Republic of Kenya

Ministry of Agriculture (MoA)&
Ministry of Environment and Natural Resources (MENR)

INDIGENOUS PEOPLES PLANNING FRAMEWORK

for the

KENYA AGRICULTURAL PRODUCTIVITY AND
SUSTAINABLE LAND MANAGEMENT PROJECT
(KAPSLMP)

August 27, 2007

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ABBREVIATIONS

ACHPR  African Commission’s Working Group of Experts on Indigenous Populations & Communities
CBD  Convention on Biological Diversity
CBO  Community based organisations
CDD  Community Driven Development
DGS  District Steering Group
ESMF  Environmental and Social Management Framework
FD  Forest Department
FMP  Forest Management Plan
GoK  Government of Kenya
IP  Indigenous Peoples
IPO  Indigenous Peoples’ Organizations
IPP  Indigenous Peoples Plan
IPPF  Indigenous Peoples Planning Framework Management Project
IPR  Indigenous Peoples Representatives
IPSS  Indigenous Peoples Screening Structure
KAP/SLM  Kenya Agricultural Productivity – Sustainable Land Management Project
KAPP  Kenya Agricultural Productivity Program
KFS  Kenya Forest Service
KSH  Kenyan Shilling
LVNWRMA  Lake Victoria North Water Resource Management Authority
LVNWSB  Lake Victoria North Water Service Board
M&E  Monitoring and Evaluation
MAT  Mobile Advisory Teams
MCAP  Micro-catchment Action Plan
MDG  Millenium Development Goal
MA  Ministry of Agriculture
MENR  Ministry of Environment and Natural Resources
MLH  Ministry of Lands and Housing
MWI  Ministry of Water and Irrigation
NGO  Non-Governmental Organisation
NIB  National Irrigation Board
NRM  Natural Resources Management Project
OA  Operational Area
OP 4.10  Operational Policy of the World Bank on Indigenous Peoples
OP 4.12  Operational Policy of the World Bank on Involuntary Resettlement
OP  Office of the President
PES  Payments for Environmental Services
PFMP  Participatory Forest Management Plan
PIM  Participatory Impact Monitoring
PRA  Participatory Rural Appraisal
PRSP  Poverty Reduction Strategy Paper
RAP  Resettlement Action Plan
RPF  Resettlement Policy Framework
SLM  Sustainable Land Management
SSBM  Social Safeguard Backstopping Mission
USD  US Dollar
WKCDD/FM  Western Kenya Community Driven Development and Flood Mitigation Project
WKIEMP  Western Kenya Integrated Ecosystem Management Project
WRMA  Water Resource Management Authorities
WRUA  Water Resource Users Association
EXECUTIVE SUMMARY

1. The Kenya Agricultural Productivity – Sustainable Land Management Project (KAPSLMP) seek to promote the sustainable use of land and natural resources to achieve higher productivity and incomes of the rural populations of Kenya and the maintenance of critical ecosystems functions of degraded and environmental fragile areas. The project’s key development goal is to assist agricultural producers in the targeted operational areas to adopt environmentally-sound land management practices without sacrificing their economic welfare.

2. During preparation, it became clear that the projects might impact on indigenous peoples’ rights, lands, livelihoods, and culture. To comply with international standards, including the World Bank’s Operational Policy on Indigenous Peoples (OP 4.10), whose provisions must be met in order to qualify for funding from the World Bank, the Government of Kenya has commissioned the elaboration of this Indigenous Peoples Planning Framework (IPPF). The purpose of the IPPF is to ensure that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples, and that the projects are able to gain the broad community support of affected indigenous populations through free, prior, and informed consultations. To that end, the IPPF presents guidelines which will avert any potentially adverse effects on the indigenous peoples' communities; or if avoidance proves not to be feasible, minimize, mitigate, or compensate for such negative impacts. An additional goal of the IPPF is to ensure that the indigenous peoples receive social and economic benefits that are culturally appropriate, and inclusive in both gender & intergeneration terms. Under OP 4.10, an IPPF is for community-driven development projects, social funds, sector investments, financial intermediary loans and other projects which involve the preparation and implementation of annual investment programs. The IPPF is thus essential to the compliance of the KAPSLM with international standards.

3. The report presents the findings of a short term consultancy carried out in a participatory manner and in close cooperation with all stakeholders (indigenous peoples’ communities and organizations, other populations, governmental services, donors, NGOs etc.). The report has been approved by all stakeholders on 20/12/2006 in Nairobi.

INDIGENOUS PEOPLES IN THE OPERATIONAL AREAS

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

5. As regards the groups which the IPPF is required to address, the report documents that members of the Sengwer ethnic group are found in a structurally subordinate position in four of the project districts, and Ogiek in a further four. In some districts, it is not clear whether any populations fall within this category. To address this lack of information, the projects provide for comprehensive screening mechanisms to identify, inform, and consult the
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Sengwer, Ogiek, and other indigenous peoples in all operational areas of the two projects well in advance of any investment or subproject implementation.

6. The indigenous peoples face similar problems. From the formal legal point of view they are citizens equal to all other Kenyans. However, they do not have the same access to land and other resources, protection against cattle rustlers, social and political influence, legal status and/or organizational, technical or economic capacities as other citizens of Kenya. The Ogiek and Sengwer, who formerly ranged over broad areas of uninterrupted forests as full-time foragers, have increasingly been restricted to areas with home ‘bases’ involving agriculture and livestock rearing and outlying areas where honey gathering is still practiced. The continual expropriation of land and steadily intensifying restrictions on access to natural resources – especially forests - have further increased their sedentarization, marginalization, social discrimination, and impoverishment. The Ogiek and Sengwer, who are more dependent on forests than others, were - often in contravention of their legal utilization rights - forced out of forests with little or no compensation, and with little or no land to go to or resources to live on.

THE INDIGENOUS PEOPLES PLANNING FRAMEWORK

7. Their increased dependence on farming and livestock rearing and aspiration to access social services and decision-making institutions are not sufficient to give opportunities to indigenous peoples equal to those of other Kenyan citizens. The incomes of indigenous peoples are only about one third of those of other rural Kenyan households. Most indigenous households are landless, and lack legal access to natural resources or other assets for income-generation. Indigenous peoples are ill-equipped to defend even the informal, de facto access that they retain to the remnants of their 'homelands' from encroachment or restriction by outside authorities and interests. They do not have the institutional capacity or degree of empowerment that will enable them to benefit from the reform processes in the forestry, water and lands sectors which are intended to give more say to communities in the management of natural resources and are central to these two projects. Few indigenous people hold positions in the government, even at junior levels (e.g. as chiefs or assistant chiefs). They have little representation even as local government councilors, let alone at higher political levels, and are thus administered and represented by members of non-government groups.

8. The aspirations of the indigenous peoples in the project area are simple: to live in peace with their neighbors, to have access to sufficient land to practice agriculture and graze their livestock, to have access to forests to gather honey for consumption and sale, to practice their culture, to have equitable access to social infrastructure and technical services, and to be fairly represented in the institutions which make decisions affecting their lives at local, regional and national levels. They are not looking for special treatment, only, rather for the rights and opportunities enjoyed by other citizens of Kenya. This IPPF proposes a specific approach to prepare Indigenous Peoples Plans, if needed, addressing the needs and rights of indigenous peoples in the project.

9. The Indigenous Peoples Planning Framework develops measures to ensure that all indigenous peoples, who are affected by the project, receive social and economic benefits that are culturally appropriate, including measures to enhance the capacity of all stakeholders to achieve this. It also addresses the risks for indigenous peoples identified in chapter 3 and
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develops on the basis of the mitigation strategies outlined there, actions to avoid, minimize, mitigate, and/or compensate these adverse effects.

10. During a first phase until 12/2008, the main focus will be to carry out the screenings of subprojects and, when indigenous peoples are present in, or have attachment to, project lands, prepare Indigenous Peoples Plans (IPPs) on the basis of the respective social assessments and free, prior and informed consultations. Once community support for the project has been obtained, the IPPs will formulate action plans with timeliness, budget and institutional responsibilities. As this will involve all indigenous peoples’ communities in the operational areas, the IPPF should be further discussed in detail and - in case the need arises - amendments suggested to the steering committee.

11. In the positive scenario of a successful KAPSLMP, which works in accordance with the visions and approaches set up in the various project documents, the policy framework in Kenya and the World Bank social safeguards, the KAPSLMP will foster the full respect for the dignity, livelihoods, human rights, and culture of the indigenous peoples, protect the indigenous peoples from suffering adverse effects from the implemented measures, and guarantee that the indigenous peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.

12. There are several major potential risks for the indigenous peoples, which may have to be mitigated to insure that the Ogiek and Sengwer do not:

- face further physical and economic displacements from land and forests traditionally utilized by them as source of livelihood and basis for their cultural and social system;
- lose all legal access to natural resources, which are an important source of livelihood and basis for their cultural and social system;
- continue to be affected by land grabbers and cattle rustlers;
- become even more marginalized in the society and disintegrate from the nation;
- receive less assistance from Government services;
- have less capacities to defend their legal rights;
- become or remain as dependent of other ethnic groups, and;
- lose their cultural and social identity.

13. Discussions with all stakeholders indicate that all parties involved are prepared to assist the indigenous peoples to face these risks. The main actors of the IPPF of the KAPSLMP are the Ministries of Agriculture, Livestock and Fisheries, Environment and Natural Resources, Water and Irrigation, Lands, Home Affairs, Planning and National Development, Education, Gender, Sports, Culture and Social Services, Special Programmes, Tourism and Wildlife, Justice, the Office of the President, the Kenya National Commission for Human Rights, the indigenous peoples’ organizations and the Ogiek and Sengwer themselves.
1. To realize the potential positive impacts and to mitigate the potential negative impacts, to guarantee that the indigenous populations have equal opportunities to participate in the benefits offered by the KAPSLMP and that these benefits are culturally appropriate, to ensure that the rights, livelihoods, dignity and culture of the indigenous forest are respected, to guarantee that the KAPSLMP fulfils international standards as outlined in the OP 4.10 of the World Bank and to enable the KAPSLMP to fulfill its objectives, the Government of Kenya will carry out, through KAPSLMP the following measures for the Sengwer and Ogiek in the operational area of the KAPSLMP:

(a) Establish an environment that enables sustainable land and resource management

   Establish the capacities necessary to implement the IPPF;
   Establish an equal access to land and natural resources;
   Establish an equal access to security, social infrastructure and technical services.

(b) Establish equal technical opportunities

   (i) Provide the Ogiek and Sengwer with technical capacities to participate actively in sustainable land and natural resource management;
   Provide the relevant Government staff and other stakeholders with the technical capacities to cooperate successfully and in a culturally appropriate manner with the indigenous peoples;
   Facilitate priority access of indigenous peoples to KAPSLMP related jobs;
   Establish for the Ogiek and Sengwer an equal access to decision making processes in the domain of sustainable land and natural resource management;
   Establish a participatory impact monitoring for KAPSLMP in indigenous peoples’ areas.

(c) Establish equal cultural opportunities

   (ii) Collaborate with the NRM project to establish a national policy on indigenous peoples;
   Assist the GoK and the indigenous peoples’ organizations in capacity building to prepare IPPs, preserving the loss of traditional knowledge, culture and livelihood patterns;
   Foster the creation of forums for communication and exchange between IP and other ethnic groups and accompany this process of mutual understanding;
1. **Introduction and description of the project**

15. The Government of Kenya (GoK) has requested financial assistance from the World Bank to implement the Agricultural Productivity-Sustainable Land Management Project.

15. The KAPSLMP’s development objective is to assist agricultural producers in the targeted operational areas to adopt environmentally-sound land management practices without sacrificing their economic welfare. The global environment objective of the proposed project is to reduce and mitigate land degradation in the targeted operational areas and to contribute to maintenance of critical ecosystem functions and structures. Specifically, the project will:

- make resources available and strengthen the capacity of agricultural producers to adopt SLM practices and technologies to mitigate land degradation and achieve greater productivity of crops, trees and livestock;
- facilitate the strengthening of the enabling environment – policy and institutional frameworks – for SLM including an evaluation of existing policies affecting SLM in order to remove barriers that hinder the widespread adoption of SLM practices, improved coordination and greater joint planning between agencies through promotion of a programmatic approach to SLM;
- facilitate the exchange of information on best practices in SLM among farmers, communities, extension agents, researchers, development partners, and policy makers, and
- pilot the application of PES by developing a PES mechanism in the watershed supplying the Sasumua Water Treatment Plant.

16. The project aims to address land degradation and improve land management in three operational areas: Taita-Taveta, Kinale-Kikuyu, and Cherangani Hills (see Map in annex …). These catchments are of high ecological and bio-physical importance and they face high erosion and land degradation hazards that are closely linked to high poverty prevalence. The three operational areas cover a total of 11 administrative districts, half of which are KAPP operational districts. Initially, five operational areas were selected but two (Tugen Hills and Yala) were dropped based on the need to concentrate the project activities on a few areas for maximum impact. Thus, the number of communities and coverage to be targeted for SLM remains the same but is now concentrated in three as opposed to five operational areas. Furthermore, those operational areas dropped are being covered by other on-going Bank supported projects; WKCDD/FM and WKIEMP as well as the proposed Lake Victoria Environmental Management Project (LVEMP II) with similar activities.

17. **The project has four components:** (a) Building capacity for SLM; (b) Investments in community SLM micro-projects; (c) Strengthening the policy and institutional enabling environment for SLM; and (d) Coordination, monitoring and evaluation of project activities. While the World Bank supported baseline focuses on enhancing the commercial value addition and supply chain of agriculture, agricultural and other services delivery (CDD), as well as forest management, the GEF supported KAPSLMP provides the critical link to SLM in community and agricultural lands within these three watersheds.
18. **Component 1: Building Capacity for Sustainable Land Management.** This component recognizes the critical need for capacity at multiple levels for realizing the objectives of KAPSLMP, and seeks to address these gaps. It will target communities and service providers for training and capacity enhancement, and will help build a broader awareness of the potential and impact of SLM.

19. **Component 2: Investments in community SLM micro-projects.** This component will support community micro-projects identified within the micro-catchment plans developed by communities to address land degradation. Using a Community Driven Development (CDD) type approach, communities will select from a menu of technologies and practices to address land degradation and generate income. These technologies will be assessed through cost-benefit analysis and adapted to the agro-ecological conditions of the targeted project areas, and apply these BMPs and BMTs through micro-projects. They will access the necessary technical assistance from public and private service providers. The menu includes BMPs and BMTs on soil and water conservation, water harvesting, reseeding of degraded lands, forest rehabilitation, pasture management, high yielding crop and livestock varieties and genotypes, soil fertility maintenance etc. Micro catchment management plans will where possible demonstrate clear linkages to the wider catchment management plans which are being developed by the Water Resource Management Authority (WRMA) through the formation of Water Resource User Associations (WRUAs).

20. **Component 3: Strengthening the enabling environment for SLM.** This component will strengthen the policy and institutional enabling environment necessary for mainstreaming SLM approaches and will support the piloting of PES mechanism in Sasumua dam water shed.

21. **Component 4: Project coordination and monitoring.** This component will support project coordination and implementation at the national, district and grassroots level, both through institutional structures created under the KAPP and those created under the project as necessary. The project coordination organ will include competitively selected personnel with the required skill-mix (SLM/NRM, community and social development, environmental management). At the catchment level, three Catchment Area Coordinators (CACs) will be recruited to spearhead and coordinate project implementation in the three operational areas. However, most of the KAPSLMP implementation and coordination activities will be mainstreamed into the existing KAPP structures to minimize operational costs while maximizing the synergies in the two projects. The implementation period for the proposed project is six years. This component will also coordinate the activities related to project monitoring and evaluation (M&E) as well as impact assessment. Section C2 describes the institutional arrangements for project co-ordination and implementation.

22. During project preparation it became clear that the projects might impact on indigenous People’s rights, lands, livelihoods, and culture. To comply with international standards such as the World Bank’s operational policy on indigenous peoples (OP 4.10) and to qualify for funding from the World Bank the Government of Kenya has commissioned the elaboration of this Indigenous Peoples Planning Framework (IPPF) to ensure that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples and that the projects and their IPPF are able to gain through free, prior, and informed consultations the broad community support from the affected indigenous
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peoples. In that perspective, the IPPF develops guidelines to (a) avoid potentially adverse effects on the indigenous peoples’ communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. (c) The IPPF aims also to ensure that the indigenous peoples receive social and economic benefits that are culturally appropriate and gender as well as intergenerationally inclusive.

23. An IPPF is the instrument required by the OP 4.10 for community-driven development projects, social funds, sector investment operations, financial intermediary loans, and other project, which also involve the preparation and implementation of annual investment programs; thus the IPPF is the instrument necessary to achieve the compliance of KAPSLMP with international standards.

24. The IPPF embodies the following elements:
   (a) An introduction to the types of components, subcomponents and subprojects likely to be proposed for financing under the projects (see chapter 1);
   (b) A short introduction to the indigenous peoples, which might be affected by these projects (see chapter 2);
   (c) The potential positive and adverse effects of these projects on the indigenous peoples introduced in chapter 2 (see chapter 3);
   (d) A plan to carry out social assessments for such projects/subprojects (see chapter 4);
   (e) A framework to ensure free, prior, and informed consultations with the affected indigenous peoples’ communities at each stage of the preparation and implementation of the projects (see chapter 4);
   (f) Disclosure arrangements for IPPs to be prepared under the IPPF (see chapter 4);
   (g) Institutional arrangements (including capacity building where necessary) for screening project-supported activities, evaluating their effects on indigenous peoples, preparing IPPs, and addressing any grievances (see chapter 4 & 5);
   (h) Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the projects (see chapter 6).

2. The indigenous peoples in the operational areas

26. “There is no internationally agreed upon definition of indigenous people” (UN Human Rights and Indigenous Issues: 92). But for operational purposes and in line with other international organizations, such as the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues and the International Labor Organization, the OP 4.10 of the World Bank suggests “to use the term ‘indigenous peoples’ in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:
self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;

collective attachment to geographically distinct habitats or ancestral territories in the operational area and to the natural resources in these habitats and territories;

customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and

an indigenous language, often different from the official language of the country or region.”

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

28. In that logic it becomes clear that the indigenous concept is nothing fixed once and forever, but that it is possible that certain groups, which are marginalized and discriminated at national level, might at a local level be in a dominant position or at least able to defend their rights, interest and to voice their needs in local fora. Social discrimination might also change with time. It is possible that a group, which at a certain period had been in a dominant or equal position to others becomes marginalized and socially discriminated. Nevertheless, it seems as in most cases indigenous peoples remain, for structural reasons (for example because they are employing different livelihood patterns), in a marginalized and discriminated position.

29. The project will become active in two operational areas in western and in central Kenya. Both are inhabited by many ethnic groups. Quite some of them consider themselves as being the indigenous peoples of the area and fulfil the general criteria of indigenous peoples of the UN, the ILO and the World Bank. Philosophy teaches that if everybody is considered to be special, nobody is special. Due to that, it doesn’t make sense to establish special measurements for all ethnic groups. Following the outlined modern indigenous concept, the question to ask is whether all ethnic groups have the same chance to benefit from the project and voice their concern if their rights, interests, needs, livelihoods, culture or desires are
affected by the projects. The following will document that this is not the case and that the Ogiek and the Sengwer are the indigenous peoples to be addressed in the IPPF.

2.1. Hunter-Gatherers in Kenya

30. Hunter-gatherer are in Kenya often addressed as Torobbo, Dorobo, Ndorobo, or Wandorobo, which are all swahilizations deriving from "Il Torobbo," the Maa-term for people without cattle i.e. in the Maasai understanding “poor people”. In the coastal areas hunter-gather are mostly addressed by the Somali term “Boni”, which refers to someone without any possessions, and/or “Sanye”, which means in Somali “to gather together to use for a general purpose”. Assimilation policies and lack of recognition of separate and distinct identities of hunter-gatherers started under the colonial government, when the stated policy was “wherever possible the Dorobo should become members of and be absorbed into the larger tribe with which they have most affinity” (Adams, 1932). The post-independence government does not provide for a classification of ‘hunter-gatherers’ as separate groups.

31. They are further marginalized through their way of living and their livelihood patterns, as in Kenya all hunting is illegal since the 70ies and all policies, sector strategies and projects solemnly address the needs and interests of agriculturalists and/or pastoralists. From a national perspective, this makes perfect sense as more than 95% of the population depends on these two sources of livelihood and origin from cultures which are closely associated with one of the two. If one considers that most people depend on agriculture and cattle grazing, the ban of all hunting also seems not that much of a problem as game meat has for most ethnic groups only a cultural meaning (rite de passage, etc.), but no economic importance. The problem for them is not that they are unable to hunt, but that the compensation schemes for human-wildlife conflicts are either hardly ever paid (crop destruction) or very low (KSH 30,000 = USD 400 for a human killed by a wild animal). Nevertheless, there are people in Kenya who traditionally depended entirely on nonagricultural and non-pastoral use of forests: Among others the Ogiek and the Sengwer.

32. Another form of marginalization resulted from the limited understanding of hunter gatherer livelihood strategies by the colonial powers. Huge parts of the land used before the advent of the colonialists by hunter-gatherers, teeming with wildlife, were allocated to white settlers, who considered these landscapes terra nullius (empty land) as the traditional lifestyle of hunter-gatherers doesn’t leave obvious signs of settlement or caretakership. Even where hunter-gatherer habitation or “ownership” was obvious, people were moved off the land to make way for white settlers that preferred the healthier highlands to the malaria-infested plains. During this time much of the wildlife was decimated by game hunters - long before the post-colonial government came into power. With independence, productive hunter-gatherer land was grabbed by the more dominant groups, scattering the people and forcing them to seek refuge deeper in the forests, higher up the mountains or to move to marginal areas where tsetse flies and mosquitoes are rife. During the same time, the forests were taken away when

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1 It has to be noted that the following description of the baseline situation of the indigenous peoples in Kenya are not comprehensive scientific ethnographies. They are rather rapid assessments of the situation found in 2005/2006 and based entirely on the documents listed in the bibliography and discussions with the people listed in the contact list.
the government unilaterally gazetted these forests as protected areas, forest reserves or forest areas. Other areas, especially in the coastal region, have been set aside for large agricultural projects. Hunter-gatherer communities were summarily evicted from the forests, which had been the source of their livelihoods for thousands of years. Several hunter-gatherer communities have lodged court cases against the government, but till date no decision has been taken.

2.1.1 Legal and Policy Framework

33. The Government of Kenya has realized these problems created by the ignorance to the rights, needs and cultures of hunter-gatherer communities. The goal of the 2006 Forest Policy is to “enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services” and one of the specific objectives of this policy is to “contribute to poverty reduction, employment creation and improvement of livelihoods through sustainable use, conservation and management of forests and trees” (Forest Policy; p. 3). A key strategy is outlined as policy statement 1.1.3.: “Empower local communities to manage forests through community forest associations”. It makes clear that “sustainable managed indigenous forests can supply goods and services to meet the demand of the growing population. These forests will be put under efficient and sustainable multipurpose management, which combines biodiversity conservation and water-catchment functions together with the production of tangible benefits for forest adjacent communities” (Forest Policy; p. 6).

34. The Ministry of Lands and Housing (MLH) has also initiated the formulation of a comprehensive policy for the administration and management of Kenya's land. The overall objective is to provide for sustainable growth and investment and the reduction of poverty in line with the Government's overall development objectives. The policy is expected to guide the development of laws that provide all citizens, particularly the poor, with equal opportunities to access and beneficially occupy and use land and guarantee the economic, equitable and environmentally sustainable allocation and use of land. It will also establish appropriate regulatory arrangements for the productive, sustainable use and equitable distribution of land. Technical reports to various aspects have been developed and a draft policy is available (MLH 2006). The KAPSLM project will use the positions expressed in the draft land policy whatever the implementation status of this document is as the problem here is that one can not determine whether the important and far reaching enhancements such as the recognition of the user rights of indigenous peoples (§ 192) and the specific problems of hunter-gatherers (§ 70 & § 194) will be maintained in the final version of the law. Indigenous peoples’ organizations fear that these very progressive elements will be similar to the elaboration process of a new constitution in 2005 taken out in the last round.

35. Following is a short introduction to the indigenous peoples addressed in this IPPF, to their history, their livelihood strategies, their social organization, and - in general - to the marginalization and social discrimination, they are facing, and its underlying courses.

2.2. Ogiek

36. The Ogiek (Ogien - sing.) ethnic group consists of 20-30 groups of former hunters and honey-gatherers, mostly living in forested highlands in western Kenya. Local groups have
more specific names, e.g., Kaplelach, Kipsang’any, Kapchepkendi etc. Okiek, a Kalenjin language of the Southern Nilotic group, is the mother tongue of most Ogiek people, but several groups now speak Maasai as their first language. In the discussions it was made clear - supported by historical evidences - that traditionally the Ogiek had occupied most of the forests in the extreme west and south of Western Kenya, but today their main area of living is in and around the Mau forest, which is not part of the operational areas.

37. Nevertheless, some Ogiek groups are found in the Upper Yala catchment near the villages Serengoni, Senghalo (Nandi South), in the Kipkurere forest (Nandi South) and some live scattered in the Uasin Gishu district. Most publications (Ogiek.org etc.) and most NGOs assume that the hunter-gatherers at Mt. Elgon belong to the Ogiek and that they are not – as they claim - an independent hunter-gatherer group. Their argument is not very convincing as they address themselves as Dorobo, which is – as said before - the Maaword for people without cattle, while they share most cultural practices with the Ogiek. Precise demographic figures are not available as the last national census did not count the Ogiek as an independent group. The African Commission on Human and Peoples’ Rights estimated their total population to be between 15,000 and 20,000 individuals (ACHPR 2005:15) which is in line with scientific data (Heine and Möhlig 1980:32), while the Ogiek themselves estimate their total number to be between 20,000 (Kobei 2002:60) and 60,000 (Ogiek.org).

2.2.1. History

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

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

2.2.2. Livelihood

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

41. Unlike many other hunter-gatherers, beside of honey, Ogiek collect hardly any plants, fruits or non-timber-forest-products from the forest. Honey is eaten, stored for future use,
brewed into beer and traded. It is said to have been the main product for the barter with their agricultural and/or pastoralist neighbours. Traditionally the Ogiek hunt with dogs, bows and arrows, spears, clubs and poison. Traditionally they were going for buffalos, elephants, duikers, hyraxes, bongos, and giant forest hogs. Now that hunting is illegal, they only hunt with small traps around their garden farms resulting in some meat from monkeys and other smaller game.

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

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

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

45. Ogiek, underlined their social discrimination and cemented their marginalization. Those Ogiek that managed to obtain group-ranch titles, started in the 80ies and 90ies to divide the land into individual plots following the example of their neighbors and supported by governmental services. Settlement patterns shifted again as people moved to live on their own land, but it also attracted many Ogiek to lease or sell their lands to other ethnic groups. Many of these land sales were technically illegal as they were made before group-ranches were legally divided and many sales were undertaken before Ogiek learned about the market value of their land and at ridiculously low prices. Today the majority of the Ogiek have still no legal access to land or any source of livelihood and live a life at the mercy of their non-Ogiek neighbors and local and national governments in which they are not represented (Huntingford 1929, 1954; Blackburn 1976, 1982; Kratz 1981, 1994; Marshall 1994; Tuweit 2004).
46. If one takes the two sites visited inside the operational areas in the context of the elaboration of this IPPF one even gets a better understanding of the marginalization and social discrimination of Ogiek communities and their vulnerability to all interventions: In the Kipkurere forest, the indigenous forests are protected as forest reserve (i.e. not considered to inhabit humans), while the lowlands were in the early 70ies transformed by non-Ogiek into Shambas, leaving little land and sources of income for the Ogiek. They mostly settled at the forest fringes and established small gardens and lived from honey gathering and subsistence agriculture. In the context of the ethnic clashes in the early 90ies, most non-Ogiek were driven out and did not return as the Shamba system, which regulated farming in forest areas, was banned during that period. They left a vast area of potential agricultural land behind, but this land was not given to the Ogiek, but taken by their dominant neighbors. The Ogiek of this region, about 1,500 individuals, have neither a legal access to land nor to any source of livelihood. Some of them were resettled in 1995 to a settlement scheme near Senhalo, where they were provided with individual land titles, but the settlement scheme was much too small to absorb all those Ogiek of the area without land. Those who remained behind report constant conflicts with their neighbors and the local administration as they have no legal access to land and resources and due to that live at the mercy of others. In 2001 the administration prohibited Ogiek children to visit the local primary school and in 2005, they told the Ogiek that they would burn down any larger farm. Due to that, they are unable to generate any cash income (Focus group discussion & Tuweit 2004).

47. Elgon is a swahilization deriving from "Ol Doinyo Ilgoon" a Maa-term, which means “mountain shaped like a human breast”. The significance of the forests on Mt. Elgon to the Ogiek communities living within the catchment cannot be over-emphasized as the livelihoods of most people revolve traditionally around forest resources. In 1973 the GoK resettled all Ogiek, who were living in the forests and the proposed national park, to the Chepyuk resettlement site at the slopes of Mt. Elgon and cleared this area of all forests to foster agricultural production. Initially, this site was reserved for the resettled 600 Ogiek households but as they did not receive land titles and/or assistance to protect their land against land grabbers from other ethnic groups in the early 90ties around 7,500 households were living in the resettlement site. After the new government took over a vetting process was carried out to identify the rights and land-use areas of the people in the resettlement site and an agreement achieved that half of the Chepyuk resettlement site should be inhabited by the Ogiek and half of it by other ethnic groups. 1733 Ogiek households received letters of allotment for 5 ha each, while those Ogiek which could not document that they are descendants of the original resettlers were not receiving any land. Due to that, the perception of the Ogiek on this process is divided: Those which received land are quite satisfied, while those who did not receive land ask why the government and the Ogiek chiefs agreed that half of the land initially provided to the Ogiek as compensation for the land and forest taken away for conservation measures were handed over to other ethnic groups. The Ogiek have access to the forest and are allowed to collect for a fee or KSh 40 one head-load of firewood per person per day and are allowed to cross the forest to graze their cattle in the grassland between the gazetted forest and the national park.

48. Around 300 households were not resettled in 1973 as they lived and live at the upper forest fringes and in the grasslands between the gazetted and protected forest and the national park. Initially the NRM project wanted to resettle these indigenous peoples from the highlands and into the Chepyuk resettlement site, but as resettling indigenous peoples are
most likely to result in their impoverishment, this option has been ruled out. A key problem in
the area is the extreme violence which prevails the western parts of the resettlement site since
the forest department evicted some 10.000 people from the gazetted forests near Chepaniare &
Korunhoiny. Beside these problems, the situation of the Ogiek at Mt. Elgon is better than of
other Ogiek groups in the country. This is considered to be the reason, why they no longer
address themselves as Ogiek, but as Doborro (see above).

2.2.3. Social organization

49. Ogiek live in local groups dispersed throughout the highlands, typically near one or
more other Ogiek groups and adjacent to more populous ethnic groups. In quite a good
number of cases Ogiek speak their neighbors’ language better than their own. Ogiek groups
thus have distinctive histories of interaction with one another, with their neighbors, and with
local government administration. Modes of social organization vary among Ogiek groups, but
in general one can say that patrilineages are central in land holding and residence, legal
matters, inheritance, and marriage arrangement, while matrilineal and affine relations are
important for ceremonial occasions, in some residential and work groups, and in emotional
terms. Further units are the age-sets, which create relationships among members, crosscutting
relations defined by lineage and clan. Women have no separate age-sets, but become
associated with male age-sets through relatives. Political and legal matters are discussed in
meetings of men.

50. Depending on the issue, gatherings involve men from one lineage, several lineages, or
a large neighborhood. All adult men have the right to attend and speak at meetings, though
older men often speak more extensively. This changes of course in meetings with officials as
most elders don’t speak Swahili or English. Women were traditionally excluded from formal
councils, but this traditional setting is no longer ruling as government officials and external
visitors demand and invite the presence of all gender groups (Huntingford 1929, 1954;
organized in the traditional way, most Ogiek are grateful for the effort of some educated
Ogiek, who have established an armada of Community Based Organization and NGOs. These
efforts are spearheaded by Charles Sena (the first Ogiek lawyer) and Joseph Towett from the
Ogiek Peoples National Assembly (they also represent the Ogiek Rural Integral Projects and
the Ogiek Welfare Council), Daniel Kobei from the Ogiek Peoples’ Development Program
and Sarone ole Sene, who holds a PhD in anthropology from McGill and runs the research
department of World Vision Kenya.

2.3. Sengwer

51. The Sengwer (also referred to as Cherangany, a nickname given to them by the
Maasai) are former hunter-gatherers, who live in the Trans-Nzoia, Marakwet and West Pokot
Districts in and around the Cherangany Hills. In a letter to the Review Commission of the
Constitution of Kenya, they outlined in detail the boundaries of their ancestral land, which
covered most of the Cherangany hills and the lowland of the region. The published data of

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2 Ancestral Land of the Sengwer: Commences from Kiporoom River in Uasin Gishu District. It extends along
Kapsumbeyewet river through Ziwa (Sirikwa) centre, Moiben Posta and Kose hills in Uasin Gishu. From Kose
hills it goes down to join Moiben river. The boundary goes up river Moiben to the confluence of Ko’ngipsebe
and Kimowo streams. It turns eastwards to cover areas of Maron sub-location in Emboput location in Marakwet
the 1999 census does not provide information on the ethnographic distribution. The Sengwer themselves claim to have between 40,000 (Tiampati 2002:63) and 60,000 (Kiptum 2001) members. No scientific material could be located to judge on this claim.

2.3.1. History

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

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

54. As so many other ethnic minorities, the Sengwer were considered by the British to be served best if they were forced to assimilate with their dominant neighbors. Due to that their traditional structure was not recognized and integrated as independent ethnic group in the system of indirect rule, but as sub-structure of their neighbors. As their land in the plains of Trans Nzoia turned out to be the best area for agricultural production in Kenya, they were displaced entirely from there to make way for white farmers. A minority stayed behind as farm workers, but the majority went up into the forests of the Cherangany hills. When the government started to protect the water-catchments and forests in the 1920ies and 30ies as forest reserves, they acknowledged the presence of the Sengwer and provided them with all us ufructuary rights for this area as well as the right to farm on the openings in the forest. They enjoyed these rights until the 1970ies, when a new fashion of conservation recommended that all hunting should be prohibited and forests should be cleansed of people.

55. According to Coldham (1978), Ostberg (1988), Kiptum (2001, 2002) and others, the Sengwer were not invited to join the settlement schemes in which the independent Keny are distributed the white farms, because they were not considered as independent group. While most Sengwer are officially landless, some few Sengwer especially in the northern parts of the Cherangany hills received some land, but even this land is hardly contested.

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District. Turning to the west it then goes to Kamolokon along Marakwet/West Pokot and Marakwet boundary. From here it drops to Sebit, Somor, then to Kongelai and up along Swom river. From Swom river to the confluence of Swom and Cheptenden river. From Cheptenden river to the confluence of Cheptenden river and Moiben river where these two rivers confluence with Kibooram” (Kiptum 2002).
2.3.2. Livelihood

56. Before the colonial time, Sengwer used to be hunters and honey-gatherers. Following their contacts with the Arabs and the Maasai some adopted small scale agriculture (shifting cultivation) and/or livestock rearing, but it is said that hunting remained their main source of livelihood until the 1920s. The elders reported collective as well as individual hunting techniques. During the Sakas (collective hunt) a group of people would try to circle large animals such as elephants and buffalos on the plains and spear or arrow them down. In contrast, the Kwo (individual hunt) is carried out by a nuclear family and mostly based on the use of poisoned baits and/or traps.

57. Gathering of fruits and other non-timber-forest-products is mostly done by women, while honey collection from beehives as well as from natural places such as holes in trees etc. is traditionally a male activity. It has - beside of eating - a variety of uses:

- honey is mixed with water as a daily drink (breakfast), and used to brew beer;
- honey plays a major role in marriages and other ceremonies. Before marriage, honey is given to the mother of the bride as part of the dowry. The night before the marriage, wife and husband had to smear honey on their future house, each starting in a different direction until they met and unite.
- honey has also medical use. People apply it to their body to drive away mosquitoes and against muscle pains. Another smelly mixture is spread around the compounds to keep wildlife at distance.

58. Millet and Sorghum are the “traditional” crops, which were inherited from the Arab traders and mostly planted in the lowlands. These days, maize, potatoes, beans and a variety of vegetable are grown. Before land became scarce, the Sengwer used shifting cultivation patterns and changed their farms every three years. Transplanting, harvesting transforming, marketing and preparing of crops is considered beside of gathering, the provision of water and the education of the children as core female activities. The Sengwer learned to keep animals, especially cattle, from the Maasai, when these arrived in the area in the context of their expansion from the north. The herds of the Sengwer are also due to the common cattle rustling - very small and milk and livestock mostly used for auto-consumption.

59. Most of the ancestral land of the Sengwer is occupied either by other ethnic groups or demarcated as forests, which prohibit legal settlements or agriculture. It is said that around 20% of the Sengwer have legal access to land, but that these plots are on average only 2.5 acres per household, i.e. very small. The majority of the community members are landless. Significant parts of the ancestral lands have been demarcated as forests: Kapkanyar 70,000 acres; Kipteber 57,000 acres; Kapolet 10,800 acres; Chemurgoi 9,800 acres; Sogotio 8,800 acres; Kerer 5,340 acres; Kaisingor 2,680 acres and Embobut 8,000 acres. The problem of the Sengwer to access land and/or resources legally might best be described best through an assessment of the three communities visited:

60. The Embobut forest in the Marakwet district contains, according to local sources, approximately 5,000 Sengwer, which claim to have arrived in the area in the 1930s when they were displaced from the plains of Trans-Nzoia. The settlements are located right on top of the highest lines of the Cherangany hills, with a view into the Rift Valley and the plains of Trans-Nzoia on either side, but without roads, schools, health infrastructure as it is officially
considered as forest. The people who took refuge there, report of ongoing conflicts with forest officials and neighboring communities. They commonly stated that the forest guards would arrive every three to four years to burn and destroy their houses and farms in the name of forest conservation and to loot their property. In the meantime armed cattle rustlers would come time and again to take crops and cattle and shoot those who resisted.

61. The Sengwer of the Embobut forest made clear that the local and central administration did not react on any complaints against the evictions, with the argument that the Sengwer are illegally in the area and due to that not entitled to any protection from the state and county council. Their average annual cash income is said to be around KSh 3,000 (USD 40) per household as significant parts of their production are taken away before they can market it. In June 2006 all the 5,000 Sengwer living in the Embobut forest and another 3,000 Sengwer living in the Kikunur forests were forcefully evicted by the Forest Department without any resettlement assistance, compensation, or land to live on. Till date they are living in temporary shelters, with no access to land, resources, or income (Personal Communication Kiptum 2006 & Bartoo 2006). As the Sengwer of the Embobut forests were covered under the safeguard measures adopted by the GoK for the KAP-SLM project in January 2006, this could be considered as non-compliance with the standards set out by the GoK and a clear indicator that the KAPSLM project need clear benchmarks and external and objective control mechanisms to make sure that all governmental structures comply with the standards adopted by one structure.

62. The situation of the Sengwer of the Kapolet forest is not much better. Presently there are 487 Sengwer households living in this half-legal settlement, which had been given to them after they invaded a state lodge. The history of these people is closely linked to the quest of the Sengwer for land and recognition: In result of years of broken promises from side of the government approximately 2,000 Sengwer invaded on March, 22, 1997 a state owned farm in the plains (ADC Milimani) and stayed there even when their elders and leaders were arrested. After a month of serious fights, the government offered them a new settlement scheme in the Kapolet forest (in total over 3,000 acres) in exchange for a peaceful end of the invasion. The Sengwer accepted, and in a first phase 1,000 acres were demarcated for nearly 500 households, who moved in the same month, but the promised letters of allotment were not even issued in December 2006 with the official reason that the land is officially a forest and due to that not suitable for a settlement scheme. Due to the same reason, the second and third phase of the settlement scheme, which supposed to provide the entire 3,000 acres to Sengwer, have not yet started. The community members stated that they have witnessed significant encroachments from non-Sengwer on the entire Kapolet forest, especially logging activities and the establishment of new farms on the land of phase 2 & 3. In August 2006 the Sengwer learnt that the Lake Victoria North Water Services Board (LVNWSB) is planning to establish with financial assistance from the KfW (German Development Bank) on their land in the Kapolet forest a dam (6-8 m with a storage capacity of 8m m³). They were initially not consulted and not invited to stakeholder meetings organized by the LVNWSB in Kitale and Kakamega, which is about 4 hours drive from the Kapolet forest. Following an international campaign spearheaded by the Sengwer Indigenous Development Project and supported by the UN Permanent Forum on Indigenous Peoples, CBD etc. a meeting was organized. While LVNWSB claimed that an agreement has been achieved (email KfW 2006) about 400 Sengwer signed a resolution which objected the establishment of the dam requested “that the Kapolet Water Project will not commence until the following are done:
(b) A free prior and informed consent/consultations is done by the donor and implementing agency in an environment free from fear and intimidation.

(c) Social and Cultural Impact assessment is carried out with effective and adequate participation of Sengwer Indigenous Peoples – Sengwer to access read amend, reject or adopt the report.

(d) The government of Kenya through provincial administration addresses pending issues affecting the community e.g. Recognition of Sengwer as a tribe and giving ID Code No.; Settlement of landless Community members in Kapolet forest; Enhancing security in Kapolet by recruiting and arming community members as Kenya Police Reservists; etc.

(e) The community will present their expectations to the board and the donor for negotiations and reach a binding agreement.

(f) Once all the fears, concerns and requirements are met and done – the project will commence after Sengwer Council of Elders carry out a ceremony to bless the god of rain and spirits at Kapolet River. Kapolet River has cultural and spiritual significance to Sengwer Indigenous Peoples. NB. Any shortcuts will result to disaster in and the neighborhood of Kapolet River and forests” (Kiptum 2006).

63. As the LVNWSB is a structure within LVNWRMA, which is the key implementer of the component 2 of the WFCDD/FM project, this case is serious. It documents that under the present setting one of the implementing structures of the WFCDD/FM project: a) does not consult the directly affected people, but carries out stakeholder meetings in the next major towns without even inviting the affected people; b) that if they are forced to meet the project affected people, do not provide factual information to the concerned donor; c) does not react to the requests of the project affected people and continue with project implementation even against the sincere resistance of the affected people. This is the baseline situation for which this report will elaborate a planning framework to avoid a situation like in the Kapolet forest.

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

2.3.3. Social organization

65. Patrilineages led by the elders are the traditional form of self-organization. In contrast to other hunter-gatherer societies, the influence of the elders seems to be quite strong among
the Sengwer and have also survived the advent of modern forms of self-organization. In their struggle for land and recognition the Sengwer-elites have created a good number of Community Based Organizations and NGOs (see contact list), which are spearheaded by David Kiptum Yator, chairman of among others the Sengwer Indigenous Development Project and the Hunter-Gatherer Forum of Kenya, Jacob Tekeroi, the chairman of the Sengwer land allocation committee, and Josilah Cheruiyot, who is an assistant director in the Ministry of Livestock & Fisheries. All are assembled and coordinated through the Sengwer Cultural Centre in the Kapolet forest.

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

2.4. Summary of the living condition of indigenous peoples in the operational areas

67. The indigenous peoples face similar problems. From the formal legal point of view they are citizens equal to all other Kenyans. However, they do not have the same access to land and other resources, protection against cattle rustlers, social and political influence, legal status and/or organizational, technical or economic capacities as other citizens of Kenya. The Ogiek and Sengwer, who formerly ranged over broad areas of uninterrupted forests as full-time foragers, have increasingly been restricted to areas with home ‘bases’ involving agriculture and livestock rearing and outlying areas where some honey gathering is still practiced. The continual expropriation of land and steadily intensifying restrictions on access to natural resources – especially forests - have further increased their sedentarization, marginalization, social discrimination, and impoverishment. The Ogiek and Sengwer, who are more dependent on forests than others, were - often in contravention of their legal utilization rights - forced out of forests with little or no compensation, and with little or no land to go to or resources to live on.

68. Their increased dependence on farming and livestock rearing and aspiration to access social services and decision-making institutions are not sufficient to give opportunities to indigenous peoples equal to those of other Kenyan citizens. The incomes of indigenous peoples are only about one third of those of other rural Kenyan households. Most indigenous households are landless, and lack legal access to natural resources or other assets for income-generation. Indigenous peoples are ill-equipped to defend even the informal, de facto access that they retain to the remnants of their 'homelands' from encroachment or restriction by outside authorities and interests. They do not have the institutional capacity or degree of empowerment that will enable them to benefit from the reform processes in the forestry, water and lands sectors which are intended to give more say to communities in the management of natural resources and are central to these two projects. Few indigenous people hold positions in the government, even at junior levels (e.g. as chiefs or assistant chiefs). They have little representation even as local government councilors, let alone at higher political levels, and are thus administered and represented by members of non-government groups.
69. The aspirations of the indigenous peoples in the project area are simple: to live in peace with their neighbors, to have access to sufficient land to practice agriculture and graze a their livestock, to have access to forests to gather honey for consumption and sale, to practice their culture, to have equitable access to social infrastructure and technical services, and to be fairly represented in the institutions which make decisions affecting their lives at local, regional and national levels. They are not looking for special treatment, only, rather for the rights and opportunities enjoyed by other citizens of Kenya. To achieve this, a good number of key issues have to be addressed: **Equal access to land and forests**: To have equal opportunities for a self-determined development, the indigenous peoples need land and forest to settle, to farm, to graze their small herds on and to collect honey etc.

70. **Equal access to security**: As a result of their social discrimination, their legal titles are often not respected by their neighbors. To have equal opportunities, the indigenous peoples need the support of the security forces to protect their properties and lives. **Equal access to traditional sources of livelihood**: To have equal opportunities, the indigenous peoples need more than any other people in Kenya legal access to forests and forest products (honey etc.), as these two are their traditional sources of livelihood. **Equal access to decision making processes**: To participate fully in the development process, to voice their concerns and needs and to be able to guarantee that the rights, livelihoods and culture of the indigenous peoples are not negatively affected, they need to be represented in all relevant decision making bodies (county councils, local consultative meetings, project structures).

3. Potential positive and adverse effects of KAPSLMP components and subcomponents on the indigenous peoples

71. In what follows, impacts on the Ogiek, Sengwer and other indigenous peoples which might result from the project will be discussed to develop a planning framework, which ensures that negative impacts of these projects are mitigated and positive impacts as much as possible enhanced based on the free, prior and informed consultations with the affected indigenous peoples. Not all the proposed components & subcomponents (see for a detailed description chapter 1) will have social impacts and not all those components which have social effects will be carried out in areas, where they impact on indigenous peoples. Only if a component & subcomponent has social impacts (whether positive or negative) and is carried out in an area, where it might impact on indigenous peoples, it has to comply with the full array of guidelines and implement comprehensive mitigation strategies. Due to that, this IPPF places much emphasis on a detailed and comprehensive screening process to identify how and where the projects impact on indigenous peoples rights, economies and cultures.
Tab. 1: The possible impacts of a KAP-SLM without an IPP on the indigenous peoples in the operational areas of the project

<table>
<thead>
<tr>
<th>Project activities as outlined in the PAD</th>
<th>Possible Impacts on indigenous peoples without IPP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Component 1: Building Capacity for Sustainable Land Management</strong></td>
<td></td>
</tr>
<tr>
<td>1.1. Community capacity building</td>
<td></td>
</tr>
<tr>
<td>1.1.1. Soil and water conservation technologies;</td>
<td>🌈 As the indigenous peoples (IP) are marginalised there is a high risk, that the project does not work with them, that they do not benefit from the project and even lose their access to resources through management plans etc., which might enforce that only those with legal access use the natural resources.</td>
</tr>
<tr>
<td>1.1.2. Appropriate fertility management practices;</td>
<td>🌈 As the IP are marginalised, there is a high risk that non-IP benefit more from these activities and implement these activities on land that are presently or traditionally used by IP.</td>
</tr>
<tr>
<td>1.1.3. Environmentally positive production systems;</td>
<td></td>
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<td>1.1.4. Water management;</td>
<td></td>
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<tr>
<td>1.1.5. Integrated pest management;</td>
<td></td>
</tr>
<tr>
<td>1.1.6. Conservation and utilization of biodiversity;</td>
<td>🌈 The support to apiculture embodies the chance for significant and cultural appropriate benefits for the IP.</td>
</tr>
<tr>
<td>1.1.7. Alternative livelihoods (e.g. tree nurseries, ecotourism, apiculture, medicinal plants, fisheries, emerging livestock);</td>
<td>🌈 The training in conflict resolution might enable the IP to search and find ways to pacify their social environment and find sustainable solutions for the problems with their neighbours.</td>
</tr>
<tr>
<td>1.1.8. Consensus building and conflict resolution mechanisms;</td>
<td>🌈 As the IP are marginalised, there is a high risk that they are not invited to participate in the capacity building.</td>
</tr>
<tr>
<td>1.1.9. Early warning systems;</td>
<td>🌈 As the IP are marginalised, there is a high risk that IP do not benefit and even lose their access to resources through management plans etc., which enforce that only those with legal access use resources.</td>
</tr>
<tr>
<td>1.1.10. Marketing and value addition;</td>
<td></td>
</tr>
<tr>
<td>1.1.11. Efficient use and alternatives to fuel wood;</td>
<td>🌈 The support to efficient fuel wood harvest might be a chance for significant and cultural appropriate benefits for IP in forest areas.</td>
</tr>
<tr>
<td>1.1.12. Compliance to environmental policies.</td>
<td>🌈 As most IP live illegally on state land, an enforcement of environmental policies (i.e. no human habitation in forests and the ban to hunt) will displace them physically and economically and undermine their culture, which relays to a large extent on their being in forests and their chance to hunt.</td>
</tr>
<tr>
<td>1.2. Services Providers Capacity</td>
<td></td>
</tr>
<tr>
<td>1.2.1. Sustainable resource use planning and management;</td>
<td>🌈 As the project will mostly work with existing service providers it is unlikely that IP are invited to benefit from these trainings.</td>
</tr>
<tr>
<td>1.2.2. Livestock management; crop management practices;</td>
<td>🌈 As most existing service providers are non-indigenous, without additional measures non-indigenous organisation will benefit more from the capacity building. This increases the gap in capacities between IP and Non-IP and due to that.</td>
</tr>
<tr>
<td>1.2.3. Water harvesting and irrigation practices;</td>
<td></td>
</tr>
<tr>
<td>1.2.4. Marketing strategies;</td>
<td></td>
</tr>
<tr>
<td>1.2.5. Agro-forestry systems;</td>
<td></td>
</tr>
</tbody>
</table>

3 Key for the potential impacts on the indigenous populations: 🌈 = significant positive impact; 🌈 = limited positive impact; 🌈 = no impact; 🌈 = limited negative impact; 🌈 = significant negative impact.
### Indigenous Peoples Planning Framework for the (KAPSLMP)

<table>
<thead>
<tr>
<th>Project activities as outlined in the PAD</th>
<th>Possible Impacts on indigenous peoples without IPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2.6. marketing;</td>
<td>capacities between IP and Non-IP and due to that</td>
</tr>
<tr>
<td>1.2.7. Agro-processing and other</td>
<td>their marginalisation in decision making</td>
</tr>
<tr>
<td>1.2.8. Alternative livelihood strategies.</td>
<td>processes. That might lead to a situation in which</td>
</tr>
<tr>
<td>1.2.9. Project management methods;</td>
<td>only non-IP organisations are implementing</td>
</tr>
<tr>
<td>1.2.10. Participatory research and extension methods;</td>
<td>activities of KAP-SLM even on IP land etc. As</td>
</tr>
<tr>
<td>1.2.11. Participatory and outcome based monitoring and evaluation;</td>
<td>these service providers are most likely neither</td>
</tr>
<tr>
<td>1.2.12. Conflict management and consensus building among others.</td>
<td>motivated to support the case of the IP and/or</td>
</tr>
</tbody>
</table>

### Component 2: Investments in community SLM micro-projects

2.1. Value addition of NTFPs and agroforestry and processing;  
2.2. Diversification into high value crops;  
2.3. Marketing information networks and strengthening marketing channels;  
2.4. Ecotourism incl. facilitating community and private sector partnerships;  
2.5. Apiculture technologies and community honey processing;  
2.6. Packaging and marketing channels;  
2.7. Fisheries including appropriate fish varieties, processing and links to market outlets;  
2.8. Promoting emerging livestock and identifying market opportunities.  
2.9. Promotion of biogas technology  

The support for apiculture, NTFPs and agroforestry embodies the chance for significant and culturally appropriate benefits for the IP.  

As this component will support micro-projects that are identified within the micro-catchment plans, the present setting in which the IP’s rights to land and resources are not recognised and the IP not represented in decision making bodies, it is most likely that IP rights and needs are not represented in the micro-catchment plans and that they - due to that – will not benefit from the component. In contrast they face the high risk that non-IP implement micro-projects on land and with resources presently used by IP, displacing them physically or economically and increasing their social discrimination and marginalisation.

### Component 3: Strengthening the enabling environment for SLM

3.1. A sound policy framework  
3.1.1. Support the Government in implementing its policy objectives  
3.1.2. Support various studies and analyses that assess the current and proposed policy and regulatory frameworks for potential implications on land degradation.  
3.1.3. Support stakeholder consultations on these various policy issues as well as  
3.1.4. Seek to remove existing policy and legal barriers through a consultative process involving communities, CBOs, government agencies and research institutions.  
3.1.5. Policy makers will also be exposed to SLM & NRM issues through consultative policy meetings, workshops and dialogue.  

As the forest policy and the forest bill do not allow any settlement in forest, there is a high risk that this activity displaces IP from their homes, land and resources and forces them into an ever increasing impoverishment.

There is a chance to use these activities to address the current problems of IP in view of access to land and resources and find mutual and satisfying solutions.

As indigenous peoples are not represented in the decision making bodies, there is a high risk that their rights, needs and interests are not addressed in the studies and the enhancement of policies and that the IP are not considered as stakeholders and also in the future not able to participate in the decision and policy making process.

3.2. An improved knowledge and information base
### Indigenous Peoples Planning Framework for the (KAPSLMP)

<table>
<thead>
<tr>
<th>Project activities as outlined in the PAD</th>
<th>Possible Impacts on indigenous peoples without IPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2.1. Address the gaps towards a sound information system that would link outcomes to adaptive decision-making (relying less on ‘control’ measures and more on market signalling and incentive measures)</td>
<td>There is a chance to use these activities to address the current problems of IP in view of access to land and resources and find mutual and satisfying solutions and to make them known to decision makers and the interested public.</td>
</tr>
<tr>
<td>3.2.2. Support mainstreaming SLM into sectoral program areas such as energy, forests, wildlife, biodiversity, water resources as well as gender issues and technology dissemination.</td>
<td>As indigenous peoples are not represented in the decision making bodies, there is a high risk that their rights, needs and interests are not addressed in the studies, information systems and M&amp;E frameworks.</td>
</tr>
<tr>
<td>3.2.3. Support an adequate M&amp;E framework.</td>
<td>As traditional knowledge of indigenous peoples is presently not legally protected, there is a high risk that their neighbours market IP knowledge and/or receive benefits related to them.</td>
</tr>
<tr>
<td>3.2.3.1. Establishing baselines and developing a simplified monitoring framework for the collection and use of socio-economic and environmental data relevant to improving land and natural resources management at the local level, which can then be aggregated upwards for decision-making at the district, provincial and national levels.</td>
<td></td>
</tr>
<tr>
<td>3.2.3.2. Building capacity to analyze and interpret data for decision-making and management.</td>
<td></td>
</tr>
<tr>
<td>3.2.3.3. Building capacity to identify and address NRM links to poverty and cross-sectoral issues.</td>
<td></td>
</tr>
<tr>
<td>3.2.3.4. Valuing the economic cost of degradation and demonstrating benefits from alternate approaches.</td>
<td></td>
</tr>
<tr>
<td>3.3. Strengthen institutions</td>
<td></td>
</tr>
<tr>
<td>3.3.1. Strengthen institutions relevant to the promotion of sustainable land management by supporting capacity enhancement and improved coordination and information sharing.</td>
<td>There is a chance to use the capacity building to address the current problems of IP, but as they are not involved in the decision making process, this is not very likely.</td>
</tr>
<tr>
<td>3.3.2. In-country training (including site-visits for policy makers) will be organized; agencies that will be targeted include the relevant ministries, research institutes and related organizations.</td>
<td>Presently hardly any IP association or IP individual has achieved a position that would make it likely that IP benefit directly from these activities.</td>
</tr>
<tr>
<td>3.3.3. Regional and international training, where necessary, will be conducted as appropriate and may include workshops, conferences and study tours.</td>
<td>As IP are not involved in the decision making process it is likely that their rights, livelihoods and needs are not included in the capacity building exercise.</td>
</tr>
</tbody>
</table>

### Component 4: Project coordination and monitoring

4.1. Support project coordination and implementation at the national, district and grassroots level. | As IP are neither involved in the decision making process nor represented at the level of project coordination, they will most likely not benefit from the job opportunities resolving from the project. If no special measures are taken, their rights, livelihoods and needs will most likely be addressed neither in the M&E system nor in the impact assessments. Both would sustain their marginalisation and social discrimination. |
| 4.2. Project monitoring and evaluation (M&E) | |
| 4.3 Impact assessments | |
72. In the following, these detailed impacts are clustered to derive the overall and cumulative risks and obstacles of the project, which are then used to elaborate possible mitigation measures, which will stand at the centre of the Indigenous Peoples Planning Framework.

73. In the positive scenario, the projects will foster the full respect for the dignity, livelihoods, human rights, and culture of the indigenous peoples, protect the indigenous peoples from suffering adverse effects from the implemented measures, and guarantee that the indigenous peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive. If one deconstructs sustainable natural resource (water, forest, land etc.) management to the key principles, it becomes obvious that the concept is to invest time, money, and energy and to not exploit all possible short term benefits in view of future and/or downstream individual and collective gains. As it is logic that nobody invests or accepts reduced short term benefits as long as he/she is not sure that he/she will benefit from the long term benefits and as long as it is uncertain that these long term benefits are higher for the individual than the short term costs, the secured ownership of land and access to resources for all stakeholders is a key requirement for sustainable land and natural resource management.

74. The projects address the questions of short-term costs and long-term benefits and the question of balancing individual/local costs with collective/international benefits through cost-benefit studies, the payment for environmental services and a full set of activities, but the detailed assessment documents that the KAPSLM project embody in a scenario without any specific framework several major risks for the indigenous peoples, which have to be mitigated to insure that the indigenous peoples do not:

- face further physical and economic displacements from land and forests traditionally utilized by them as source of livelihood and basis for their cultural and social system,
- loose all legal access to natural resources, which are an important source of livelihood and basis for their cultural and social system,
- continue to be affected by cattle rustlers,
- become even more marginalized in the society and disintegrate from the nation,
- receive less assistance from governmental services,
- have less capacities to defend their legal rights,
- become or remain as dependent of other ethnic groups, and
- loose their cultural and social identity.

75. In the following section the key obstacles to achieve the project objectives and to comply with international standards (OP 4.10) are outlined and mitigation measures elaborated. These elements will be than used to establish the specific measures of the indigenous peoples planning framework.

**Key Obstacles**

(g) Neither the indigenous peoples nor the governmental services or service providers have an idea of how to incorporate the usufruct and traditional rights of the indigenous peoples in the modern legal system.

Most indigenous peoples do not have letters of allotment or any other legal ownership of land for settlements, farms, forests, and grazing areas. As their
settlements are illegal in view of the law, they are hardly able to interact on a level field basis with governmental services.

The forestry policy does not mention human settlements in indigenous, gazetted or protected forests and does not recognize traditional usufruct rights. Collective management of forest is possible according to the 2006 forest policy, but restricted to Community Based Organizations and does not offer any special measures for indigenous peoples or those people presently living in the forest or who base their livelihood on its resources. There is high risk that those indigenous peoples, which still live in forests are evicted from these forest in the context of enhanced law enforcement. A large number of indigenous peoples have been evicted from forests without receiving any compensation or resettlement assistance.

Possible mitigation measures:

(h) The basis for all improvements in the interaction between the GoK and the indigenous peoples is the recognition of the existence of the other and the willingness to learn from each other. Training on the best practices and techniques of working with indigenous peoples (OP 4.10) for relevant GoK staff, NGO, and indigenous peoples' organizations will improve the mutual understanding that the respect of the rights, culture and dignity of the indigenous peoples is a necessity for the nation building process in Kenya and a sign of good governance.

(i) Legal access to land is a prerequisite of agricultural productivity—sustainable land management. The GoK recognizes through the projects and in line with the draft land policy, the forest policy and international standards (OP 4.10) all traditional user rights of indigenous peoples’ communities on land, whether they are certified in any form, accepted by their neighbors and the land boards or not. This is well justified and underlines the role of this project to help WKCDD/FM and NRM projects harmonize the ongoing reform processes in the various sectors. The GoK had made clear that “land issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest-dwellers and pastoralists) and vulnerable groups will be addressed. The rights of these groups will be recognized and protected” (Draft Land policy; p.6). The reason is that “minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are keys to their livelihoods. This follows the gazettment of these habitats as forests or national reserves or their excision and allocation to individuals, who subsequently obtain titles to the land. These communities are now recognized internationally as minority groups deserving special protection by the State with regard to their land rights and ability to manage their natural resources in a sustainable manner. These communities have not been represented adequately in governmental decision making at all levels since they are relatively few in number. Their political and economic marginalization has also been attributed to the fact that colonial policies assimilated them into neighboring communities. In addition, the colonial Government alienated their lands through forest preservation policies, which effectively rendered them landless as they were denied the right to live in the forests. Colonial capitalism also led to the
marginalization of hunter gatherer communities at the expense of agricultural expansion. To protect and sustain the land rights of the minorities, the Government shall:

- Undertake an inventory of the existing minority communities with a view to obtaining a clear assessment of their status and land rights; and
- Facilitate the practice of their land tenure and resource management systems by providing a suitable legal framework” (Draft land policy § 69-71).

Legal access to forests and to natural resources is an important element of agricultural productivity and sustainable land management. Due to that, the Government of Kenya

will assist all indigenous peoples’ communities in the operational area to create CBOs and/or strengthen existing CBOs and through this CBOs to receive legal access to forests (community forests, etc.) and other natural resources,

will assist the indigenous peoples’ communities in the production, transformation and marketing of honey, other non-timber-forest products and dead-wood as well as in the domain of agro-forestry,

will not support any activities/subprojects in forests with ongoing/pending disputes and/or any unsettled claims with regards to indigenous land ownership as long as the affected indigenous peoples in their broad majority don’t agree in prior, free and informed consultations that these activities are carried out,

will not engage/support in any form evictions of indigenous peoples from forests and explore in line with international standards (OP 4.10) all options to avoid the physical relocation of indigenous peoples (for example from Mt. Elgon), because physical relocation of indigenous peoples is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when it is not feasible to avoid relocation, the GoK 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. If this need arises in the context of the KAPSLM project the projects will prepare a resettlement action plan in accordance with the requirements of the World Bank’s Operational Policy on Involuntary Resettlement (OP.4.12), an indigenous peoples plan in accordance with the OP 4.10 and ensure that is the entire process is compatible with the indigenous peoples' cultural preferences, and includes a land-based resettlement strategy4. will in line with the Draft Land Policy (§ 190-191) pay special attention and offer specific assistance within the land restitution process to indigenous peoples to claim all lands over which indigenous peoples have lost control between 1895 and December 30th

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4 “‘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” (OP 4.10; Footnote 7).
2002. A very important element is that past actions don’t change the entitlements of the indigenous peoples. The OP 4.10 makes clear that even “a group that has lost ‘collective attachment’ to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy” (OP4.10, § 4). This is in echoed by the GoK’s draft land policy, which makes clear that “the purpose of land restitution is to restore land rights to those that have unjustly been deprived of such rights. It is based on a recognition that the lack of access to land may be due to unfair governmental policies and laws.” (Draft land policy, § 53). “Historical injustices are land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. […] The grievances remain unresolved because successive post independence Governments have failed to address them in a holistic manner. In the post-independence period, the problem has been exacerbated by the lack of clear, relevant and comprehensive policies and laws. The Government shall:

- Establish mechanisms to resolve historical land claims arising in 1895 or thereafter;
- Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolution;
- Review all laws and policies adopted by post independence Governments that exacerbate the historical injustices, including the constitutional provisions on the right to private property and compensation on compulsory acquisition regardless of how the property was acquired; and
- Establish suitable mechanisms for restitution, reparation and compensation of historical injustices/claims” (Draft land policy § 190-191).
- Avoid the involuntary restrictions on indigenous peoples’ access to legally designated protected areas, in particular access to their sacred sites and forests. In exceptional circumstances, where it is not feasible to avoid restricting access, the GoK prepares, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, a resettlement process framework in accordance with international standards (OP 4.12). The resettlement process framework provides guidelines for preparation, during project implementation, of an individual 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 protected areas. The management plan should give priority to collaborative arrangements that enable the indigenous peoples, as the custodians of the resources, to continue to use them in an ecologically sustainable manner.

76. The documented failure of the various structures to represent in the past the indigenous peoples, equally documents that governmental services, donor organizations and NGOs can not address the specific needs of indigenous peoples through the same channels as

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5 “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.” (OP 4.10; Footnote 8).
their farming and pastoralist neighbors. Based on a sensitive analysis of the differences in social organization, projects need to elaborate jointly with those concerned adapted strategies for strengthening the effective representation of indigenous peoples in relevant committees (according to their share of the population and not their share of power). Beside of this conceptual problem, a full array of technical, financial and organizational hindrances prohibit till date the establishment of an equal representation of indigenous people in decision making bodies related to sustainable land management:

**Technical Obstacles**

(j) To date, the indigenous peoples in their majority do not have the technical skills to participate actively in technical discussions and activities and/or to anticipate the long term impacts of laws, regulations, contracts etc. The indigenous peoples are, due to that - even in those rare cases where they are invited to participate in decision making bodies - not able to defend their rights, needs, and interests.

(k) As ‘indigenous peoples planning frameworks’ are a relatively new instrument in Kenya, the skills of civil servants and other stakeholders need to be enhanced to allow them to interact successfully with indigenous peoples. Due to that, the majority of the indigenous peoples are not treated with the necessary respect for their dignity, rights and culture.

**Mitigation Measures**

(l) The project will elaborate together with other relevant national research/training structures, governmental extension services and the indigenous peoples’ organizations, based on the documented best practices, training curricula for the indigenous peoples on key topics related to sustainable land management. Apart from the technical aspects of these training opportunities, special emphasis will be on the facilitation of mutual understandings of indigenous peoples and neighboring communities. This might open the road to a new, more beneficial relationship.

(m) The project will enhance the capacities of relevant project staff and extension workers etc. in operational areas with indigenous peoples to enable them to respect the rights, livelihoods, culture and needs of indigenous people and interact successfully and in a culturally appropriate manner with the indigenous peoples.

**Organizational Obstacles**

(n) Indigenous people are not equally represented in decision making bodies. The rights, needs and interests of the indigenous people can thus not be equally considered in the decision making process.

(o) Presently, the M&E frameworks of the projects have not been finalized. Due to that, it is uncertain whether indigenous peoples and their interests will equally be represented in the internal monitoring and evaluation system of the projects and might be completely excluded from the dynamic of the M&E process.
Mitigation Measures

The projects will technically, financially and organizationally support the indigenous peoples in the operational area to be equally represented in all meetings, workshops, hearings, decision making bodies etc. (according to their share in the affected population).

The projects will include and independent stream within the projected internal M&E system for interventions in the operational areas inhabited by indigenous peoples (see also chapter 7).

77. Also the best mitigation system, which offers indigenous people equal access and equal benefits, has serious impacts on their culture and their belief systems. The decision on how to preserve indigenous culture in the development process is an ongoing discussion among the indigenous peoples, their organizations and in social sciences, which has not yet – and might never - result in a final solution. It is considered as best practice to provide sensitizations on the risks of the development process, assist indigenous peoples’ organizations in capacity building to preserve traditional knowledge, culture and livelihood patterns and to promote the interethnic communication and exchange of experiences. First and foremost the projects provide (see chapter 6) mechanisms through which indigenous peoples can voice in free, prior, and informed consultations their concerns. All these activities will not be able to keep the culture and belief systems of the indigenous peoples as they are today, but it offers the indigenous peoples the opportunity to understand the risks and find their own solutions on how to adapt their culture to the modern mode of interaction.

4. The Indigenous Peoples Planning Framework

78. The Indigenous Peoples Planning Framework develops measures to ensure that all indigenous peoples, which are affected by the projects, receive social and economic benefits that are culturally appropriate, including measures to enhance the capacity of all stakeholders to achieve this. It also addresses the risks for indigenous peoples identified in chapter 3 and develops on the basis of the mitigation strategies outlined there, actions to avoid, minimize, mitigate, and/or compensate these adverse effects.

79. During a first phase until 12/2008, the main focus will be to carry out the screenings, social assessments and option assessment, establish the institutional framework, and to sensitize all stakeholders in general and the affected indigenous populations in particular. As this will involve all indigenous peoples’ communities in the operational areas, the IPPF should be further discussed in detail and - in case the need arises - amendments suggested to the steering committee.

80. In the positive scenario of a successful KAPSLMP, which works in accordance with the visions and approaches set up in the various project documents, the policy framework in Kenya and the World Bank social safeguards, the KAPSLM will foster the full respect for the dignity, livelihoods, human rights, and culture of the indigenous peoples, protect the indigenous peoples from suffering adverse effects from the implemented measures, and guarantee that the indigenous peoples receive social and economic benefits that are culturally
appropriate and gender and inter-generationally inclusive. Is it likely that the KAPSLMP will achieve all this without a specific set of action? Certainly not! If one deconstructs sustainable land management to the key principles, it becomes obvious that the concept is to invest time, money and energy and to not exploit all possible short term benefits in view of future individual and collective gains. As it is logic that nobody invests or accepts reduced short term benefits as long as he/she is not sure that he/she will benefit from the long term benefits, the secured ownership of land and access to resources for all stakeholders is a key requirement for sustainable land and natural resource management. This key problem for the indigenous peoples’ communities has to be addressed in a timely and comprehensive manner to allow indigenous peoples to become beneficiaries of the KAPSLMP.

81. The report documents in detail that the KAPSLMP embodies in a scenario without an IPPF several major risks for the indigenous peoples, which have to be mitigated to insure that the Ogiek and Sengwer do not:

(a) face further physical and economic displacements from land and forests traditionally utilized by them as source of livelihood and basis for their cultural and social system;
(b) lose all legal access to natural resources, which are an important source of livelihood and basis for their cultural and social system;
(c) continue to be affected by land grabbers and cattle rustlers;
(d) become even more marginalized in the society and disintegrate from the nation;
(e) receive less assistance from Government services;
(f) have less capacities to defend their legal rights;
(g) become or remain as dependent of other ethnic groups, and;
(h) lose their cultural and social identity.

82. Discussions with all stakeholders indicate that all parties involved are prepared to assist the indigenous peoples to face these risks. The main actors of the IPPF of the KAPSLMP are the Ministries of Agriculture, Livestock and Fisheries, Environment and Natural Resources, Water and Irrigation, Lands, Home Affairs, Planning and National Development, Education, Gender, Sports, Culture and Social Services, Special Programmes, Tourism and Wildlife, Justice, the Office of the President, the Kenya National Commission for Human Rights, the indigenous peoples’ organizations and the Ogiek and Sengwer themselves.

83. To realize the potential positive impacts and to mitigate the potential negative impacts, to guarantee that the indigenous populations have equal opportunities to participate in the benefits offered by the KAPSLMP and that these benefits are culturally appropriate, to ensure that the rights, livelihoods, dignity and culture of the indigenous forest are respected, to guarantee that the KAPSLMP fulfils international standards as outlined in the OP 4.10 of the World Bank and to enable the KAPSLMP to fulfill its objectives, the Government of Kenya will carry out, through KAPSLMP the following mitigation measures for the Sengwer and Ogiek in the operational area of the KAPSLMP:
(p) Establish an environment that enables sustainable land and resource management

   Establish the capacities necessary to implement the IPPF;
   Establish an equal access to land and natural resources;
   Establish an equal access to security, social infrastructure and technical services.

Establish equal technical opportunities

(i) Provide the Ogiek and Sengwer with technical capacities to participate actively in sustainable land and natural resource management;

(ii) Provide the relevant Government staff and other stakeholders with the technical capacities to cooperate successfully and in a culturally appropriate manner with the indigenous peoples;

(iii) Facilitate priority access of indigenous peoples to KAPSLMP related jobs;

(iv) Establish for the Ogiek and Sengwer an equal access to decision making processes in the domain of sustainable land and natural resource management;

(v) Establish a participatory impact monitoring for KAPSLMP in indigenous peoples’ areas.

Establish equal cultural opportunities

   Collaborate with the NRM project to establish a national policy on indigenous peoples;

   Assist the indigenous peoples’ organizations in capacity building to prepare IPPs, preserving the loss of traditional knowledge, culture and livelihood patterns;

   Foster the creation of forums for communication and exchange between IP and other ethnic groups and accompany this process of mutual understanding;

84. During the proposed project preparation it was agreed that most of the national and policy related issues identified as activities in the IPPF will be supported by the IDA supported NRM project. The proposed KAPSLM will only support specific activities IPPF relating to the operational areas. The NRM Project will address key issues regarding IP and other forest-dependent communities in Kenya. It will harmonize the forest policy with the draft land policy, implement a participatory forest management, support the elaboration of a comprehensive resettlement policy and rehabilitate in the operational areas (Aberdares, Upper Tana, Kakamega, Mt Elgon as well as the Nandi and Cherengani hills), the livelihoods of populations, which have been evicted from forests after the new Government was sworn in December 30, 2002. The project will ensure: (a) that present and past settlements, land use areas and cultural sites of IP are comprehensively documented; (b) that the IP are well represented in all forest and resettlement related decision-making bodies and processes; (c) that a comprehensive strategy to rehabilitate the livelihoods of evicted IP is elaborated in an
open-minded and fully participatory option assessment; and (d) that this strategy is implemented in a comprehensive and timely manner and that the IP are enabled to benefit from participatory forest management and reforestation.

85. Given the broad-based support of IP under NRM, the proposed KAPSLMP will support a number of limited activities on capacity building for IP at the operational areas. These activities will include: (1) empowering indigenous peoples in understanding their basic rights as citizens; (2) training IPs in skill provision to be able to take advantage of business opportunities that the project presents; (3) empowering IPs in communication skills to ensure that they can articulate issues of primary concern for all the Indigenous Peoples in the project areas; and (4) establishing an environment that allows Indigenous Peoples in the project areas to represent themselves and their own interest in project decision making organs and processes; and (5) preparing Indigenous Peoples Plans (IPPs), as required by OP 4.10, Annex B. A budget for these activities has been provided for in the project design. Table 2 below summarizes some of these activities.
### Establish an environment that enables sustainable land and resource management

<table>
<thead>
<tr>
<th>Issue</th>
<th>Activity</th>
<th>Responsibility</th>
<th>By When</th>
<th>Cost in US$</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Establish the capacities necessary to implement the IPPF.</td>
<td>• Training of staff from KAPSLM, the relevant Governmental structures and Ministries (see page 47) and IP Organization (IPO)</td>
<td>KAPSLM</td>
<td>ongoing</td>
<td>40,000 Comp 1</td>
<td>• The beneficiaries of this training are able to implement the IPPF</td>
</tr>
</tbody>
</table>

### Establish equal technical opportunities

<table>
<thead>
<tr>
<th>Issue</th>
<th>Activity</th>
<th>Responsibility</th>
<th>By When</th>
<th>Cost in US$</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Establish a participatory impact monitoring for KAP-SLM in OAs with indigenous peoples.</td>
<td>• Sensitization of the IP &lt;br&gt; • Training on methodology, quantitative research and database management &lt;br&gt; • Carry out an annual participatory impact monitoring starting from 1/2008 &lt;br&gt; • Carry out an external evaluation of IPPF implementation and the PIM</td>
<td>KAPSLM, IPO IPO KAPSLM</td>
<td>ongoing Ongoing 2008-2011</td>
<td>20,000 Comp 5&lt;sup&gt;6&lt;/sup&gt; Comp 5&lt;sup&gt;7&lt;/sup&gt;</td>
<td>• The database is accessible and perceived by the KAPSLM M&amp;E unit as useful instrument and by the IP as accurate description of their reality &lt;br&gt; • The PIM reports are used for fine-tuning and document a poverty reduction rate of IP villages</td>
</tr>
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</table>

### Establish equal cultural opportunities

<table>
<thead>
<tr>
<th>Issue</th>
<th>Activity</th>
<th>Responsibility</th>
<th>By When</th>
<th>Cost in US$</th>
<th>Indicators</th>
</tr>
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<tr>
<td>3. Enable IP communities to benefit from the project, preparing IPPs, as needed</td>
<td>Collaborate with the NRM project to establish a national policy on indigenous peoples; &lt;br&gt; Assist the indigenous peoples’ organizations in capacity building to prepare IPPs, preserving the loss of traditional knowledge, culture and livelihood patterns; &lt;br&gt; Foster the creation of forums for communication and exchange between IP and other ethnic groups and accompany this process of mutual understanding;</td>
<td>KAPSLM, NRM, IPO KAPSLM , IPO KAPSLM</td>
<td>ongoing Ongoing 2008-2011</td>
<td>NRM Comp 1&amp;2&lt;sup&gt;8&lt;/sup&gt; Comp 4&lt;sup&gt;9&lt;/sup&gt;</td>
<td>• Draft policy is formulated in a participatory fashion &lt;br&gt; • IPPs prepared and implemented &lt;br&gt; • Fora organized and implemented with the active participation of IPs and other groups</td>
</tr>
</tbody>
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<sup>6</sup> The KAP-SLM M&E unit (component 5) will provide US$ 1,000 per year and district in the OA with IP settlements = US$ 32,000 in total.

<sup>7</sup> The KAP-SLM component 5 will commission this in the context of the general social safeguard supervision missions. It is expected that each mission will cost around US$ 10,000 = US$ 20,000 in total.

<sup>8</sup> The KAP-SLM M&E unit (components 1&2) will provide US$ 1,000 per year and district in the OA with IP settlements = US$ 32,000 in total.

<sup>9</sup> The KAP-SLM component 4 will commission this in the context of the general social safeguard supervision missions. It is expected that each mission will cost around US$ 10,000 = US$ 20,000 in total.
5. Communication framework

86. This communication framework elaborates principles, strategies and structures on how the two projects and the affected indigenous peoples should interact at each stage of project preparation and implementation to satisfy the criteria of free, prior and informed consultations. Before the different levels of the communication framework are outlined, it might be useful to remind of some basic principles of intercultural communication in general and the work with indigenous peoples in particular. All actors should

(q) **Aim to share control and responsibility**, even if those, one should share control with, are perceived as not qualified, inexperienced and driven by different objectives. One will have to work with them anyway, so one should try to increase their capacities and encourage them to participate actively to speed up processes.

(r) **Monitor and evaluate all the time**. Social safeguard instruments such as this IPPF are new tools in Kenya and the work with indigenous peoples a new task for the governmental services, so it is necessary for all actors to assist the implementing structures to achieve the common goal of equal opportunities, poverty reduction and biodiversity conservation. It is not only the responsibility of the implementing structures of the two projects to ask the indigenous peoples in all processes for their opinion and invite them to participate in the decision making processes, but also the responsibility of the indigenous peoples to contribute as much as possible to the implementation of the IPPF.

(s) **Keep people informed, listen to what they say**. No one was born with a better knowledge than others and everybody has something to say. Since sustainable land and resource management affects everybody and is based on the contribution of everybody, everybody needs to be informed so that they can become involved in all kinds of activities.

(t) **Be prepared to learn new ways of doing things**. Since sustainable natural resource management is based on the cooperative management of all people in the project area, everybody has a say and is able to contribute something. To observe how other people handle issues is always an advantage, because by learning new ways of doing things, one is better prepared to address new challenges in the future and to understand the actions of others.

(u) **Be totally professional and committed at all times**. Indigenous Peoples Planning Framework for the WKCDD/FM & NRM – Draft (10/01/2007)

(v) **Not allow people to use the projects for selfish reasons**. There is always the risk that certain people take over a project to personalize the benefits related to it. These problems mostly occur when people are not fully involved in what is going on, don’t come to meetings, don’t listen to talks and sign documents without reading them. As long as one rests silent or passive, those in charge might do what they want. So it is everybody’s responsibility to take part in the decision making process.
(w) **Be patient, but demand commitment and effort.** The communication between different groups especially in rural areas is not an easy task. Due to the limited number of people working on the subject and in the area, one might have had bad experiences in the past. One should leave bad memories behind and presume that the others have learned as one has also increased its capacity.

(x) **Respect beliefs and customs.** Sustainable land and natural resource management and the IPPF are focusing on the cooperative management of natural resources and the sustainable utilization of cultural and biological diversity for the greater good of all. A first step to sustain diversity is the respect for the different beliefs and customs. At district level the IPPS and IPR will link up the projects, the indigenous peoples and the district administration. They should meet once a month and work as focal point for all IPPF related issues at district level. They should be informed about all kinds of activities of the projects and communicate relevant information to the indigenous peoples’ communities. They should also gather information and feedbacks from the indigenous peoples’ communities to channel them to the relevant governmental structures, the national steering committee or the implementation units of the projects. They should consist of

1. representatives from the projects (Coordinator),
2. 1 representative from the forest/water department,
3. 1 representative from the department of social affairs,
4. 5 elected representatives from the indigenous peoples’ communities.

87. The elected representatives from the community will be in charge to facilitate the communication between the indigenous peoples’ communities in their area and the IPSS & IPR. They should be elected during the pilot phase of the IPPF after a further introduction and general discussion on the IPPF, the communication channels etc. to ensure that the elected representatives have broad community support and are elected on the base of free, prior and informed consultations.

88. To harmonize IPPF work between the different levels, the indigenous peoples representatives in each of the districts in the operational areas with indigenous peoples should elect among them two coordinators to represent the indigenous peoples at national level and to coordinate communication and work. Following the general guidelines for a successful communication outlined above, the representatives should remember that they are representatives of the people by whom they are elected and due to that feedback all information they receive and consult their communities as often as possible and prior to any major decisions. The IPPF creates a level playing field, the indigenous peoples have to decide themselves how they use this communication framework to voice their needs and interests.

5.1. **Grievance processes**

89. As the communication is mostly channeled through the projects and government structures, a situation might arise in which certain information are not communicated or
not adequately addressed. In that line, the provision of accessible procedures to address grievances by the affected indigenous peoples’ communities arising from the implementation of the projects is an important element to enhance and sustain the quality of the services and communication. In selecting a grievance structure, the indigenous peoples should take into account their customary dispute settlement mechanisms, the availability of judicial recourse and the fact that it should be a structure considered by all stakeholders as an independent and qualified actor. As it should be a single organization for all indigenous peoples’ communities affected by the projects, the Kenya National Commission on Human Rights (CVS Plaza, Kasuku Rd off Lenana Rd; P. O BOX 74359-00200; Tel: 020-2717900-08 / 282717256; Mobile: 721–207320; Fax: 020–2716160; Email: haki@knchr.org) seems to be an appropriate grievance structure as it is present in all districts and well known by most people.

6. Monitoring and evaluation mechanisms

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

91. The PIM will be based on the data gathered by the screening process/social assessments, the organizations of the indigenous peoples, the IPSSs, the relevant governmental structures (lands, forests, development and social) at district level etc.. It will further use during the description of the baseline situation (Dec. 30, 2002) and the initial sensitization and training of the indigenous peoples’ communities. It is assumed that at least during the first year of the PIM (2008), the indigenous peoples’ organizations will play a key role as facilitator of the PIM process before the IPSSs are able to take over this task. As this is a participatory process, the selection of the facilitator is of course the decision of the communities, but it is advised to choose people who are able to elaborate on the basis of the PIM reports, which reflect the situation on the ground in a transparent and plausible way.

92. The PIM reports at district level should be produced before June 30th of the years and then be returned to all indigenous peoples’ communities for feedback etc. before being handed over to the DGS before August 30th. In September of each year (from 2008 on) all IPSS will meet to discuss among other issues the PIM reports, elaborate an overall evaluation and prepare recommendations on how to fine-tune the IPPF further. The district PIM reports, the IPPF evaluation and the recommendation should be communicated to all stakeholders before October 30th through the project webpage, communicate them to the World Bank task team and the interested public.
93. The IPPF implementation in view of the performance indicators outlined in the IPPF and the outcomes of this process will be further crosschecked in 2008 and 2010 by an external IPPF evaluation in view to enhance the quality further and to guarantee that the indigenous peoples’ dignity, human rights, economies, and cultures are respected by the projects, that all decisions which affect any of these are based on the free, prior, and informed consultation with the indigenous peoples, that the indigenous peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive, that adverse effects on the indigenous peoples' communities are as much as possible avoided and if this was according to the IPSSs not feasible, minimize, mitigate, or compensate in a culturally appropriate manner based on broad support by the indigenous peoples’ communities.
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Annex 2  KAPSLMP Operational Areas
Annex 3: Peoples and organizations consulted

Ogiek
Charles Sena; Ogiek Peoples National Assembly; (info@orip.or.ke)
Joseph Towett; Ogiek Peoples National Assembly & Ogiek Welfare Council (ogieknet@crornet.com).
Sarone ole Sena (sarone_ole_sena@wvi.org).
Daniel Kobei; Ogiek Peoples Development Programme (dkoei@yahoo.com; opdp2001@yahoo.com).

Mt Elgon: Chief James Chepkaito (0734-817029); Dr. Changeitywo 0722858563; Chelasia (0721985295); Martin Somotwo (07228664839), Rasimis Sangula (0720538130), Sakwony (0722508208), Tungwet (0721967990) and Martha (0722376837).

Village Meeting Kipkurere Forest: Joseph Tuwei (0720-808130); Kipkoch Sang (0724-554315); Kiprotich Koringo (0723-753440); William K. Tuwgi (0721-735330); William K. Katam (0720-385919); Mercy Jepkosgei (0725-943949); Samuel K. Songok; William K. Koech; Kepkendot Mutai; Johana Bett; Benjamin Maiyo; Kibkerege Koech; Richard K. Langat; David K. Sitienei.

Village Meetings in Kolongei & Chepyuk Central: James C, Chepkuto (Chief Chepyuk Location Mt. Elgon 0734-817029).

Sengwer
David Kiptum Yator; Sengwer Indigenous Development Project; Sengwer Education Bursary Fund; Hunter-Gatherer Forum; (ykiptumsengwer@hotmail.com; yat.or@lycos.com; sengwer.idp@multitechweb.com).
Moses Leleu Laima (Sengwer Cerangany Cultural Group; P.O. Box 94-30215; Kesogon via Kitale; 0734-683050)
Paul Kebet; Cherangany Hills Forest Conservation; (0721-353944)

Village Meeting Talau Location: 20 male and 10 female.

Village Meeting Kamologon (Embobut Forest): Thomas; Paul Kip Kenoi; Sammy Kip Chemeri; Toroitich; William; Chehimo Kip Koo; Paulina; Josephine; Elisabeth; Selly.

Village Meeting Kapolet Forest: Jacob K. Chehol (Sengwer Land Allocation Committee; 0735-493161); Josilah J. Cheruiyot (Livestock & Fisheries); Charles Kiberen (Sengwer Land Allocation Committee); Barnabas Ng’esenwo (Public Officer Marakwet District); Joseph Cheruiyot (Sengwer Community Health Centre); Jacob K.Roi (Sengwer Water, Sanitation and Environment Committee); Viola Chepngetich (Sengwer Youth Committee 0722-428781); Frida Chepkoech (Sengwer Youth Committee); William Kiptoo (Village Elder); Kiptoo Keleke (Sengwer

Indigenous Peoples Organisations
Naomi Kipuri, African Union Sub-commission on Indigenous People; (kipuri3000@yahoo.com)
Fisherpeoples Network: Mr. Mhuswala (0733-423706)
Indigenous Information Network: Lucy Mulenkie (020-2723958; 722914614; 733894080; iin@iin.co.ke).
Centre for Minority Rights Development: Korrir Singoeie (Korrir.singoei@cemiride.info; 722-776994)

Experts
Scott Matter; McGill University (scott.matter@mail.mcgill.ca)
Julian Bauer; EcoTerra (0733-633000; pjb@ecoterra.net)
Annex 4: Participants IPPF Workshop

Comments and Feedbacks from IPPF Workshop
The indigenous peoples were generally pleased with the document. Comments focused on

- the need to enhance and validate demographic figures in the draft document, which were considered as very high (this is the reason they have been taken out in the final version);
- the need to enhance the recognition of and support for certified forest products;
- the need for a clear map of project areas, gazetted and protected forests;
- the negative impact on water catchments caused by multinational logging companies;
- the need to mainstream the policy enhancement proposed in the IPPF to areas where the projects don’t work and/or where donors intervene, which do not sign up to this IPPF (such as the KFW and their catchment dam in the Kapolet forest);
- the need for an inter-ministerial coordinating body for all projects and issues related to indigenous peoples;
- the need to enhance the existing screening mechanisms as they are not participatory so the proposed screening processes of the IPPF is most welcome; and
- the need to establish an effective communication mechanism following the principle of 'prior and informed consent' so that IPs get information that help them participate and make decisions in a meaningful way.

The Government of Kenya considered the IPPF as a well thought of document and well researched particularly given the short time it has taken to produce it. According to the GoK the author has given an in-depth analysis of the subject matter. The GoK suggested some minor changes to harmonize the wording on some controversial issues with those used in legal and policy documents (This request has been addressed in the final version to the full satisfaction of the GoK).
Annex 5: OP. 4.10: Indigenous Peoples

Note: OP and BP 4.10 together replace OD 4.20, Indigenous Peoples, dated September 1991. These OP and BP apply to all projects for which a Project Concept Review takes place on or after July 1, 2005. Questions may be addressed to the Director, Social Development Department (SDV).

1. This policy [1] contributes to the Bank’s [2] 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,[3] the Bank requires the borrower to engage in a process of free, prior, and informed consultation.[4] 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.[5] 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[6] possessing the following characteristics in varying degrees: (a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;[7] (c) customary cultural,
economic, social, or political institutions that are separate from those of the dominant society and culture; and (d) an indigenous language, often different from the official language of the country or region.

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.[8] Ascertaining 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. [9]

Project Preparation
6. A project proposed for Bank financing that affects Indigenous Peoples requires: (a) screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area (see paragraph 8); (b) a social assessment by the borrower (see paragraph 9 and Annex A); (c) a process of free, prior, and informed consultation with the affected Indigenous People's 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 Indigenous Peoples Plan or 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.[10] 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 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, [12] 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.[13] 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. [14]

**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.[15] Before project appraisal, the borrower sends the social assessment and final IPP/IPPF to the Bank for review. [16] 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 Disclosure of 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[17] 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 [18] 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 parks and protected areas. The management plan should give priority to collaborative arrangements that enable the Indigenous Peoples, 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 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.

Notes
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 4.11, forthcoming), 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 loans, credits, or grants. For social aspects of development policy operations, see OP 8.60, Development Policy Lending, paragraph 10. 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 decision-making 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
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ancient 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 non-agricultural 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.E).

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 13.05, Project Supervision).

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 OP 8.50, Emergency Recovery Assistance. 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

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.
Annex B Indigenous Peoples Plans
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.
Annex C: Indigenous Peoples Planning Framework
The Indigenous Peoples Planning Framework (IPPF) sets out: (a) The types of programs and subprojects likely to be proposed for financing under the project. (b) The potential positive and adverse effects of such programs or subprojects on Indigenous Peoples. (c) A plan for carrying out the social assessment (see Annex A) for such programs or subprojects. (d) A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples’ communities at each stage of project preparation and implementation (see paragraph 10 of this policy). (e) Institutional arrangements (including capacity building where necessary) for screening project-supported activities, evaluating their effects on Indigenous Peoples, preparing IPPs, and addressing any grievances. (f) Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project. (g) Disclosure arrangements for IPPs to be prepared under the IPPF.
Annex 6: Draft Terms of Reference for the Social Assessment

1. Background and Rationale:
The KAPSLM Project seeks to improve social welfare, enhance living standards and promote the sustainable land management through a support of small-scale initiatives (community-driven development as well as subprojects related to land management). It will harmonize the forest policy with the draft land policy, implement a participatory land management, support the elaboration of a comprehensive resettlement policy and rehabilitate in the operational areas (Aberdares, Upper Tana, Kakamega, Mt Elgon as well as the Nandi and Cherengani hills) the livelihoods of populations, which have been evicted from forests after the new government was sworn in (30/12/2002).

During preparation it became clear that the projects might impact on indigenous peoples’ rights, lands, livelihoods, and culture. To comply with international standards such as the World Bank’s operational policy on indigenous peoples (OP 4.10) and to qualify for funding from the World Bank, the Government of Kenya has elaborated an Indigenous Peoples Planning Framework (IPPF) to ensure that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples and that the projects are able to gain through free, prior, and informed consultations the broad community support from the affected indigenous peoples. When the IPPF was elaborated the operational areas of the project were not yet clearly defined and it was not possible to obtain comprehensive information on where indigenous peoples live. Due to that, the IPPF calls for a comprehensive screening of all operational areas of the project to identify groups, which are in a “structural subordinate position to the dominating groups and the state, leading to marginalization and discrimination” (the definition of “indigenous” used in line with the African Union in the IPPF). A more detailed screening and social assessment should provide comprehensive information, which area and resource is used or claimed by the indigenous peoples.

2. Objectives of the assignment:
A social assessment will be carried out for all those groups identified above. This group wide social assessment will respond through its mapping section to the call of the Draft Land Policy (§ 190-191) to provide detailed and well documented claims for land restitution. This is equally important for the projects as international standards (OP 4.10) make clear that even “a group that has lost ‘collective attachment’ to geographically distinct habitats or ancestral territories in the project area’ because of forced severance remains eligible for coverage under this policy” (OP 4.10, § 4). The OP 4.10 makes clear that these rights go back an entire generation (“within the concerned group members’ lifetime”), while the Draft Land Policy goes even further and defines the year 1895 as cut off date. In this context of this framework the national cut off date will be used. Through this detailed assessment, well ahead of the national land restitution process, the projects provide clear and significant benefits to the indigenous peoples, while serving operation purposes.

3. Expected outcomes
The expected result of this assignment is twofold:
a) a social assessment for each of the group of indigenous peoples identified during the
screening. The social assessment will provide comprehensive information to the
following elements:
  • a review of the legal and institutional framework applicable to the group of
    indigenous peoples.
  • baseline information on the demographic, social, cultural, and political characteristics of
    the indigenous peoples’ communities, and the natural resources on which they depend on.
The social assessment will provide evidences that all these information have been
established in a participatory process with the indigenous peoples in free, prior and
informed consultations.
b) detailed participatory land use maps, which show the land and territories that are
presently used by each of these indigenous peoples’ communities and which have been
traditionally owned or customarily used or occupied. Special emphasis will be placed on
the link of indigenous peoples to forests. The participatory land use mapping will
specifically identify areas a) for which land titles have been produced, b) for which the
process of land title establishment has been started, c) and for which other peoples have
obtained titles in disrespect of long standing claims of the indigenous peoples.
There will be three sets of maps providing information on the land used:
  • at the time of the mapping process;
  • on December 30, 2002, when the new government was sworn in;
  • in 1895 (the cut of date proposed national land restitution process);

The maps will be based on the 1:50,000 topographic maps and provide evidences that all
these information have been established in a participatory process with the indigenous
peoples in free, prior and informed consultations.

26 ‘‘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”
(OP 4.10; Footnote 7).
27 ‘‘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.” (OP 4.10; Footnote 8).

4. Conditions of the consultancy/task execution:
4.1. Duration of services:
Start date for the contract: 01/05/2008
End date for the contract: 30/06/2008

4.2. Payment
Separate contracts will be established for each of the indigenous peoples groups
identified in the first screening The consultants for each of these teams will be
compensated as follows:
USD xxxxx as lump sum advance payment;
USD xxxxx will be paid as lump sum payment after all deliveries have been
accepted by the the social safeguard backstopping mission, the WKCDD/FM and
NRM project, and the World Bank task team.

4.3. Reporting requirements
The consultants will work in close collaboration with the social safeguard backstopping mission, the two projects, as well as local organizations with expertise in matters relating to indigenous peoples, and if necessary in consultation with the Ministry of Lands and Housing, the Office of the President, the Ministry of Water and Irrigation, the Kenya Forest Service and the World Bank Project Task Team. The consultants will make themselves available to respond to reviews of the draft reports by all these stakeholders and will present a final report, incorporating the comments made.

4.4. Disclosure
The reports and maps will be published and made available to all indigenous peoples communities in the operational areas of the two projects as hard copy and through the general public through the project’ web-page.

4.5. Consultant qualifications:
This second level of geographic screening will be carried out as much as possible by the organizations of the indigenous peoples themselves. To enable them to comply with international standards a comprehensive capacity building in the domain of participatory land use mapping, quantitative socio-economic surveys and archival research will be provided as well as technical backstopping (see Draft ToRs in Annex 11).
Annex 7: Draft terms of reference for consultations and the elaboration of indigenous peoples plans within the project

1. Background and Rationale:
The KAPSLM Project seek to improve social welfare, enhance living standards and promote the sustainable use of water resources through a support of small-scale initiatives (community-driven development as well as subprojects related to natural resources, forests and water management), construction of small- to medium-scale infrastructure (dams, irrigation schemes etc), policy advice, and institutional development.

During preparation it became clear that the projects might impact on indigenous peoples’ rights, lands, livelihoods, and culture. To comply with international standards such as the World Bank’s operational policy on indigenous peoples (OP 4.10) and to qualify for funding from the World Bank, the Government of Kenya has elaborated an Indigenous Peoples Planning Framework (IPPF) to ensure that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples and that the projects are able to gain through free, prior, and informed consultations the broad community support from the affected indigenous peoples. When the IPPF was elaborated the operational areas of the project were not yet clearly defined and it was not possible to obtain comprehensive information on where indigenous peoples live. Due to that, the IPPF calls for a comprehensive screening of all operational areas of the project to identify groups, which are in a “structural subordinate position to the dominating groups and the state, leading to marginalization and discrimination” (the definition of “indigenous” used in line with the African Union in the IPPF).

For all large scale subprojects (dams, irrigation schemes etc), which are going to be implemented on land that has been identified during the screening processes to be used or claimed by indigenous peoples - thus which will have impacts on indigenous peoples -, the projects will in line with international standards engage in free, prior, and informed consultations with the indigenous peoples, before the individual large scale subproject is implemented. Most likely this will be the case with the preparation of two multi-purpose dams. In deciding whether to proceed with the individual subproject, the projects ascertain on the basis of the social assessment and additional free, prior and informed consultations, whether the affected indigenous peoples' communities provide their broad support to the subproject. Where there is no such support, the project will need to elaborate alternatives, which are found suitable by the affected indigenous peoples. Where there is such support, the project prepares a detailed Indigenous Peoples Plan.

2. Objectives of the assignment:
On the basis of the social assessment and in consultation with the affected indigenous peoples' communities, the consultants will prepare an Indigenous Peoples Plan that sets out the measures through which the KAPSLM project 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.

3. Expected outcomes
The expected results of these assignments are Indigenous Peoples Plans, which will outline for each of these large scale subprojects:

a) the findings of the social assessment and the overlap of land use areas;
b) a framework for ensuring free, prior, and informed consultation with the affected indigenous peoples’ communities during project implementation;
c) 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;
d) 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.

e) the cost estimates and financing plan for the IPP,
f) accessible procedures appropriate to the project to address grievances by the affected indigenous peoples’ communities arising from project implementation, and

g) 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.

4. Conditions of the consultancy/task execution:

4.1. Duration of services:
Start date for the contract: xx/xx/xxxx
End date for the contract: xx/xx/xxxx

4.2. Payment
Separate contracts will be established for each of the large scale subprojects, which impact on land and resources used or claimed by indigenous peoples. The consultants for each of these teams will be compensated as follows: USD xxxx as lump sum advance payment; USD xxxx will be paid as lump sum payment after all deliveries have been accepted by the social safeguard backstopping mission, the project, and the World Bank task team.

4.3. Reporting requirements
The consultants will work in close collaboration with the social safeguard backstopping mission, the KAPSLMP project, as well as local organizations with expertise in matters relating to indigenous peoples, and if necessary in consultation with the Ministry of Agriculture, the Office of the President, the Ministry of Water and Irrigation and the World Bank Project Task Team. The consultants will make themselves available to respond to reviews of the draft reports by all these stakeholders and will present a final report, incorporating the comments made.

4.4. Disclosure
The KAPSLMP will make the draft IPP available to the affected indigenous peoples’ communities in an appropriate form, manner, and language and sends the final IPP to the Bank for review. Once the Bank accepts the documents as providing an adequate
responds to the demands of the OP 4.10 and this IPPF, the Bank makes them available to
the public through its Infoshop and the projects makes them available to the affected
indigenous peoples' communities and the broad public in the same manner as the earlier
draft IPPs. The quality of this process will be assured by the World Bank, which will
review and approve the IPPs before disclosure.

4.5. Consultant qualifications:
These IPPs will be prepared as much as possible by the organisations of the indigenous
peoples themselves. To enable them to comply with international standards a
comprehensive capacity building in the legal domain as well as in the area of quantitative
social research and the methods to assess impacts will be provided as well as technical
backstopping carried out by a social scientists whose qualifications, experience, and
terms of reference are acceptable to the World Bank.
Annex 8: **Terms of reference for the social safeguard backstopping mission for the KAPSLM project**

The KAPSLM Project seeks to improve social welfare, enhance living standards and promote the sustainable use of water resources through a support of small-scale initiatives (community-driven development as well as subprojects related to natural resources, forests and water management), construction of small- to medium-scale infrastructure (dams, irrigation schemes etc), policy advice, and institutional development. The Natural Resource Management Project will address key issues regarding indigenous peoples and other forest-dependent communities in Kenya: It will harmonize the forest policy with the draft land policy, implement a participatory forest management, support the elaboration of a comprehensive resettlement policy and rehabilitate in the operational areas (Aberdares, Upper Tana, Kakamega, Mt Elgon as well as the Nandi and Cherengani hills) the livelihoods of populations, which have been evicted from forests after the new government was sworn in (30/12/2002). During preparation it became clear that the projects might impact on indigenous peoples’ rights, lands, livelihoods, and culture. To comply with international standards such as the World Bank’s operational policy on indigenous peoples (OP 4.10) and to qualify for funding from the World Bank, the Government of Kenya has elaborated an Indigenous Peoples Planning Framework (IPPF) to ensure that the development process fully respects the dignity, human rights, economies, and culture of indigenous peoples and that the projects are able to gain through free, prior, and informed consultations the broad community support from the affected indigenous peoples.

Based on the IPPF, the KAPSLM project will fund a two-level screening process to identify possible adverse effects on IPs: In primary screening, all groups which are in a “structural subordinate position to the dominating groups and the state” (and thus indigenous), will be identified in all operational areas. The secondary screening will consist of a detailed social assessment undertaken for each of these indigenous communities. To implement this strategy, the project will (a) assist the indigenous peoples to create an elected Indigenous Peoples’ Screening Structure (IPSS) in all districts where indigenous peoples use land and/or land based resources, and (b) empower these IPSS to document, in free, prior and informed consultations, the indigenous peoples’ position on all funding requests, which might impinge upon land or resources, which have been identified in the social assessment and in line with the land policy as rightly theirs. For subprojects, which do not in the first instance gain broad support from the affected indigenous peoples, the District Steering Group (DSG) and the IPSS will search for mutually acceptable solutions. Indigenous Peoples Plans (IPP) can be prepared to assist and reflect transparent decision-making in the case of controversial subprojects, and will also be elaborated for large scale infrastructures (dams etc.), if the screening suggests that rights, livelihoods, and culture of the indigenous peoples might be affected. The project will further apply five mechanisms to ensure that indigenous peoples receive cultural appropriate benefits: (a) support and capacity building will be provided to IP communities through the IPSS to assist community planning and applications for resources for priority sub-projects; (b) IP communities will be given preferential treatment for subproject identification and funding; (c) IP communities will
be allowed the option of making the required community sub-project contribution in kind; (d) IP representatives will be invited to sit in the DSG and decision-making bodies at catchment level; and (e) the capacities of the indigenous peoples will be enhanced using appropriate participatory tools.

Based on the IPPF the KAPSLM project will ensure: (a) that present and past settlements, land use areas and cultural sites of indigenous peoples are comprehensively documented; (b) that the indigenous peoples are well represented in all forest and resettlement related decision making bodies and processes; (c) that a comprehensive strategy to rehabilitate the livelihoods of evicted indigenous peoples is elaborated in an open-minded and fully participatory option assessment; (d) that this strategy is implemented in a comprehensive and timely manner); and (e) that the indigenous peoples are enabled to benefit from participatory forest management and reforestation.

Most of these activities will be implemented by indigenous peoples’ organizations. The rapid training need assessment in the context of the IPPF documented, that the technical and organizational capacities are very low. A Social Safeguard Backstopping Mission will address these needs and supervise a timely and comprehensive implementation of the activities outlined in the IPPF action plans for the two projects.

2. Objectives of the assignment:
The objective of this assignment is a) to enhance the capacities of the indigenous peoples’ organizations and other stakeholders, b) to comment on and clear all reports and studies established during IPPF implementation, c) to supervise the timely and comprehensive implementation of the IPPF activities, d) to establish evaluation reports and e) to ensure the implementation of the IPPF action plans in line with the OP 4.10.

3. Expected outcomes
   a) Training
Several trainings will have been carried out (an initial training for all stakeholders, trainings for each of the teams carrying out the screenings, social assessments and Indigenous Peoples Plans, trainings for teams carrying out the participatory impact monitoring and the reports on these training documents that the capacities of the participants have been enhanced and that they are able to carry out their assignments.

   b) Backstopping
The indigenous peoples’ organizations, the consultants for the various assignments and the projects are receiving in a timely manner quality responses to their questions and comments on their products (reports etc. which they consider useful in carrying out their assignments etc. and which document an ongoing empowerment of indigenous peoples’ organizations.

   c) Provide annual progress reports and in 2009 & 2013 evaluation reports
Towards the end of each year a progress report is elaborated, approved by all stakeholders and published. In 2009 & 2013 an in-depth evaluation of IPPF implementation and the impacts of the two projects on the living condition of the indigenous peoples is carried out, approved by all stakeholders and published.
4. Conditions of the consultancy/task execution:

4.1. Duration of services:
Start date for the contract: 01/01/2008
End date for the contract: xx/xx/xxxx

4.2. Payment
The consultant will be compensated as follows:
a) USD xxxxx as lump sum advance payment;
b) USD xxxxx will be paid at the end of the year as lump sum payment after all deliveries have been accepted by the KAPSLM project, and the World Bank task team.

4.3. Reporting requirements
The consultant will work in close collaboration with the two projects, as well as local organizations with expertise in matters relating to indigenous peoples, and if necessary in consultation with the Ministry of Agriculture, the Office of the President, the Ministry of Water and Irrigation, the Kenya Forest Service and the World Bank Project Task Team.

The consultant will make himself available to respond to reviews of the draft reports by all these stakeholders and will present a final report, incorporating the comments made.

4.4. Disclosure
The annual report will be published and made available to all indigenous peoples communities in the operational areas of the two projects as hard copy and through the general public through the project’ web-page.

4.5. Consultant qualifications:
A social scientist with outstanding experiences in the work with indigenous peoples’ communities in Kenya, training in intercultural communication, international standards for the work with indigenous peoples (OP 4.10), the two projects and/or the approach and subjects addressed by them and World Bank funded projects.