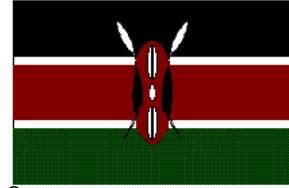




**Republic of Kenya**



Office of the President &  
Ministry of Water and Irrigation &  
Ministry of Environment and Natural Resources

**INDIGENOUS PEOPLES PLANNING FRAMEWORK**  
for the  
**WESTERN KENYA COMMUNITY DRIVEN**  
**DEVELOPMENT AND**  
**FLOOD MITIGATION PROJECT**  
and the  
**NATURAL RESOURCE MANAGEMENT PROJECT**

**Final Report December 2006**

Prepared by  
**Dr. Kai Schmidt-Soltau**  
Email: [SchmidtSol@aol.com](mailto:SchmidtSol@aol.com)  
Webpage: [www.Schmidt-Soltau.de](http://www.Schmidt-Soltau.de)

## Table of content

Executive Summary	4
1. Introduction and description of the two projects	9
2. The indigenous peoples in the operational areas	14
2.1. Hunter-Gatherer in Kenya .....	15
2.2. Ogiek .....	19
2.3. Sengwer .....	23
2.4. Summary of the living condition of indigenous peoples in the operational areas ....	28
3. Potential positive and adverse effects of WKCDD/FD & NRM components and subcomponents on the indigenous peoples	30
4. The Indigenous Peoples Planning Framework	40
4.1. The IPPF for the WKCDD/FM project .....	40
4.2. The IPPF for the NRM project .....	44
5. Communication framework	47
5.1. Grievance processes .....	49
6. Monitoring and evaluation mechanisms	49
Annex 1: Bibliography	51
Annex 2: Itinerary	54
Annex 3: Peoples and organisations consulted	55
Annex 4: Participants IPPF Workshop	56
Annex 5: Comments and Feedbacks from IPPF Workshop	57
Annex 6 OP. 4.10: Indigenous Peoples	58
Annex 7: Draft Terms of Reference for the first screening process	69
Annex 8: Draft Terms of Reference for the second screening/social assessment	72
Annex 9: Draft terms of reference for consultations and the elaboration of indigenous peoples plans within the WKCDD/FM project	75
Annex 10: Draft terms of reference for the option assessment on how to rehabilitate the livelihoods of evicted indigenous peoples	78
Annex 11: Terms of reference for the social safeguard backstopping mission for the WKCDD/FM & NRM projects	80

## 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
IPP-KAP/SLM	Indigenous Peoples Plan of the Kenya Agricultural Productivity – Sustainable Land Management Project
IPR	Indigenous Peoples Representatives
IPSS	Indigenous Peoples Screening Structure
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	Millennium Development Goal
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

The **Western Kenya Community Driven Development and Flood Mitigation Project** (WKCDD/FM) and the **Natural Resources Management Project** (NRM) in Kenya seek to improve social welfare, enhance living standards and promote the sustainable use of water, land, forests and other natural 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 WKCDD/FM and NRM projects will be complementary and add value to one other.

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 WKCDD/FM and NRM with international standards. The present IPPF draws upon from the Indigenous Peoples Plan developed for the Kenya Agricultural Productivity – Sustainable Land Management Project, which was adopted by the Government of Kenya in January 2006.

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 organisations, other populations, governmental services, donors, NGOs etc.). The report has been approved by all stakeholders and workshopped on 20/12/2006 in Nairobi.

### **Indigenous Peoples in the operational areas**

The African Commission's Working Group of Experts on Indigenous Populations & Communities affirms that *“almost all African states host a rich variety of different ethnic groups (...). All of these groups are indigenous to Africa. However, some are in a structural subordinate position to the dominating groups and the state, leading to 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.”*

The two projects will work in 24 districts in Western and Central Kenya: 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 Sengwer, Ogiek, and other indigenous peoples in all operational areas of the two projects well in advance of any investment or subproject implementation.

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 sedentarisation, marginalisation, social discrimination, and impoverishment. The Ogiek and Sengwer, who are more dependent on forests than others, were - often in contravention of their legal utilisation 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 for WKCDD/FM & NRM**

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 councillors, let alone at higher political levels, and are thus administered and represented by members of non-government groups.

The aspirations of the indigenous peoples in the project area are simple: to live in peace with their neighbours, 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.

This report proposes a specific framework to address the needs and rights of indigenous peoples in the WKCDD/FM and NRM projects. This is shown to be necessary to mitigate the risks that the challenges currently facing indigenous peoples are not perpetuate. The projects will provide opportunities and mechanisms for indigenous peoples to ensure that they do not:

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

The Government of Kenya has made clear its intention 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).<sup>1</sup> 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 key to their livelihoods. This follows the gazettement 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 neighbouring 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:*

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

<sup>1</sup> The WKCDD/FM and the NRM projects will use the positions expressed in the draft land policy whatever the implementation status of this document is.

The **Western Kenya Community Driven Development and Flood Mitigation 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 according to the definition quoted above), will be identified in all operational areas (the 10 districts of the CDD component and the three micro-catchments likely to be located within 6 additional districts). The secondary screening will consist of a detailed social assessment undertaken for each of these indigenous communities. This modus operandi will simultaneously assist the indigenous peoples in the project area to establish claims within the parallel national land restitution process proposed under the draft land policy, and fulfil the operational requirements of OP 4.10. 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 or claim land and/or 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 (see above) 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) (which decides on the funding of subprojects) 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. Taken together, the measures described above would ensure that negative impacts are avoided.

The project will 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 (i.e. through labour or the supply of local materials); (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.

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). The 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.

The Government of Kenya, recognizes that, given, their close association with land, forests, water, wildlife, and other natural resources, the physical relocation of indigenous peoples, or other measures which reduce their access to livelihood-related resources, has complex implications, and may entail significant adverse impacts on their identity, culture, and customary livelihoods. For these reasons, the option assessment will explore to the extent possible the feasibility of re-establishing access to land and land-based resources that are key to their livelihood. Where this is not feasible, the NRM project will commission for each forest a Resettlement Action Plan (RAP) in accordance with international standards (World Bank OP 4.12 Involuntary Resettlement). The RAP will include a land-based resettlement strategy, compatible with the indigenous peoples' cultural preferences.

Discussions with a broad range of stakeholders indicate a willingness of all parties to work together with the projects and the indigenous peoples to implement the measures outlined above. The main parties responsible for the implementation of the IPPF for the WKCDD/FM & NRM are the Office of the President, the Ministries of Water and Irrigation, Environment and Natural Resources, Lands and Housing, the Kenya National Commission for Human Rights, the indigenous peoples' organizations and the indigenous peoples themselves.

The measures elaborated here will ensure that the WKCDD/FM & NRM:

- reduce poverty for all ethnic groups and lower the dependence on and degradation of natural resources;
- promote the effective management of natural resources, which offers benefits to the entire population and as well as environmental sustainability and biodiversity;
- foster the full respect for the dignity, rights and culture of the indigenous peoples;
- assure that the indigenous peoples receive culturally appropriate benefits equal to any other ethnic groups;
- protect the indigenous peoples from suffering adverse effects; and thus
- comply with international standards (OP 4.10).

## 1. Introduction and description of the two projects

The Government of Kenya (GoK) has requested financial assistance from the World Bank to implement two projects: the Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FM) and a Natural Resources Management Project (NRM).

The **WKCDD/FM** seeks “*to empower local communities of men and women to engage in wealth creating activities, lower the incidence of poverty and reduce their vulnerability*” and will include the following three components:

**WKCDD/FM Component 1 - Community Driven Development** - will finance livelihoods-based micro-projects, which will be identified in selected communities through PRAs. In this process, the communities will receive the assistance of mobile advisory teams (MAT) comprising technical personnel from district governments as well as NGOs. In addition to livelihoods-based micro-projects, funds will be provided to micro-projects, which address the malaria scourge in Western Kenya through (i) information, education and communication; (ii) providing insecticide-treated nets; (iii) using community resource personnel to treat malaria with Coartem; (iv) carrying out indoors residual spraying; and/or (v) reducing the breeding sites. The communities are expected to contribute 30% to the subprojects. To enhance sustainable planning and response mechanisms and to facilitate the implementation of intra-community activities a district steering group (DSG), which will include representatives from all stakeholders will be established, trained, and enabled to plan and guide participatory development.

**WKCDD/FM Component 2 - Flood Mitigation** - This component will address three aspects in the Nzoia River Basin: a) It will improve management of the upper catchment through the reforestation outside gazetted and protected forests, changing land use patterns on steep slopes and degraded areas, protection of river banks and improved water management including check dams and small scale regulating mechanisms. Communities will have their capacity enhanced to allow them to take advantage of the resources allocated for livelihood-based catchment management measures. The technical support to communities will be coordinated and supervised by the Lake Victoria North Water Resource Management Authority (LVNWRMA) and implemented by a variety of district-based support teams formed under the DSGs. b) The project will focus on the management of the Budalangi flood plain as well as the identification and preparation of a multi-purpose flood protection structures in the mid-catchment. In the Budalangi flood plain the project will try to alleviate the social and economic costs of flooding, rehabilitate and strengthen the existing levies in order to provide short and medium term relief, investigate measures to address high levels of sedimentation between existing levies and increase the safe discharge capacity of the flood plain in order to reduce the flood storage and attenuation requirements in the mid-catchment reaches. Flood plain management activities will be done in close collaboration with communities, allow controlled seasonal flooding of fields to maintain fertility and increase agricultural incomes and support the existing fisheries using flood waters. In the mid-catchments the project will invest in detailed option assessments to develop an integrated flood management strategy and detailed economic analysis will be undertaken of multi-purpose use of stored flood waters for irrigation, micro-hydropower generation, village and town water supplies etc. Activities will also include the preparation

for one or two multi-purpose dams to be financed as separate stand-alone operations. A communications strategy will be a major activity of this component, including the integration of public-private partnerships such as the Nzoia River Management Initiative program developed by the Mumias Sugar Company. Finally an effective, two way flow of information within an early warning system will assist communities and government in decreasing the substantial social and economic cost of floods.

**WKCDD/FM Component 3 - Implementation Support** - will support research, market assessments, advocacy work, the identification and development of new opportunities for economic growth in the region and a comprehensive project-wide communication strategy as well as the establishment and running of key coordination mechanisms in the Office of the President on Special Programmes (OP), which is the government entity mandated with disaster management, including floods and drought. Substantial training of district and project staff in various management skills, fiduciary, accountability, environmental management, community participatory processes, watershed management, and communications will be provided and the M&E system will comprise both an “internal” monitoring system and an “external” impact assessment system. The internal M&E system will include participatory assessments, qualitative report and score cards, expenditure tracking surveys, quantitative socio-economic household surveys and the collection of environmental indicators. Using these M&E data, especially the socio-economic household surveys, the external independent impact assessment system will measure what changes in poverty and well-being can be attributed to the project.

The objective of the **NRM project** is to “*improve the management of water and forest resources for enhancement of local livelihood and national economy*” and will include the following four components:

**NRM Component 1 - Water Resource Management** - As water is one of Kenya’s key natural resources upon which it depends for development and growth, the GoK has undertaken far-reaching reforms in the water sector. In that line, the project will complete the realignment of existing laws, policy, and regulations related to Water Resource Management. Technical support, funds for consultations and institutional strengthening will be provided to ensure the effective functioning of the Water Resource Management Authorities (WRMA) and an economic study will be undertaken to identify key strategic investments in water resources related infrastructures. In the Tana catchment sustainable agriculture and land management practices will be supported to address the economic needs of the people as well as the degradation of catchments and watersheds caused by human habitation and utilisation, land-use conflicts over forests, cultivation on steep hillsides and river banks and the use of poor farming methods. In order to achieve that farmers participate in conservation activities, the project will need to offer clear incentives. The WRMA will target micro-catchment ‘hotspots’ and invest in erosion control and terracing, small to medium water storage infrastructure, the rehabilitation of existing structures and improvement of on-farm agronomic practices. The regional WRMA will work closely with the Kenya Forest Service (KFS) to ensure synergies with their work in the gazetted forest and with neighbouring communities. As improved irrigation performance requires actions at scheme level as well as at national level to capture

synergies between the two and achieve higher overall returns on investments, the project intervenes at both levels: At scheme level, it will support the elaboration and implementation of comprehensive reforms of the management, policy and legislative framework of the irrigation and drainage sector including institutional realignment and a review of the role and functions of the NIB and of public irrigation schemes. As it is expected that the role of farmer organizations in the management of irrigation will be enhanced, funding will be used for training and capacity building. In support of this, the project will finance targeted investments in the modernization of public irrigation schemes such as Mwea. In order to capture benefits from upstream investments in catchment management and flood mitigation, the project will invest in the development of up to 3,000 hectares of gravity irrigation in the lower catchment of the Nzoia River.

**NRM Component 2 - Management of Forest Resources** - With the recent passage of the Forest Act, Kenya promotes now a joint management and sustainable use of forest resources. To operationalize the Forest Act the newly established KFS will require (i) assistance in creating a transparent and accountable regulatory and institutional framework, and (ii) targeted support for implementation. In this line, the project will assist the GoK with the reforms necessary to transform the Forest Department (FD) to a semi-autonomous KFS and will support the formulation and implementation of a strategic plan for KFS to enable a socially and environmentally sound implementation of the Act and improving revenue capture while increasing transparency, accountability, and integrity. Emphasis will be given to improve the development and management of forest plantations and the protection and management of indigenous forests. To address the lack of reliable data on forest resources, it is envisaged that the project will conduct a phased Forest Resources Assessment. Necessary investments in training, equipment and other infrastructure will be made at different levels with emphasis on the district level. While the new Forest Act is innovative with respect to the promotion of stakeholder participation, it does not clearly articulate rights and responsibilities of concerned parties, processes for developing and approving management plans, or benefit sharing arrangements. Assistance will be provided to identify and prioritize an array of partnership models to implement the legislative framework and improve benefit sharing. The initially focus will be on Kakamega, Mt. Elgon, the Cherangani and Nandi hills, the Aberdares and Upper Tana. Support for enhancing incentive structures for sustainable resource use through the development of payments for environmental services (PES) schemes will also be available. Bank financing will also support increasing awareness on the benefits of sustainable land management (SLM) practices and the conservation of forests. To address forest related land-use problems, financing will be provided to formulate and implement a coherent and transparent framework to mitigate conflicts over land, customary rights and rights of indigenous peoples. It is expected that evictions of persons who have customary or traditional rights to forests will not be carried out till the aforementioned framework is in place. Through a KFS Investment Center the creation of an enabling environment for community and private sector involvement in development and management of production forests will be supported. Funding will also be provided to improve plantation management planning capacities and assessing technical and financial feasibility of the plantation estate in a transparent manner.

**NRM Component 3 - Livelihood-based Multisectoral Microcatchment Management Investments in the Upper Tana Catchment** - uses a CDD approach. Proposals will be sought from communities in the catchment to invest in livelihood enhancing micro-projects such as afforestation schemes in the watersheds, development of private sector/community partnerships for timber, fuel-wood and pulp production, production and sale of seedlings, introduction of productivity-enhancing techniques of agro-forestry or conservation farming, and other investments in agriculture development. The approach will bring different actors from different sectors under a steering committee to vet and prioritize proposals in March of every year for funding in the next fiscal year. A secretariat for the component will be established in the WRMA offices in Nyeri. As much as possible, this component will utilize the local management modalities being developed for the WKCDD/FM (see above). Similar arrangements for the Aberdares catchment will be developed, maximizing NGO/CBO partnerships to provide an efficient, multi-sectoral delivery mechanism for community based interventions in any given district.

**NRM Component 4 - Management and Monitoring and Evaluation** - will provide the resources for an effective management and monitoring of the project. It will also provide significant funds to the Ministry of Lands of Housing to elaborate a national resettlement policy and rehabilitate the livelihood of people, who have been evicted from forests. Management of the tasks undertaken by the two line ministries will be mainstreamed within the ministries. Funds will also be made available for the development and implementation of a communications strategy and an overarching framework for monitoring and evaluation. To accomplish the management of monitoring and evaluation, each ministry will have an M&E expert assigned. Additional resources will be made from other sustainable development projects in Kenya, namely WKCDD/FM, Kenya Agricultural Productivity Program (KAPP), Kenya Agricultural Productivity – Sustainable Land Management Project (KAP/SLM) and Western Kenya Integrated Ecosystem Management Project (WKIEMP) to establish an overarching management information system and impact evaluation system.

During project 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 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 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. 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 WKCDD/FM and NRM with international standards. The IPPF derives from the Indigenous Peoples Plan of the Kenya Agricultural Productivity – Sustainable Land Management Project (IPP-KAP/SLM), which has been adopted by the Government of Kenya in January 2006.

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 organisations, other populations, governmental services, donors, NGOs etc; annex 3). This report has been approved by all stakeholders and workshoped on December 20<sup>th</sup> in Nairobi (see annex 4 & 5).

The IPPF for the WKCDD/FM and NRM 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

*“There is no internationally agreed upon definition of indigenous people” (UN Human Right and Indigenous Issues: 92). But for operational purposes and in line with other international organisations, such as the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues and the International Labour Organisation, 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:*

- 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 operational area and to the natural resources in these habitats and territories;*
- c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- d) an indigenous language, often different from the official language of the country or region.”*

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

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 marginalised 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 marginalised 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) throughout history in a marginalised and discriminated position.

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.

## **Limitations**

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. It builds on the Indigenous Peoples Plan of the KAP/SLM project, which has been adopted by the GoK in January 2006.

### **2.1. Hunter-Gatherer in Kenya**

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.

They are further marginalised 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 depend 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 non-agricultural and non-pastoral use of forests: Among others the Ogiek and the Sengwer.

Another form of marginalisation 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 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.

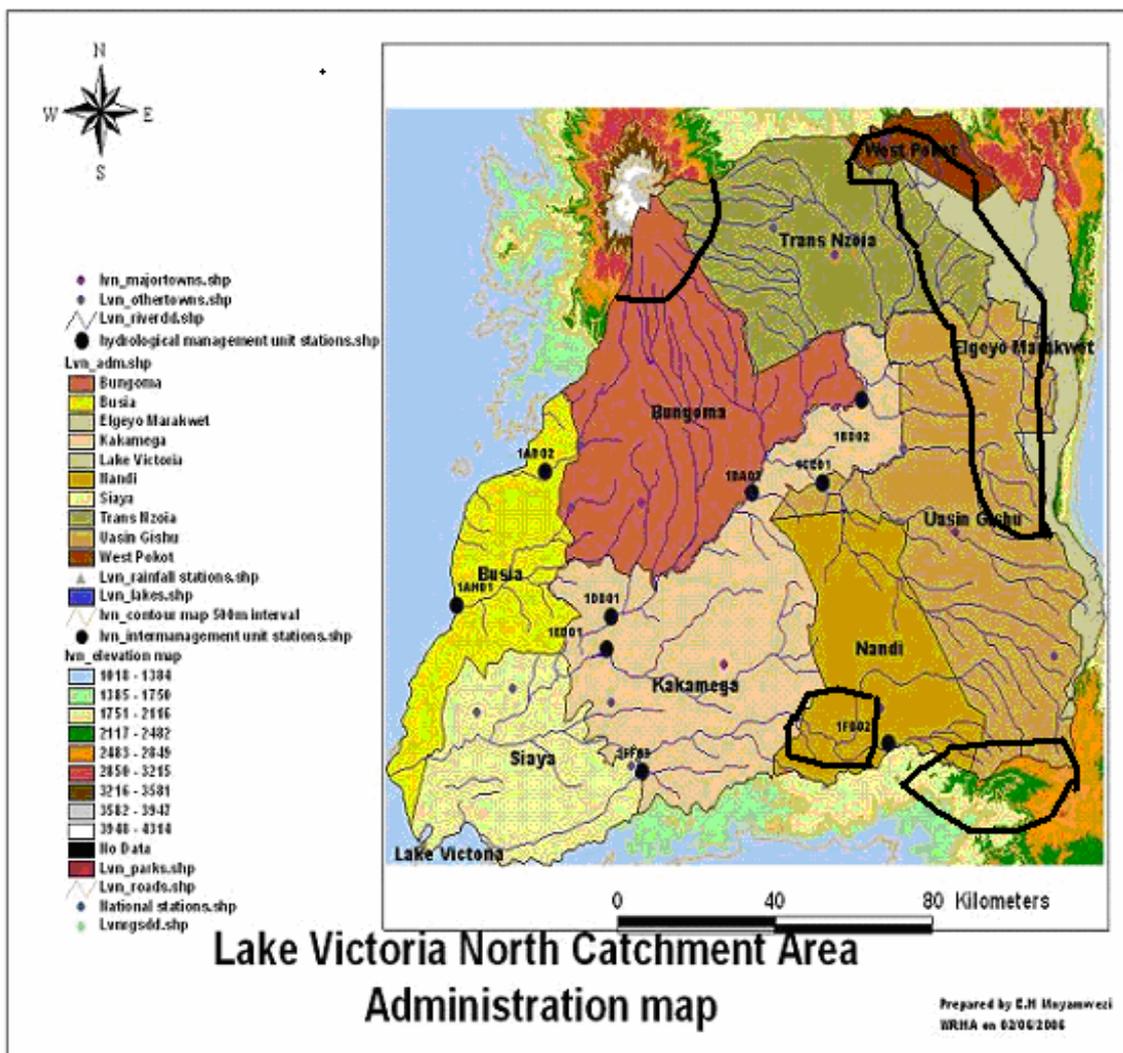
The Government of Kenya has realised these problems created by the ignorance to the rights, needs and cultures of hunter-gatherer communities. The goal of the 2006 Forest Policy is to "*enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services*" 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). The NRM project is among others the GoK tool to implement this policy. It will build on the lessons learned of the ODA/DFID funded Kenya's Indigenous Forests Conservation Project (KIPCON), which has worked intensively with hunter-gatherers in the establishment of sustainable management systems for indigenous forests.

A shortcoming of the Forest Policy (2006) and the Forest Act (2005) in view international standards such as the Convention on Biological Diversity (CBD; especially § 8j and the Akwe: Kon Guidelines) to which Kenya is a signatory, is its unclear position towards user rights and settlements in forests. The CBD makes clear that "*each contracting party shall, as far as possible and as appropriate [...] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the*

*approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices” (CBD § 8j).* This shortcoming will be addressed in the context of the NRM project through the establishment of a regulatory and institutional framework for implementing the forest bill and the forest policy. The NRM project will provide the legal, organisational, and technical framework to adjust the forest policy to international standards. One of the issues to be solved by the project in accordance with international standards such as the social safeguards of the World Bank (here especially OP 4.10 Indigenous Peoples & OP 4.12 Involuntary Resettlement) is the existence of large group of people living in protected and gazetted forests. In that line the resettlement policy framework of the NRM project and this IPPF become important elements to achieve the objectives of this project. Due to that it seems logic that the findings of these two social safeguard instruments are mainstreamed in all project documents.

The Ministry of Lands and Housing (MLH) has 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 WKCDD/FM and the NRM projects 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' organisations 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.

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



Map 1&2: The operational areas of the WKCDD/FM & NRM projects and the areas of known indigenous peoples

Province	Districts	Indigenous Peoples	WKCDD/FM	NRM
Western Province	Mt. Elgon	Ogiek (Doboro?) (IPPF) <sup>2</sup>	CDD <sup>3</sup>	Forestry <sup>4</sup>
	Teso	0 ???	CDD	
	Vihiga	0 ???	CDD	All
	Bungoma	0 ???	CDD	
	Butere Mumias	0 (IPP-KAP-SLM)	CDD	
	Kakamega	0 (IPP-KAP-SLM)	CDD	Forestry
	Lugari	0 ???	CDD	
Nyanza Province	Busia	0 ???	CDD	
	Siaya	0 (IPP-KAP-SLM)	CDD	
	Uasin Gishu	Ogiek (IPP-KAP/SLM)	UCM <sup>5</sup> ??	Forestry
	Bondo	0 (IPP-KAP-SLM)	CDD	
	Nandi North	Ogiek (IPP-KAP/SLM)	UCM ??	Forestry
Nandi South	Ogiek (IPP-KAP/SLM)	UCM ??	Forestry	

<sup>2</sup> Demographic data will be established during the social assessments.  
<sup>3</sup> WKCDD/FM Component 1: Community Driven Development Subprojects.  
<sup>4</sup> NRM Component 2: Forestry.  
<sup>5</sup> WKCDD/FM Component 2: Upper Catchment Management

Province	Districts	Indigenous Peoples	WKCDD/FM	NRM
<b>Rift Valley West</b>	Trans-Nzoia	Sengwer (IPP-KAP/SLM)	UCM ??	Forestry
	Marakwet	Sengwer (IPP-KAP/SLM)	UCM ??	Forestry
	West Pokot	Sengwer (IPP-KAP/SLM)	UCM ??	Forestry
	Keiyo	Sengwer (IPP-KAP/SLM)	UCM ??	Forestry
<b>Central Province</b>	Nyeri	0 ???		All
	Murang'a	0 ???		All
	Maragwa	0 ???		All
	Thika	0 ???		All
	Nyandarua	0 (IPP-KAP-SLM)		All
	Kiambu	0 (IPP-KAP-SLM)		All
	Kirinyaga	0 ???		All

Table 1: Operational areas of the projects and indigenous peoples.

## 2.2. Ogiek

The Ogiek ( Ogiot - sing.) ethnic group consists of 20-30 groups of former hunters and honey-gatherers, mostly living in forested highlands in western Kenya. Local groups have more specific names, e.g., Kaplelach, Kipsang'any, Kapchepkendi 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. 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 Maa-word for people without cattle, while they share most cultural practices with the Ogiek.

Precise demographic figures are not available as the last national census did not count the Ogiek as an independent group. 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

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

Colonial administration affected Ogiek groups in different ways. Between the 1920s and 1940s, many Ogiek were displaced from their lands by European farmers, while

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

### **2.2.2. Livelihood**

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

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

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

The economic activities are 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.

Their access to land varies very much from village to village. Before independence most Ogiek lived on state or trust land (i.e. in the forests) with all usufructuary rights, but no letters of allotment. Following independence, the land reform and the general land demarcation in 1969 usufructuary rights were out-ruled. Legal access to land is now channelled through individual land titles and - in the Maasai-dominated 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 Ogiek, underlined their social discrimination and cemented their marginalisation.

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

If one takes the two sites visited inside the operational areas in the context of the elaboration of the IPP - KAP-SLM and this IPPF one even gets a better understanding of the marginalisation 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 neighbours. 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 neighbours 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).

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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.

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 organisation**

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

defined by lineage and clan. Women have no separate age-sets, but become associated with male age-sets through relatives. Political and legal matters are discussed in meetings of men. Depending on the issue, gatherings involve men from one lineage, several lineages, or a large neighbourhood. All adult men have the right to attend and speak at meetings, though older men often speak more extensively. This changes of course in meetings with officials as most elders don't speak Swahili or English. Women were traditionally excluded from formal councils, but this traditional setting is no longer ruling as government officials and external visitors demand and invite the presence of all gender groups (Huntingford 1929, 1954; Blackburn 1976, 1982; Kratz 1981, 1994; Marshall 1994). While in their majority still organised in the traditional way, most Ogiek are grateful for the effort of some educated Ogiek, who have established an armada of Community Based Organisation 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**

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.<sup>6</sup> The published data of 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**

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, Kaptogom, Kapcherop, Kaki-sango, Kimarich (Kamosus), Kapsorme (Kapseto), Kapteteke, Kipsirat, Kamengetiony (Kopoch & Kapkotet), Kaplema and Kamesieu. Each patrilineage is said to have had their portion of land running from the highlands to the plains. The elders said that before the advent of the colonialists, the Sengwer lived during the rainy season in the vast plains of what is today Trans-Nzoia and during the dry season in the forest on the

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<sup>6</sup> "Ancestral Land of the Sengwer: Commences from Kiporoom River in Uasin Gishu District. It extends along Kapsumbeywet 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 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 Kiboorum" (Kiptum 2002).

mountain slopes of the Cherangany hills. It is said that the Sengwer lived in good relation with their neighbours as they were not competing for the same resources, but barter honey and dry meat for food crops and/or milk etc.

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

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

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 Kenya redistributed 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.

### **2.3.2. Livelihood**

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

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

Millet and Sorghum are the “traditional” crops, which were inherited from the Arab traders and mostly planted in the lowlands. These days, maize, potatoes, beans and a variety of vegetable are grown. Before land became scarce, the Sengwer used shifting cultivation patterns and changed their farms every three years. Transplanting, harvesting transforming, marketing and preparing of crops is considered beside of gathering, the provision of water and the education of the children as core female activities.

The Sengwer learned to keep animals, especially cattle, from the Maasai, when these arrived in the area in the context of their expansion from the north. The herds of the Sengwer are - also due to the common cattle rustling - very small and milk and livestock mostly used for auto-consumption.

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

The Embobut forest in the Marakwet 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 neighbouring communities. They commonly stated that the forest guards would arrive every three to four years to burn and destroy their houses and farms in the name of forest conservation and to loot their property. In the meantime armed cattle rustlers would come time and again to take crops and cattle and shoot those who resisted. The Sengwer of the Embobut forest made clear that the local and central administration did not react on any complaints against the evictions, with the argument that the Sengwer are illegally in the area and due to that not entitled to any protection from the state and county council. Their average annual cash income is said to be around KSh 3,000 (USD 40) per household as significant parts of their production are taken away before they can market it. In June 2006 all the 5,000 Sengwer living in the Embobut forest and another 3,000 Sengwer living in the Kipkunur 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 WKCDD/FM and NRM projects need clear benchmarks and external and objective control mechanisms to make sure that all governmental structures comply with the standards adopted by one structure.

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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 m<sup>3</sup>). They were initially not consulted and not invited to stakeholder meetings organised 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:

1. A free prior and informed consent/consultations is done by the donor<sup>7</sup> and implementing agency<sup>8</sup> in an environment free from fear and intimidation.
2. 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.

<sup>7</sup> The Federal Republic of Germany through KfW Development Bank

<sup>8</sup> Lake Victoria North Water Services Board

3. 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<sup>9</sup>; Enhancing security in Kapolet by recruiting and arming community members as Kenya Police Reservists; etc.
4. The community will present their expectations to the board and the donor for negotiations and reach a binding agreement.
5. 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).

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.

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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 organised by the only Sengwer councillor 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 marginalised by the government.

<sup>9</sup> “We are forest peoples and we’ve been coexisting harmoniously with the environment. As Indigenous Peoples we have rich indigenous knowledge on forest management, protection and conservation.”

### **2.3.3. Social organisation**

Patrilineages led by the elders are the traditional form of self-organisation. 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-organisation. In their struggle for land and recognition the Sengwer-elites have created a good number of Community Based Organisations 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.

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 councillor (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**

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 sedentarisation, marginalisation, social discrimination, and impoverishment. The Ogiek and Sengwer, who are more dependent on forests than others, were - often in contravention of their legal utilisation rights - forced out of forests with little or no compensation, and with little or no land to go to or resources to live on.

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 councillors, let alone at higher political levels, and are thus administered and represented by members of non-government groups.

The aspirations of the indigenous peoples in the project area are simple: to live in peace with their neighbours, 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.

**Equal access to security:** As a result of their social discrimination, their legal titles are often not respected by their neighbours. 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 WKCDD/FD & NRM components and subcomponents on the indigenous peoples

In what follows, impacts on the Ogiek, Sengwer and other indigenous peoples which might result from the WKCDD/FD & NRM projects 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. 2: The potential impacts of WKCDD/FD & NRM on indigenous peoples**

Project activities as outlined in the PAD	Possible Impacts on indigenous peoples (☺>0 - ☹=0 - ☹<0) <sup>10</sup>
<b><i>WKCDD/FM Component 1. Community Driven Development</i></b>	
1.1 Enhanced capacity of targeted communities to prioritize, develop and implement socially accountable investments at the community level	☺☺ CDD Projects can be a very useful instrument to empower indigenous communities, contribute to poverty reduction, better protection of indigenous rights and culture, and enhanced relations between all people living in a given area and sharing natural resources such as water, forests etc. ☹ As the capacities of the IP are very low, there is a high risk that they are unable to elaborate project proposals, which fulfil the technical requirements of the CDD screening process and due to that not receive funding; thus that they not benefit from the CDD component. ☹ As the IP are marginalised in the decision making process and their specific needs unknown to decision makers, there is a high risk, that CDD-projects proposed by them do not receive funding. ☹ As the income of indigenous peoples is three times lower than of other rural populations, they might not be able to contribute the requested 30% to all activities financed by the CDD component. ☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that they are displaced and or lose their access to resources through CDD-projects proposed by other communities on IP' land and/or using IP' resources and/or not considering other adverse impacts on IPs.

<sup>10</sup> **Key for the potential impacts on the indigenous populations:** ☺☺ = significant positive impact; ☺ = limited positive impact, ☹ = no impact; ☹ = limited negative impact, ☹☹ = significant negative impact.

Project activities as outlined in the PAD	Possible Impacts on indigenous peoples (☺>0 - ☹=0 - ☹<0) <sup>10</sup>
1.2. Enhanced development investment planning and response mechanisms at the district and higher levels	<p>☺☺ The capacity building might also cover areas such as intercultural communication, which could lead to a better relation between governmental structures and the IPs and the development investments might provide benefits to the IPs (jobs, poverty alleviation, good governance, recognition of rights, land restitution etc.)</p> <p>☹ As the IP are marginalised, there is a high risk that they are not invited to participate in the capacity building and/or in the planning process and due to that not able to include their needs and interest into the reform and development agenda</p> <p>☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that they are displaced and or lose their access to resources through investments on IP' land and/or using IP' resources and/or not considering other adverse impacts on IPs.</p>
<b>WKCDD/FM Component 2. Flood Mitigation</b>	
2.1. Catchment management enhanced and sediment loads in rivers reduced by promoting sustainable land use practices in the project intervention areas	<p>☺☺ Catchment management can be a very useful instrument to empower indigenous communities to manage their resources in a sustainable way, protect indigenous land and user rights, contribute to poverty reduction, enhance relations between all people living in a catchment and provide long term benefits to the indigenous people through PES schemes.</p> <p>☹ As the IP are often not member of the WRUAs (Water Resource Users Associations), their needs and interests are not reflected to the same extend as others in the elaboration of catchment management plans and the identification of sustainable land use patterns to be promoted by the project.</p> <p>☹ As the income of indigenous peoples is three times lower than of other rural populations, they might not be able to contribute the requested 10% to all activities financed in the catchments.</p> <p>☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that they are displaced and or lose their access to resources through projects proposed by other communities on their land and/or using their resources.</p>
2.2. Vulnerability of the local communities to floods reduced through multi-purpose food management	There seems to be no indigenous peoples in the flood plains
2.3. Develop and institutionalize a proactive mechanism for alerting communities to flood threats to reduce the impact of floods	☹ As the IP are marginalised in society, there is a high risk that they are not included into the early warning system (employment or compensation for recording data or PES schemes)
<b>WKCDD/FM Component 3. Implementation Support</b>	
3.1. Support to Policy Analysis, Advocacy and Local Development	<p>☺☺ The enhancement of policies and the studies could provide the ground for a better protected of IP' rights, economies and might lead to their inclusion into the development process and the establishment of equal opportunities</p> <p>☹☹ As the IP are marginalised in the decision making process, their needs and interests are not reflected to the same extend as others in the planning and implementation of the studies etc; their needs might not be reflected and the IP not be able to benefit from this.</p>
3.2. Capacity build for effective M&E and project implementation	<p>☺☺ The capacity building might enable the IP to search and find ways to participate more actively in the decision making process and the inclusion of IPs in the group of beneficiaries of the project</p> <p>☹☹ As the IP are marginalised, there is a high risk that they are not invited to participate in the capacity building and or the M&amp;E system</p>

Project activities as outlined in the PAD	Possible impacts on indigenous peoples (☺>0 - ☹=0 - ☹<0) <sup>11</sup>
<b><i>NRM Component 1: Water Resource Management</i></b>	
1.1. Legislation harmonization and identification of priority investments	<p>☺☺ The enhancement of policies could provide the ground for a better protected of IP' rights, economies in the upper catchments and might lead to their inclusion into the development process</p> <p>☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that policies elaborated in this subcomponent don't reflect the IP' needs recognise the IP' rights etc.</p>
1.2. Promotion of sustainable land use practices in the project intervention areas esp. the Tana catchment and to reduce sediment loads in the rivers.	There seems to be no indigenous peoples in the operational area proposed for this activity.
1.3. Promotion of an optimal utilization of national irrigation potentials to attain food sufficiency and wealth creation	There seems to be no indigenous peoples in the operational area proposed for this activity.
<b><i>NRM Component 2: Management of Forest Resources</i></b>	
2.1. Support of the Forest Sector Institutional Reform, which transforms the forest department into a semi-autonomous service.	<p>☺☺ The enhancement of policies could provide the ground for a better protected of IP' rights, economies and culture, remedy for past injustice and lead to the establishment of equal opportunities.</p> <p>☹☹ As the IP are marginalised in the decision making process, their needs and interests are not reflected to the same extend as others in the decision making process etc and their needs might not be reflected.</p> <p>☹ As the capacities of the IP are very low, there is a high risk that they are unable to benefit from employment opportunities, which might arise from the creation of the Kenya Forest Service.</p> <p>☹☹ As the IP are marginalised in the decision making process and their rights not protected, they are considered to live "illegally" on state land. Due to that an enforcement of the unclear forest policies, which is interpreted in a way which does not allow human habitations in indigenous and gazetted forests, this support to the KFS might cause further evictions or loss of access to resources</p>
2.2. Provision of benefits from participating in protection and sustainable use of forests through the implementation of partnership arrangements.	<p>☺☺ Indigenous organisations within the CBD-process have identified the payment for environmental serves as a key activity to compensate and honour the IP for their sustainable utilisation of natural resources.</p> <p>☺☺ 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.</p> <p>☹☹ 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 partnership agreements.</p> <p>☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that they don't benefit from the new approach in forest management</p>

<sup>11</sup> **Key for the potential impacts on the indigenous populations:** ☺☺ = significant positive impact; ☺ = limited positive impact, ☹ = no impact; ☹ = limited negative impact, ☹☹ = significant negative impact.

Project activities as outlined in the PAD	Possible impacts on indigenous peoples (☺>0 - ☹=0 - ☹<0) <sup>11</sup>
2.3. Creation of an enabling and transparent environment for community and private sector investment in plantation and farm forestry	☺☺ Any support to community managed forests embodies the opportunity that the rights and needs of IP are recognised and that their forest based economy is enhanced. . ☹☹ As the IP are marginalised in the decision making process and their rights not protected, there is a high risk that they are displaced and or lose their access to resources through projects and measures proposed by other communities and/or enterprises on their land and/or using their resources.
<b><i>NRM Component 3: Livelihood-based Multisectoral Microcatchment Management Investments</i></b>	
Livelihood-based multi-sectoral micro-catchment management investments in the Upper Tana using a community driven development approach	There seems to be no indigenous peoples in the operational area of this component.
<b><i>NRM Component 4: Management and Monitoring and Evaluation</i></b>	
Project Implementation Support Elaboration of a resettlement policy, rehabilitation of livelihoods of people evicted from forests	☺☺ The resettlement policy to be elaborated here can assist indigenous peoples to be better protected against forced evictions ☺☺ The rehabilitation of livelihoods for those people being evicted from forests in the last years is an outstanding opportunity to safeguard the rights and livelihoods of indigenous peoples ☹☹ As the IP are neither involved in the decision making process nor represented at the level of project coordination, there is a high risk that they are not invited in the elaboration of the policy and might even not benefit from the rehabilitation of livelihoods component. Both would finalise their marginalisation, social discrimination and impoverishment.

In the following, these detailed impacts are clustered to derive the overall and cumulative risks and obstacles of the projects, which are then used to elaborate mitigation measures, which will stand at the centre of the Indigenous Peoples Planning Framework.

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 intergenerationally inclusive. Is it likely that the projects will achieve all this without a specific set of action? Certainly not! 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. 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 WKCDD/FD & NRM projects 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,
- 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 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
- lose their cultural and social identity.

To mitigate these risks is a direct contribution to allow the WKCDD/FM to achieve its objective: *“Empower local communities of men and women to engage in wealth creating activities, lower the incidence of poverty and reduce their vulnerability”* and an key requirement that the NRM is able to reach its expected outcome: *“Improve the management of water and forest resources for enhancement of local livelihood and national economy”*. In that line in what follows 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**

1. Neither the indigenous peoples nor the governmental services or service providers have an idea of how to incorporate the usufructural and traditional rights of the indigenous peoples in the modern legal system.
2. 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.
3. The forestry policy does not mention human settlements in indigenous, gazetted or protected forests and does not recognise traditional usufructural rights. Collective management of forest is possible according to the 2006 forest policy, but restricted to Community Based Organisations 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 foreseen within the component 2 of the NRM project. A large number of indigenous peoples have been evicted from forests without receiving any compensation or resettlement assistance.

### Mitigation measures:

1. 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' organisations 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.
2. Legal access to land is a prerequisite of sustainable resource management. The GoK recognises through the projects and in line with the draft land policy,<sup>12</sup> 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 neighbours and the land boards or not. This is well justified and underlines the role of this two projects as test-bed to harmonise 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 key to their livelihoods. This follows the gazettelement 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 neighbouring 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:*
  - a) *Undertake an inventory of the existing minority communities with a view to obtaining a clear assessment of their status and land rights; and*
  - b) *Facilitate the practice of their land tenure and resource management systems by providing a suitable legal framework”* (Draft land policy § 69-71).

The GoK will use the WKCDD/FM & NRM projects as policy test-beds and will

- hasten that the indigenous peoples in the operational areas obtain titles (letter of allotment, group ranches etc.) for the land they are presently occupying and using and will support all necessary steps (land survey and demarcation, registration and

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<sup>12</sup> The WKCDD/FM and the NRM projects will use the positions expressed in the draft land policy whatever the implementation status of this document is.

documentation) to provide all indigenous peoples in the project area with letters of allotment, group ranch titles etc.,

- hasten that the indigenous peoples in the operational areas get full access to the pending settlement schemes, and
  - not support any activities/subprojects in locations with ongoing/pending disputes and/or any unsettled claims with regards to land ownership of the indigenous peoples 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.
3. Legal access to forests and to natural resources is an important element of sustainable natural resource 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 WKCDD/FD & NRM projects 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 strategy. Where possible, the resettlement action 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 (i.e. the decommissioning of a dam or a protected area etc.),
  - consider the situation of December 30, 2002 (the day President Kibaki was sworn in) as baseline situation and cut off date, as the project preparation process for the various projects in the domain of sustainable natural resource management has started in January 2003; i.e. this means that the GoK recognises and protects the customary rights of indigenous peoples on all lands and forests they have occupied and/or used on December 30, 2002. Indigenous peoples, which have been displaced after December 30, 2002 are eligible to the full array of social safeguard mechanisms outlined in the OP

4.10 & 4.12 and mentioned above. The NRM project will establish through an open-minded and fully participatory option assessment a comprehensive strategy to rehabilitate the livelihoods of evicted indigenous peoples to the level of December 30, 2002. To enhance the knowledge base and streamline it with international policy processes, the GoK will commission a high level group of experts (senior international and Kenyan indigenous peoples' rights advocates and environment/forestry experts, representatives of Kenya indigenous peoples' organizations and the KFS) to carry out the open minded option assessment. As indigenous peoples are closely tied to land, forests, water, wildlife, and other natural resources, the Government of Kenya acknowledges that the physical relocation of indigenous peoples as well as an reduced access to resources is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods. Due to that, the option assessment will exploit to the extent possible the feasibility of reestablishing the indigenous peoples on their lands and in their forests. If this is not possible the NRM project will commission for each forest a resettlement action plan in accordance with international standards (World Bank OP 4.12 Involuntary Resettlement) to elaborate a land-based resettlement strategy, which is compatible with the indigenous peoples' cultural preferences. As many indigenous peoples are living presently at the roadside and with no access to land or livelihoods, a timely implementation is imperial.

- 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 30<sup>th</sup> 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’<sup>13</sup> to geographically distinct habitats or ancestral territories in the project area’ because of forced severance<sup>14</sup> remains eligible for coverage under this policy”* (OP 4.10, § 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:*

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<sup>13</sup> “‘Collective attachment’ means that for generations there has been a physical presence in and economic ties to lands and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. ‘Collective attachment’ also refers to the attachment of transhumant/nomadic groups to the territory they use on a seasonal or cyclical basis” (OP 4.10; Footnote 7).

<sup>14</sup> „‘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).

- a) *Establish mechanisms to resolve historical land claims arising in 1895 or thereafter;*
  - b) *Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolution;*
  - c) *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*
  - d) *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. In this context downstream benefits should be shared through PES schemes. 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.

The documented failure of the various structures to represent in the past the indigenous peoples, equally documents that governmental services, donor organisations and NGOs can not address the specific needs of indigenous peoples through the same channels as their farming and pastoralist neighbours. Based on a sensitive analysis of the differences in social organisation, 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 organisational hindrances prohibit till date the establishment of an equal representation of indigenous people in decision making bodies related to sustainable natural resource management:

#### **Technical Obstacles**

1. 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.
2. 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**

1. The projects will elaborate together with other relevant national research/training structures, governmental extension services and the indigenous peoples' organisations, based on the documented best practices, training curricula for the indigenous peoples on key topics related to sustainable resource management. Apart from the technical aspects of these training opportunities, special emphasis will be on the facilitation of mutual understandings of indigenous peoples and neighbouring communities. This might open the road to a new, more beneficial relationship.
2. The WKCDD/FM & NRM projects 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.

### **Organisational Obstacles**

1. 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.
2. Presently, the M&E frameworks of the projects have not been finalised. 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**

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

Also the best mitigation system, which offers indigenous peoples 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 organisations and in social sciences, which has not yet – and might never - result in a final solution. It is considered as best practice to provide sensitisations on the risks of the development process, assist indigenous peoples' organisations 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

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.

The main actors of this IPPF are the Office of the President (OP), the Ministry of Water and Irrigation (MWI) and the Lake Victoria North Water Resource Management Authority (LVNWRMA) – these three especially for the WKCDD/FM -, the Ministry of Environment and Natural Resources (MENR), the Ministry of Lands and Housing (MLH) and the Kenya Forest Service (KFS) – these three especially for the NRM -, the Kenya National Commission for Human Rights (KNCHR), the indigenous peoples' organisations, and the indigenous peoples themselves.

During a first phase until 12/2007, 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.

### 4.1. The IPPF for the WKCDD/FM project

**The Western Kenya Community Driven Development and Flood Mitigation 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 according to the definition quoted above), will be identified in all operational areas (the 10 districts of the CDD component and the three micro-catchments likely to be located within 6 additional districts - activity 2, see Draft ToR in Annex 7). The secondary screening will consist of a detailed social assessment undertaken for each of these indigenous communities (Activity 3; see Draft ToRs in Annex 8). This *modus operandi* will simultaneously assist the indigenous peoples in the project area to establish claims within the parallel national land restitution process proposed under the draft land policy, and fulfill the operational requirements of OP 4.10. 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 or claim land and/or resources (activity 4), 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 (see above) as rightly theirs.<sup>15</sup> For subprojects which do not in the first instance gain broad support from the affected indigenous peoples, the District Steering Group (DSG) (which decides on the funding of subprojects) 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 (activity 5; see draft ToRs in Annex 9). Taken together, the measures described above would ensure that negative impacts are avoided.

The project will 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 (activity 6); (b) IP communities will be given preferential treatment for subproject identification and funding (activity 6); (c) IP communities will be allowed the option of making the required community sub-project contribution in kind (activity 6; i.e. through labour or the supply of local materials); (d) IP representatives will be invited to sit in the DSG and decision-making bodies at catchment level (activity 7); and (e) appropriate participatory tools will be used to support IP capacity needs (see draft ToRs in annex 11).

As the objective of the WKCDD/FM is to “*empower local communities of men and women to engage in wealth creating activities, lower the incidence of poverty and reduce their vulnerability*”, the progress will be measured in view of the relevant indicators of the Millennium Development Goals (1= Reduced poverty; 2 = Reduced Food insecurity; 3 = Better access to school due to better incomes; 8 = Reduced prevalence of Malaria due to antimalaria CDD activities), which are an integral part of the projects M&E household survey. As the indigenous peoples are the most vulnerable and poor populations in the operational areas of the WKCDD/FM this indicator has been taken up in the result framework and is one of the indicators to measure project performance. The impacts of the activities outlined here and the project at large on the indigenous peoples will be documented with the help of a participatory impact monitoring (activity 8). It is believed that these activities are able to ensure full compliance of the WKCDD/FM with international standards such as the OP 4.10.

In the following a detailed action plan is provided:

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<sup>15</sup> As the WKCDD/FM will not work in gazetted and protected forests, its sister-project (NRM) will address forest related IP issues in the WKCDD/FM operational areas.

Indigenous peoples planning framework for the Western Kenya Community Driven Development & Flood Mitigation Project					
Issue	Activity	Responsibility	By When	Cost in US\$	Indicators
1. Training & sensitization of key actors	Training of staff from the relevant governmental structures (OP, MWI & LVNWRMA) and IP Organizations (IPO)	Social Safeguard backstopping mission (SSBM)	3/2007	10,000	The beneficiaries of this training are able to implement the IPPF
2. Screening	Carry out an inventory of IP communities in the operation areas Carry out training and provide backstopping	IPO SSBM	5/2007 5/2007	20,000 5,000	The inventory is available and accurate
3. Social assessment	Carry out social assessments for each identified IP group incl. a detailed land-use mapping Carry out training and provide backstopping	IPO SSBM	6/2007 6/2007	40,000 <sup>16</sup> 5,000	The report & the maps are approved by all stakeholders
4. Establish and operate an indigenous peoples screening mechanism	Carry out a sensitization campaign in all IP settlements in the operational area (OA) and facilitate the elections of representatives for the Indigenous Peoples Screening Structure (IPSS) Operational costs of the IPSS Training and Backstopping	IPO WKCDD/FM SSBM	12/2007 From 1/2008 Ongoing	20,000 320,000 <sup>17</sup> 45,000 <sup>18</sup>	All funded subprojects which used land or land based resources which have been identified in line with the draft land policy rightly as those of the IP, gained the broad support from the affected IP
5. Carry out IPP(s), if the need arises	If the inventory documents that the proposed dams might impact on the indigenous peoples: carry out IPPs Carry out training and provide backstopping	IPO SSBM	Together with the RAP	WKCDD/FM Comp.2.2.	The Indigenous Peoples Plans are accepted by the GoK, the World Bank and the IP
6. Enable the IP' communities to benefit from the CDD and catchment funds	Sensitize IP in OA Sensitize and train project personnel, service providers and other structures (MAT, DSG, , WRUA) Target IP' communities for PRAs to identify needs and solutions and include IP into PRA groups Assist IP' communities in the OA in applying for funds and implementing the projects Allow the IP to pay their contribution to subprojects in kind Assist the IP' communities in the OA to receive titles for their land, access to resettlement schemes etc. Provide Training and Backstopping	See 4 SSBM DSG, MAT IPSS DSG IPSS SSBM	See 4 3/2008 ongoing see 4 ongoing see 4 see 4	See 4 10,000 0 see 4 0 see 4 see 4	The living condition of the IP in the OA is significantly increasing in view of the household survey

<sup>16</sup> Assuming 2 groups = Sengwer & Ogiek. Each of the social assessments will cost USD 20,000.

<sup>17</sup> Assuming 8 districts with IP (8 IPSSs) with a financial need of USD 5,000 per year for per diem transport, material etc. = USD 40,000 per year for 8 years.

<sup>18</sup> It is assumed that the needed input is reducing over the years: For year 1 & 2 = 10,000 for year 3,4,5,6 = 5,000 and for the years 7&8 = 2,500.

Indigenous peoples planning framework for the Western Kenya Community Driven Development & Flood Mitigation Project					
Issue	Activity	Responsibility	By When	Cost in US\$	Indicators
7. Establish for the IP an equal access to decision making processes	Sensitization of all stakeholders	See 4 & 6	See 4 & 6	See 4 & 6	The PIM documents that the IP are satisfied with the IPPF implementation and the WKCDD/FM
	Election of representatives at all relevant levels	IPSS	See 4	See 4	
	Provide places for IP in all relevant committees etc. at national, water catchment and district level especially DGSs & WRUAs	WKCDD/FM	3/2008	0	
	Encourage IP to participate actively	IPSS	Ongoing	see 4 & 6	
	Provide the IP the possibility to address grievances	KNCHR	Ongoing	40,000 <sup>19</sup>	
8. Establish a participatory impact monitoring	Sensitization of the IP	See 4	See 4	See 4	•Regular, credible reports are produced on key indicators and milestones of the IPPF
	Training on methodology & quantitative research	SSBM	12/2008	10,000	
	Carry out an annual participatory impact monitoring starting from 1/2009 in all IP' communities in the OA	IPO	Ongoing	WKCDD C.3	
	Carry out an external evaluation of IPPF implementation and the PIM	SSBM	2009,2013	WKCDD Comp .3 <sup>20</sup>	

<sup>19</sup> As the grievance process will use existing infrastructures, the annual contribute to provide for communication etc. can be limited to 5,000 per year.

<sup>20</sup> The projects will commission this in the context of the general social safeguard supervision missions (WKCDD/FM Comp.3 & NRM Comp.4). It is expected that each mission will cost around USD 10,000 = USD 20,000 in total.

## 4.2. The IPPF for the NRM project

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). The project will ensure: (a) that present and past settlements, land use areas and cultural sites of indigenous peoples are comprehensively documented (activity 2; see draft ToRs in Annex 7 & 8); (b) that the indigenous peoples are well represented in all forest and resettlement related decision-making bodies and processes (activity 3); (c) that a comprehensive strategy to rehabilitate the livelihoods of evicted indigenous peoples is elaborated in an open-minded and fully participatory option assessment (activity 4; see draft ToRs in Annex 10); (d) that this strategy is implemented in a comprehensive and timely manner (activity 5); and (e) that the indigenous peoples are enabled to benefit from participatory forest management and reforestation (activity 6).

The Government of Kenya, recognizes that, given, their close association with land, forests, water, wildlife, and other natural resources, the physical relocation of indigenous peoples, or other measures which reduce their access to livelihood-related resources, has complex implications, and may entail significant adverse impacts on their identity, culture, and customary livelihoods. For these reasons, the option assessment will explore to the extent possible the feasibility of reestablishing access to land and land-based resources that are key to their livelihood. Where this is not feasible, the NRM project will commission for each forest a Resettlement Action Plan (RAP) in accordance with international standards (World Bank OP 4.12 Involuntary Resettlement). The RAP will include a land-based resettlement strategy, compatible with the indigenous peoples' cultural preferences.

The objective of the NRM project is to *“Improve the management of water and forest resources for enhancement of local livelihood and national economy”*. The key activities to achieve the social aspect of it are the rehabilitation of livelihoods of those populations, which have been displaced from forests and the forest related income generating activities. Progress will be measured in view of the Impoverishment, Risk and Reconstruction Model (World Bank 2002: Sourcebook resettlement). As the indigenous peoples are the most vulnerable and poor populations in the operational areas of the NRM project and have been significantly more often evicted from forests than other populations, this indicator has been taken up in the result framework and is one of the indicators to measure project performance. The effectiveness of the activities outlined here and the project at large on the indigenous peoples will be documented with the help of a participatory impact monitoring (activity 7). It is believed that these activities are able to ensure full compliance of the NRM project with international standards such as the OP 4.10 of the World Bank.

In the following a detailed action plan is provided:

Indigenous peoples planning framework for the Natural Resource Management Project					
Issue	Activity	Responsibility	By When	Cost in US\$	Indicators
1. Training & sensitization of key actors	Training of staff from the relevant governmental structures (MENR, MLH, KFS) and Indigenous Peoples' Organisations (IPO)	Social Safeguard backstopping mission (SSBM)	3/2007	10,000	The beneficiaries of this training are able to implement the IPPF
2. Social assessment	Carry out an inventory of IP communities in the operation areas together with the WKCDD/FM project	IPO	5/2007	WKCDD/FM	The report & the maps are accurate
	Carry out social assessments for IP' communities, which have been evicted from forests since Dec. 30. 2002 incl. a detailed land-use mapping & assessment of lost properties & livelihoods	IPO	6/2007	40,000 <sup>21</sup>	
	Carry out training and provide backstopping	SSBM	6/2007	5,000	
3. Ensure the participation of the IP in all decision making bodies	Carry out a sensitization campaign in all IP settlements in the operational area (OA) and facilitate the elections of representatives	IPO	12/2007	20,000	
	Ensure the participation of IP representatives in all forest and resettlement related committees, working groups and other decision making bodies	NRM	Ongoing	0	
	Provide funds to the elected IP representatives (IPR) to carry out consultations with the IP communities and participate in meetings	NRM	Ongoing	120,000 <sup>22</sup>	
	Training and Backstopping for IP representatives	SSBM	Ongoing	35,000 <sup>23</sup>	
4. Options assessment	Elaborate and agree on ToR	NRM, MENR, KFS, MLH & IPO	3/2007	5,000	The options assessment is acceptable to all stakeholders as a fair compromise and a thorough assessment of all options
	Set up High level commission		6/2007	5,000	
	Carry out consultations	High level commission	9/2007	50,000	
	Establish draft report	High level commission	10/2007	10,000	
	Workshop the draft report	High level commission	11/2007	25,000	
	Final Report	High level commission	12/2007	5,000	
5. Rehabilitate the level of livelihoods of evicted indigenous peoples following the recommendations of	Assist the evicted IP to return to their lands and forests or carry out resettlement action plans and implement the land based resettlement strategy taking into account cultural preferences	IPR	12/2008	NRM Comp. 4	The livelihoods of the evicted IP have reached pre-displacement levels plus an increase according to the increase of the GDP since they have been evicted.

<sup>21</sup> Assuming 4 evicted IP' communities and for each the social assessments will cost USD 10,000.

<sup>22</sup> Assuming 4 representatives with a financial need of USD 5,000 per year for per diem transport, material etc. = USD 20,000 per year for 6 years.

<sup>23</sup> It is assumed that the needed input is reducing over the years: For year 1 & 2 = 10,000 for year 3 & 4 = 5,000 and for the years 5 & 6 = 2,500.

Indigenous peoples planning framework for the Natural Resource Management Project					
Issue	Activity	Responsibility	By When	Cost in US\$	Indicators
the option assessment					
6. Enable the IP' communities to benefit from participatory forest management and reforestation	Sensitize IP in OA	See 3	See 3	See 3	The living condition of the IPs in the OA is significantly increasing in view of the household survey
	Sensitize and train project personnel, service providers and other structures (KFS etc.)	SSBM	3/2008	10,000	
	Include IP representatives in all relevant forest related activities (elaboration and implementation of PFMP etc.)	DSG, MAT	ongoing	0	
	Assist IP' communities in the OA to participate in these activities (creation of CBOs etc.)	IPR	see 3	see 3	
	Provide Training and Backstopping	SSBM	see 3	see 3	
7. Establish a participatory impact monitoring	Sensitization of the IP	See 3	See 3	See 3	<ul style="list-style-type: none"> <li>Regular, credible reports are produced on key indicators and milestones of the planning framework</li> </ul>
	Training on methodology & quantitative research	SSBM	12/2008	10,000	
	Carry out an annual participatory impact monitoring starting from 1/2009 in all IP' communities in the OA	IPO	Ongoing	NRM C.4	
	Carry out an external evaluation of IPPF implementation and the PIM	SSBM	2009,2013	NRM C.4 <sup>24</sup>	

<sup>24</sup> The projects will commission this in the context of the general social safeguard supervision missions (WKCDD/FM Comp.3 & NRM Comp.4). It is expected that each mission will cost around USD 10,000 = USD 20,000 in total.

Based on the measures elaborated here, it is assumed that the WKCDD/FM & NRM

- reduce poverty for all ethnic groups and lower the dependence on and degradation of natural resources,
- promote an effective management of natural resources, which offers benefits to the entire population and the biodiversity,
- foster the full respect for the dignity, rights and culture of the indigenous peoples,
- assure that the indigenous peoples receive culturally appropriate benefits equal to any other ethnic groups
- protect the indigenous peoples from suffering adverse effects, thus
- comply with international standards (OP 4.10).

## 5. Communication framework

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

- **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.
- **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 and the WKCDD/FM and the NRM at large.
- **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.
- **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.
- **be totally professional and committed at all times**.

- **not allow people to use the projects for selfish reasons.** There is always the risk that certain people take over a project to personalise 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.
- **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.
- **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 utilisation 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),
- 1 representative from the forest/water department,
- 1 representative from the department of social affaires,
- 5 elected representatives from the indigenous peoples' communities.

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.

To harmonise 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**

As the communication is mostly channelled 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 organisation 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**

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 maximise culturally appropriate benefits and provide space for the indigenous peoples' communities to voice their concerns.

The PIM will be based on the data gathered by the screening process/social assessments, the organisations 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 sensitisation and training of the indigenous peoples' communities. It is assumed that at least during the first year of the PIM (2008), the indigenous peoples' organisations 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.

The PIM reports at district level should be produced before June 30<sup>th</sup> of the years and then be returned to all indigenous peoples' communities for feedback etc. before being handed over to the DGS before August 30<sup>th</sup>. 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 30<sup>th</sup> through the project webpage, communicate them to the

World Bank task team and the interested public. 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 intergenerationally 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: Itinerary**

<b>Itinerary for the Elaboration of the IPPF</b>			
<b>Day</b>	<b>Date</b>	<b>Place</b>	<b>Activity</b>
1	24/11/06		Review of PAD and other literature
2	25/11/06		Review of PAD and other literature
3	26/11/06		Review of PAD and other literature
4	27/11/06		Elaboration of concept note
5	28/11/06		Elaboration of concept note
6	29/11/06		Elaboration of concept note
7	30/11/06	-Nairobi	Elaboration of concept note. Transport.
8	1/12/06	Nairobi	Discussion with M. M. Maalim (Permanent Secretary of the Ministry of Water and Irrigation) and the D. Mbugwa (Chief Conservator of Forests; Forest Department; Ministry of Environment and Natural Resources)
9	2/12/06	Nairobi-Kakamega	Discussion with national stakeholders. Transport
10	3/12/06	Kakamega	Discussions with the World Bank Team
11	4/12/06	Kakamega	Discussion with LVNWMA & Forest Service
12	5/12/06	Kakamega	Discussion with R. Gathii (Office of the President) and other representatives from the Government of Kenya
13	6/12/06	Kakamega-Nairobi	Discussion with the indigenous peoples of Mt. Elgon. Transport.
14	7/12/06	Nairobi	Elaboration of draft IPPF
15	8/12/06	Nairobi	Elaboration of draft IPPF
16	9/12/06	Nairobi	Elaboration of draft IPPF
17	10/12/06	Nairobi	Elaboration of draft IPPF
18	11/12/06	Nairobi	Elaboration of draft IPPF
19	19/12/06	Nairobi	Planning and preparation of IPPF workshop
20	20/12/06	Nairobi	IPPF workshop
21	21/12/06	Nairobi -	Finalisation of IPPF, Transport
22	22/12/06		Finalisation of IPPF
23	23/12/06		Finalisation of IPPF
24	24/12/06		Finalisation of IPPF

## **Annex 3: Peoples and organisations consulted**

### **Ogiek**

Charles Sena; Ogiek Peoples National Assembly; ([info@orip.or.ke](mailto:info@orip.or.ke))

Joseph Towett; Ogiek Peoples National Assembly & Ogiek Welfare Council ([ogieknet@cratornet.com](mailto:ogieknet@cratornet.com)).

Sarone ole Sena ([sarone\\_ole\\_sena@wvi.org](mailto:sarone_ole_sena@wvi.org)).

Daniel Kobei ; Ogiek Peoples Development Programme ([dkobei@yahoo.com](mailto:dkobei@yahoo.com); [opdp2001@yahoo.com](mailto: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); Kipkoech 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](mailto:ykiptumsengwer@hotmail.com); [yat.or@lycos.com](mailto:yat.or@lycos.com); [sengwer.idp@multitechweb.com](http://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](mailto:kipuri3000@yahoo.com))

Fisherpeoples Network: Mr. Mhuswala (0733-423706)

Indigenous Information Network: Lucy Mulenkie (020-2723958; 722914614; 733894080; [iin@iin.co.ke](mailto:iin@iin.co.ke)).

Centre for Minority Rights Development: Korrir Singoeie ([Korir.singoei@cemiride.info](mailto:Korir.singoei@cemiride.info); 722-776994)

### **Experts**

Scott Matter; McGill University ([scott.matter@mail.mcgill.ca](mailto:scott.matter@mail.mcgill.ca))

Julian Bauer; EcoTerra (0733-633000; [pjb@ecoterra.net](mailto:pjb@ecoterra.net))

**Annex 4: Participants IPPF Workshop****DISCUSSIONS ON INDIGENOUS PEOPLES PLANNING FRAMEWORK (IPPF)**

WORLD BANK, DECEMBER 20, 2006

NAME	TITLE/INSTITUTION	E-MAIL ADDRESS
D.R. MATHA	DAED / OOP - Arid Lands Project	dmath@aridland.go.ke
RUTH GATHII	FBAC	gathii@aridland.go.ke
Eng. P. Njumbi	NW & Irrigation	njumbi@aridland.go.ke
A. Wani Kipuru	Arid Lands Institute	aridlands@connect.co.ke
Fatuma S. Abdikadir	NPC / ALRMP / OOP	alrmp@afrioonline.co.ke
LUCH MULENKEI	Indigenous Information Network	iin@iin.co.ke / mulenkei@yahoo.com
Paul Kibet	Songweu Cherangani Hills Forests Con.	Paulkibet2005@yahoo.com
Nyambura Guthega	World Bank - Team leader WKCD/FM	ngithagui@worldbank.org
Tom Osiyo Mboya	World Bank - Mt. El Specialist	tom.osiyo.mboya@worldbank.org
Kipanjat Chesnyot	Orger Peoples Development Program	afrikanogriec@gmail.com / opdp2001@yahoo.com
Murini Mutuku	CEMIR DE	muhny@yahoo.com / korin@ingel@emirde.info

## **Annex 5: 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 6 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 Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project (see paragraphs 10 and 11);
- (d) the preparation of an Indigenous Peoples Plan (see paragraph 12 and [Annex B](#)) or an Indigenous Peoples Planning Framework (see paragraph 13 and [Annex C](#)); and
- (e) disclosure of the 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<sup>[11]</sup> appropriate to the social and cultural values of the affected Indigenous Peoples' communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits; and
- (c) provides the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation.

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

- (a) the findings of the social assessment;
- (b) the process of free, prior, and informed consultation with the affected Indigenous Peoples' communities;
- (c) additional measures, including project design modification, that may be required to address adverse effects on the Indigenous Peoples and to provide them with culturally appropriate project benefits;
- (d) recommendations for free, prior, and informed consultation with and participation by Indigenous Peoples' communities during project implementation, monitoring, and evaluation; and
- (e) any formal agreements reached with Indigenous Peoples' communities and/or the IPOs.

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

### ***Indigenous Peoples Plan/Planning Framework***

12. *Indigenous Peoples Plan.* On the basis of the social assessment and in consultation with the affected Indigenous Peoples' communities, the borrower prepares an Indigenous Peoples Plan (IPP) that sets out the measures through which the borrower will ensure that (a) Indigenous Peoples affected by the project receive culturally appropriate social and economic benefits; and (b) when potential adverse effects on Indigenous Peoples are identified, those adverse effects are avoided, minimized, mitigated, or compensated for (see [Annex B](#) for details). The IPP is prepared in a flexible and pragmatic manner, [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 [19] 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 ancestral territories occurring within the concerned group members' lifetime because of conflict, government resettlement programs, dispossession from their lands, natural calamities, or incorporation of such territories into an urban area. For purposes of this policy, "urban area" normally means a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of 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 7: Draft Terms of Reference for the first screening process**

### ***1. Background and Rationale:***

The Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FM) 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.

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 Cherangani 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 WKCDD/FM and the NRM projects to identify groups, which are in a "*structural subordinate position to the dominating groups and the state, leading to marginalisation and discrimination*" (the definition of "indigenous" used in line with the African Union in the IPPF).

### ***2. Objectives of the assignment:***

Screenings/social assessments are normally carried out for a set of activities/subprojects (OP 4.10) and not per geographic areas and/or per indigenous peoples' community, but the design of the two projects make this adjustment necessary. The first screening process, which is subject of this assignment, should identify all existing indigenous peoples' communities (following the definition used in the IPPF) in the districts covered by the projects (the 24 districts highlighted in the IPPF) and establish for the projects' operational areas in line with the Draft Land Policy (§ 71) "*an inventory of the existing minority<sup>25</sup> communities with a view to obtaining a clear assessment of their status and land rights.*"

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<sup>25</sup> 'Minority' is considered in the context of the project and the IPPF as to be synonym to 'indigenous'.

### **3. *Expected outcomes***

The expected result of this assignment is a report, which provides a short introduction to all ethnic groups in the operational areas of the two projects, which consider themselves or considered by other as “indigenous”, “minority”, “hunter/gatherer” etc. and discusses their living conditions in view of the criteria set up in the IPPF in general and verify in particular, if they can be considered as “*distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:*

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

For those groups, which are considered to fulfill these criteria, the report will provide a more detailed introduction to their history and establish a detailed list of all villages/sub-locations in which members of these groups are presently living. This includes the provision of contact details of representative/elder etc. with detailed contact addresses. The report will also provide evidences that all these information have been established in a participatory process with the indigenous peoples in free, prior and informed consultations.

### **4. *Conditions of the consultancy/task execution:***

#### *4.1. Duration of services:*

Start date for the contract: 01/02/2007

End date for the contract: 30/04/2007

#### *4.2. Payment*

The consultants will be compensated as follows:

- a) USD 10,000 as lump sum advance payment;
- b) USD 10,000 will be paid as lump sum payment after all deliveries have been accepted by the the social safeguard backstopping mission, the two projects, 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 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 report will be published and made available to all indigenous peoples communities in the operational areas of the projects as hard copy and through the general public through the project' web-page.

#### *4.5. Consultant qualifications:*

This assignment should be carried out by a network of NGOs, which include organizations of those indigenous peoples already identified (Sengwer Development Project & Ogiek Peoples Development Programme) as well as three organizations, which work at national level (Indigenous Information Network & Centre for Minority Rights Development) and regional level (African Union Sub-commission on Indigenous Peoples). An initial training and backstopping will be provided by the social safeguard backstopping mission (see their Draft ToRs in Annex 11).

## **Annex 8: Draft Terms of Reference for the second screening/social assessment**

### ***1. Background and Rationale:***

The Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FM) 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.

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 Cherangani 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 WKCDD/FM and NRM projects to identify groups, which are in a "*structural subordinate position to the dominating groups and the state, leading to marginalisation and discrimination*" (the definition of "indigenous" used in line with the African Union in the IPPF). Based on the outcomes of this first screening (see Annex 7) 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:***

In a second round of screening 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*<sup>26</sup> to geographically distinct habitats or ancestral territories in the project area' because of forced severance<sup>27</sup> 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 first screening. The social assessment will provide comprehensive information to the following 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.

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<sup>26</sup> "‘Collective attachment’ means that for generations there has been a physical presence in and economic ties to lands and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. ‘Collective attachment’ also refers to the attachment of transhumant/nomadic groups to the territory they use on a seasonal or cyclical basis" (OP 4.10; Footnote 7).

<sup>27</sup> „‘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: 01/05/2007

End date for the contract: 30/06/2007

##### *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 organisations 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 9: Draft terms of reference for consultations and the elaboration of indigenous peoples plans within the WKCDD/FM project**

### ***1. Background and Rationale:***

The Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FM) 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 WKCDD/FM project to identify groups, which are in a "*structural subordinate position to the dominating groups and the state, leading to marginalisation 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 WKCDD/FM 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 WKCDD/FM 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 WKCDD/FM project, 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 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 WKCDD/FM 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 response 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 10: Draft terms of reference for the option assessment on how to rehabilitate the livelihoods of evicted indigenous peoples**

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 NRM project will ensure: (a) that present and past settlements, land use areas and cultural sites of indigenous peoples are comprehensively documented (activity 2; see draft ToRs in Annex 7 & 8); (b) that the indigenous peoples are well represented in all forest and resettlement related decision-making bodies and processes (activity 3) and (c) that a comprehensive strategy to rehabilitate the livelihoods of evicted indigenous peoples is elaborated in an open-minded and fully participatory option assessment.

The Government of Kenya, recognizes that, given, their close association with land, forests, water, wildlife, and other natural resources, the physical relocation of indigenous peoples, or other measures which reduce their access to livelihood-related resources, has complex implications, and may entail significant adverse impacts on their identity, culture, and customary livelihoods. For these reasons, the option assessment will explore to the extent possible the feasibility of reestablishing access to land and land-based resources that are key to their livelihood.

### ***2. Objectives of the assignment:***

The objective of this assignment is to elaborate a comprehensive strategy on how the livelihoods of the indigenous peoples, which have been evicted after December 30, 2002 from forest in the operational areas of the NRM project, can be rehabilitated best.

### ***3. Expected outcomes:***

The expected outcome will be a case by case assessment of the various options on how to rehabilitate the livelihoods of the evicted indigenous forest dwellers. Among others, the options are: a) to reestablish access to land and land-based resources in the forests; b) to

provide land in the buffer zone of the forest and engaged the indigenous peoples into participatory forest management; c) provide similar lands and assets in other areas; d) provide different lands and assets (for instance in the new irrigation schemes) etc. The high level team of experts will provide a state of the art assessment of the sustainability of the various options and their social (using the Impoverishment Risk and Reconstruction Model), cultural and environment impacts. They will discuss the various options with the relevant governmental structures (Kenya Forest Service, Ministry of the Environment and Natural Resources; Ministry of Land and Housing; etc.) and the affected indigenous peoples to evaluate and document their preferences. The final outcome will be for each of the cases a detailed recommendation, which has been accepted by all stakeholders in free, prior, and informed consultations, on how to rehabilitate the livelihoods of the evicted indigenous peoples best in respect of the dignity, human rights, economies, and culture of the indigenous peoples and the needs of forest and biodiversity conservation.

#### ***4. Conditions of the consultancy/task execution:***

##### *4.1. Duration of services:*

Start date for the contract: 01/05/2007

End date for the contract: 30/12/2007

##### *4.2. Payment*

The consultants will be compensated as follows:

- a) USD xxxxx as lump sum advance payment;
- b) USD xxxxx will be paid as lump sum payment after all deliveries have been accepted by the NRM project, and the World Bank task team.

##### *4.3. Reporting requirements*

The consultants will work in close collaboration with the NRM project, the Kenya Forest Service, 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 and the World Bank Project Task Team. The consultants will make themselves available to respond to reviews of the draft reports by all stakeholders and will present a final report, incorporating the comments made.

##### *4.4. Disclosure*

The report will be published and made available to all affected 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:*

To enhance the knowledge base and streamline it with international policy processes, this assignment should be carried out by a high level group of experts: senior international and Kenyan indigenous peoples' rights advocates and environment/forestry experts, representatives of Kenya indigenous peoples' organizations and the KFS.

## **Annex 11: Terms of reference for the social safeguard backstopping mission for the WKCDD/FM & NRM projects**

The Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FM) 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.

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 WKCDD/FM 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 NRM 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' organisations. The rapid training need assessment in the context of the IPPF documented, that the technical and organisational 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' organisations 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 (WKCDD/NRM: Activity 1, 2.2, 3.2, 4.3, 5.2, 6.7 & 8.2; NRM : 1, 2.3, 3.4, 6.5 & 7.2) 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. (WKCDD/NRM: Activity 2.2, 3.2, 4.3, 5.2 & 6.7; NRM : 2.3, 3.4 & 6.5), 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: 01/01/2007

End date for the contract: 30/05/2015

**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 WKCDD/FM and NRM 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 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 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.