preparation, other specific actions such as information disclosure, capacity building of IPs (where necessary), and monitoring and evaluation of the VMGP implementation. These will be reflected in the specific VMGP to be prepared by KeNHA in coordination with the concessionaire. On the other hand, the costs related to the construction of livestock crossings, overpass pedestrian crossings and stakeholder consultations, and grievance redress mechanism operationalization and other mitigation and CSR<sup>3</sup> measures as included in VGMPs per agreement with VMGs will be included in the concessionaire's budget to be determined during detailed design phase and as a condition of final design approval.

**Table 2: Indicative budget for VMGF preparation**

<b>No</b>	<b>Budget Item</b>	<b>Indicative cost (KES)</b>
1	Stakeholder consultations forums on VMGF preparation	2,000,000.00
2	Social Assessment and VMGP preparation	3,000,000.00
3	Information disclosure (including translation of documents)	3,000,000.00
4	VMGP Implementation and capacity building of VMG institutions	10,000,000
5	VMGF/P implementation monitoring, oversight and ongoing stakeholder engagement	4,000,000.00
6	Expenses related to GRM implementation including allowances for community level committee members and their training	3,000,000
7	10% Contingency for unforeseen costs	1,400,000
8	CSR	TBD
	<b>Total</b>	<b>26,400,000.00</b>

<sup>3</sup> It is noteworthy that this PPP project is a commercial contract and CSR will only be included in the VMGP to the extent the Concessionaire has agreed upon such measures with the affected VMGs. KeNHA will monitor the implementation of all VGMP measures, including CSR to ensure they are fulfilled by the Concessionaire.

ANNEXES

Appendix 1: Stakeholder consultation findings

Table 1: Summary of issues raised in the first IPOs representatives meeting on January 25, 2018

Question/ Comment by VMGs	Response by KeNHA
<ul style="list-style-type: none"> <li>➤ Participants wanted to be informed of the plans to decongest the Toll station at Gilgil.</li> <li>➤ Has the design incorporated crossing and access to utilities and institutions especially schools.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The station is not a toll station, but a weighbridge station and the plan are to shift the weighbridge away from the road to decongest the area.</li> <li>➤ The design of the road will incorporate access roads, foot bridges, and underpasses for the animals and all other road furniture facilities to accommodate existing institution and utilities as well as monitoring for any new development that will occur after the construction.</li> </ul>
<p><b>Access to documents</b></p> <ul style="list-style-type: none"> <li>➤ Requested for the existing reports already developed.</li> <li>➤ Would appreciate if they would get the design reports so that they can review and give an informed decision or views to be incorporated in the final design report.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The draft reports generated will be shared as the design is not final and that the essence of the meeting was to collect their views so that they can be incorporated in the final design.</li> </ul>
<p><b>Consultations and information sharing</b></p> <ul style="list-style-type: none"> <li>➤ There was appreciation for being involved in the road development project.</li> <li>➤ People should be informed early about the project and KeNHA to consider gender representation from the Indigenous people during consultation</li> <li>➤ There are demonstrations that have been witnessed in various projects due to lack of public participation.</li> <li>➤ KeNHA should visualize the engagement with the community to ease their operations especially on sourcing for materials.</li> <li>➤ Involvement of the indigenous groups in the road development project was appreciated as it helps in minimizing misunderstandings.</li> <li>➤ Disclosure of information to the public is a constitutional requirement and that it should be done in good time.</li> <li>➤ The language of communicating with the indigenous people to be adopted since most of them only understand their local language.</li> <li>➤ Indigenous people representatives cannot conclude the process of consultation and therefore KeNHA should organize a public baraza to notify the public on the intention of</li> </ul>	<ul style="list-style-type: none"> <li>➤ An engagement plan that will be inclusive of all gender will be developed and operationalized to ensure community is engaged. This will be in consultation with the indigenous people.</li> <li>➤ The remarks were welcomed, and concerns raised noted with an affirmation that KeNHA, and the concessionaire will continuously engage the indigenous people to have all their concerns addressed. The stakeholder engagement process will also be monitored by the World Bank. KeNHA recognizes disclosure of public information as a constitutional requirement and that it has and will continue to engage the public in regard to information that concerns the interest of the public.</li> <li>➤ All the benefits and the negative impacts will be captured in the reports and disclosure will be undertaken and per the established guidelines.</li> <li>➤ Free, prior and informed community level consultations with VMGs will be</li> </ul>

Question/ Comment by VMGs	Response by KeNHA
<p>the government of Kenya.</p> <ul style="list-style-type: none"> <li>➤ Developers should look into documentation from the GoK, ASAL among others that exist in regard to pastoralist and livestock safeguards and local traditional leadership systems (protocols). This will be important in order to address the realities and the community's interest which should never be superseded by the individuals' interest.</li> <li>➤ Noted that the positive impacts that the project development will address is eradication of corruption which is a major vice on our highways contributed by the traffic police.</li> <li>➤ Wanted to be informed if proper mapping of stakeholders has been done along the road corridor since adequate mapping will ease addressing all the issues including labour, land acquisition, material sites and animal crossing points.</li> </ul>	<p>undertaken as necessary throughout the life of the project.</p> <ul style="list-style-type: none"> <li>➤ Noted that there already established Grievance Redress Mechanisms Committees that exist, and which will be strengthened if need be, to effectively deal with project related grievances.</li> <li>➤ Informed that the people in the committees were nominated from the various consultative meetings that were undertaken in earlier studies.</li> <li>➤ The remark was welcomed and that all concerns of the people will be considered through a continuous community engagement through the local existing community structures to ensure that the gaps in mapping are addressed</li> </ul>
<ul style="list-style-type: none"> <li>➤ The referred vulnerable groups should be referred as indigenous people and not vulnerable and marginalized groups as per Kenyan constitution of 2010 article 56 and 260.</li> </ul>	<p>It was clarified that the name indigenous people was replaced with Vulnerable and marginalized groups after a wider consultation between the World Bank and the GoK and its only since 2013 that the pastoralist communities have been included in the list of VMGs in Kenya. Nevertheless, the term VMGs does not preclude the intent, spirit or purpose of the indigenous peoples policy of the World Bank (OP 4.10)</p>
<p><b>Animal crossing</b></p> <ul style="list-style-type: none"> <li>➤ A8 south-Mau summit road traverses a grazing zone for the pastoralists and the road at the escarpment is very narrow. Design should consider animal crossing to mitigate accidents.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Informed that animal crossings will be developed in consultation with the local communities</li> </ul>
<p>The VMG community is now informed and aware as the development of the Standard Gauge Railway (SGR) brought a lot of lessons that revolved around:</p> <ul style="list-style-type: none"> <li>➤ Land issues i.e. Historical land rights, land grabbing and under rating land rates when buying from uninformed/illiterate individuals.</li> <li>➤ Employment Opportunities: it was noted that developers have created a perception that the indigenous people cannot manage the unskilled labour and thus are being left out which is a breach to the GoK constitution</li> </ul>	<ul style="list-style-type: none"> <li>➤ Appreciated all the concerns raised and that all the concerns/information they shared is informative and that they have been noted.</li> <li>➤ Informed that it's a national requirement that the private concessionaire will undertake independent ESIA for the material sites and when the license is issued there are conditions attached in regard to the management of the license.</li> <li>➤ Informed that KeNHA monitors all its</li> </ul>

Question/ Comment by VMGs	Response by KeNHA
<p>where local employment should be up to 70% of the unskilled labour and also skilled where opportunities are.</p> <p>➤ Material sites: noted that materials sites are badly excavated thus leaving the community members and the livestock safety compromised. He requested KeNHA to develop guidelines on the management of the material sites and if possible if they are left as water pans they should be safe for the people and their livestock.</p>	<p>development and associated developments to ensure compliance to the national, international and development partners' operational policies and guidelines to prevent hazards and ensure that the unskilled and semiskilled or skilled labor will be given to the locals/VMGs as a matter of priority. However, for skilled labor, the locals will be selected competitively whenever opportunities arise.</p> <p>➤ Informed that KeNHA will oversee the process for restoration of excavated material sites to satisfactory standards that are safe for the members of the public. The VMGs should ensure that this condition is included in the willing seller-willing buyer agreement between them and the concessionaire should any material site be located in their areas</p>

**Table 2: Summary of issues raised during the second IPOs representative meeting on March 19, 2018**

Concern/Comment	Response
<p><b>Animal crossing</b></p> <ul style="list-style-type: none"> <li>➤ The on-going fencing of the Delamere farm and other private ranches may create barrier effect to livestock and wildlife thus endangering them as well as safety risk to motorists.</li> <li>➤ The wildlife crossings mentioned in the ESIA document assumed that livestock will be using them and wanted a separate study to be done to accommodate livestock crossings.</li> <li>➤ Noted that the report is missing the immigration livestock routes such as Kajiado-Gilgil which are the source of livelihood for IPs. The immigration routes were said to be on the Right of Way.</li> </ul>	<ul style="list-style-type: none"> <li>➤ It was acknowledged that the ranchers were fencing their property and it is a concern to KWS and KeNHA in terms of wildlife and livestock crossing.</li> <li>➤ It was clarified that the IPOs at the local level will be engaged to guide on the location for animal crossings to ensure crossings designed are of use during the operation phase of the project.</li> <li>➤ The reference was made to the existing Wildlife crossing route, however further consultations on crossing routes will be done and incorporated in the report. The project design has factored in the box culverts and underpasses which are proposed livestock crossing routes.</li> <li>➤ The livestock’s crossing routes will further be identified during IPs consultations which were ongoing in development of VMGFs Framework (see proposed crossing sites in the section on impacts of the project on IPs). It was clarified that the road improvement will be within the existing road reserve and no land acquisitions were expected except in areas where there are interchanges, but acquisition for this has been taken care of in the RAP that has been prepared for the project. The members were assured that the road reserve will not be exhausted even after construction.</li> </ul>
<ul style="list-style-type: none"> <li>➤ KeNHA was commended for continuous engagements with the IPOs groups.</li> <li>➤ Absorption of the IPOs into the larger monitoring and evaluation team during the implementation phase of the project.</li> <li>➤ There was an existing borehole on road reserve which is being used by the pastoralist and wanted to know its fate.</li> <li>➤ Provisions in the ESIA document such as Stakeholder Engagement plan, Grievance Redress Mechanism and Gender Mainstreaming Plan to be in place before ESIA disclosure.</li> <li>➤ Requested that studies to be conducted on cultural values of the IP groups along the A8 road particularly at Suswa and</li> </ul>	<ul style="list-style-type: none"> <li>➤ The project is under RFP stage of ESIA however, the impact or loss of the bore hole will be determined during actual implementation of the project.</li> <li>➤ Clarified that the documents will be prepared during implementation phase by the project concessionaire. These will be living documents detailing how the Concessionaire will abide to the prescribed environmental and social safeguards, including this VMGF.</li> <li>➤ The request on engagement of the IPOs was noted and clarified that further meetings will be held on the ground with IPOs representatives at the local level. The representatives were requested to guide in mapping them out.</li> <li>➤ Development of a framework that will guide on how the private concessionaire will engage the</li> </ul>



Concern/Comment	Response
<p>Longonot areas.</p> <ul style="list-style-type: none"> <li>➤ The GRM framework to be part of ESIA; there was a request for development of all implementable documents before submission of ESIA report to World Bank for approval.</li> </ul>	<p>IPOs during project implementation phase was under preparation by KeNHA.</p> <ul style="list-style-type: none"> <li>➤ All the workable plans (environment and social safeguards strategies) will be developed by the concessionaire during implementation phase. These will be reviewed and commissioned by KeNHA.</li> </ul>
<p><b>Project Impacts</b></p> <ul style="list-style-type: none"> <li>➤ The road project will impact the existing water bodies and other sites and wanted to know how the impacts will be mitigated upon.</li> <li>➤ The expected impact on the existing livestock fodder (destruction by trucks and dust) and mitigation measures that will be put to ensure no negative impact to quality of the fodder.</li> <li>➤ Noted that other projects have had labour issues during construction and suggested for a consultative criterion for recruitment and identification of the local labour. A Community Liaison Officer can be sourced locally to ensure order and transparency.</li> <li>➤ Need for development of affirmative action to ensure more local/casual laborers are employed during construction works. The project implementation team to ensure efficiency and accountability hence can end up being benchmark platform for other future projects in the area and for the Authority.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The ESIA report indicated the nationally and culturally recognized heritage sites by the Kenya museum (Kariandusi &amp; Hyrax). He informed the members that any other cultural sites or heritage that may be identified during construction, including chance-finds, will be incorporated and protected.</li> <li>➤ The other perceived impacts such as water, air and noise pollution will be analyzed during implementation where the Concessionaire will prepare separate EIAs for Camp site, Borrow pit, Crusher site and quarry site.</li> <li>➤ Destruction of the existing fodder will depend on the location of Concessionaire sites such as quarry, camp and other facilities. Members agreed that a baseline study to ascertain status on fodder before project commencement will be undertaken to mitigate any anticipated impacts on fodder.</li> <li>➤ A labor management plan will be developed by the project concessionaire; this will guide on labour influx management.</li> <li>➤ A labour influx plan will be developed during project implementation by the concessionaire with a threshold of 70% and 30% for local labour and female representation respectively.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Acknowledged that the IPs value their cultural practices and suggested that the immigrant construction workers' interaction with the locals should be restricted to avoid actions that may erode the IPs culture.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The concessionaire will develop Code of Conduct (CoC) detailing the guidelines on expected engagement and penalties on issues around the local community, child protection and gender-based violence protection, including sexual exploitation and abuse (SEA). This will be signed by foreign and local workers and they are expected to abide to the set rules and regulations while the concessionaire contractors will be expected to enforce the penalties outlined in the CoC.</li> <li>➤ It was recommended that awareness on cultural dynamics of the IPS to be conducted among the workers to help preserve their cultures.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Appreciated the proposed construction of</li> </ul>	<ul style="list-style-type: none"> <li>➤ The proposed station will have amenities such as</li> </ul>

<b>Concern/Comment</b>	<b>Response</b>
Bus Bays and shelters, truck lay-bays and asked whether the proposed tolling station will have sanitation facilities.	washrooms, clinics, shopping stalls, hotels/restaurants etc. The stations are expected to be developed by private investors which might not be part of the road project.

**Table 3: Summary of issues raised in a Meeting with Ogiek and Endorois IP representatives on April 19, 2018**

<b>Questions/Concerns/Comments</b>	<b>Responses</b>
<p><b>Consultations and information sharing</b></p> <ul style="list-style-type: none"> <li>• There was appreciation for being involved in the process.</li> <li>• How many meetings have been held and what has been discussed so far?</li> <li>• Women should be given opportunities to air their views regarding the project</li> </ul>	<ul style="list-style-type: none"> <li>▪ Public consultation meetings have been held in all markets along the proposed road project during the preparation of ESIA, RAP and other studies. Two previous national level IPOs consultation meetings were held with representation of VMGs. The meetings aimed at informing the people about the project as well as giving them opportunity to air their views, concerns that are documented.</li> </ul>
<p><b>Design considerations</b></p> <ul style="list-style-type: none"> <li>• Avoid underpasses for pedestrian crossing which is a risk to women and girls. Underpasses are associated with insecurity, rape and other crimes. Provision of such exposes people to risks and others forced to use the busy highways risking their lives.</li> <li>• The steep/hilly areas along the road should be levelled as this will reduce accidents.</li> <li>• Road signage and bumps should be erected in areas close to schools, markets etc. to control over speeding and reduce accidents</li> <li>• Is non-motorized transport (NMT) included in the proposed road design?</li> </ul>	<ul style="list-style-type: none"> <li>▪ The design proposal features were well received, documented and will be shared with the private concessionaires for consideration in the designs.</li> </ul>
<p><b>Grievance redress Mechanism</b></p> <ul style="list-style-type: none"> <li>• There should be 2 or 3 representatives in the formation grievance redress committees to represent them in case of any grievances arising</li> </ul>	<ul style="list-style-type: none"> <li>• Only RAP committees have been formed so far. The project will ensure the inclusion of VMGs in the GRM which will be established in consultation with them.</li> </ul>
<p><b>Employment opportunities</b></p> <ul style="list-style-type: none"> <li>• Provision of employment opportunities to the indigenous people at all levels (skilled, semi-skilled and unskilled level)</li> </ul>	<p>The local community will be given the first priority for unskilled and semi-skilled employment during project construction phase. For skilled labor, VMGs and other locals will have to compete for any opportunities that may</p>

	arise
<p><b>Project impacts</b></p> <ul style="list-style-type: none"> <li>• What are the negative impacts of the proposed road project?</li> <li>• Is the IPPFs used by KeNHA same as that of KFS in reference to OP 4.10?</li> <li>• The Concessionaire should devise other materials for road signs apart from metal. This is due to the theft and destruction of the metal road signs by scrap dealers</li> <li>• The road is long hence the need for public amenities i.e. toilets to promote health and cleanliness and protect the environment</li> <li>• What is the relationship between KeNHA and National Transport and Safety Authority (NTSA)?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negative impacts associated with the proposed road project include; involuntary displacement of people, air pollution, water pollution barrier effects and dust but some of these impacts are temporary and can be mitigated.</li> <li>▪ Every project has its own IPPF/VMGF if OP 4.10 on indigenous people is triggered. KeNHA was developing VMGPF to guide the concessionaire for the road project, hence this consultation with you as VMGs.</li> <li>▪ In other project areas, non-metal materials have been used but illegal removal was noted. Participants encouraged on being vigilant and report such illegal activities as well as sensitize community members on dangers of removing the road signage.</li> <li>▪ There will be roadside amenities included in the road design i.e. toilets, restaurants but will be firmed up after in the final design.</li> <li>▪ These are different authorities under the same Ministry. KeNHA constructs, maintains and rehabilitates class A, B and C roads while NTSA ensures safety of the roads use.</li> </ul>
<p><b>CSR</b></p> <ul style="list-style-type: none"> <li>• Apart from direct benefits of the project, are there Corporate Social Responsibility (CSR) benefits too?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CSR to the community will be decided upon by the private Concessionaire who will make plans on giving back to the community.</li> </ul>
<p><b>Land Compensation and material sites</b></p> <ul style="list-style-type: none"> <li>• Is there compensation where land acquisition exceeds the 60 meters' width?</li> <li>• Will the Concessionaire purchase or just use the construction materials upon material availability?</li> </ul>	<ul style="list-style-type: none"> <li>▪ The proposed road project is within the existing 60 meters' road reserve owned by KeNHA. In case of any establishments beyond the 60 meters, like in the construction of interchanges, there will be land acquisition and compensation for the project affected persons at current full replacement cost of the affected assets, including land.</li> <li>▪ In this case, the land owner in the presence of a local administrator like the chief should sign an agreement with the Concessionaire</li> </ul>

	regarding the acquisition of material sites. The land owner is expected to keep a copy of the agreement signed that can serve as an evidence in case of any disputes arising from the Concessionaire's side. Such an agreement should include provisions for the restoration of the sites after construction
--	--

**Table 4: Summary of issues raised in a Meeting with Maasai community representatives on April 20, 2018**

<b>Questions/ Concerns/ Comments</b>	<b>Responses</b>
<p><b>Consultations and information sharing</b></p> <ul style="list-style-type: none"> <li>• What are the names of the members of indigenous people organization (IPO) who attended the previous IPO consultation meetings?</li> <li>• Proposed further and wider consultations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Names of participants for the meetings were shared.</li> <li>▪ Further consultation with IPOs will be undertaken during implementation to ensure they play a role in implementation monitoring</li> </ul>
<p><b>Grievance redress</b></p> <ul style="list-style-type: none"> <li>• Inclusion of pastoralists in the grievance redress committees to be formed since the project also affects them.</li> <li>• Ensure gender sensitivity in the formation of grievance redress committees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Only the project affected persons (PAPs) grievance redress committees were formed during the RAP preparation. The overall implementation grievance redress committee is yet to be developed and therefore the indigenous people will be considered and will be gender sensitive.</li> </ul>
<p><b>Labour relations and employment</b></p> <ul style="list-style-type: none"> <li>• The Concessionaire should sub-contract the community people with registered local companies to supply materials during construction</li> <li>• Provision of open employment opportunities to the indigenous people</li> <li>• On employment, the employed community workers should be provided with transport to and from construction sites.</li> <li>• Ensure that indigenous people are given first priority in the sourcing of people for employment.</li> <li>• Ensure that there is a Maasai community liaison officer (CLO) who will act as a link between the Concessionaire and the community.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Concessionaire will require materials for construction. The local companies which wish to supply construction materials to the project will have to sign an agreement with the Concessionaire in the presence of a local administrator such as the Area Chief. Both parties will also keep a copy of the agreement that can serve as evidence in case of any disagreements.</li> <li>▪ The local communities will be given the first priority in employment during the implementation of the project. KeNHA will request that the local communities be given priority by the Concessionaire</li> <li>▪ Only the Concessionaire is in a position of answering the issue of provision of transport to the community workers as per the employment agreements.</li> <li>▪ CLO from the indigenous people will be considered who will objectively bring to the fore issues from locals to the Concessionaire and vice versa.</li> </ul>
<p><b>Community CSR</b></p>	<ul style="list-style-type: none"> <li>▪ CSR to the community will be provided by the</li> </ul>

<ul style="list-style-type: none"> <li>• CSR for the community</li> <li>• Grant some help in Namucha Peace Secondary School as a CSR as it's the only indigenous people institution existing in the area.</li> <li>• The Concessionaire can rehabilitate and make use of the Mirela-Suswa borehole during construction because it has a lot of water then revert to the community after project completion.</li> <li>• Construction and maintenance of access road to the reserve to serve people inside the community</li> </ul>	<p>Concessionaire and this will depend on agreement the Concessionaire has with the host community. KENHA will put it forward to the concessionaire for the benefit of the IPs.</p>
<p><b>Design considerations</b></p> <ul style="list-style-type: none"> <li>• Livestock crossings to be considered at Kikuyu Escarpment forest reserve, at Longonot area around Muniu, and at Gilgil areas. These are the community's major grazing and migratory routes during dry seasons.</li> <li>• Provision of livestock crossings should be designed to be used by all members of the public unlike the existing crossings which are designed for private ranches.</li> <li>• Drainage system should be keenly designed to follow the existing natural storm water flow. The IPs should be engaged in identification of best sites prone to overflows for provision of drainage culverts to avoid downstream flooding.</li> <li>• Provision of footbridges and bumps at Suswa, Satellite and Mafuta taa areas and other sections.</li> <li>• Use non-metal materials for signage posts to avoid removal by scrap metal dealers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provision of livestock crossings to the community will be determined in the final design and the indigenous people will be involved to help in deciding the strategic places for the livestock and animal crossings for enhanced sustainability.</li> <li>▪ The provision of livestock crossing has been taken into account in the design, and the Concessionaire will be advised on the same during construction.</li> <li>▪ A8 South road will only be strengthened and therefore features like culverts, footbridges, climbing lanes will be included.</li> <li>▪ In other project areas, non-metal materials have been used but illegal removal was noted. Participants encouraged on being vigilant and report such illegal activities as well as sensitize community members on dangers of removing the road signage.</li> </ul>

**Table 5: Summary of issues raised in the Meeting with Maasai community representatives on 21<sup>st</sup> March 2019**

<b>Questions/ Concerns/ Comments</b>	<b>Responses</b>
<p><b>Identification of livestock crossings</b> The following livestock crossing points were proposed.</p> <ul style="list-style-type: none"> <li>➤ Mai Mahiu (to connect slaughter house and the market)</li> <li>➤ Monkey corner</li> <li>➤ Keroiro</li> </ul>	<ul style="list-style-type: none"> <li>▪ This was noted. It was clarified that further consultations will be undertaken during project design phase to firm up the same.</li> </ul>

<ul style="list-style-type: none"> <li>➤ Buda</li> <li>➤ Ngubi (Police Patrol base)</li> <li>➤ Keeya River</li> <li>➤ Obunda restaurant</li> <li>➤ Jikaze IDPs</li> <li>➤ Hillstop</li> <li>➤ Longonot Railway</li> <li>➤ Brokers</li> <li>➤ Tanki area</li> <li>➤ Kwa Dam access to Oasis water drinking point</li> <li>➤ Kwa kanio</li> <li>➤ Mirella Railway</li> <li>➤ Maili mbili (highly residential)</li> <li>➤ 2km before Gilgil town</li> <li>➤ Kambi somali</li> <li>➤ Kariandusi</li> </ul>	
<p><b>Design considerations</b> Proposed that road signage targeting the affected community to adopt favorable language. Consider adequate human and livestock crossings</p>	<ul style="list-style-type: none"> <li>▪ This was noted</li> </ul>
<p><b>Grievance redress</b> Consider inclusion of VMGs in the grievance redress committees</p>	<ul style="list-style-type: none"> <li>▪ The indigenous people will be considered</li> </ul>
<p><b>CSR</b> Consider provision of cattle dips along the road corridor. Consideration for construction of dam/ water pans to help in rain water harvesting for use by the community.</p>	<ul style="list-style-type: none"> <li>▪ CSR to the community will be provided by the Concessionaire and this will depend on an agreement the Concessionaire has with the host community.</li> </ul>
<p><b>Other concerns</b></p> <ul style="list-style-type: none"> <li>➤ Plans put in place to mitigate tree cutting.</li> <li>➤ Measures put in place to ensure protection of the forested area at the escarpment</li> <li>➤ Ensure adequate measures are put in place to guide foreign contractor in regard to the protection of community's culture.</li> </ul>	<ul style="list-style-type: none"> <li>▪ KeNHA is committed to ensuring environmental sustainability through tree planting initiatives.</li> <li>▪ The A8 South road will only be strengthened with minimal impacts on the ecosystem. In addition, mitigation measures have been proposed to mitigate any anticipated negative impacts.</li> <li>▪ As part of the protection of the VMGs culture, the concessionaire will prepare a SEP, a GRM, a GBV/SEA management plan as well as CoC workers in consultation with the VMGs. VMGs are encouraged to seize the opportunity during consultations for the preparation of these plans to ensure their concerns are captured in the plans.</li> </ul>

**Table 6: Summary of issues raised in a Meeting with the Ogiek community representatives on 21<sup>st</sup> March 2019**

Questions/ Concerns/ Comments	Responses
<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>• Local community to be considered for employment</li> </ul>	<ul style="list-style-type: none"> <li>▪ Employment opportunities for skilled labor will be provided based on merit. Once opportunities arise, qualified and interested individuals will be expected to apply. Locals will however be given first consideration for unskilled labor</li> </ul>
<p><b>Design considerations</b></p> <ul style="list-style-type: none"> <li>• Road design to include road safety measures such as foot bridges, and speed calming measures and signage</li> <li>• Contractor to level steep area to reduce accidents.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The road design has put into consideration all road safety aspects.</li> </ul>
<p><b>Other concerns</b></p> <p>Measures put in place to mitigate impacts of dust pollution, noise pollution and vibrations</p> <p>Ensure adequate measures are put in place to mitigate impacts associated with spread of HIV/AIDS and irresponsible sexual behaviors.</p>	<ul style="list-style-type: none"> <li>▪ Project has developed ESIA report that proposes mitigation measures related to the project which will be adhered to. This is included in detail, in the project Environmental and Social Management Plan (ESMP). Monitoring will be undertaken to ensure adherence.</li> <li>▪ The project will have a component on HIV AIDS awareness, prevention and training targeting the workers and the immediate community they interact with. Participants were also encouraged to further extend awareness to the community members.</li> </ul>

## ***Appendix 2: Social Assessment TORs***

### **1. Background and Objectives of OP 4.10**

The project has triggered the World Bank's Operational Policy (OP 4.10) on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities. This policy is triggered when it is known that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are present or are likely to be present in the project area.

The term Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities is used in a generic sense to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and
- Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and
- Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

In Kenya, the groups of people who meet the above criteria are referred to as Vulnerable and Marginalised Groups (VMGs).

The objective of OP 4.10<sup>1</sup> is to contribute to the Bank's<sup>2</sup> mission of poverty reduction and sustainable development by ensuring that:

- The development process fully respects the dignity, human rights, economies, cultures and natural resource-based livelihoods of **Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities**.
- To avoid adverse impacts of projects, or, when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultations with affected communities throughout the project's life-cycle

### **2. Objectives of the Social Assessment**

In line with the objectives of OP 4.10, the project will prepare site specific Social Assessments (SA) to evaluate the project's potential positive and adverse effects of the project on the VMGs in the project areas where VMGs are present – and to examine project alternatives where adverse effects may be significant. The findings of the SA will inform project design and the preparation of Vulnerable and Marginalized Groups Plans (VMGPs).

KeNHA will procure the services of a SA consultant. The consultant will conduct the SA in accordance with the free, prior and informed consultations principles (See Note at the end of this section of the ToR) with the affected VMGs – leading to their broad support for the road project.



## 2.1 The specific tasks of the SA will include:

1. Review of the legal and institutional framework applicable to VMGs. This will include but not limited to:
  - i. The international agreements that Kenya has signed and ratified that relate to VMGs;
  - ii. The Constitution of Kenya, 2010, especially its provisions on VMGs whether they are recognized as a distinct group;
  - iii. Other national and county laws and regulations applicable to VMGs, e.g. whether they have any special rights or protections in law, e.g. in relation to their language, culture etc.;
  - iv. How the legal and institutional frameworks practically impact on these groups.
  - v. Comparison between Kenyan laws and OP4.10 and recommendations on how to address any gaps between the Kenyan laws and the World Bank policy
2. Gathering and analyzing baseline information including social, cultural, economic and institutional contexts of the project in relation to VMGs:
  - i. Social: Are VMGs integrated into the larger society? Are they separate? If separate, is it voluntary or involuntary isolation? How are they vulnerable or marginalized? Do they have access to social services?)
  - ii. Cultural: Do VMGs maintain own cultural practices? Is there any conflict with the Government about cultural heritage/practices? Is their culture/language at risk of dying out due to assimilation? Is assimilation acceptable to them?) Do VMGs along the road project have any tangible and/or intangible cultural heritage (structures, historical sites, sacred sites, artifacts, music, story-telling, poetry) that may be affected (positively or negatively by the project?
  - iii. Economic: population/demographic statics of the VMGs in each site; education levels of the VMGs; the VMGs livelihood strategies? Whether their livelihoods are dependent on land and or other natural resources, and if so, which ones? Whether their livelihoods are changing, and if so, how? Are they moving from rural areas to urban areas? Are they economically vulnerable? What are the practical implications of their vulnerability? Formal and informal employment sectors for the VMGs; Opportunities for improved sustainable livelihoods?)
  - iv. Institutional: What kind of institutions do the VMGs have that are distinct from those of the government? Do they have rights to govern certain institutions, such as a local council, school, hospital, economic development entity? Do they have special control of natural resources, such as forests, fisheries, water or land areas? How is the government/VMGs relations?
3. Based on items 1 and 2 above, identifying key project stakeholders and analyzing their interests and roles in the project, in particular, those stakeholders who speak for and represent the VMGs.
4. Identifying the potential positive and adverse effects of each of the project's components on VMGs. Critical to the determination of potential adverse impacts is 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, in which they live.

5. Identifying mitigation measures for each set of adverse impacts of the project.
6. Based on 1-5 above, making recommendations to inform the project design.
7. Making recommendations to inform the preparation of Vulnerable and Marginalized Groups Plans, including the following as appropriate:
  - a) Site specific culturally appropriate development measures, and,
  - b) Measures to minimize, mitigate, or compensate the adverse effects, and to ensure that the VMGs receive culturally appropriate benefits under the project.
8. Clearly documenting the consultation process with VMGs during the SA, including positive and negative views as well as the outcomes from the consultations leading to their broad support for the project. Should the SA note that there is no broad support for the project or any of its components, make recommendations on how to address the VMGs concerns.
9. In consultation with the VMGs, elaborating a culturally appropriate process for free, prior and informed consultations with them at each stage of the project preparation and implementation. (See Note below).
10. In consultation with the VMGs, proposing arrangements for the disclosure of the SA, including disclosure locations and language.

**Note:** Meaningful, free, prior and informed consultations with VMGs during the social assessment and at every stage of project preparation and implementation should be:

- In an appropriate language
- Culturally appropriate,
- Gender and inter-generationally inclusive,
- Conducted in good faith,
- Voluntary, free of interference and non-manipulative,
- Involve advance information to VMGs about the activity at hand, and provide sufficient time for them to make informed decisions.

### 3. Methodology for undertaking the SA

The consultant shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies – in line with the free, prior and informed consultations process requirements – to be used in undertaking the SA. These will include but not be limited to:

- Literature review, including among others, the review of the World Bank’s Operational Policy (OP 4.10) on indigenous Peoples/VMGs and its related Annex, Annex A, the Kenyan policies, legislations and regulations on marginalized and minority groups, in particular, the Constitution of Kenya, 2010;
- Focused Group Discussions that are gender and intergenerationally inclusive;
- Proof of the consultation process with VMGs, (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions).

### 4. Outputs of the Consultancy

#### *4.1 Inception Report*

The Concessionaire in consultation with KeNHA will prepare an inception report that will include the following:

- a clear description of the understanding of the assignment, methodology to be used in undertaking the assignment, and, a detailed work plan
- a preliminary analysis of potential key direct and indirect impacts of the project
- the identification of issues requiring guidance or input
- an annotated table of content for each assignment, SA report

#### *4.2 Preliminary report*

The Concessionaire will prepare a preliminary report in both hard copy and soft copy.

#### *4.3 Full draft report*

The Concessionaire in consultation with KeNHA will provide a full draft SA report in both hard copy and soft copy. The draft must cover all the issues mentioned in Section 2 above and must clearly show the consultation process with VMGs and other concerned stakeholders. This entails the process of free prior and informed consultations with affected VMGs, for which the consultation plan must be included as an Annex.

#### *4.4 Final report*

The Concessionaire will provide a final report in both hard copy and soft copy.

### 5. Support to the Concessionaire

#### *5.1 Documents to be provided by KeNHA*

KeNHA will make available to the Concessionaire the Constitution of Kenya, 2010, and other appropriate Kenyan laws and regulations (national and county) applicable to VMGs. In addition, KeNHA will provide the Concessionaire with the World Bank policies on Indigenous Peoples/VMGs (OP 4.10) and their related Annexes. (These have been included in these ToRs as Appendices).

### 6. Report Format

All reports shall be in the English Language, in a format acceptable to the World Bank, and KeNHA. The reports must be clear and concise

#### *7. Consultant's Qualifications*

The Consultant shall provide sufficient and qualified personnel to complete the SA tasks for the road project.

The consultant will assign: (i) a coordinator, and (ii) a team leader and a survey expert who will be accountable for the timely completion of the task. The team for each task shall include the skill mix necessary to meet the objectives and scope of services.

#### *7.1 The SA and VMGP Team Leader*

The SA/VMGP Team Leader shall have the following qualifications:

- a masters' degree in Sociology, Anthropology or other social sciences from a recognized university
- proof of leadership in carrying out a SA and preparation of at least 5 VMGPs/Community Development Plans
- participation in at least two SAs and at least two VMGP for infrastructure project that met the requirements of an International Financial Institution, such as the World Bank, IFC, AfDB, or EIB

The SA/VMGP team leader will spend considerable time in the field (leading the teams in his/her docket) and part of the time in the office writing reports.

#### *8. Services, Facilities and Tools*

KeNHA shall avail staff that shall work closely with the Concessionaire and represent the Authority in different tasks including among others:

- Assisting in provision of existing project information and data when required,
- Reviewing and approving any submissions by the Concessionaire that require approval
- Following-up on the site works, monitoring and evaluation.

These staff shall, however, be under the control of and be paid by the Client. The Concessionaire shall make its own arrangements for office space and equipment facilities (fax, phone, e-mail, internet, computers, copying, editing, etc.) including transport and personnel accommodation.

The Concessionaire at his/her own expense shall provide all equipment, tools and software needed to undertake the assignment.

All equipment, tools and software that may be procured using KeNHA funds will be handed over to the Client after completion of the project.

## Appendix 3: OP 4.10

### OP 4.10 - Indigenous Peoples

These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject. July, 2005

Note: OP/BP 4.10, *Indigenous Peoples*, were revised on April 2013 to take into account the recommendations in “*Investment Lending Reform: Modernizing and Consolidating Operational Policies and Procedures*” (R2012-0204 [IDA/R2012-0248]), which were approved by the Executive Directors on October 25, 2012. As a result of these recommendations: (a) OP/BP 10.00, *Investment Project Financing*, were revised, among other things, to incorporate OP/BP 13.05, *Supervision*, and OP/BP 13.55, and *Implementation Completion Report*, (which have accordingly been retired); and (b) OP 8.60, *Development Policy Lending*, and OP 9.00, *Program-for-Results Financing*, have also been revised. OP/BP 4.10 have consequently been updated to reflect these changes, as well as to clarify the extent of their applicability to Development Policy Lending and Program-for Results-Financing and to reflect the updated title of the Bank’s policy on access to information.

Questions on this OP/BP may be addressed to the Safeguard Policies Helpdesk in OPCS ([safeguards@worldbank.org](mailto:safeguards@worldbank.org)).

#### Revised April 2013

1. This policy<sup>1</sup> contributes to the Bank’s<sup>2</sup> mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples. For all projects that are proposed for Bank financing and affect Indigenous Peoples,<sup>3</sup> the Bank requires the borrower to engage in a process of free, prior, and informed consultation.<sup>4</sup> The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples.<sup>5</sup> 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. Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and intergenerationally inclusive.

2. The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex. As social groups with identities that are often distinct from dominant groups in their national societies, Indigenous Peoples are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development. At the same time, the Bank recognizes that Indigenous Peoples play a vital role in sustainable development and that their rights are increasingly being addressed under both domestic and international law.

3. *Identification.* Because of the varied and changing contexts in which Indigenous Peoples live and because there is no universally accepted definition of “Indigenous Peoples,” this policy does not define the term. 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.”

4. 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<sup>6</sup> possessing the following characteristics in varying degrees:

- self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories<sup>7</sup>
- customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- an indigenous language, often different from the official language of the country or region.

A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area”; (paragraph 4 (b)) because of forced severance remains eligible for coverage under this policy.<sup>8</sup> Ascertain whether a particular group is considered as “Indigenous Peoples” for the purpose of this policy may require a technical judgment (see paragraph 8).

5. *Use of Country Systems.* The Bank may decide to use a country’s systems to address environmental and social safeguard issues in a Bank-financed project that affects Indigenous Peoples. This decision is made in accordance with the requirements of the applicable Bank policy on country systems.<sup>9</sup>

#### Project Preparation

6. A project proposed for Bank financing that affects Indigenous Peoples requires:

- screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area (see paragraph 8);
- a social assessment by the borrower (see paragraph 9 and [Annex A](#));
- a process of free, prior, and informed consultation with the affected Indigenous Peoples’ communities 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 (see paragraphs 10 and 11);

(d) the preparation of an Indigenous Peoples Plan (see paragraph 12 and [Annex B](#)) or an Indigenous Peoples Planning Framework (see paragraph 13 and [Annex C](#)); and

(e) disclosure of the draft Indigenous Peoples Plan or draft Indigenous Peoples Planning Framework (see paragraph 15).

7. The level of detail necessary to meet the requirements specified in paragraph 6 (b), (c), and (d) is proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether adverse or positive.

### *Screening*

8. Early in project preparation, the Bank undertakes a screening to determine whether Indigenous Peoples (see paragraph 4) are present in, or have collective attachment to, the project area.<sup>10</sup> In conducting this screening, the Bank seeks the technical judgment of qualified social scientists with expertise on the social and cultural groups in the project area. The Bank also consults the Indigenous Peoples concerned and the borrower. The Bank may follow the borrower's framework for identification of Indigenous Peoples during project screening, when that framework is consistent with this policy.

### *Social Assessment*

9. *Analysis.* If, based on the screening, the Bank concludes that Indigenous Peoples are present in, or have collective attachment to, the project area, the borrower undertakes a social assessment to evaluate the project's potential positive and adverse effects on the Indigenous Peoples, and to examine project alternatives where adverse effects may be significant. The breadth, depth, and type of analysis in the social assessment are proportional to the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether such effects are positive or adverse (see [Annex A](#) for details). To carry out the social assessment, the borrower engages social scientists whose qualifications, experience, and terms of reference are acceptable to the Bank.

10. *Consultation and Participation.* Where the project affects Indigenous Peoples, the borrower engages in free, prior, and informed consultation with them. To ensure such consultation, the borrower:

(a) establishes an appropriate gender and intergenerationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the borrower, the affected Indigenous Peoples' communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil society organizations (CSOs) identified by the affected Indigenous Peoples' communities;

(b) uses consultation methods<sup>11</sup> 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; and

(c) provides the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation.

11. In deciding whether to proceed with the project, the borrower ascertains, on the basis of the social assessment (see paragraph 9) and the free, prior, and informed consultation (see paragraph 10), whether the affected Indigenous Peoples' communities provide their broad support to the project. Where there is such support, the borrower prepares a detailed report that documents:

(a) the findings of the social assessment;

(b) the process of free, prior, and informed consultation with the affected Indigenous Peoples' communities;

(c) additional measures, including project design modification, that may be required to address adverse effects on the Indigenous Peoples and to provide them with culturally appropriate project benefits;

(d) recommendations for free, prior, and informed consultation with and participation by Indigenous Peoples' communities during project implementation, monitoring, and evaluation; and

(e) any formal agreements reached with Indigenous Peoples' communities and/or the IPOs.

The Bank reviews the process and the outcome of the consultation carried out by the borrower to satisfy itself that the affected Indigenous Peoples' communities have provided their broad support to the project. The Bank pays particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected Indigenous Peoples' communities as a basis for ascertaining whether there is such support. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists.

## *Indigenous Peoples Plan/Planning Framework*

12. *Indigenous Peoples Plan.* On the basis of the social assessment and in consultation with the affected Indigenous Peoples' communities, the borrower prepares an Indigenous Peoples Plan (IPP) that sets out the measures through which the borrower will ensure that (a) Indigenous Peoples affected by the project receive culturally appropriate social and economic benefits; and (b) when potential adverse effects on Indigenous Peoples are identified, those adverse effects are avoided, minimized, mitigated, or compensated for (see [Annex B](#) for details). The IPP is prepared in a flexible and pragmatic manner,<sup>12</sup> and its level of detail varies depending on the specific project and the nature of effects to be addressed. The borrower integrates the IPP into the project design. When Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries, the elements of an IPP should be included in the overall project design, and a separate IPP is not required. In such cases, the Project Appraisal Document (PAD) includes a brief summary of how the project complies with the policy, in particular the IPP requirements.

13. *Indigenous Peoples Planning Framework.* Some projects involve the preparation and implementation of annual investment programs or multiple subprojects.<sup>13</sup> In such cases, and when the Bank's screening indicates that Indigenous Peoples are likely to be present in, or have collective attachment to, the project area, but their presence or collective attachment cannot be determined until the programs or subprojects are identified, the borrower prepares an Indigenous Peoples Planning Framework (IPPF). The IPPF provides for the screening and review of these programs or subprojects in a manner consistent with this policy (see [Annex C](#) for details). The borrower integrates the IPPF into the project design.

14. *Preparation of Program and Subproject IPPs.* If the screening of an individual program or subproject identified in the IPPF indicates that Indigenous Peoples are present in, or have collective attachment to, the area of the program or subproject, the borrower ensures that, before the individual program or subproject is implemented, a social assessment is carried out and an IPP is prepared in accordance with the requirements of this policy. The borrower provides each IPP to the Bank for review before the respective program or subproject is considered eligible for Bank financing.<sup>14</sup>

## *Disclosure*

15. The borrower makes the social assessment report and draft IPP/IPPF available to the affected Indigenous Peoples' communities in an appropriate form, manner, and language.<sup>15</sup> Before project appraisal, the borrower sends the social assessment and draft IPP/IPPF to the Bank for review.<sup>16</sup> Once the Bank accepts the documents as providing an adequate basis for project appraisal, the Bank makes them available to the public in accordance with [The World Bank Policy on Access to Information](#), and the borrower makes them available to the affected Indigenous Peoples' communities in the same manner as the earlier draft documents.

## **Special Considerations**

### *Lands and Related Natural Resources*

16. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social assessment and preparing the IPP/IPPF, the borrower pays particular attention to:

(a) the customary rights<sup>17</sup> of the Indigenous Peoples, both individual and collective, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods;

(b) the need to protect such lands and resources against illegal intrusion or encroachment;

(c) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; and

(d) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices.

17. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the IPP sets forth an action plan for the legal recognition of such ownership, occupation, or usage. Normally, the action plan is carried out before project implementation; in some cases, however, the action plan may need to be carried out concurrently with the project itself. Such legal recognition may take the following forms:

(a) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or

(b) conversion of customary usage rights to communal and/or individual ownership rights.

If neither option is possible under domestic law, the IPP includes measures for legal recognition of perpetual or long-term renewable custodial or use rights.

#### *Commercial Development of Natural and Cultural Resources*

18. If the project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories that Indigenous Peoples traditionally owned, or customarily used or occupied, the borrower ensures that as part of the free, prior, and informed consultation process the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower includes in the IPP arrangements to enable the Indigenous Peoples to share equitably in the benefits<sup>18</sup> to be derived from such commercial development; at a minimum, the IPP arrangements must ensure that the Indigenous Peoples receive, in a culturally appropriate manner, benefits, compensation, and rights to due process at least equivalent to that to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land.

19. If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge (for example, pharmacological or artistic), the borrower ensures that as part of the free, prior, and informed consultation process, the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. Commercial development of the cultural resources and knowledge of these Indigenous Peoples is conditional upon their prior agreement to such development. The IPP reflects the nature and content of such agreements and includes arrangements to enable Indigenous Peoples to receive benefits in a culturally appropriate way and share equitably in the benefits to be derived from such commercial development.

#### *Physical Relocation of Indigenous Peoples*

20. Because physical relocation of Indigenous Peoples 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 Indigenous Peoples' 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 Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.

21. In many countries, the lands set aside as legally designated parks and protected areas may overlap with lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied. The Bank recognizes the significance of these rights of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites, should be avoided. In exceptional circumstances, where it is not feasible to avoid restricting access, the borrower prepares, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, a process framework in accordance with the provisions of [OP 4.12](#). The process framework provides guidelines for preparation, during project implementation, of an individual parks and protected areas' management plan, and ensures that the Indigenous Peoples participate in the design, implementation, monitoring, and evaluation of the management plan, and share equitably in the benefits of the park's and protected areas. The management plan should give priority to collaborative arrangements that enable the Indigenous, as the custodians of the resources, to continue to use them in an ecologically sustainable manner.

#### **Indigenous Peoples and Development**

22. In furtherance of the objectives of this policy, the Bank may, at a member country's request, support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to:

(a) strengthen local legislation, as needed, to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;



- (b) make the development process more inclusive of Indigenous Peoples by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultation and participation;
- (c) support the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples;
- (d) address the gender<sup>19</sup> and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;
- (e) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns;
- (f) strengthen the capacity of Indigenous Peoples' communities and IPOs to prepare, implement, monitor, and evaluate development programs;
- (g) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;
- (h) protect indigenous knowledge, including by strengthening intellectual property rights; and
- (i) facilitate partnerships among the government, IPOs, CSOs, and the private sector to promote Indigenous Peoples' development programs.

- 
1. This policy should be read together with other relevant Bank policies, including *Environmental Assessment* [OP 4.01](#), *Natural Habitats* [OP 4.04](#), *Pest Management* [OP 4.09](#), *Physical Cultural Resources* [OP/BP 4.11](#), *Involuntary Resettlement* [OP 4.12](#), *Forests* [OP 4.36](#), and *Safety of Dams* [OP 4.37](#).
  2. "Bank" includes IBRD and IDA; "loans" includes IBRD loans, IDA credits, IDA grants, IBRD and IDA guarantees, and Project Preparation Facility (PPF) advances, but does not include Development Policy Lending or Program-for-Results Financing. For social aspects of Development Policy Lending and program-for-Results Financing operations, see [OP 8.60](#), *Development Policy Lending*, paragraph 10 and [OP/BP 9.00](#), *Program-for-Results Financing*. The term "borrower" includes, wherever the context requires, the recipient of an IDA grant, the guarantor of an IBRD loan, and the project implementing agency, if it is different from the borrower.
  3. This policy applies to all components of the project that affect Indigenous Peoples, regardless of the source of financing.
  4. "Free, prior, and informed consultation with the affected Indigenous Peoples' communities" refers to a culturally appropriate and collective decisionmaking process subsequent to meaningful and good faith consultation and informed participation regarding the preparation and implementation of the project. It does not constitute a veto right for individuals or groups (see paragraph 10).
  5. For details on "broad community support to the project by the affected Indigenous Peoples," see paragraph 11.
  6. The policy does not set an *a priori* minimum numerical threshold since groups of Indigenous Peoples may be very small in number and their size may make them more vulnerable.
  7. "Collective attachment" means that for generations there has been a physical presence in and economic ties to lands and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. "Collective attachment" also refers to the attachment of transhumant/nomadic groups to the territory they use on a seasonal or cyclical basis.
  8. "Forced severance" refers to loss of collective attachment to geographically distinct habitats or ancestral territories occurring within the concerned group members' lifetime because of conflict, government resettlement programs, dispossession from their lands, natural calamities, or incorporation of such territories into an urban area. For purposes of this policy, "urban area" normally means a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of nonagricultural economic activities relative to agricultural activities.
  9. The currently applicable Bank policy is [OP/BP 4.00](#), *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*. Applicable only to pilot projects using borrower systems, the policy includes requirements that such systems be designed to meet the policy objectives and adhere to the operational principles related to Indigenous Peoples identified in [OP 4.00](#) (see [Table A1](#)).
  10. The screening may be carried out independently or as part of a project environmental assessment (see [OP 4.01](#), *Environmental Assessment*, paragraphs 3, 8).
  11. Such consultation methods (including using indigenous languages, allowing time for consensus building, and selecting appropriate venues) facilitate the articulation by Indigenous Peoples of their views and preferences. The *Indigenous Peoples Guidebook* (forthcoming) will provide good practice guidance on this and other matters.
  12. When non-Indigenous Peoples live in the same area with Indigenous Peoples, the IPP should attempt to avoid creating unnecessary inequities for other poor and marginal social groups.
  13. Such projects include community-driven development projects, social funds, sector investment operations, and financial intermediary loans.
  14. If the Bank considers the IPPF to be adequate for the purpose, however, the Bank may agree with the borrower that prior Bank review of the IPP is not needed. In such case, the Bank reviews the IPP and its implementation as part of supervision (see [OP/BP 10.00](#), *Investment Project Financing*).
  15. The social assessment and IPP require wide dissemination among the affected Indigenous Peoples' communities using culturally appropriate methods and locations. In the case of an IPPF, the document is disseminated using IPOs at the appropriate national, regional, or local levels to reach Indigenous Peoples who are likely to be affected by the project. Where IPOs do not exist, the document may be disseminated using other CSOs as

appropriate.

16. An exception to the requirement that the IPP (or IPPF) be prepared as a condition of appraisal may be made with the approval of Bank management for projects meeting the requirements of paragraph 11 of [OP/BP 10.00, Investment Project Financing](#). In such cases, management's approval stipulates a timetable and budget for preparation of the social assessment and IPP or of the IPPF.
17. "Customary rights" to lands and resources refers to patterns of long-standing community land and resource usage in accordance with Indigenous Peoples' customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the State.
18. The *Indigenous Peoples Guidebook* (forthcoming) will provide good practice guidance on this matter.
19. See [OP/BP 4.20, Gender and Development](#).

-----  
[Annex A - Social Assessment](#)

[Annex B - Indigenous Peoples Plan](#)

[Annex C - Indigenous Peoples Planning Framework](#)

## Appendix 4: OP 4.10 Annex A: Social Assessment

### OP 4.10, Annex A - Social Assessment

**These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.** OP 4.10 - Annex A  
July, 2005

1. The breadth, depth, and type of analysis required for the social assessment are proportional to the nature and scale of the proposed project's potential effects on the Indigenous Peoples.
2. The social assessment includes the following elements, as needed:
  - (a) A review, on a scale appropriate to the project, of the legal and institutional framework applicable to Indigenous Peoples.
  - (b) Gathering of baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.
  - (c) Taking the review and baseline information into account, the identification of key project stakeholders and the elaboration of a culturally appropriate process for consulting with the Indigenous Peoples at each stage of project preparation and implementation (see paragraph 9 of this policy).
  - (d) An assessment, based on free, prior, and informed consultation, with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live.
  - (e) The identification and evaluation, based on free, prior, and informed consultation with the affected Indigenous Peoples' communities, 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 Indigenous Peoples receive culturally appropriate benefits under the project.

### OP 4.10, Annex B - Indigenous Peoples Plan

**These policies were prepared for use by World Bank staff and are not** OP 4.10 - Annex B  
July, 2005

**necessarily a complete treatment of the subject.**

1. The Indigenous Peoples Plan (IPP) is prepared in a flexible and pragmatic manner, and its level of detail varies depending on the specific project and the nature of effects to be addressed.
2. The IPP includes the following elements, as needed:
  - (a) A summary of the information referred to in [Annex A](#), paragraph 2 (a) and (b).
  - (b) A summary of the social assessment.
  - (c) A summary of results of the free, prior, and informed consultation with the affected Indigenous Peoples' communities that was carried out during project preparation (Annex A) and that led to broad community support for the project.
  - (d) A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities during project implementation (see paragraph 10 of this policy).
  - (e) An action plan of measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, including, if necessary, measures to enhance the capacity of the project implementing agencies.
  - (f) When potential adverse effects on Indigenous Peoples are identified, an appropriate action plan of measures to avoid, minimize, mitigate, or compensate for these adverse effects.
  - (g) The cost estimates and financing plan for the IPP.
  - (h) Accessible procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples.
  - (i) Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples' communities.

-----  
[OP 4.10 - Indigenous Peoples](#)