

ANNEX 8: SOCIAL SAFEGUARD STUDIES FOR TRANSMISSION LINES PPP PROJECTS

The objectives of the assignment will include:

- a) To screen the projects for potential socio-economic impacts and risks; and presence in the project area of Indigenous Peoples (IPs), also referred to as Vulnerable and marginalized Groups (VMGs) who meet the World Bank's OP 4.10 and the Article 260 of the Constitution of Kenya, 2010, criteria;
- b) To provide baseline information about the social, economic and cultural conditions in the project area.
- c) To identify, analyze and evaluate the type and extent of likely potential social impacts and risks as well as the significance, magnitude and distribution of beneficial or adverse effects of the proposed projects on the existing biophysical, socioeconomic and cultural components, including risks to, and impacts on the VMGs; and assess the capacity of the institution (Client) to manage the identified impacts and risks.

In line with the objectives outlined above, the assignment includes the following main activities:

- i. Prepare a detailed Resettlement Action Plan (RAP) study for each of the proposed lines following the principles of the ESIA.
- ii. Undertake a SA of each T-Line that has been confirmed by the ESIA to have impacts on VMGs
- iii. Based on the findings of the SA, prepare a Vulnerable and Marginalized Groups Plan (VMGP) for each T-Line that has been found to have impacts on the VMGs.

3.1 Justification for the RAP

- Involuntary resettlement if unmitigated, often gives rise to severe economic, social and environmental risks. It may lead to production systems being dismantled, people being impoverished when their productive assets or income sources are lost, people being relocated to environments where productive skills may be less applicable and the competition for resources greater, weakened community institutions and social networks, kin groups dispersed, and diminished or lost cultural identity, traditional authority and the potential for mutual help.
- This RAP will be prepared to ensure safeguards are in place to address and mitigate the impoverishment risks identified above. The scope and level of detail of the RAP (i.e. whether detailed or abbreviated) will be dependent on the magnitude of displacement and the complexity of the measures required in mitigating adverse social and economic impacts.
- The RAP study will be guided by the Constitution of Kenya (CoK) 2010 and requisite laws of the land, and also take cognizance of OP 4.12
- The RAP will only be done in Phase II, if the project is found viable and would be subsequently updated during the procurement phase of the project and implemented just after commercial close.

3.2 Objectives of the RAP Study

The purpose of consultancy is to prepare a Resettlement Action Plan (RAP) and Livelihood Restoration Plan (if found to be necessary) for each of the two T-Lines in line with the relevant laws of Kenya and the WB's Policy on Involuntary Resettlement (OP 4.12).

The objectives of OP 4.12 are:

- a) To prevent or minimize involuntary displacement whenever possible;
- b) To design and implement resettlement as a sustainable development program;
- c) To pay for lost assets at replacement cost;
- d) To restore peoples' capacity to earn a living and their community ties;

- e) Components necessary to realize project objectives are covered regardless of the source of financing;
- f) Resettlement costs are considered part of project costs.

3.2.1 Scope of the RAP Consultancy

In line with the objectives of OP 4.12 the RAP consultancy will include baseline socio economic data on the project affected persons (PAPs), actual census of the PAPs, nature of impacts on PAPs, categorization of PAPs based impacts on them, eligibility criteria for compensation, valuation of structures, crops/trees (where applicable) and total land affected, Entitlement Matrix, grievance redress mechanism (GRM) and a report detailing all these variables as well as a determination of the cut-off date.

Note: Should the consultant encounter groups that meet the criteria of OP 4.10 during the RAP preparation process, the OP 4.10 will apply in addition to OP 4.12.

3.2.2 Specific Tasks under the RAP consultancy

- a) Provide the project description and location
- b) Undertake Socioeconomic and cultural assessment/Baseline survey of the of affected population including:
 - A description of the pre-project situation of the project affected persons (PAPs);
 - Detailed household survey;
 - Size and characteristics of affected population, social and economic patterns; property held and legal basis of ownership;
 - A detailed description of the income streams of the PAPs that define their livelihood strategies;
- c) Carry out an Analysis of the Applicable Policy, Legal and Institutional Frameworks, including:
 - Identification and analysis of relevant national and international policies, legislation and regulations applicable to resettlement;
 - Analysis of the differences between the Kenyan laws and the WB's OP 4.12 in relation to resettlement;
 - Analysis of the Kenyan institutional frameworks for resettlement; □ Analysis of the country's property assessment/valuation methods.
 - Explore, in consultations with project affected communities, possibilities for voluntary land donations and the process to be followed for such donations, in case a project was to be located on community land.
 - Describe, in consultations with project affected communities, the nature/type of compensation for community owned land and the process to be followed to ensure the entire community benefits from such compensation
- d) Identify and evaluate potential impacts of the project including:
 - Components that cause displacement;
 - The zone of impact of the components or activities
 - Potential positive and adverse impacts;
 - Alternatives to prevent or minimize displacement, and/or restriction of access;
- e) Carry out a detailed socio-economic and census of the project affected persons – by location - on the entire trace of the line. The PAPs census should clearly identify:
 - All PAPs who may be physically displaced by the project, also referred to as project displaced persons (PDPs), including their details e.g. names, original National Identity card number, phone and physical contacts (street/estate, village, sublocation, location, District and County) and photograph;

- Vulnerable PAPs by gender and age, who may need special targeting for livelihood restoration or other forms of assistance including their details as well as explanation or description of their vulnerability and the kind of support that might be accorded to them.
- Standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels/income streams and income derived from both formal and informal economic activities) and standards of living, including education levels and health status of the displaced population

The detailed census will include the following information as appropriate:

1. Where physical displacement/relocation is anticipated: ☐
 - Number of owner households to be affected;
 - Number of renter households to be affected;
 - Number of informal occupant households to be affected.
2. Where land acquisition is anticipated:
 - Number of affected households with titles;
 - Number of affected households without titles;
 - Number of affected households losing more than 50% of their land; ☐ Number of affected households less than 30% of their land.
3. Where non-land economic displacement is anticipated:
 - Number of households to be affected;
 - Number of individuals to be affected by non-land economic displacement.

In all three cases above, and as appropriate:

- Total number of VMG households affected by the proposed project ☐ Total Estimated population of the VMGs present in the project area.
- f) Carry out a detailed Census and valuation of PAPs Assets including farm/commercial land, structures, crops, and trees.
- g) Census and valuation of land
- For each PAP, whose land is affected, provide (i) actual acreage of land to be taken by the transmission line way leave; (ii) total acreage of the PAP's land; (iii) a description of the nature of impact on the land and structures, i.e. whether whole or partial; (iv) details of the land affected in terms of type of tenure and land use patterns
 - For each PAP, whose land is affected: (i) conduct valuation of the affected strip and compute compensation values; (ii) provide type and methodology of compensation; (iii) preferred method of valuation with justification; and,
 - For each PAP, whose land is affected, provide the following information on the status of land ownership documents (i) information on whether the current land occupant is the registered land owner (ii) placed caveats (if any); (iii) disputes involving the land parcel if any, and their status (i.e. whether they are in court or not).
 - Provide actual values of the percentage parts of the parcels affected basing the values on 30 – 70% of the total market value of land where 30% is for the parcels with very minimal effect while up to 70% being for the parcels that are severely or totally affected.

Note: (i) The valuation estimates should be based on locational registration areas. (ii) eligibility of affected land must be confirmed by legal documents of ownership (squatters may be compensated for structures not for land).

h) Census and valuation of structures

- A detailed census and valuation of all affected structures, by type and nature, e.g. residential, institutional, communal or business structures, and whether made of permanent, semi-permanent or temporary materials, and the plinth area.
- i) Census and valuation of crops and trees
- A detailed census and valuation of affected crops and trees by type and level of maturity.
- Note: (i) For each affected asset provide details of the true owner, including names, gender and ID as a caption of the picture of the affected assets; (ii) For each of the affected assets, provide type and methodology of compensation preferred with justification.
- j) Prepare the PAPs Categorization/Classification and Compensation Entitlements due to each category of PAPs.
- Classification should be in the form of, e.g. Land, structures, Crops and Trees affected, Permanently Displaced Persons (PDPs) and PDPs with structures.
 - Provide a description of the eligibility criteria for each entitlement.
 - Prepare a livelihoods restoration plan (where appropriate) for each category of vulnerable PAPs.
- k) If necessary, prepare a Livelihood Restoration Plan
- l) Provide a cutoff date to prevent “rent seeking”.
- m) Propose the institutional arrangements for the implementation of the RAP. This should clearly identify all stakeholder institutions at all levels that are responsible RAP implementation as well as assign implementation roles and responsibilities to each.
- n) Prepare a Grievance Redress Mechanisms (GRM), developed in consultation with the PAPs and other project stakeholders.
- o) Propose a capacity building strategy ensuring effective and smooth implementation of the RAP
- p) Prepare a detailed budget estimate for the whole resettlement action plan inclusive of costs of structures, land, livelihoods restoration, capacity building and monitoring of the project.
- q) Prepare the RAP Implementation timetable (linked to the underlying project)
- r) Propose a follow-up or monitoring system
- s) Propose the RAP evaluation system
- t) Clearly document the consultation that occurred during RAP preparation including:
- a summary of the views expressed by PAPs and other stakeholders;
 - how the views were taken into account in the RAP;
 - the alternatives presented to PAPs and their views on the same.
- u) Propose a consultation strategy to be employed during the RAP implementation to ensure the active involvement and participation of PAPs and a process for the engagement of other stakeholders.
- v) Resettlement Measures: These include:
- An Entitlement Matrix prepared in line with both the GOK laws and regulations, and the WB’s OP 4.12. The entitlement Matrix should clearly present the categorization/classification of affected assets and eligibility and compensation entitlements, that will assist each category of eligible PAPs to achieve the RAP objectives. Classification should be in the form of, e.g., land only affected; structure only affected; land and structure affected, crops only affected and trees only affected. Permanently displaced persons PDPs and PDPs with structures, etc. For PAPs whose livelihoods are land-based, preference should be given to land-based resettlement strategies. Such strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Note that:
 - o Whenever replacement land is offered, PAPs are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, or the provision of land would

adversely affect the sustainability of a park or protected area, or sufficient land is not available at a reasonable price, then non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.

- o Payment of cash compensation for lost assets may be appropriate where: (a)

livelihoods are land-based, but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; or, (b) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or, (c) livelihoods are not land-based. In any of these cases, cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

- Should the study affirm that there will be involuntary taking of land resulting in: (a) relocation or loss of shelter; (b) loss of assets or access to assets; or (c) loss of income sources or means of livelihood, whether or not the affected persons must move to another location, then in line with the World Bank's policy on involuntary resettlement, OP 4.12, the RAP consultant will:
 - o Ensure that the displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.
 - o Ensure that appropriate and accessible grievance mechanisms are established for these groups in consultation with them. [1] [SEP]
 - o Propose measures to ensure that, in new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the displaced persons and host communities.
 - o Propose measures to ensure that alternatives or similar resources are provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).
- Propose measures to ensure that patterns of community organization appropriate to the new circumstances are based on choices made by the displaced persons. To the extent possible, the existing social and cultural institutions of PAPs and any host communities are preserved and PAPs preferences with respect to relocating in preexisting communities and groups are honoured. [1] [SEP]
- For each of the affected assets, provide type and methodology of compensation preferred, with justification.

3.2.3 Methodology for RAP Preparation

The TA shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies to be used in the preparation of the RAP, including survey/census instruments. These will include but not be limited to:

- Literature review, including among others, the review of the feasibility study reports; the Kenyan policies, legislations regulations governing resettlement, the WB's OP 4.12
- Free prior and informed consultations with the PAPs;
- Focused Group Discussions that are gender and intergenerationally inclusive;
- Proof of the consultation process (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions).

3.3 Social Assessment in relation to Vulnerable and Marginalized Groups

3.3.1 Background and Objectives of OP 4.10

The project has triggered the WB's Operational Policy (OP 4.10) on Indigenous Peoples, this policy is triggered when it is known that VMGs are present or are likely to be present in the project area. The term VMG refers exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:

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

In Kenya, the groups of people who meet the above criteria are referred to as Vulnerable and Marginalized Groups (VMGs) and include the hunter/gatherer and pastoralist communities in accordance with the World Bank's OP 4.10 and Article 260 of the Constitution of Kenya, 2010.

The objective of OP 4.10¹ is to ensure that:

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

3.3.2 Objectives of the Social Assessment (SA)

In line with the objectives of OP 4.10, the project will prepare site specific Social Assessments (SA) to evaluate the project's potential positive and adverse effects of the project on the VMGs, in the project areas of each T-Line – where VMGs are present – and to examine project alternatives where adverse effects may be significant. The findings of the SA will inform project design and the preparation of Vulnerable and marginalized Groups Plans (VMGPs).

The SA will be conducted through free, prior and informed consultations (See Note at the end of this ToR) with the affected VMGs – leading to their broad support for proposed project. The specific tasks of the SA will include:

1. Identifying the Project's potential positive and adverse effects on VMGs. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected VMGs, given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, in which they live.
2. Gathering and analyzing baseline information including social, cultural, economic and legal contexts of the project in relation to VMGs:
 - i. Social: Are VMGs integrated into the larger society? Are they separate? If separate, is it voluntary or involuntary isolation? How are they vulnerable or marginalized? Do they have access to social services?)

- ii. Cultural: Do VMGs maintain own cultural practices? Is there any conflict with the Government about cultural heritage/practices? Is their culture/language at risk of dying out due to assimilation? Is assimilation acceptable to them?) Do VMGs in the TLine have any tangible and/or intangible cultural heritage (structures, historical sites, sacred sites, artifacts, music, storytelling, poetry) that may be affected (positively or negatively by the project?
 - iii. Economic: population/demographic statics of the VMGs in each site; education levels of the VMGs; the VMGs livelihood strategies? Whether their livelihoods are dependent on land and or other natural resources, and if so, which ones? Whether their livelihoods are changing, and if so, how? Are they moving from rural areas to urban areas? Are they economically vulnerable? What are the practical implications of their vulnerability? Formal and informal employment sectors for the VMGs; Opportunities for improved sustainable livelihoods?)
 - iv. Legal: What are the international agreements that Kenya has signed and ratified that relate to VMGs? What does the Constitution of Kenya, 2010, say about VMGs? What are the national laws and regulations that are applicable to VMGs, e.g. do they have any special rights or protections in law? Are the natural resources on which they depend as well as their language and cultures recognized and protected by law?
 - v. Institutional: What kind of institutions do the IPs have that are distinct from those of the government? Do they have rights to govern certain institutions, such as a local council, school, hospital, economic development entity? Do they have special control of natural resources, such as forests, fisheries, water or land areas? How is the government/VMGs relations?
3. Based on item 2 above, identifying key project stakeholders and analyze their roles in the project.
 4. Based on 1-3 above, making recommendations to inform the project design
 5. Make recommendations to inform the preparation of Vulnerable and marginalized Groups Plans, including the following as appropriate:
 - i. Site specific culturally appropriate development measures, and,
 - ii. Measures to minimize, mitigate, or compensate the adverse effects, and to ensure that the VMGs receive culturally appropriate benefits under the project.
 6. Clearly document the consultation process with VMGs during the SA, including positive and negative views as well as the outcomes from the consultations leading to their broad support for the project
 7. In consultation with the VMGs, elaborating a culturally appropriate process for free, prior and informed consultations with them at each stage of the project preparation and implementation. (See Note below).
 8. Arrangements for the disclosure of the SA.

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

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

3.3.3 Methodology for undertaking the SA

The consultant shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies – in line with the free, prior and informed consultations process

requirements – to be used in undertaking the SA, including study instruments. These will include but not be limited to:

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

3.4 Vulnerable and marginalized Groups Plan (VMGP)

The objective of OP 4.10 is to contribute to the World Bank’s mission of poverty reduction and sustainable development by ensuring that:

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

Note: The VMGP will be based on the outcomes of the SA and will therefore be prepared after the conclusion of the SA for each site/T-Line where VMGs are present.

3.4.1 Purpose of the Vulnerable and marginalized Groups Plan (VMGP)

To enable KETRACO comply with the objectives of OP 4.10, the consultant will prepare a Vulnerable and marginalized Groups Plan (VMGP) for each of the T-Lines where VMGs are present, in accordance with the findings and recommendations of the Social Assessment. The purpose of the VMGP is to ensure that VMGs receive social and economic benefits under the project, that are culturally appropriate, and, that measures are put in place for avoiding, minimizing, mitigating, or compensating any adverse effects on the VMGs that may have been found by the SA.

The specific tasks in the preparation of VMGPs will include a summary of the findings of the SA, including:

1. Summary of the legal and institutional framework applicable to VMGs;
2. Summary of the baseline information on VMGs;
3. Summary results of the free, prior and informed consultation and broad community support during the SA and a framework for such consultations during project implementation;
4. A time bound and achievable Action Plan of measures for ensuring culturally appropriate social and economic benefits for VMGs, and/or for avoiding, minimizing, mitigating or compensating them for adverse effects. The Plan should be proportional to the specific context of proposed project, its benefits, social impacts and risks, and the circumstances of affected VMGs as identified by the SA;
5. An accessible and robust grievance redress mechanism (GRM) to be applied during the project implementation. The GRM should take into account the availability of customary dispute settlement mechanisms among the VMGs as well as the Kenyan judicial recourses for dispute resolution;
6. Cost estimates for the action plans) and a financing plan;

7. Arrangements for the disclosure of the VMGP;
8. An appropriate plan for monitoring, evaluating, and reporting on the implementation of the VMGP. The monitoring and evaluation plan should include arrangements for the free, prior, and informed consultation with the VMGs at every stage of the VMGP implementation

3.4.2 Methodology for preparing the VMGP

The VMGP will be prepared through meaningful consultation with VMGs in line with the free prior and consultation process requirements. In this regard, the consultant will ensure that the VMGs are actively and meaningfully involved in the identification of sustainable social and economic development measures that are culturally appropriate to them and/or for avoiding, minimizing, mitigating or compensating them for adverse effects (where applicable). In this regard, the consultant shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies – in line with the free, prior and informed – to be used in the preparation of the VMGP.

Proof of the consultation process with VMGs, (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions) as well as a clear documentation a presentation of any positive and negative views that may have been expressed and how these have been taken into consideration in the VMGP.

REPORTS

The Consultant will prepare the following reports in relation to the RAP:

No	Output
1.	An Inception Report that presents a clear description of the understanding of the assignment, methodology to be used in undertaking the assignment, and, a detailed work plan for undertaking the assignment
2.	A Draft RAP report A Draft SA VMGF report that clearly outlines: <ol style="list-style-type: none"> a) The steps followed by the consultant in the preparation of the VMGP; b) Detailed information on each of the items in section III above; c) A summary of the key outcomes of consultations with VMGs;
3.	<ol style="list-style-type: none"> a) A final RAP report that has incorporated comments from the client b) SA and VMGP report that has incorporated comments from the Client.
4.	<p>Annexes will be included as appropriate, including but not limited to the following:</p> <p>For RAP:</p> <ol style="list-style-type: none"> i. Minutes of consultation meetings ii. Detailed outcome of the consultation process iii. Photo gallery for the consultation process iv. Land values per location along the transmission lines v. GPS coordinated of each land parcel and structure within the wayleave corridor <p>For SA and VMGP</p> <ol style="list-style-type: none"> i. Detailed outcomes of the consultation process with VMGs along the relevant T-Lines or their representative organizations; ii. Photo gallery of the consultation process with VMGs or their representative organizations; iii. List of participants consulted for the preparation of the VMGP (with signatures); iv. VMG/Stakeholders Consultation Plan v. Social screening form;

	vi. Social Assessment ToR;
	vii. ToR for preparation of VMGPs (inclusive of the content of VMGP)

Format and outline of Resettlement Action Plan

The TA should revise the RAP to confirm to the format prescribed by the World Bank OP4.12 as follows:

1. Executive Summary
2. Introduction
3. Project Description
4. Minimizing Resettlement
5. Legal Framework
6. Participation and Consultation
7. Census and Socioeconomic Surveys
8. Vulnerable Groups or Persons
9. Eligibility Criteria and Cut-off date
10. Project Impacts and Entitlement Matrix
11. Valuation Criteria
12. Livelihoods Restoration
13. Resettlement Sites
14. Host Communities
15. Grievance Redress Mechanism
16. Organization and Institutional Arrangements for RAP implementation
17. Monitoring and Evaluation of RAP implementation
18. Implementation Schedule
19. Cost and Budgets
20. References
21. Annexes