



Dairy Interventions for Mitigation and Adaptation (DaIMA)

Funding Proposal

Annex 6b: Indigenous Peoples Planning Framework (IPPF)

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Acronyms

ACRWC	African Charter on Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples Rights
AE	Accredited Entity
AMA	Accreditation Master Agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CH ₄	Methane
CRC	Convention on the Rights of the Child
CRDP	Convention on the Rights of Persons with Disability
DaIMA	Dairy Intervention for Mitigation and Adaptation
FPIC	Free Prior and Informed Consent
GCF	Green Climate Fund
GHG	Greenhouse Gas
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IFAD	International Fund for Agricultural Development
IP	Indigenous Peoples
IPPF	Indigenous Peoples Planning Framework
IPP	Indigenous Peoples Plan
L-FFS	Livestock Farmer Field Schools
SMEs	Small and Medium Enterprises
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

1. Justification for an IPPF for the DaIMA Project

Recent developments in the field of International Human Rights have underscored and further clarified the right to participation to suit Indigenous Peoples' unique context and situations. The expansion aims to address historical injustices and is partly a result of the realization of apparent and deepening power imbalances and information asymmetries underlying Indigenous Peoples' interactions with other actors such as States, transnational corporations and increasingly, international non-governmental organizations and UN Agencies working in the area of development. Accordingly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was passed by the UN General Assembly in 2007, introduces Free Prior and Informed Consent (FPIC)¹, a right closely connected to the right to participation, but applicable only to Indigenous Peoples as a group or collective right.

While FPIC is widely understood as an environmental and social safeguard aimed at protecting Indigenous Peoples from negative impacts of interventions, International Fund for Agricultural Development (IFAD) and Green Climate Fund (GCF) take it beyond protection. For IFAD and GCF, FPIC is understood and practiced from the angle of co-designing. It is seen as an opportunity to engage Indigenous Peoples as partners, ensuring that development projects are built on the experiences, knowledge, understandings, and initiatives of Indigenous Peoples.

Since there is no universally agreed procedure for conducting FPIC, its success depends largely on adherence to the principle of good faith. This classical International Law operational principle can be demonstrated in practical terms by strictly adhering to all the three components or qualities of consent, namely Free, Prior, and Informed. In this context, free means voluntary, not clouded with pressure or threats or corruption.

Prior means the consultation process should begin as soon as feasible in the circumstance, but strictly before any harmful activity is implemented. Harm in this

¹ Article 32(2) provides for example that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands and territories and other resources, particularly in connection to the development, utilization or exploitation of mineral, water or other resources. See the United Nations Declaration on the Rights of Indigenous Peoples, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

context bears a wide interpretation to include both physical, emotional, or spiritual. Consent connotes some autonomy that Indigenous Peoples have and speaks to the quality of the consultation process- not as a mere 'box checking' exercise, but one encompassing the right to refuse or object the proposed project for which their consent is sought considering that good faith is key.

Accordingly, objectives of FPIC are Firstly, to ensure the positive engagement of local residents and the adequate participation of youth, women and other vulnerable groups in the programme. Secondly, to prevent adverse impacts, or when avoidance of such impact is impractical, minimize, mitigate, or compensate for these impacts in accordance with the agreement of local residents. Thirdly, to tailor benefits in a gender-responsive and culturally appropriate manner.

To sum up, DaIMA implementation will be guided by an understanding of FPIC as constituting the following cardinal aspects.

- Free-Independent decision-making process.
- Prior: Right for Indigenous Peoples to undertake their decision-making process regarding any project concerning them before its implementation.
- Informed: Right to be provided with sufficient information for decision-making.
- Consent: Collective and independent decision of impacted communities after undergoing their own decision-making process.

Based on the above, and to safeguard against existing information asymmetry, the principle of good faith thus animates implementation of FPIC and requires the involvement of multiple actors in the consultation process. They may include independent experts and academics with interest in Indigenous Peoples' issues as well as educated members of the indigenous groups in question. This can be contrasted from efforts to take advantage of indigenous elders' lack of technical knowledge in certain emerging areas such as biotechnology or geographic information systems for example, compounded by using languages that are foreign to Indigenous Peoples, or the use of disciplinary jargons, when interacting with Indigenous Peoples.

According to the Funding Proposal, DaIMA will be implemented in four countries namely Kenya, Rwanda, Tanzania and Uganda. These countries are home to communities that self-identify as Indigenous Peoples, comprising mainly pastoralists and hunter gatherers. A conceptual relationship between pastoralists and indigenous peoples in the DaIMA project countries is noteworthy. While the countries have several groups of pastoralists, not all pastoralists are indigenous peoples based on international human rights law clarification of the term as adopted by the African

Commission on Human and Peoples Rights (Please see section 3.1 of this IPPF on recognition of indigenous peoples in Africa). For the purpose of DaIMA implementation, indigenous pastoralists include the Karamajong of Uganda and the Maasai of Tanzania. The presence of these groups justifies the need for the IPPF.

Guided by IFAD and GCF Policies and their commitment to co-designing projects with Indigenous Peoples, the present Indigenous Peoples Planning Framework (IPPF) is thus developed for the DaIMA Project which will be implemented in countries with Indigenous Peoples.

Specifically, the IPPF underscores GCF's commitment to Indigenous Peoples engagement as reflected in the GCF Indigenous Peoples Policy and its operational guidelines. In terms of contents, this IPPF is developed pursuant to paragraph 24 (a) to (g) of the GCF's Operational Guidelines on Indigenous Peoples. The paragraph in question requires preparation of an IPPF where the activities proposed for financing will be implemented in areas inhabited by indigenous peoples or lands for which Indigenous Peoples have collective attachment.

The remainder of the present IPPF is structured as follows: Part B briefly introduces the DaIMA Project. Part C describes the Indigenous Peoples in the Project countries by foregrounding the contextual application of the concept of Indigenous Peoples in Africa followed by a brief discussion of who Indigenous Peoples are in each of the four Project countries. Part D relates to the legal frameworks for the protection of Indigenous Peoples' rights. Part E reviews potential negative and positive impacts of the DaIMA project on Indigenous Peoples. Part F maps the use of FPIC across the DaIMA Project implementation. Part G contains the Institutional arrangement for the implementation of the DaIMA Project. Part H covers monitoring and reporting arrangements while disclosure arrangements are contained under Part I.

2. DaIMA Project-An overview

1. The objective of the DaIMA is to improve the resilience and sustainability of dairy production in East Africa while reducing GreenHouse Gas (GHG) emissions related to dairy farming. It envisages to guide smallholder dairy producers and private sector value-chain operators on a transformational path to a low-emission and climate-resilient dairy sector. As part of this transformation, dairy production and value chains will be streamlined for maximum efficiency,

financial services will be opened up to dairy producers, and the sector's institutional framework will be enhanced. DaIMA will thus foster an enabling policy, institutional, and service delivery environment that facilitates the transformation of East Africa's dairy sector towards increased productivity, climate resilience, and reduced emissions intensity.

2. Specifically, DaIMA aims to address the following challenges: (i) strengthening climate resilience, (ii) reducing emissions across the dairy value chain; (iii) the reduction of GHG emissions per kg of milk; and (iv) improving the livelihoods of dairy farmers in East Africa. Achieving these aims requires a holistic approach to improving all aspects of the dairy sector, from improving policy, institutional and service delivery environments to building the capacity of smallholder farmers. It also includes measures to facilitate access to finance and innovative technologies with mitigation and adaptation benefits.
3. As a result, DaIMA will inspire dairy farmers and processors to adopt more efficient, climate-resilient practices that will increase incomes, reduce production costs, and help combat climate change. Central to DaIMA's transformative approach is the symbiosis of private sector support and financial access within the dairy sector. This integration aims to foster market growth while promoting climate resilience and reducing GHG emissions. DaIMA thus aims to achieve the following three Outcomes
 - **Outcome 1:** Systemic and institutional capacities in the livestock sector are strengthened to enable smallholder dairy farmers and local value chain actors to reduce CH₄ and other GHG emissions.
 - **Outcome 2:** Smallholder dairy farmers and private sector value chain operators can envision a low-emission, climate-resilient, and sustainable pathway through increased production and market knowledge and tools.
 - **Outcome 3:** Smallholder dairy farmers and local private sector value chain actors have access to the financial services needed to make the necessary transition to low-carbon, climate-resilient, and sustainable livestock production and value chain development.

Achievement of the above outcomes is subject to the following assumptions, including: (i) the willingness of dairy farmers and pastoralists to adopt new technologies and practices that increase the incomes and climate resilience of their

production system; (ii) the commitment of governments to reduce GHG emission from livestock in line with international commitments and national strategies; (iii) socio-cultural barriers do not prevent women and youth from participating in Livestock Farmer Field Schools (L-FFS) and practicing new techniques.

Other assumptions include (iv) farmers' organizations and cooperatives that have established good governance and financial management systems; (v) financial service providers that voluntarily serve customers with different characteristics from conventional customers; (vi) dairy cooperatives, Small and Medium Enterprises (SMEs), processors and other stakeholders are able and willing to take risks related to loans; (vii) technologies adopted after establishing local supply chains, distribution networks and after-sale support services.

Considering that Project countries are also home to internationally recognized Indigenous communities, an additional but cross-cutting assumption is that the project will be implemented in a form that is culturally appropriate to indigenous peoples, in line with the GCF Indigenous Peoples Policy, which provides in part:

"...Indigenous Peoples often have identities and aspirations that are distinct from mainstream groups in national societies and are disadvantaged by transnational models of mitigation, adaptation and development. In many instances, they are among the most economically marginalized and vulnerable segments of the population. The economic, social and legal status of indigenous peoples frequently limit their capacity to defend their rights to, and interest in, land, territories and natural and cultural resources and may restrict their ability to participate in and benefit from development initiatives and climate change actions. In many cases, they do not receive equitable access to project benefits, or benefits are not devised or delivered in a form that is culturally appropriate, and they are not adequately consulted about the design or implementation of activities that would profoundly affect their lives or communities."²

In the next part of this IPPF, a description is given of communities that self-identify as Indigenous Peoples in the project countries.

² See Paragraph 3 of the GCF Indigenous Peoples Policy.

3. Understanding Indigenous Peoples in the DaIMA Project Countries

To understand the Indigenous peoples in each of the four DaIMA project countries, it is informative to provide an overview of recognition of Indigenous Peoples in Africa. The aim is to provide a clearer “big picture” view of the state of indigenous peoples in the project area, within the broader context of public policy discussions and developments of indigeneity in Africa and in the four DaIMA project countries.

3.1. Recognition of Indigenous Peoples in Africa

Reference to the African Charter on Human and Peoples Rights (the African Charter) is central to appreciating who indigenous peoples in Africa, including in the DaIMA Project countries are. The African Charter establishes the African Commission on Human and Peoples Rights (the African Commission) and tasks it to supervise the African Charter’s implementation. In line with this mandate, the African Commission has for decades engaged in discussions on the human rights situation of African communities on the margin (mostly hunter-gatherers and nomadic pastoralists) that self-identify as Indigenous Peoples. These communities also constitute the most vulnerable and highly marginalized groups in the continent. They live in remote areas, and have *inter alia*, linguistic barriers and lack formal education, making it hard for them to effectively participate in development planning and other public affairs of their respective countries.

A watershed moment was 2001. In that year, the African Commission formed a Working Group on the Right of Indigenous Populations/Communities to advance and coordinate the discussions featured prominently in meetings of the Commission. Based on extensive research and consultations, the Working Group issued a report, which is considered as “a highly important instrument for the advancement of indigenous populations’ human rights situations”³ in Africa. Launched in 2004, the report confirms that indeed there are Indigenous Peoples in Africa.

Significantly, the report provides that (unlike in jurisdictions such as Canada, New Zealand, Australia, and the United States where indigeneity is assessed in terms of land occupancy prior to colonialism), the term Indigenous Peoples in the African

³ As envisaged during its adoption, the report has facilitated constructive dialogue between the Commission and member states and has served as a platform for the commission’s activities on promotion and protection of human rights of indigenous populations.

context puts more emphasis on continued marginalization in line with the modern analytical and emancipatory connotation of the term. The question of aboriginality or which community was the first to occupy which part of the continent is therefore irrelevant and undesirable in understanding who Indigenous Peoples are in Africa.

The African Commission Report clarifies that communities that self-identify with the concept aim to showcase the structural relationships of inequality that have persisted after liberation from colonial dominance, mainly attributed to the communities' traditional livelihoods and land holding systems that are at variance with public policy priorities of most African countries.⁴ Generally, African communities that self-identify as Indigenous Peoples have disproportionately experienced and continue to experience subjugation, marginalization, dispossession, exclusion, or discrimination based on different cultures, ways of life or modes of production than the national hegemonic or dominant model.⁵ They strive to maintain traditional livelihoods, culture and spiritual connection that intricately depend on communal ownership of land and natural resources, in the face of strong opposing forces that put primacy on modernization and individual land ownership.

Based on the above, indigeneity in Africa has semblance with characteristics of indigenous peoples provided under 14 of the GCF IPP. They include self-identification; collective attachment to a geographically distinct habitat; customary, political and economic systems that are distinct from the mainstream communities and possession of a distinct language or dialect.

Accordingly, the African Commission (the intergovernmental organization charged with the protection and promotion of human rights on the continent) has settled the debate on whether there are indigenous peoples in Africa, at least conceptually. The practical importance of its report hinges on the report's adoption by the African Union. It is therefore correct to say that the report is an official document for African Governments. Contemporarily, the concept of Indigenous Peoples has gained momentum largely as an international legal platform that enables claimant communities to seek justice as well as treatment that is responsive to their spirituality, communal land ownership, and distinctive and vulnerable status compared to other mainstream communities.

⁴ Ibid p. 92

⁵ See Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, IWGIA and ACHPR, 2005 p. 92-92

Indigenous Peoples of Africa (like Indigenous peoples elsewhere) do not agitate for special rights or treatment but insist on conditions that enable them to exist as distinct groups. Absent deliberate efforts such as the ones that this IPPF embodies, Indigenous Peoples in the DaIMA Project countries may not receive project benefits. The present IPPF thus aims to comment on how the DaIMA project will be delivered in a form that is culturally appropriate to the Indigenous Peoples though adequate consultation regarding activities that would profoundly affect their livelihoods. Paragraphs that follow describe who Indigenous Peoples in each of the four DaIMA project countries are.

3.2 Indigenous Peoples in the DaIMA countries

3.2.1 Kenya

Kenya's 2010 Constitution recognizes "marginalized communities." Based on the constitutional definition, the term is broadly conceived to refer to communities that also self-identify as Indigenous Peoples in Kenya, in line with the African Commission report referred to above. Specifically, Article 260 states:

"Marginalized community" means (a) a community that, because of its relatively small population, or for any other reason has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need to or desire to preserve its unique culture and identity from assimilation; has remained outside the integrated social and economic life of Kenya as a whole; (c) and indigenous community that has retained and maintained a traditional lifestyle and livelihood on a hunter-gatherer economy; (d) pastoral persons and communities whether they are: (i) nomadic or; (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole (...).

While several communities in Kenya self-identify as Indigenous Peoples, most of them practice either nomadic pastoralism or hunter-gathering. Yet a few others practice small-scale crop production and fishing. The latter category includes the marginalized Burji and Talai communities. All indigenous communities in Kenya have disproportionately experienced land dispossession from colonial times to the present. In addition, climate change and its impacts are having particularly significant effects on Indigenous Peoples of Kenya. For example, prolonged droughts have not only

decimated pastoralists' livestock but also made it hard for them to adapt and to cope with the continuing impacts.

Hunter-gatherers, on the other hand, experience severe food insecurity. Traditionally, both pastoralists and hunter-gatherers have implemented some cultural protocols to mitigate food insecurity, including reciprocity, stock loan, and reliance on kins. However, these traditional coping mechanisms have been severely overwhelmed by climate change and its impacts.

3.2.2 Tanzania

Unlike Kenya, the Constitution of the United Republic of Tanzania of 1977 has no reference to marginalized communities. However, marginalized communities in Tanzania that self-identify as Indigenous Peoples are four ethnic groups, the Maasai, the Datoga, the Akie and the Hadzabe. The Maasai are an iconic nomadic pastoralist group found both in Kenya and Tanzania. While literature on the history of the Maasai remains fragmentary, it is common knowledge that they have been present in the two East African countries for centuries. The Maasai in Tanzania are estimated to be 430,000. Another pastoral group-the Datoga (Datoog) comprise the Barabaig and the Taturu whose ancestral land in Manyara region, Northern Tanzania was a site of protracted court cases following launching of a bilateral project between the Government of Tanzania and the Government of Canada that dispossessed them of prime grazing lands for wheat production. Recently experienced scarcity of pastures, saltlicks and water for human and livestock resulting from land encroachment and climate change, has necessitated Datoga's emigration to other parts of southern and coastal regions within Tanzania. The Datoga are estimated to be 87,978.

The other two groups namely the Akie and the Hadzabe are hunter-gatherers. The Akie is estimated to be less than 5,268 countrywide.⁶ Their livelihood is under considerable attack from crop growers and cattle herders whose activities disrupt the ecological balance hence pushing away animals that the Akie sustainably hunt. The Hadzabe on the other hand, are estimated to be 1,000 countrywide. Based on their livelihood and remoteness of their settlements, the government understands that the Hadzabe require additional efforts to be effectively consulted. While their lands are similarly encroached like the Akie, there have recently been efforts to demarcate the

⁶ Estimates based on consideration of recent census 2022, please note that Tanzania does not allow data disaggregation based on ethnicity or religious affiliation.

remaining land and the government of Tanzania agreed to issue them with a customary certificate to attest to their collective ownership.

3.2.3 Uganda

The Constitution of Uganda does not expressly recognize indigenous peoples, although affirmative actions for groups on the margin is common governance practice in the country. However, based on self-identification, communities in Uganda that self-identify as Indigenous Peoples the Benet and the Batwa the two communities are predominantly hunter-gatherers. However, due to a myriad of factors including climate change, land dispossession and assimilation, most members of the two groups now practice cultivation to supplement household food needs.

Other groups that self-identify as Indigenous Peoples in Uganda include a numerical minority group called the Ik, and some groups of pastoralists such as the Karamajong and the Basongora. Like other Indigenous communities in other parts of the world, Indigenous Peoples in Uganda have disproportionately experienced massive land dispossession, including due to the creation of conservation areas and expansion of new ones. Similarly, mining interests have been a leading cause of state-driven landlessness, especially among the Karamajong of Karamoja region.

3.2.4 Rwanda

While Rwanda does not have constitutional provisions recognizing indigenous communities. A numerical minority group called the Batwa Self-identify as indigenous peoples and area recognized as such in international processes, including the African Commission on Human and Peoples Rights. The Batwa are predominantly a hunter-gatherer community found in Rwanda, Burundi, Uganda and some parts of Democratic Republic of Congo. Other names include “potters” to reflect an occupation they were historically associated with; “historically marginalized People” to denote a second-class citizen status the Batwa have consistently been associated with from time to time. They are also referred to as the original inhabitants of the land, and as the ones “who have been left behind by history”. Based on the 2018 estimates projected from the National *Institutes of Statistics of Rwanda*, the Batwa are between 25,000 to 30,000.

4. Legal Frameworks for the Protection of Indigenous Peoples Rights

4.1 International and Regional Legal Frameworks.

None of the four DaIMA Project countries has ratified the International Labour Organization Convention (ILO Convention 169)-the Indigenous and Tribal Peoples Convention of 1989. So far this is the only comprehensive and binding Indigenous Peoples' specific international legal instrument. Technically therefore, the four DaIMA Project countries are not bound by the various provisions of the ILO Convention 169 which are relevant to the rights of Indigenous Peoples described above who may potentially be affected by the DaIMA Proposed Project.

Additionally, none of the four DaIMA Project countries has formulated an implementation plan for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP has been described as having "significant normative weight grounded in its high degree of legitimacy."⁷ However, the four DaIMA countries have signed and ratified key international and regional human rights instruments that could and have been used to pursue rights of indigenous peoples in the DaIMA Project countries. Below is a list of the legal frameworks in question.

The Regional Legal Frameworks signed/ratified by Kenya, Tanzania, Uganda, and Rwanda are the following:

- The Convention on the Elimination of All forms of Racial Discrimination (CERD) 1965

The four DaIMA Project countries have ratified the Convention on the Elimination of all forms of Racial Discrimination which addresses discrimination of the indigenous peoples. General Recommendation No.23: Indigenous Peoples:.08/18/1997⁸ recognizes that the situation of indigenous peoples has always been a matter of close attention and concern. It reaffirms that the provisions of the Convention apply to indigenous peoples.

⁷ S James Anaya, Situation of Human Rights and Fundamental Freedoms of Indigenous People, UN Doc A/65/264 (9 August 2010) 17 [61].

⁸ United Nations International Convention on Elimination of Racial Discrimination, General Recommendation 23 of 1997

The Committee calls upon the States parties to (a) recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation (b) ensure that members of the indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that

based on indigenous origin or identity. (c) provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; (d) ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interest are taken without their informed consent; (e) ensure that members of the indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their language. It goes further as to call upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.

- The international Covenant on Civil and Political Rights (ICCPR) 1966

The four DaIMA Project countries have ratified the Convention on Civil and Political Rights. This Convention recognises indigenous peoples under Article 27 which provides that States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. This Convention imposes an obligation to state parties to protect and respect the rights of indigenous peoples. This is specifically provided under Article 40 of the Convention where State Parties are required to submit periodic reports (every five years) which are considered and questioned by the Human Rights Committee.

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The four DaIMA Project countries have ratified the Convention on Economic, Social and Cultural Rights which under Article 1 require State Parties to recognize that all people may, for their ends, freely dispose of their natural wealth and resources

without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of substance.

Moreover, the Convention under Article 11 requires State Parties to take appropriate steps to ensure the realization of right to adequate standard of living, recognition to this effect the essential importance of international co-operation based on free consent. Also, to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources.

- The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979

The Four DaIMA Project countries are State Parties to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) which recognizes various forms of discrimination that women face by reaffirming the principle of equality. It requires States Parties to take all appropriate measures including legislative measures to ensure full development and advancement of women for the purpose of guaranteeing them enjoyment of human rights and fundamental freedoms based on equality with men. This includes measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Also, it requires State Parties to take appropriate measures to eliminate discrimination against women in areas of economic and social life to ensure, on a basis of equality of men and women, the same rights, in particular; right to family benefits, right to bank loans, mortgage and other forms of financial credit.

This Convention defines the term discrimination against women to mean any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

- The Convention on the Rights of the Child (CRC) 1989

The four DaIMA Project countries have ratified the Convention on the Rights of the Child. This Convention provides for the minimum standards for the respect, nurturing, wellbeing, participation and protection of all children.

It requires State Parties to respect and ensure the rights set in the Convention without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or any other status.

Further, Article 30 provides that in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

To ensure implementation of rights and obligations under the Convention, a committee is established under the Convention to examine State Parties' reports on the implementation of the Convention.

- The Convention on the Rights of Persons with Disability (CRDP) 2006

The four DaIMA Project countries have ratified the Convention on the Rights of Persons with Disability which protects the right of people with disabilities. It defines a disabled person as anyone unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/ or social life, because of deficiency, either congenital or not, in his or her physical or mental capabilities.

This convention reaffirms the principles of equality and non-discrimination, accessibility, participation and inclusion.

It provides for monitoring and implementation of the Convention through the established Committee on the Rights of Persons with Disabilities. State Parties are obligated to provide report to the Committee the implementation of the provisions of the Convention.

At the regional level, the Four Countries under review have ratified the following regional human rights instruments.

- The African Charter on Human and Peoples Rights (ACHPR) 1981

The four DaIMA Project countries have ratified the African Charter on Human and Peoples Rights which is a key regional human rights instrument. The Charter

under Article 2 provides for non-discrimination whereas the rights provided under the Charter must be guaranteed without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

It further provides for equality before the law and equal protection of the law. It states that everyone may freely take part in the cultural life of his community and proceeds to provide that the promotion and protection of morals and traditional values recognized by community shall be the duty of the State.

The Charter sets forth the right to economic, social and cultural development regarding freedom and identity in equal enjoyment of common heritage of mankind.

- The African Charter on Rights and Welfare of the Child (ACRWC) 1990

This is another regional instrument ratified by the four DaIMA Project countries. The African Charter on Rights and Welfare of the Child provides obligation to State Parties to recognise rights, freedoms and duties provided under the Charter. These rights include both economic, social and cultural rights. As much as it provides for the non-discrimination principle, it also provides for the principle of the best interest of the child. The best interest of the child shall be the primary consideration.

It further recognises a child as an autonomous being with several participatory rights such as the right to participate in community life.

- The Protocol on the ACHPR on the rights of women in Africa 2003

The Four DaIMA Project countries have signed the Protocol on the ACHPR on the Rights of Women in Africa which reaffirms the principle of promoting gender equality. It recognises the role of women in the preservation of African values based on the principle of equality, peace, freedom, dignity, justice, solidarity and democracy.

It provides for the elimination of discrimination against women and calls upon State Parties to integrate gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres.

It also provides for access to justice and equal protection before the law whereas women and men are equal before the law and shall have the right to equal protection and benefit of the law.

- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998

The four DaIMA project countries have ratified the Protocol to the African Charter on Human and Peoples' Rights on Establishment of an African Court on Human and Peoples' Rights which establishes the African Court on Human and Peoples' Rights whose organization, jurisdiction and functioning is governed by this Protocol. The Protocol provides for the relationship between the Court and the African Commission on Human and Peoples Rights which is complimentary in nature.

This Protocol sets out the jurisdiction and accessibility of the Court, admissibility of cases and structure of the Court.

Based on the above, this IPPF can conclude that whereas the four DaIMA project countries have not ratified ILO Convention 169, they have ratified key international human rights instruments which are also relevant to the protection of rights of indigenous peoples in the DaIMA project countries. These can be complemented by key domestic legal frameworks as discussed briefly in the paragraphs that follow:

4.2. Selected Domestic Legal Frameworks

For DaIMA, Kenya's Community Land Act, 2016 is particularly important. Described as "historic,"⁹ this legal framework is significantly well-suited to protection of a pastoral communal land tenure. This is because, the law provides that a community holding land communally, can register as a legal entity for the purpose of being issued with a title document over their land. Once registered and issued with a title to a communally owned land, the community as a collective (through the registered legal entity) can make decisions regarding the use, control, and transfer of the collectively owned land. Additionally, a certificate issued in respect of a communally owned land enables communities to have stronger tenure rights over their traditional lands.

Other Policy and legal frameworks include the following.

Constitution of the Republic of Uganda 1995 which provides a list of indigenous communities under the Third Schedule. It lists 56 communities that were present in Uganda as of 1st February 1926. Also, the Uganda National Land Policy 2013, states that land rights of indigenous peoples as ancestral and traditional owners, users and

⁹ Republic of Kenya: Country Technical Note on Indigenous Peoples' Issues, IFAD, March 2022 p.

custodians of various natural habitats and their survival is dependent upon access to natural resources.

Land Act of 1998 in Uganda, provides for the right to land, graze, hunt, gather honey, and other forest resources for food and medicinal purposes as well as other purposes among the community.

The law governing land in Rwanda 2013 provides that land is part of the common heritage of all Rwandan people: ancestors, present and future generation. The State has the supreme power of managing all land situated on the national territory in the general interest of all with a view to ensuring rational economic and social development. For the purposes of land use and consolidation it is prohibited to subdivide plots of land reserved for agriculture and animal resources if the result of such subdivision leads to parcel of land of less than a hector in size of each of them.

The Village Land Act in Tanzania provides for the land rights within village areas. It provides for the management and administration of the village land such customary tenure of the village land, inclusion of common properties as legal land rights, sets forth community level land dispute forums. Based on the above, pastoralists in Tanzania can be issued with a certificate of village land. However, until recently, hunter-gatherers as a numerical minority could not constitute a number required by law to form a village. The practice has been to grant them a collective certificate based on their unique lifestyle and vulnerability.

A common thread running through the policies and laws in the DaIMA project countries is that recognition of communal land tenure exists but customary laws and institutions could be strengthened.

5. The Potential Positive and Negative Impacts of DaIMA project on Indigenous Peoples.

In terms of Environmental and Social Risk Assessment the DaIMA Project has been reviewed and classified as moderate. Based on the focus of DaIMA in the dairy sector, this IPPF can confirm that its implementation will have no or minimal adverse impacts on land access and use rights of rural communities of the four Project

countries that self-identify as Indigenous peoples. This is because the activities of output 3.2 (Pasture and grasslands management improved) will result in improvements to the pastoral lands, and the other DaIMA activities will not be implemented on land used by pastoralists and hunter-gatherers. As such, DaIMA will not be implemented in a manner that adversely affects indigenous peoples' lands or collective attachment to it such as blocking stock routes.

Nevertheless, considering that DaIMA will be implemented in countries that have historically promoted modernization at the expense of pastoralism concrete efforts should address potentially unintended impacts. In Tanzania for example, pastoralists are seen and treated as a problem likely to hinder smooth implementation of government policies. In all four DaIMA Project countries, indigenous peoples have been forcefully evicted from their ancestral lands, hence affecting the spiritual and cultural connection they have over the lands in question. Compounding forceful evictions, these communities are subjected to systemic discrimination, marginalisation, and exclusion from participating in the socio-political and economic affairs of their country.

This thus calls for ensuring that DaIMA implementation solicits FPIC wherever appropriate to avoid any potential negative impacts on pastoralism while at the same time developing safeguards to ensure that activities related to formulation of Dairy Sector policies, strategies and regulations do not undermine pastoralism. (See for example Output 1 which aims at ensuring that "Systemic and institutional capacities in the livestock sector are strengthened to enable smallholder dairy farmers and local value chain actors to reduce CH₄ and other GHG emissions.").

For example, activities relating to optimization of land productivity for dairy farming such as fodder cultivation and construction of irrigation infrastructure should not be implemented on communally owned lands. This is because, key pastoral-livelihood enhancing assets notably traditional livestock routes for accessing water, pastures, and salt resources may be fragmented.

6. The Use of FPIC of IPs in Different Stages of the Project

The GCF IPP states circumstances under which FPIC may be required. FPIC is applicable where activities proposed will firstly, impact on lands and natural resources subject to traditional ownership or under customary use or occupation. Secondly, when the activities in question will cause relocation of indigenous peoples from lands, and natural resources subject to traditional ownership or under customary use or occupation. Finally, when the activities proposed for financing by GCF may potentially

affect cultural heritage of indigenous peoples. Based on the above, FPIC in the DaIMA context will be triggered as summarized below.

Phase 1: The Start-up Phase

During DaIMA project design phase, Indigenous Peoples who will potentially be impacted by the project were not identified in concrete terms. However, as a precautionary measure, the fact that the Project will be implemented in the four countries that are homes to communities that self-identify as Indigenous Peoples necessitated the development of the present IPPF at the initial stages of the Project design. Additionally, the Project design team has corresponded with an expert in Indigenous Peoples based in the region to provide some expert opinions for inclusion in the Project Document.

This IPPF has thus advised that during the initial stages of the Project implementation, dedicated consultations with representatives of Indigenous Peoples likely or potentially affected by the project should be conducted to fully understand the Project document as well as the current IPPF as outlined briefly below:

Preliminary consultations. It should be noted that consultation at this stage does not relate to the request for Free Prior and Informed Consent (FPIC). It is however essential for all programs that may have a significant impact on concrete communities from a cultural, social and environmental point of view. In the case of preliminary consultations, these refer to spaces for early dialogues with representatives of indigenous peoples of the project's target population. The general purpose is to generate indigenous perspectives that can inform an understanding of the project problem, context and possible responses, that is, the design and implementation of the project. It aims to engage with indigenous representatives in the analysis of the problem, the project aims to address, the Indigenous context and the generation of possible interventions, implementation and participation mechanisms. This phase will seek to reach consensus on how to carry out the process

for seeking FPIC during the implementation of the project. These preliminary consultations give operation to the practice of co-design.

Preliminary consultations with the Indigenous representatives will have the following specific objectives: (i) co-analyze the challenges indigenous peoples may face in their traditional livelihoods resulting from promotion dairy farming such as policy shifts and land commoditization; (ii) identify indigenous actions around these; (iii) share the goal, objectives, theory of change of and the proposed activities and investments of the project along with the implementation mechanism; (iv) review the project, assess indigenous interest and generate recommendations for the project design; (v) clarify the roles and responsibilities of the parties involved; (vi) analyze the potential risks and identify opportunities; (vii) generate input for the FPIC process; (viii) generate input for the grievance and redress mechanism. It will be a priority to ensure the participation of women and youth in the consultations.

Roles and Responsibilities. It is proposed that the preliminary online consultation with representatives of indigenous peoples be managed by government and attended by IFAD, considering as much as possible inclusion of women and youth. Indigenous peoples' experts and IFAD country teams can provide methodological and logistical support.

Phase 2: The Implementation Phase

Typically, it is during the implementation phase that projects interface with concrete communities and it is at this phase that conducting consultations for the purpose of obtaining consent needs to happen. However, as indicated above, FPIC according to IFAD and GCF goes beyond merely consenting to the project implementation. For example, IFAD's updated IP Policy explicitly commits channeling benefits to Indigenous Peoples. This will be achieved by initiating sensitization seminars. Accordingly, this stage envisions empowering indigenous communities to be part of DaIMA project.

This approach will have the additional value of avoiding parallel consultation and participation processes and is aligned to the type of project which does not involve acquiring land belonging to indigenous peoples or resettling them. However, when the intervention takes place in indigenous communities, it will be important to follow the principles that ensure compliance with the right to free, prior, and informed consent.

As mentioned above, the indigenous peoples in DaIMA Project implementation countries have different forms of social organization and governance, which will imply that FPIC processes during project implementation may differ. Translation and interpretation into Swahili (widely spoken national language in Tanzania) and other indigenous languages must be guaranteed throughout the entire process.

During the execution of the project, there is a continuous and inclusive process of consultation and participation of the indigenous peoples, aimed at generating trust with the communities, their organizations and government institutions. This is because FPIC is not a mere one-time event but must be mainstreamed throughout the process. At the same time, the potential risks of the project and the measures to minimize and mitigate possible negative impacts will be evaluated together with the indigenous communities. In general, all project activities will adopt a "do no harm" principle, identifying potential constraints throughout project execution and establishing measures to mitigate unintended negative impacts.

Once a concrete community that may potentially be affected is fully identified, the last step will be to formalize the consent agreements, the planning of the results and the planned activities and the execution agreements. All queries made will be documented.

The agreement must clearly articulate:

- What was discussed and decided (issues, commitments, budget, schedule, role, responsibilities, etc.).
- Who entered into the agreement (clearly identifying the persons and their functions).
- What mechanisms have been established to maintain dialogue and deal with possible disagreements, including agreements during the execution and follow-up of the proposed activities.
- When requested by the community, the agreement will be translated into Swahili and other indigenous language.
- The results of the FPIC process will guide the development of project activities with communities of Indigenous Peoples while ensuring inclusion of indigenous women and youth.

Based on the above, FPIC will need to be solicited during DaIMA implementation phase.

Budget and Financing. As detailed in annex 4 of the project document, a detailed budget has been allocated for planning and implementation of activities, including activities relevant for indigenous peoples potentially affected by DaIMA. During annual consultation and monitoring sessions, detailed budgets shall be prepared as part of annual work plan preparations for each country. The overall budget comprise budget lines for preparation of indigenous peoples plans (IPPs) for each of the DaIMA project countries.

This IPPF proposes inclusion in the IPPs, activities involving research on indigenous knowledge, system and practices related to dairy production, natural resource management systems and technologies (held by indigenous peoples).

7. Institutional Arrangement

According to the project document (see part B4 on Institutional Arrangements), IFAD will be the Accredited Entity (AE) for this Programme. In this capacity, IFAD will be responsible for the overall management of the Programme, including: (i) all aspects of Programme appraisal; (ii) administrative, fiduciary and technical oversight and supervision throughout the implementation of the Programme; (iii) ensuring that funds are managed efficiently to deliver the expected Outputs and achieve Outcomes; (iv) ensuring the quality of the monitoring of the Programme monitoring, as well as the timeliness and quality of reporting to the GCF; and (v) Programme closure and final evaluation. IFAD will carry out these responsibilities in accordance with the detailed provisions set out in the Accreditation Master Agreement (AMA) between IFAD and the GCF.

In addition, IFAD will make use of international and national consultants, preferably from the indigenous communities of the four DaIMA countries as safeguard specialists.

8. Monitoring and Reporting (including mechanisms and benchmarks appropriate for the project).

IPPF monitoring and reporting will be based on and further clarified, in the monitoring and reporting procedures to be developed during DaIMA implementation

phase. It is proposed that IFAD (through dedicated DaIMA staff and part-time indigenous consultants), will provide regular progress reports to GCF and other co-financiers to keep them informed of DaIMA performance including with regards to the participation of Indigenous Peoples in line with GCF's Indigenous Peoples Policy and its Operational Guidelines.

IFAD will undertake regular supervisions and commission periodical evaluation studies on DaIMA development impact. IFAD will also coordinate the development and implementation of policy dialogues, if need be, specific on indigenous pastoralists and hunter-gatherers. As indicated above, these functions will be performed by dedicated IFAD staff for DaIMA project as well as by recruited part-time consultants (preferably indigenous experts), all financed with the management fees earned on the loans and grants provided by GCF and other international financiers to IFAD for the DaIMA Project.

9. Disclosure arrangements for IPPs as specified in the IPPF.

Based on the preliminary (desk-based) mapping of potential project affected indigenous communities in the four East African countries, most of them are illiterate and do not speak dominant languages. Accordingly, information disclosure will be guided by GCF Indigenous Peoples' Policy requiring pictorial depiction and oral presentation in their language. Accordingly, indigenous languages such as Maa as well as Swahili and Kinyarwanda will be used in communication.

Additionally, the information to be disclosed will include potential impacts and their culturally appropriate mitigation measures as well as benefits that the affected indigenous communities. Should there be severe impacts, an Indigenous Peoples Plan (IPP) will be developed once the affected indigenous pastoralists and hunter gatherers have been concretely identified. For DaIMA implementation, IPPs will be developed at the country level (each country will have a separate IPP) which considers different groups and their unique contexts and vulnerabilities.

Specifically, the IPP will ensure that the activities proposed will be consistent with applicable laws of the four project countries and obligations of the state and relevant international treaties and agreements. Specifically, the IPP will outline how to seek FPIC during project implementation, and expected outcomes related to the risks and impacts affecting the pastoralists and hunter-gatherer indigenous peoples. The GCF Indigenous Peoples' Policy and its guidelines as well as IFAD's 'How to Do Note' will

provide reference points and guidance. All elements/components will be duly followed in the IPP development as well as during FPIC seeking processes wherever applicable.

10. Grievance Redress Mechanism

Members of the Indigenous Communities in the DaIMA project countries potentially affected by project activities will be provided with clear information and instructions on the procedures for filing complaints. In addition, disclosure of potential impacts will be made to make the indigenous communities fully aware of their rights. DaIMA implementation thus considers mechanisms for responding to reports, complaints and claims as an integral part of the consultation protocols.

Specifically, if a complaint arises during the execution of the DaIMA project, the project will consider it a priority that implementing agencies resolve it as soon as possible. This will preferably be done at the local level, through a conciliation process using community systems and mechanisms or, if this is not possible, the complaint will be taken outside the community for resolution. The following guiding principles will form the bedrock for resolving disputes as soon as they arise.

Guiding Principles:

- Good faith and a willingness to resolve conflict, grievance, complaint, or dispute must be considered an essential prerequisite to the process.
- The presence, if necessary, of a mediator to help resolve the conflict and/or the complaint.
- The decision/resolution reached by mutual agreement shall be deemed final; such decision will be signed by both parties and will be witnessed and communicated as the final and binding decision, whatever the level at which the decision or resolution of the conflict or complaint is agreed upon.