



**The Second Kenya Devolution Support Program  
(KDSP II)  
(P180935)**

**DRAFT**

**ENVIRONMENTAL AND SOCIAL SYSTEM ASSESSMENT  
(ESSA)**

**October 2023**

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### List of Acronyms

APA	Annual Performance Assessments
ASALs	Arid and Semi-Arid Lands
CAT	Capacity Assessment Tool
CAJ	Commission on Administrative Justice
COVID-19	Corona Virus Disease
CoG	Council of Governors
CVA	Credible Verification Agent
DA	Designated Account
DLI	Disbursement Linked Indicator
DLR	Disbursement Linked Result
E&S	Environment and Social
EIA/EA	Environmental Impact Assessment/Environmental Audit
EMCA	Environmental Management and Coordination Act
ESF	Environment and Social Framework
EHS	Environmental Health and Safety
ESHS	Environment Social Health and Safety
ESHSM	Environment Social Health and Safety Management
ESIA	Environment and Social Impact Assessment
ESMP	Environment and Social Management Plans
ESSA	Environment and Social System Assessment
FGDs	Focus Group Discussions
FLLoCA	Financing Locally Led Climate Action Program
FY	Financial Year
GBV	Gender Based Violence
GDP	Gross Domestic Product
GPOBA	Global Partnership on Output Based Aid
GoK	Government of Kenya
GRM	Grievance Redress Mechanism
HDI	Human Development Index
HCF	Health Care Facilities
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
IA	Implementing Agency (ies)
IGRA	Intergovernmental Relations Act
IP	Indigenous People
IPF	Investment Project Financing
IVA	Independent Verification Agency
LAR	Land Acquisition and Resettlement
M&E	Monitoring and Evaluation
MC	Minimum Condition
MDAs	Ministries, Departments and Agencies
NACOSH	National Advisory Committee on Occupational Safety and Health
NCA	National Construction Authority
NLC	National Land Commission
NCCRS	National Climate Change Response Strategy
NCPWD	National Council for Persons with Disability
NECC	National Environmental Complaints Committee

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NEMA	National Environmental Management Authority
NGEC	National Gender and Equality Commission
NT	National Treasury
MAC	Minimum Access Conditions
M&E	Monitoring and Evaluation
MoLPP	Ministry of Land and Physical Planning
OCCR	Operation Cost Coverage Ration
OD	Open Defecation
OHS	Occupational Health and Safety
DOSHS	Directorate of Occupational Health and Safety Services
OSHA	Occupational Health and Safety Act
OSR	Own Source Revenue
O&M	Operation and Maintenance
PAP	Program Action Plan
PCR	Physical Cultural Resources
PDO	Program Development Objective
PforR	Program-for-Results
PIU	Program implementing Unit
PLUPA	Physical and Land Use Planning Act
PLWD	Persons Living with Disability
PMU	Programme Management Unit
POM	Program Operation Manual
PIP	Project Implementation Plan
PIAP	Performance Improvement Actions Plan (s)
PS	Performance Standard
PTC	Program Technical Committee
PWD	Persons With Disability
QER	Quality Enhancement Review
RA	Result Area (s)
RAP	Resettlement Action Plan
SDD	State Department of Devolution
SDG	Sustainable Development Goals
SEA/SH	Sexual Exploitation and Abuse
SH	Sexual Harassment
SEP	Stakeholder Engagement Plan
SoE	Statement of Expenditure
SOP	Standard Operating Procedure
SRIM	Social Risks and Impacts Management
STD	Sexually Transmitted Disease
TA	Technical Assistance
ToT	Training of Trainers
VMG	Vulnerable and Marginalized Group (s)
WB	World Bank
WIBA	Work Injury Benefits Act

## Executive Summary

### Background Information

**The Devolution Sector Plan (DSP) is the overall umbrella strategic framework for devolution.**<sup>1</sup> The theme of the 2024-2028 DSP is “ the acceleration of the performance of devolution” and its objectives include improving capacity in service delivery, resource management, and accountability; improving access to decentralized services; ensuring effective participation by communities in governance and socioeconomic development; and strengthening intergovernmental cooperation and collaboration for resolution of emerging issues in devolution.

### Proposed Second Kenya Devolution Support Program (KDSP II)

The proposed KDSP II will build on the achievements of the first phase of the Kenya Devolution Support Program (KDSP), which was implemented from 2016 to 2021. Through KDSP I, foundational institutions, systems, and capacities to support devolution were put in place, but certain gaps remain. Through the implementation of several other devolved sector projects, a common theme of challenges has emerged, which the Program also proposes to address. The overarching objective is to strengthen counties to deliver on their functions efficiently and effectively. The Program proposes to address these challenges through a range of activities undertaken by national Ministries, Departments and Agencies (MDAs) and county governments.

### Program Development Objective (PDO)

The objective of the operation is to improve capacity in service delivery, resource management, and accountability; improve access to decentralized services; ensure effective participation by communities in governance and socioeconomic development; and strengthen intergovernmental cooperation and collaboration for resolution of emerging issues in devolution. The proposed PDO-level results indicators are described in Table 0-1.

*Table 0-1. Program Outcomes and Indicators*

PDO-Level Result	PDO-Level Indicators
Sustainable Financing and Expenditure Management	Counties that have increased own source revenue collected by at least 10% annually over and above the rate of inflation(number)
Improved Intergovernmental Coordination, Institutional Performance, and Integration of HR and Payroll Data	Counties that have strengthened institutional performance as demonstrated in APA (number)
Strengthened Oversight, Participation, and Accountability	Counties with public investment management dashboards with citizen feedback mechanisms (number)

### PforR Scope

At the national Level, the Program will incentivize the timely processing of county exchequer requests, and more efficient implementation of the new conditional grants law (DLI-1). Specific results here will include the automation of the county exchequer process and more timely communication between national and county governments on conditional grants to be received by counties. At the county level, DLI 2 and DLI 3 are linked to two types of conditional grants. DLI 2 is linked to the Governance Institutional Grant (Level 1 Grant) which will support counties implementation of key reform steps that will facilitate achievement Program results, and support program coordination. DLI 3 is linked to the Service Delivery Investment Grant (Level 2 Grant) which will be used to finance service delivery investments.

KDSP II interventions are aligned under three **Key Result Areas (KRAs)**:

**KRA 1 will support efforts towards enhancing financing to, and expenditure management by counties.** In this KRA, the IPF will support the development of frameworks and guidelines for county revenue mobilization; policy and legislation to support financing for service delivery units through Appropriation-in-Aid (A-in-A) and Authority-to-Incur Expenditure (A-I-E); and structures and tools to support counties institutionalization of shared project management functions (i.e., the County Single Project Management Unit (SPMU)). The DLIs and Disbursement-

<sup>1</sup> The DSP has clear links with the county-facing pillars of the Public Finance Management Reforms Strategy (PFMRS) 2024-2028 and the Public Sector Transformation Strategy (PSTS) 2024-2028, which will both also inform and support Program results.

Linked Sub-Indicators (DLSIs) will similarly target the revenue mobilization agenda (e.g., increased revenue collection, enhanced accuracy of fiscal forecasting and expansion of revenue base), timely communication on releases of conditional grants, automation of the county exchequer requests, and implementation of pending bill action plans. **KRA 2 will support national and county government initiatives towards strengthening intergovernmental coordination, institutional performance, and integration of HR and payroll data.** The IPF will support the development of policy, legislation, and administrative procedures for the operationalization of inter-governmental, inter-city and inter-municipality forums. The IPF will also support the development of guidelines including on county HR and skills audits, model organization structures for customization by counties, and performance management. DLIs and DLSIs under this KRA will target counties conducting and implementing recommendations of HR, Skills, and payroll audits, alignment of county staffing with departmental functions, and improving credibility of the payroll. **KRA 3 will support improvements in oversight, participation, and accountability.** The IPF will support the development of guidelines on project stock taking, community led-project management committees and climate change risk screening and preparedness (including assessment of the climate resilience of existing infrastructure assets). The IPF will also support the roll out of the county PIM framework. The DLIs and DLSIs will focus on establishment of project management committees; county compliance with the PIM framework and the development and operationalization of a county investment dashboard with a citizen feedback interface (which is used to improve public investments).

The Program will support a range of investments in construction and/or rehabilitation of infrastructure in the following sectors; Agriculture, health, transport, trade, education, county public works, firefighting and disaster management, cultural activities, public entertainment, and public amenities. The program will not finance any investments in the negative list of the ESSA, and other ineligible expenses as defined in the PAD (See PAD Table 10)

### **Institutional Arrangements**

**The SDD will be responsible for implementation, management, and coordination of KDSP II.** However, given the constitutional and legal mandates of various other institutions in the devolution space and the results the Program intends to achieve, the CoG, IGRTC, NT, and PSC<sup>2</sup> will also play a key supporting role in the implementation of the Program.

### **ESSA Scope and Methodology**

The Environmental and Social System Assessment (ESSA) for the Program was undertaken to review the extent to which the borrower systems for Environmental, Social, Health and Safety (ESHS) risks and impacts management are consistent with the six core principles and key planning elements of the Bank Policy and Directive for PforR financing. The six core principles and planning elements ensure that PforR operations are designed and implemented in a manner that maximizes potential environmental and social (E&S) benefits while avoiding, minimizing, or mitigating adverse ESHS risks and promote (E&S) sustainability of the Program.

In this regard, the World Bank (WB) team conducted a consultative ESSA with relevant stakeholders, to evaluate the adequacy of the borrower's systems and capacities for ESHS management related to Program interventions. Essentially the ESSA entailed:

- a. Reviewing the nature and significance of the Program's ESHS effects, including indirect, induced, and cumulative impacts;
- b. Assessing the adequacy of the borrower's systems and capacity for effective management of the ESHS risks and impacts including determining if the system is applied as written;
- c. Determining the effectiveness of the Grievance Redress Mechanism (GRM) to receive, record, resolve, and follow up on complaints or grievances received; and

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<sup>2</sup> Council of Governors (CoG)  
Intergovernmental Relations Technical Committee (IGRTC)  
Public Service Commission (PSC)  
National Treasury (NT)

- d. Formulating measures to enhance the effectiveness of the ESHS management systems and the outcomes for inclusion in the overall Program Action Plan (PAP).

In conducting the ESSA, the Bank applied several approaches, including:

- a. **Screening** Program activities was undertaken during the concept stage to identify potential ESHS effects of the program and to confirm that no activities that meet the defined exclusion criteria are included in the PforR;
- b. **Comprehensive desk review of relevant country policies, legal, regulatory, and institutional frameworks, and program documents** that address ESHS aspects relevant to the Program; and
- c. **System, Institutional and Capacity Assessments** conducted through consultations with stakeholders at the national and regional levels to consider the applicability as written versus in practice for ESHS effects management and consistency with the six ‘core PforR principles’. The ESSA team held regional level consultations in Nakuru and Nairobi counties with participants from Isiolo, Taita Taveta, Vihiga, Elgeyo Marakwet, Kajiado, Kakamega, Makueni, Nakuru, Nairobi, Mombasa, Nyandarua, Kisumu, and Kisii counties, including Ministries, Departments and Agencies (MDAs), civil society groups, representative of Vulnerable and Marginalized Groups. National-level consultations were held in Nairobi bringing together implementing agencies, MDAs relevant to the Program and civil society groups. The sampling criteria considered counties with registered and unregistered community land, where VMGs are present, county Social Risk and Impacts Management (SRIM) committees have been formed or inducted, as well as counties presenting lessons learned and best practices in governance.
- d. **Environmental and Social (E&S) Focal persons from all the 47 counties and trained on E&S risk management under past and ongoing World Bank-funded operations.** The focal persons were engaged to identify opportunities to harmonize E&S structures across projects, to ensure E&S sustainability.
- e. **The SRIM Unit under the Directorate for Social Development engaged county Social Development Coordinators to assess the status of SRIM interventions in counties.** They include the coordination of SRIM activities between the relevant county and national government entities, availability of adequate and qualified social experts, effectiveness of existing county GRM systems and opportunities to enhance positive social outcomes.

#### **ESSA validation and disclosure workshop**

In line with the World Bank Policy for PforR financing and the World Bank’s Access to Information Policy, the draft ESSA findings will be presented to stakeholders through a workshop in October 2023. Based on the input and feedback from the participants, the draft ESSA report will be revised, approved, and the final report publicly disclosed in-country on the SDD website and the World Bank’s external website prior to Board approval.

#### **Program Environmental, Social, Health and Safety effects**

The Program will strengthen county institutional performance and management of resources for service delivery through reforms in financing, expenditure, institutional and human resources management, oversight, citizen participation, grievance redress, and accountability under GSIG. Under SDIG, the Program will finance investments in devolved sectors, ranging from small to medium-scale infrastructures, like projects undertaken under KDSP I and, to some extent, KUSP I, such as rehabilitation and construction of infrastructure in health, education, agriculture, sectors, among others. There will be investments in civil works activities with potential ESHS implications.

#### **Program Risk Rating**

Because of the significant geographic dispersion of the participating counties, and constraints around oversight; different scales of proposed investments; the potential direct and cumulative E&S risks and impacts associated with the sub-projects proposed under the Program; the capacity of the Program coordination and implementation teams at both the national and county levels, and gaps identified in the institutions responsible for managing ESHS risks in the country; the varying capacity of county institutions to roll out the proposed reforms, as well as the exclusion of Vulnerable and Marginalized Groups (VMGs) and other disadvantaged individuals and groups



from the public participation process and access to Program information, benefits and opportunities, the overall risk of the program is rated as **Substantial**.

#### **Positive Environmental, Health and Safety Benefits for the Program**

The PforR will significantly deliver EHS benefits which will vary from county to county depending on the investments' menu. This will include but not be limited to; improved management of storm water drainage systems, improved sanitation and public health, reduced environmental degradation from flooding and soil erosion, clean air and improved health through reduction of dust, noise, vibrations and waterborne diseases, improved mobility of urban residents through the Non-Motorized Transport (NMT), improved road conditions and access to public transport services will contribute to reduction in traffic congestion, lower vehicle operating costs, reduced transportation costs, and road accidents, among others.

#### **Potential Environmental, Health and Safety (EHS) Risks and Impacts**

The Program is expected to have direct and indirect effects on the physical environment. The potential negative EHS impacts due to construction works include but are not limited to; localized noise and air pollution (dust and emissions) from construction activities, soil contamination and underground water pollution from spillage of oil and fuel, soil erosion and sedimentation of water resources, disturbance and/or loss of existing vegetation and potential impact to fauna species, Occupational Health and Safety (OHS) incidents/accidents to workers, and public health and safety risks, among others.

#### **Potential Social Benefits**

The Program has overall significant positive social impacts, as it will increase effectiveness and efficiency of the counties in service delivery by strengthening transparency and accountability in the management of public resources; improve processes of public participation and disclosure of information; augment Alternative Dispute Resolution (ADR) mechanisms, existing GRM systems and Court User Committees to receive and facilitate the resolution of concerns and grievances throughout the public investment cycle promptly and effectively; and strengthen county SRIM structures to mitigate social risks and impacts, enhance opportunities and increase the overall social performance in counties.

#### **Potential Social Risks and Impacts**

The proposed investments may pose potential negative social effects, including loss of land, livelihoods, and other assets, and restrictions on land use; labour influx and related impacts; inadequate targeting and inclusion of VMGs and other disadvantaged or vulnerable groups, and social conflicts due to execution of projects for the achievement of DLIs.

#### **Gains and Lessons Learnt from Previous and ongoing PforR programs**

Previous and ongoing PforR programs in Kenya have delivered substantial institutional and capacity building support on ESHS management to national and county governments, including institutions that managed the programs. In addition, key achievements noted under KDSP I include; development of GRM guidelines; E&S safeguard tools; and GEMS tools for monitoring and reporting. In addition, the programs have enabled appointment and training of E&S focal persons, including training of the County officials on social risks management in all the counties. KDSP II will strengthen the quality, inclusiveness, effectiveness, and capacities of county governments on improving the institutional performance of these governments for service delivery.

#### **ESSA Findings**

The ESSA identified gaps at both national and county levels that would potentially undermine the application of the country systems for effective management of ESHS risks and impacts under the Program. Despite the robustness of the country's E&S system, and E&S structures set up by completed and/or ongoing PforR Programs, the ESSA identified some gaps including: (i) low commitment to E&S sustainability leading to inadequate resourcing and accountability for ESHS risk management; (ii) fragmented legislative and institutional frameworks for managing social risks and impacts; (iii) ineffective county GRM systems; (iv) insufficient targeting and inclusion of VMGs and other disadvantaged individuals and groups in participation and accessing Program benefits; (v)

insubstantial public participation; (vi) limited monitoring and reporting on ESHS risks and impacts management, ; (v) lack of inclusion and/or implementation of E&S clauses in the contract and bidding documents; (vi) inadequate (a) collaboration and coordination of activities between the Program teams with lead E&S agencies i.e. DOSHS, NGECC, CAJ, NLC, and NEMA; (b)E&S staffing in some of the counties (although under KDSP I all E&S staff were trained on SRIM, some of those trained have since been removed or transferred to other departments, employment contracts expired, retired from public service), and (c) contract management and ESMP supervision, (v) MDA's limited interaction with and knowledge of country data protection provisions amidst the data security challenges that face government platforms. This is in relation to the Human Resources (HR), skills, and payroll audits proposed under the Program.

### **ESSA Recommendations**

To mitigate against ESHS risks and impacts, all subprojects under the Program will undergo screening, which will include a set criterion for excluding certain categories of projects which would result into high and substantial risks and significant negative E&S impacts which are irreversible or unprecedented on the environment and/or affected people. In addition, the ESSA has recommended the measures presented in Table 0-2 to the Program Action Plan.

Table 0-2: Program Action Plan (PAP)

No.	Action Description	DLI/IPF	Responsibility	Timing	Expected Output
<b>Actions to strengthen Environmental, Health and Social Management Systems (EHSMS)</b>					
1.	Develop an Environmental, Social, Health, and Safety Risk and Impacts Management Manual (ESHSRIM) as an annex to the Program Operations Manual (POM).	IPF	SDD	Condition of Program effectiveness	<ul style="list-style-type: none"> <li>ESHSRIM Manual.</li> </ul>
2.	Train counties on the implementation of the <b>ESHSRIM manual</b> that includes guidelines, Standard Operating Procedures (SOPs) and templates for managing ESHS risks and impacts of investment grants to counties as part of the Program Operational Manual (POM).  Also, training will focus on the national laws and regulations.	IPF	NPCT/ County E&S focal points	Before program effectiveness  Throughout Program implementation	<ul style="list-style-type: none"> <li>Training county E&amp;S staff on the ESHSRIM manual.</li> <li>Annual training calendar delivered on ESHS capacity building and confirmed through progress reports.</li> </ul>
3.	Analyse the existing county ESHS structures and recommend measures to enhance their sustainability.	IPF	NPCT	Within 1 year after project effectiveness	<ul style="list-style-type: none"> <li>Recommendations to enhance sustainability of county ESHS structures.</li> </ul>
<b>Actions to build the capacity for staff of implementing agencies, involved in the Program to enhance environmental and social management risk performance</b>					
4.	Deploy adequate, qualified, experienced, and full-time <b>1 environmental and 1 social safeguards staff</b> in Counties Project Implementation Unit (PIU).	DLI XXXX	County Governments	Before disbursement of grants to counties	<ul style="list-style-type: none"> <li>Qualified and experienced staff assigned.</li> <li>At least 1 environment and 1 social specialist and confirmed annually through APA.</li> </ul>
5.	Deploy full time 1 environmental specialist, 1 health and safety specialist, and 1 social specialist at the NPCT.	IPF	NPCT	Condition of Program effectiveness	<ul style="list-style-type: none"> <li>Qualified and experienced staff assigned, 1 environmental, health and safety specialist, 1 social specialist, and confirmed annually through APA.</li> </ul>
6.	Establish a dedicated ESHS unit within the CoG to anchor, coordinate and oversight E&S structures/aspects within counties.	IPF	NPCT/ CoG	Before APA	<ul style="list-style-type: none"> <li>A dedicated ESHS Unit within the CoG.</li> </ul>
<b>Actions to strengthen the implementation and monitoring of the environmental and social risk management</b>					

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7.	<p>Include a robust ESHS risks and impacts management verification protocol in Annual Performance Assessment (APA). NPCU to conduct an annual ESHS independent audit for all infrastructure investments, and shared with the Bank</p>	DLI xxx	NPCT WB	<p>Before APA</p> <p>After APA</p>	<ul style="list-style-type: none"> <li>• Inclusion of APA verification indicators in the ToRs for APA.</li> <li>• Inclusion of a chapter on E&amp;S in the main APA reports.</li> <li>• Annual ESHS Audit report</li> </ul>
8.	<p>Include all the applicable ESHS clauses and budgets in the bidding and contract documents for civil works.</p>	IPF	NPCT County PIT	<p>Prior to procurement being launched</p>	<ul style="list-style-type: none"> <li>• Bidding and Contract document templates with ESHS aspects.</li> <li>• Percentage expenditure on ESHS aspects in line with the allocated budget.</li> <li>• Supervision and monitoring reports and confirmed through APA.</li> </ul>
9.	<p>Collaborate and partner with the lead ESHS agencies, including DOSHS, NEMA, SRIM unit, NCA, CAJ and NLC to train counties and contractors on ESHS risks and impacts management.</p>	IPF	NPCT CoG	<p>Continuous</p>	<ul style="list-style-type: none"> <li>• Number of trainings and technical assistance provided in collaboration with relevant agencies. Confirmed through progress reports.</li> <li>• Training reports.</li> </ul>
10.	<p>Conduct a survey of existing GRM mechanisms across counties.</p> <p>Develop an automated GRM system (tier 1) to be rolled out in all counties.</p> <p>Counties to develop and manage functional GRM structures levels.</p>	<p>IPF</p> <p>DLI xxxx</p>	<p>NPCT/CAJ</p> <p>County Governments</p>	<p>Within 1 year after project effectiveness</p> <p>Before disbursement of grants to counties</p>	<ul style="list-style-type: none"> <li>• Automated GRM systems rolled out in all counties.</li> <li>• GRM constituted and grievances being logged, responded, and resolved at county level.</li> <li>• Confirmed annually through APA.</li> </ul>

# 1 PROGRAM DESCRIPTION

## 1.1 Background

1. **The Devolution Sector Plan (DSP) is the overall umbrella strategic framework for devolution.**<sup>3</sup> The theme of the 2024-2028 DSP is “ the acceleration of the performance of devolution” and its objectives include improving capacity in service delivery, resource management, and accountability; improving access to decentralized services; ensuring effective participation by communities in governance and socioeconomic development; and strengthening intergovernmental cooperation and collaboration for resolution of emerging issues in devolution.

2. **KDSP II builds on the results achieved under KDSP.** This includes improvements in: (i) the quality of financial statements and financial reporting; (ii) compliance with budgeting formats; (iii) adherence to procurement procedures; (iv) planning, monitoring and evaluation (M&E) (set up of county M&E committees); (v) timely development of County Integrated Development Plans (CIDPs) and Annual Development Plans (ADPs); (vi) processes in public participation and (vii) county audit outcomes (two counties obtained unqualified audits for FY2017/18 and the number of counties with adverse and disclaimed audits reduced). Counties also established functional civic education units and processes for public participation and developed infrastructure investments.

3. **KDSP II also builds on lessons and experiences from KDSP.** These include: (a) the need to fully align results and responsibilities with institutional mandates; (b) improved identification of key stakeholders responsible for delivery of results and their incorporation into Technical Results Teams; (c) provision of adequate incentives to coordinate and implement reforms across various areas; (d) stronger links between addressing identified governance constraints and consequential (measurable) improvements in service delivery; (e) rigorous quality assurance processes to verify the Annual Performance Assessment (APA) results; (f) the effectiveness of using the IPF component to finance national-level program coordination; and (g) the need to include national-level agencies responsible for environmental and social standards in the Program design.

## 1.2 PforR Program Scope

4. **The Program will provide county governments with two types of grants: Governance and Institutional Support Grants (GISG) and Service Delivery Investment Grants (SDIG).** The GISG will support counties in the implementation of key reforms that will facilitate the achievement of key results of the Program. This includes development of policy and legislation, strengthening governance systems, and providing focused TA and capacity building. (see PAD Annex 2). The GISG will also support program coordination and program-related technical consultations at the county level (national level program coordination will be supported through the IPF component). The SDIG will support counties to adequately finance priority service delivery investments that meet eligible criteria outlined in Annex 3 and detailed in the POM. The Program will therefore finance service delivery investments and incentivize counties to implement reform actions and achieve results in three KRAs as follows:

- **KRA 1 will support efforts towards enhancing financing to, and expenditure management by counties.** In this KRA, the IPF will support the development of frameworks and guidelines for county revenue mobilization; policy and legislation to support financing for service delivery units through Appropriation-in-Aid (A-in-A) and Authority-to-Incur Expenditure (A-I-E); and structures and tools to support counties institutionalization of shared project management functions (i.e., the County Single Project Management Unit (SPMU)). The DLIs and Disbursement-Linked Sub-Indicators (DLSIs) will similarly target the revenue mobilization agenda (e.g., increased revenue collection, enhanced accuracy of fiscal forecasting and

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<sup>3</sup> The DSP has clear links with the county-facing pillars of the Public Finance Management Reforms Strategy (PFMRS) 2024-2028 and the Public Sector Transformation Strategy (PSTS) 2024-2028, which will both also inform and support Program results.

expansion of revenue base), timely communication on releases of conditional grants, automation of the county exchequer requests, and implementation of pending bill action plans.

**5. KRA 2 will support national and county government initiatives towards strengthening intergovernmental coordination, institutional performance, and integration of HR and payroll data.**

The IPF will support the development of policy, legislation, and administrative procedures for the operationalization of inter-governmental, inter-city and inter-municipality forums. The IPF will also support the development of guidelines including on county HR and skills audits, model organization structures for customization by counties, and performance management. DLIs and DLSIs under this KRA will target counties conducting and implementing recommendations of HR, Skills, and payroll audits, alignment of county staffing with departmental functions, and improving credibility of the payroll. **KRA 3 will support improvements in oversight, participation, and accountability.** The IPF will support the development of guidelines on project stock taking, community led-project management committees and climate change risk screening and preparedness (including assessment of the climate resilience of existing infrastructure assets). The IPF will also support the roll out of the county PIM framework. The DLIs and DLSIs will focus on establishment of project management committees; county compliance with the PIM framework and the development and operationalization of a county investment dashboard with a citizen feedback interface (which is used to improve public investments). **KDSP II will be a hybrid Program.** The IPF and PforR components are outlined in Table 1-1.

Table 1-1. Overview of KDSP II

Component	Subcomponents	Level of Intervention	Financing Instrument
1. Policies, capacity building, and Program management <sup>4</sup>	1.1 Program management, coordination of the overall operation, and performance assessment	National	IPF
	1.2 Policy development, TA, and capacity building		
2. County institutional building and investments	2.1 Institutional and capacity development <sup>5</sup>	Subnational	PforR – Governance and Institutional Support Grant (aligned to Disbursement-Linked Indicator (DLI 1))
	2.2 Service Delivery Investments		PforR – Service Delivery Investment Grant (aligned to DLI 2)

**1.3 Expenditure Framework**

**6. The overall financing over the next five years is US\$ 315 million, total government program is US\$300 million out of which the PforR financing constitutes US\$135 million (45 percent).** The breakdown of the IDA financing of US\$ 150 million is shown in Table 6. US\$132 million will comprise grants to county governments, US\$ 3 million will support a national-level DLI, and US\$15 million IPF component will support policies, capacity building, and Program management. The funds will be appropriated using the National Budget Framework, and the County Government Conditional Additional Allocation Act (CGAAA) will provide the legal basis for the disbursement of the grants.

**1.4 Program Development Objective(s) (PDO) and PDO Level Results Indicators**

**7. The objective of the operation is to improve the management, transparency, and accountability of county resources for service delivery.** The proposed PDO-level results' indicators are described in Table 1-2.

<sup>4</sup> Directly attributable to achievement of Program results in each KRA.

<sup>5</sup> Directly attributable to achievement of Program results in each KRA.

Table 1-2. Program Outcomes and Indicators

PDO-Level Result	PDO-Level Indicators
Sustainable Financing and Expenditure Management	Counties that have increased own source revenue collected by at least 10% annually over and above the rate of inflation(number)
Improved Intergovernmental Coordination, Institutional Performance, and Integration of HR and Payroll Data	Counties that have strengthened institutional performance as demonstrated in APA (number)
Strengthened Oversight, Participation, and Accountability	Counties with public investment management dashboards with citizen feedback mechanisms (number)

### 1.5 Eligible Investments under the Program

8. The Program will support a range of investments in construction and/or rehabilitation of infrastructure in the following sectors; Agriculture, health, transport, trade, education, county public works, firefighting and disaster management, cultural activities, public entertainment and public amenities. The program will not finance any investments in the negative list of the ESSA, and other ineligible expenses as defined in the PAD (See PAD Table 10).

Table 1-3: Eligible and Ineligible Activities for the Level 2 Grant

Examples of Eligible Expenditures for Level 2 Grants (indicative infrastructure investments)
<ul style="list-style-type: none"> <li>• <b>Agriculture:</b> Construction, rehabilitation, and equipping of Agri processing plants, dairy production parks, and fisheries.</li> <li>• <b>County Health</b> <ul style="list-style-type: none"> <li>○ Construction, rehabilitation/upgrading, and equipping of county hospitals, dispensaries, and other health facilities.</li> <li>○ Purchase of ambulances and mobile clinics (within a maximum limit/threshold defined in the POM)</li> </ul> </li> <li>• <b>Cultural activities, public entertainment, and public amenities:</b> Construction, rehabilitation, beautification, and equipping of county libraries, museums, sports, cultural activities, parks, beaches, and recreation facilities.</li> <li>• <b>County transport:</b> Construction and rehabilitation/upgrading of roads and bridges.</li> <li>• <b>Trade development:</b> Construction, rehabilitation/upgrading, and equipping of markets.</li> <li>• <b>Education:</b> Construction, rehabilitation/upgrading, and equipping ECDEs, village polytechnics, and childcare facilities</li> <li>• <b>County Public Works:</b> Construction rehabilitation/upgrading of piping, drainage, toilets, gutters, and so on.</li> <li>• <b>Firefighting and disaster management</b> <ul style="list-style-type: none"> <li>○ Construction, rehabilitation/upgrading, and equipping of county fire stations.</li> <li>○ Purchase of fire engines (within a maximum limit/threshold defined in the POM)</li> </ul> </li> </ul>
Examples of ineligible expenditures for Level 2 Grants
<ul style="list-style-type: none"> <li>• Activities on the negative list of the ESSA.</li> <li>• Investments in loans, other micro-credit schemes, and other securities.</li> <li>• Investments made outside the CIDPs and annual development plans.</li> <li>• Recurrent expenditures, such as salaries, utility costs (for example, electricity and water), and rent.</li> <li>• School bursaries and scholarships.</li> <li>• Foreign study tours.</li> <li>• Expenditures for infrastructure funded by other development partner programs/grants.</li> <li>• Any projects that may involve forced displacement or resettlement (the proposed project will not be eligible for financing if it is likely to result in the relocation of more than 200 people.</li> <li>• Involve procurement of (a) works, estimated to cost US\$75,000,000 equivalent or more per contract; (b) goods estimated to cost US\$50,000,000 or more per contract; (c) information technology systems and consulting services, estimated to cost US 50,000,000 equivalent or more per contract; and (d) consultants’ services, estimated to cost US\$20,000,000 equivalent or more.</li> </ul>

### 1.6 Disbursement Linked Indicators and Verification Protocols

9. **DLIs are specific to each of the grant types.** DLI 1 will trigger disbursements based on compliance with the minimum access conditions (MACs) as assessed through APA (for the GISG). DLI

2 will trigger disbursements based on achievement of results in the MPCs assessed by the APA (for the SDIG).

Table 1-4 . DLIs

	<b>KRA 1: Sustainable Financing and Expenditure Management</b>	<b>KRA 2: Improved Intergovernmental Coordination, Institutional Performance, and Integration of HR and Payroll Data</b>	<b>KRA 3: Strengthened Oversight, Participation, and Accountability</b>	<b>Amount (US\$, millions)</b>
<b>DLI</b>	<b>DLI 1:</b> Average time taken to process county exchequer requisitions	N/A	N/A	3
	<b>DLI 2:</b> Participating counties that meet the minimum conditions for the Level 1 Grant			24
	<b>DLI 3:</b> Participating counties that meet the Minimum Conditions and achieve the Performance Measures for the Level 2 Grants			108
	<b>DLSI 3.1:</b> Counties that have increased their own source revenue collection  <b>DLSI 3.2:</b> Counties that have reduced the stock of pending bills as per approved pending bills actions plans.	<b>DLSI 3.3:</b> Counties that have integrated Payroll, HR records, and approved staff establishments, and uploaded cleaned payrolls in the automated system  <b>DLSI 3.4:</b> Counties that are conducting evaluations on performance contracts and individual staff performance appraisal.	<b>DLSI 3.5:</b> Counties public investment dashboards with citizen feedback mechanisms.	

Note: \*US\$15 million will be used for the national-level IPF.

10. **Verification protocols for DLIs.** The Program DLIs will be verified on an annual basis by an independent verification agent (IVA) recruited by the SDD. The processing, receipt, review, quality assurance, and adoption of the IVA report are detailed in the PAD, Annex 1. The IVA must be a reputable independent third-party firm. Assessment results will determine the GISG and the SDIG allocations. During the first year of the Program, the IVA will be financed through a project preparation advance.

### 1.7 Institutional and Implementation Arrangements

11. **The SDD will be responsible for overall implementation, management, and coordination of KDSP II.** The other four coordination partners will be (i) CoG (ii) NT (iii) IGRTC and (iv) PSC.

12. **Implementation arrangements are consistent with inter-governmental structures and are informed by lessons learned under KDSP I.** These institutional arrangements will include: (a) a national PStC that will steer overall policy dialogue and strategic direction; (b) an inter-governmental PTC that will handle technical and operational issues; and (c) a NPCT for day-to-day management. Additionally, each county will have a PStC and PTC for management of county-level results. PTCs at both levels will have membership from relevant technical agencies and departments (Program Implementation Teams) which will be organized into dedicated Results Teams for each KRA. To enhance information sharing, consultation, and coordination with other devolution programs in the country, the Program will leverage the Devolution Sector Working Group and relevant Development Partner Working Groups

### 1.8 Results Monitoring and Evaluation

13. **Program monitoring and reporting will be based on the Results Framework, DLI reporting requirements, and Program Action Plans (PAPs).** Reports to be produced will include the APA reports,



semi-annual reports, audits, and the mid-term review report. M&E data will come from the government's own systems as tracked by the county departments and NPCT. County governments will prepare reports and submit them to CoG for consolidation and submission to the NPCT, which will then prepare a single progress report. To ensure that reporting is comprehensive, accurate and timely, there will be continuous TA, capacity building and peer-to-peer learning.

### 1.9 Disbursement Arrangements

14. **Disbursements are subject to PforR procedures and will be based on the achievement of DLIs.** For the national level agencies, the program activities will be factored in their annual work plans and Program Budgets (AWPB) and will be financed using government funds. The SDD will work closely with NT to ensure that the entity government budget allocation and exchequer are adequate to meet the DLIs. On achievement of the results, the IDA funds will be disbursed to the Consolidated Fund and no further accountability would be required by the Bank. For counties, Program funds will be channelled to counties as conditional grants via existing SPAs open and used under KDSP II in line with the POM. The participating counties will provide quarterly Statement of Expenses (SOEs) to the NPCT at SDD which will be incorporated in the quarterly Interim Financial Reports (IFRs) for submission to the Bank. A DLI Advances Account (DAA) will be opened at NT through which IDA disbursement will be disbursed as conditional grants to counties.

15. **The IPF component will be implemented by SDD which is deemed to have adequate FM capacity developed during the implementation of KDSP I.** A summary of these FM arrangements is as follows: (i) Budgeting- this will be done as part of the SDD budget, with a separate IDA budget code assigned for the Project. A qualified finance officer will be deployed to support budget preparation, execution, monitoring and reporting; (ii) Funds flows- the Program will use a foreign currency denominated Designated Account (DA) opened at the Central Bank of Kenya (CBK). The DA ceiling will be variable and the DA threshold for direct payments will be captured in the Disbursement and Financial Information Letter (DFIL). The disbursement methods will be detailed in the DFIL and will include direct payment, reimbursement, advances, and special commitment. The DA will be managed by the NT.

### 1.10 Capacity Building

16. **To support the effective delivery of capacity-building interventions, county governments will conduct annual self-assessments on capacity gaps, and thereafter design and implement a capacity-building strategy that will form part of each counties annual reform action plans (IPF and PforR).** The annual reform action plans will also include any recommendations made through the PAPs. This will ensure the development and delivery of mutually reinforcing and cohesive capacity-building interventions and approaches that are sequenced, responsive, and adaptive to the capacity asymmetries across counties. The National Technical Implementing Partner Teams (NTIPTs) will facilitate and provide supply-driven policy and legislative development, prepare guidelines, provide training on core institutional public sector capabilities. The NTIPTs, in consultation with the County Program Implementation Teams (CPITs) will also support demand-driven, nuanced TA and hands-on mentoring tailored to respond to county needs.

17. **County governments will use their Level 1 Grant to finance capacity-building interventions related to the achievement of results in each KRAs as per approved annual reform action plans.** Counties will also use these resources to finance the procurement of office, information and communication technology, and specialized equipment (in accordance with the investment menu provided in the POM).

18. **Program Operational Manual (POM):** A Program Operational Manual that will be prepared as an effectiveness condition will include: (a) the activities and timetable of actions to be carried out under the Program; (b) excluded activities; (c) the respective roles and responsibilities of entities participating in the Program; (d) the composition and responsibilities of the Program Implementation

Team; (e) the fiduciary, technical and operational aspects and procedures for implementation of the Program, including the financial management procedures; (f) the procedures for distribution of IDA credit proceeds; (g) the verification protocols for the DLIs and DLRs; (h) the Anti-Corruption Guidelines; and (i) the Program Action Plan. The POM will also include guidelines for implementation of ESHS aspects under the Program.

## 1.11 Environmental and Social Systems Assessment (ESSA) Scope and Methodology

### 1.11.1 Purpose and Objectives

19. The ESSA has been prepared by the WB for the PforR component of the Program to determine the capacity of the borrower's systems to plan and implement effective measures for the management of ESHS risks associated with the Program, and to promote E&S sustainability and requirement to avoid, minimize, or mitigate adverse ESHS impacts. In accordance with the WB PforR policy requirements, the borrower will apply national systems for the management of ESHS risks associated with the PforR interventions, provided these are consistent with the WB's PforR policy requirements, including the six PforR Core Principles and key planning elements.

20. The specific objectives of the ESSA are to:

- i. identify the Program's potential ESHS effects;
- ii. review the existing policy, legal, regulatory, and institutional frameworks relevant to ESHS management of effects related to Program's interventions;
- iii. assess the capacity of implementing institutions in managing potential adverse ESHS risks and impacts associated with the Program;
- iv. assess the Program's system performance with respect to the Six core PforR principles and identify strengths, weaknesses, opportunities, and threats in Program performance; and
- v. recommend specific actions to address gaps in the Program's ESHS systems that will be embedded into the PAP and Program design, to strengthen the Program's performance.

21. The ESSA process entailed the review of the borrower systems at the national and county levels, and assessment of the capacity of the implementing institutions to effectively manage the Program's ESHS effects. In this regard, the WB team applied various approaches as outlined below.

**Screening** of the Program activities was undertaken during the concept stage to identify potential ESHS effects of the program and to confirm that no activities that meet the defined exclusion criteria are included in the PforR. The screening was also to identify potential ESHS effects of the Program which may not meet the Policy's criteria for exclusion but potentially pose unacceptable adverse risks that are considered to likely have significant adverse impacts that are sensitive, diverse, or unprecedented on the environment and/or affected people, thus not eligible for PforR financing.

**Comprehensive desk review of relevant country policies, legal, regulatory and institutional frameworks, and program documents** that address ESHS aspects relevant to the Program: This entailed the review of:

- i. The applicable national and institutional systems and capacities for ESHS management;
- ii. Program documents, such as Program Concept Note, Program Appraisal Document; and
- iii. Recent ESSA reports for other PforRs, such as the Governance for Enabling Service Delivery and Public Investment in Kenya (GESDeK I), Kenya Urban Support Program (KUSP) I & II, Kenya Devolution Support Program (KDSP I), Financing Locally Led Climate Action (FLLoCA), Kenya Water Sanitation and Hygiene Program

(WASH), Kenya Green and Resilient Expansion of Sustainable Access to Electricity Program (GREEN) among others.

**System, Institutional and Capacity Assessments System** conducted through consultations with stakeholders at the national and regional levels to consider the applicability as written versus in practice for ESHS effects management and consistency with the six ‘core PforR principles’. The ESSA team held regional level consultations in Nakuru and Nairobi counties with participants from Isiolo, Taita Taveta, Vihiga, Elgeyo Marakwet, Kajiado, Kakamega, Makueni, Nakuru, Nairobi, Mombasa, Nyandarua, Kisumu, and Kisii counties, including Ministries, Departments and Agencies (MDAs), civil society groups, representative of Vulnerable and Marginalized Groups. National-level consultations were held in Nairobi bringing together implementing agencies, MDAs relevant to the Program and civil society groups. The sampling criteria considered counties with registered and unregistered community land, where VMGs are present, county Social Risk and Impacts Management (SRIM) committees have been formed or inducted, as well as counties presenting lessons learned and best practices in governance. The detailed list of stakeholders consulted is presented in Annex 4.

**Environmental and Social (E&S) Focal persons from all the 47 counties and trained on E&S risk management under past and ongoing World Bank-funded operations** were virtually engaged to identify opportunities to harmonize E&S structures across projects, to ensure E&S sustainability in development projects.

**The SRIM Unit under the Directorate for Social Development engaged county Social Development Coordinators to assess** the status of SRIM interventions in counties, including the coordination of SRIM activities between the relevant county and national government entities, availability of adequate and qualified social experts, effectiveness of existing county GRM systems, challenges, and opportunities to enhance social outcomes.

### 1.12 The ESSA Approach

22. The Program’s ESSA has been prepared to establish the extent to which the borrower’s systems are consistent with the six Core Principles of the World Bank’s PforR policy. The Six Core PforR principles include:

1. **Environment and Social Management:** To promote E&S sustainability in the Program design; avoid, minimize, or mitigate adverse impacts; and promote informed decision-making relating to the Program’s E&S effects.
2. **Natural Habitats and Physical and Cultural Resources:** To avoid, minimize, or mitigate adverse impacts and promote informed decision-making relating to a Program’s E&S effects in relation to physical and cultural resources.
3. **Protection of Public and Worker Safety:** To protect public and worker safety against the potential risks associated with construction and/or operations of facilities or other operational practices under the Program; exposure to toxic chemicals, hazardous wastes, and other dangerous materials under the Program; and reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards.
4. **Land Acquisition and Loss of Access to Natural Resources:** To manage land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement, and assists the affected people in improving, or at the minimum restoring, their livelihoods and living standards.
5. **Indigenous Peoples <sup>6</sup>and Vulnerable Groups:** To give due consideration to the cultural appropriateness of, and equitable access to, Program benefits, giving special attention to the rights and interests of the Indigenous Peoples and to the needs or concerns of vulnerable groups.
6. **Social Conflict:** To avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial dispute.

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<sup>6</sup> Known as Vulnerable and Marginalized Groups in the Kenyan context.

23. The relevance and applicability of the Six Core PforR Principles to the proposed Program are discussed under Chapter 6 where a comparative analysis of the borrower ESHS system and the Six Core PforR principles including the key planning elements are presented.

24. **ESSA validation and disclosure workshop.** In line with the World Bank Policy for PforR financing and the World Bank's Access to Information Policy, the draft ESSA findings will be presented to stakeholders in October 2023. Based on their input and feedback, the draft ESSA report will be revised, approved, and the final ESSA report publicly disclosed in-country on the SDD website and the World Bank's external website prior to Board approval.

25. The ESSA therefore provides a good basis for decision making and identification of gap filling measures to enhance the in-country systems and capacities for ESHS management associated with the Program interventions, by both the WB and implementing institutions. The findings of the ESSA, coupled with the recommendations, will be used to enhance the Program design and Program Action Plan.

## 2 NATIONAL ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEMS RELEVANT TO THE PROGRAM

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26. As outlined in the PforR policy, the country systems will be applied for management of ESHS risks of the proposed Program interventions. It is therefore necessary to ensure that the Program is implemented within a robust system for effective management of ESHS risks. This chapter provides an overview of Kenya’s policy, legal, regulatory, and institutional frameworks, and its relevance for management of ESHS risks of the proposed Program. It also identifies gaps, if any, in the adequacy and effectiveness of the system for the management of the ESHS risks.

27. Based on the analysis, there are no major gaps in Kenyan legislation in comparison to World Bank ESF. The gaps identified are largely in the acquisition of unregistered community land and the inclusion of minority VMGs and other disadvantaged groups related to core principles 4 and 5 respectively.

28. Annex 1 presents Kenya’s policies, regulations, and legislative frameworks that are applicable for the ESHS management for the proposed Program.

### 3 INSTITUTIONAL RESPONSIBILITIES FOR MANAGEMENT OF ENVIRONMENTAL, SOCIAL HEALTH AND SAFETY SYSTEMS

The following institutions listed under Table 7, are tasked with managing environmental, social, health and safety risks and impacts of the Program for realization of benefits.

Table 5: Institutional Responsibilities for Management of Environmental and Social Effects

No.	Institution	Responsibilities	Relevance
1.	State Department for Devolution (SD)	The SDD is the lead implementing agency, and coordinator of all Program activities at the Ministry of Devolution. The SDD will oversight all project-related matters including policy guidance, supervision, and monitoring of E&S management.	The SDD will coordinate other agencies that will implement different components of the Program, which will include; screening proposed investments, preparing a manual to manage ESHS aspects, and monthly and quarterly reports on ESHS implementation.
2.	Ministry of Environment, Climate Change and Forestry	The Ministry is responsible for environmental risk management at the policy level. The mandate of the Ministry is to monitor, protect, conserve, and manage the environment and natural resources through sustainable exploitation for socio-economic development.	Program- activities shall be carried out in manner that ensures appropriate usage of the environment, water, and natural resources. Physical investments under the proposed will undergo E&S risk screening, and requisite ESMPs developed (if necessary) to guide the management of adverse impacts and to ensure E&S sustainability.
3.	National Environment Management Authority	NEMA is mandated, under the Environmental Management and Coordination Act (EMCA) No.8 of 1999, amended in 2015, to supervise and coordinate all matters relating to the environment and implement related policies. NEMA approves ESIA's, monitors environmental compliance advice on land-use planning and ensures that environmental management is integrated into development policies, Programs, plans and projects.	Infrastructure Program activities shall entail civil works and environmental and social assessments will be prepared and submitted to NEMA for review and issuance of licenses. Environmental audits will also be prepared for investments under the Program and submitted to NEMA annually. The counties and SDD will liaise with NEMA in monitoring compliance and implementation of ESMPs. NEMA will also play a critical role in undertaking the capacity building of county teams.
4.	County Environmental Committees (CEC)	The County environmental committees contribute to decentralization of environmental management and enable the participation of local communities including persons with disabilities, marginalized groups and women in environmental management at the county level. The environmental management committees are constituted by the Governor and are responsible for the proper management of the environment within the County for which it is appointed.	The committees have a responsibility to conduct site visits and review the environment related reports of the County projects and in some cases attend site meetings of the sub-projects to follow-up on critical issues. These are in relation to infrastructure related activities.
5.	Environment and Land Court	The Court has jurisdiction over any disputes relating to the environment and land. The Court has powers to deal with disputes relating to: i) land administration	The Court shall be engaged as and when matters arise as related to implementation of Program activities

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		and management; ii) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; iii) appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court; and, iv) it exercises supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.	such as construction operations particularly when such environmental related complaints/ grievances cannot be resolved through Program’s GRM at sub-project, county, municipal and national levels.
6.	Directorate of Occupational Safety and Health Services (DOSHS)	The DOSHS has the responsibility of ensuring safety, health, and welfare of all workers in all workplaces. It also administers the Work Injury Benefits Act, 2007 (WIBA, 2007) which provides for compensation of workers who have been injured or have suffered a disease out of and in the course of employment. Inspecting workplaces to ensure compliance with safety and health laws, including Investigation of occupational accidents and diseases with a view to preventing recurrence, training on OSH, first aid and fire safety and disseminating information on OHS to customers, among other issues.	DOSHS will play a key role in the Program by inspecting and auditing workplaces to promote best practices and ensure compliance with safety and health standards as set out in OSHA, 2007 and its subsidiary regulations. Based on the gaps identified on OHS compliance during implementation of KDSP I and KUSP I, DOSHS will be critical in undertaking capacity building of county teams.
7.	The National Construction Authority (NCA)	The NCA was constituted to regulate, streamline and build capacity in the construction industry. It oversees the Kenyan construction industry and coordinates developments in the sector to ensure an effective and sustainable industry. The authority oversees; i) accrediting and registering contractors and regulating their professional undertakings, ii) registering all construction projects, iii) accrediting and certify skilled construction workers and construction site supervisors, iv) commissioning research into matters relating to the building sector, and v) the authority develops and publish a code of conduct for the construction industry.	NCA will register sites and issue permits for construction sub-projects under the program as due diligence in ensuring quality work. The authority will also have a supervision role as part of its mandate to manage construction sites including safety aspects and to manage quality assurance in the construction industry.
8.	Ministry of Roads and Transport (KeRRA, KURA and KeNHA)	The mission of the Ministry is to provide efficient, affordable and reliable transportation services for sustainable economic growth and development. The mandate of KeNHA, KURA and KeRRA as defined in the Kenya Roads Act, 2007 in the management, development, rehabilitation and maintenance of national urban trunk roads and constructing, upgrading, rehabilitating and maintaining rural roads, respectively.	Investment grants under the program will involve providing support for improving access to and coverage of key rural and urban services, such as roads and NMTs, as well as for strengthening the resilience and sustainability of the infrastructure. To ensure harmony in road infrastructure development and appropriate operation and maintenance, the listed Road Agencies in line with the Road Act 2007 will be consulted by the counties/ NPCT as relevant during feasibility stage to harmonize the proposed interventions and the design standards as well as during implementation phase to avoid conflicts in road infrastructure developments.
9.	Ministry of Interior and Coordination of	The Ministry is domiciled in the Office of the President. It is charged with the responsibility of public administration, internal security, and championing campaign against drug and substance abuse. The	KDSP II will be implemented in all the 47 counties. Some counties have security related issues, and the Program will work with the respective



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	National Government	Ministry also coordinates state functions and offers reception services to all Government ministries. The Ministry's functions have evolved and its operations restructured over time to address emerging issues. It has remained decentralized to the grassroots in order to provide a framework for quick interpretation, dissemination and implementation of Government policies.	counties public administration to ensure contractors involved in sub-projects implementation are safe
10.	County Governments	The County Governments have powers to control or prohibit all businesses, factories and other activities including the proposed Program which by reason of smoke, fumes, gases, dust, noise or other cause, maybe a source of danger, discomfort or annoyance to the neighborhood. They also have powers to prescribe conditions that such businesses, factories, and other developers must comply with.	County Government and its relevant departments shall supervise Program roll out within respective counties to ensure no activity being implemented will be a source of danger, discomfort, conflict or annoyance to the public at large.
11.	Ministry of Labour and Social Protection -State Department for Social Protection and Senior Citizen Affairs -Directorate for Social Development	The department focuses on the welfare of the family, women, Children, older persons and other vulnerable groups with special attention accorded to Persons with Disabilities (PWDs). The mandate of the department is formulation, review and implementation of Social Security, employment, Programme for persons with disabilities, National Human Resource Planning and Development, National labour productivity, Child Labour and regulation management, Facilitating and Tracking Employment creation, Co-ordination of National employment, Internship and Volunteers for public service, Community Development, Protection and advocacy of needs of Persons with Disabilities, Social Assistance Programmes, Workplace Inspection and Workman's Compensation.	The Program aims to empower individuals and communities to facilitate sustainable social development for improvement in their livelihoods. This will be facilitated through targeting for the most deserving beneficiaries of Program benefits.
12.	Social Risk and Impacts Management (SRIM) Unit under the Directorate for Social Development  Proposed County Social Risks and Impacts Management Committees	The SRIM unit has proposed the formation of County SRIM Committees. Fifteen committees are earmarked for establishment this fiscal year (2023/24), in consultation with key stakeholders such as CoG, SDD and other relevant entities. The membership of these committees would include DOSHS, NEMA, Labour Children's Gender, Public Works, NGAO, County Government, among others. Further, the SRIM unit is partnering with the Kenya School of Government (KSG) and University of Nairobi to train the committees and other social specialists involved in development projects. The Unit is currently facilitating the formation of additional committees in lacking Counties and development of a social risk management curriculum, under the FLLoCCA.	The Social Risk and Impacts Management Unit will support implementing agencies to identify and mitigate social risks and impacts and enhance positive social outcomes throughout the Program cycle.  The proposed committees will be instrumental in supporting counties to manage social risks and impacts and enhance positive social outcomes.
13.	Commission of Administrative and Justice	The office of the Ombudsman is commissined with receiving and addressing public complaints. The types of complaints considered are; (i) Citizen against State/public officers and institutions; (ii) Public Officers against fellow public officers; and, (iii) Public Institutions against other public institutions.	During Program implementation, the public has the free will to submit complaints to the commission. Sensitization of the mandate and channels of communication to the commission shall be undertaken.
14.	National Gender and Equality	The over-arching goal for the NGEN is to facilitate the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the	The Commission will be consulted to facilitate adherence to gender mainstreaming in urban infrastructure



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	Commission (NGEC)	youth, children, the elderly, minorities, and marginalized communities.	investments through i) capacity building; ii) promote formation of gender committees which are inclusive of various factors such as civil society organizations and key departments; and iii) documentation by Counties/Cities/Municipalities on the identified gender mainstreaming areas during planning and infrastructure development.
15.	National Council for Persons with Disability (NCPWD)	The National Council for Persons with Disabilities is a state corporation established by an Act of Parliament; the Persons with Disabilities Act No. 14 of 2003 and set up in November 2004. The Council is mandated to promote and protect equalization of opportunities and realization of human rights for PWDs to live decent livelihoods.	Program activities will consider PWDs as beneficiaries, in promoting their inclusivity, human dignity, equality equity, and integrity. During the design review of infrastructure investments, the NPCT will collaborate with the NCPWD to facilitate inclusion of design specifications to cater for the needs of the PWD.
16.	Office of the Data Protection Commissioner (ODPC)	The Mandate of the ODPC is to regulate the processing of personal data; ensure that the processing of personal data is guided by the principles set out in Section 25 of The Act; protect the privacy of individuals; establish the legal and institutional mechanisms to protect personal data and provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.	ODPC will focus on three areas for the proposed program: i) Build the capacity and partnership with implementing agencies to enhance data processing operations; ii) ensure private data collected under the program is safeguarded; iii) equip stakeholders with adequate capacity on data protection to promote self-regulation.

## 4 ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY EFFECTS OF THE PROGRAM

### 4.1 Introduction

29. This chapter presents the anticipated ESHS benefits, risks, impacts, and management measures specific to the KDSP II Program activities.

### 4.2 Scope of Program

30. The Program will strengthen county institutional performance and management of resources for service delivery through reforms in financing, expenditure, institutional and human resources management, oversight, citizen participation, and accountability under GSIG. Under SDIG, the Program will finance investments which will range from small to medium-scale infrastructures, like projects undertaken under KDSP I and, to some extent, KUSP I, such as rehabilitation and construction of infrastructure in health, education, agriculture, among others. The investments will involve civil works activities with potential ESHS implications.

#### Environment & Social Risk Rating

31. Because of the significant geographic dispersion of the participating counties, and constraints around oversight; different scales of proposed investments; the potential direct and cumulative E&S risks and impacts associated with the sub-projects proposed under the Program; the capacity of the Program coordination and implementation teams, and gaps identified in the institutions responsible for managing ESHS risks in the country; the varying capacity of county institutions to roll out the proposed reforms, as well as the exclusion of VMGs and other disadvantaged groups from the public participation process and access to Program information, benefits and opportunities, the overall risk of the program is rated as **Substantial**.

### 4.3 Exclusion Principle

32. This principle applies to Program activities that meet the exclusion criteria regardless of the borrower's capacity to manage such ESHS effects. In the PforR context, exclusion means that an excluded activity is not included in the identified investment menu. The exclusion principle also applies to any activity that requires completion of non-eligible activity to achieve its contribution to the PDO and/or DLI. In this regard, the Program is designed to exclude investments that are likely to have significant adverse ESHS risks and impacts or are categorised as high-risk sub-projects under the World Bank ESF and Kenya's EIA Regulations. The six core principles under the PforR will apply to all investments as a mechanism for avoiding, minimising, or mitigating adverse ESHS risks and impacts.

33. The Program shall exclude sub-projects that are likely to result in:
- a. Any investments that trigger high or substantial risks under the World Bank Policy for Program-for-Results.
  - b. New investments or expansion of;
    - i. power plants; dams; highways; urban metro systems; railways and ports;
    - ii. engineered sanitary landfills;
    - iii. construction and installation of incinerators;
    - iv. activities related to management of solid waste dumpsites;
    - v. decommissioning of dumpsites
    - vi. office buildings;
    - vii. projects with potentially significant risks to protected areas or national parks;
    - viii. manufacturing or industrial processing facilities;
    - ix. investments which may be considered temporary in nature, e.g., murrum/gravel roads, temporary relocation sites;
    - x. construction of wastewater treatment facility; and
    - xi. construction of any water storage and treatment facility.
  - c. Significant conversion or degradation of critical natural habitats or cultural heritage sites.

- d. Air, water, or soil contamination leading to significant adverse impacts on the health or safety of individuals, communities, or ecosystems.
- e. Workplace conditions that expose workers to significant health and personal safety risks.
- f. Land acquisition and/or resettlement of a scale or nature that will have significant adverse impacts on affected people or the use of forced evictions, or physically relocate more than 200 persons.
- g. Large-scale changes in land use or access to land and/or natural resources.
- h. Adverse E&S impacts covering large geographical areas, including transboundary impacts, or global impacts such as greenhouse gas (GHG) emissions.
- i. Significant cumulative, induced, or indirect adverse impacts.
- j. Activities that involve the use of forced or child labour.
- k. Significant adverse social impacts, marginalization of, and/ or may give rise to significant conflict within or among communities or social groups.
- l. Activities with high risk of GBV and SEAH.
- m. Activities that would:
  - i. adversely affect lands or rights of Traditional Local Communities or other VMGs;
  - ii. have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;
  - iii. cause the relocation of VMGs from land and natural resources that are subject to traditional ownership or under customary use or occupation; or
  - iv. have significant impacts on cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected communities.
- n. Investment on land for which ownership cannot be ascertained, land with any encumbrances, including boundary conflicts, family disputes, court cases, absentee landlords and succession challenges.

#### **4.4 Potential Environmental, Health, and Safety Benefits**

34. The PforR Program will significantly deliver ESHS benefits which will vary from county to county depending on the investments' menu. The potential ESHS benefits include, but not limited to the following.
- a. Improved clean environment and living conditions through creation of green spaces from the establishment of public parks and landscaping of public areas.
  - b. Improved health and sanitation (at markets, bus terminus, households) through provision of water, improved solid waste and wastewater management systems.
  - c. Improved public health through construction and rehabilitation of health and water infrastructures which will reduce cases of waterborne diseases such as typhoid, diarrhoea, cholera, schistosomiasis, and intestinal worms from provision of clean water to households and wastewater management systems.
  - d. Improved roads will enhance safety and access to basic services.
  - e. Reduced road-users' conflicts and pedestrian accidents through provision of Non-Motorised Transport (NMT) facilities and bus terminus.
  - f. Better roads will enhance traffic flow, improve air quality, reduce dust levels, and lower fuel consumption.
  - g. Reduced risk of flooding and erosion through improved storm water drainage systems in urban areas.
  - h. Increased awareness on the importance of environmental health and safety management at the national and county levels.
  - i. Promote climate smart resilient infrastructure improvements.
  - j. Address adverse climate related disasters such as floods that may adversely impact income streams and production as well as limit access to opportunities and services.

#### 4.5 Potential Environment Health and Safety Risks and Impacts

35. The Program is expected to have direct and indirect effects on the physical EHS risks. Impacts in this Program will mainly be limited to the construction phase. The risks are considered site specific, temporary in nature and reversible.
36. The potential negative EHS impacts, include but are not limited to:
- a. Disturbance, loss of existing vegetation and potential impact to fauna species.
  - b. Localised noise and air pollution (dust and emissions) from construction activities.
  - c. Soil contamination and underground water pollution from spillage of oil and fuel associated with construction works.
  - d. Soil erosion and sedimentation of waterways especially during construction of roads and storm water drains.
  - e. Land degradation impacts from sourcing of construction materials from quarry and borrow pits for use in civil works.
  - f. Scenic quality deterioration and environmental pollution from dumping of excavated material and impact to physical cultural resources.
  - g. Occupational health and safety incidents/accidents to workers at construction sites and community health and safety risks to the public.
  - h. Increased generation and unsafe disposal of construction solid waste and wastewater.
  - i. Traffic obstruction and increased traffic related safety risks.
  - j. Temporal disruption of public access to residential and businesses especially during excavation of trenches on structures that have encroached the road reserve.
  - k. Disruption of existing infrastructure or services such as drainage, sanitation, telecommunication utilities, power, and water supply especially during construction phase.
  - l. Increased spread of sexually transmitted diseases including HIV/AIDS, STDs, and other communicable diseases such as COVID-19 and tuberculosis.
  - m. Water (surface and groundwater) pollution risks from transport, treatment and disposal of wastewater and faecal sludge from pit latrines, septic tanks, and other onsite sanitation facilities, if not properly handled.
  - n. Poor infrastructure development from limited involvement/availability of technical experts in development of feasibility studies and monitoring or supervision from NPCT as well as from relevant government authorities such as NEMA, DOSHS and NCA.
  - o. Poor sub-project sustainability due to limited operation and maintenance of developed infrastructure.

#### Potential Social Benefits

37. It is anticipated that the Program will:
- a. Increase effectiveness and efficiency of the counties in service delivery by strengthening transparency, and accountability in the management of public resources.
  - b. Improve processes of public participation and disclosure of information, through (i) guidelines with protocols on mainstreaming gender, disability, and inclusion of VMGs and other disadvantaged and vulnerable groups in the public participation process; (ii) county project investment dashboards with citizen feedback interface on project implementation, annual and supplementary budgets, among others, (iii) citizen participation in the ward or village -level project implementation committees.
  - c. Enable access to public facilities/social services through improved health, transport, trade, and water infrastructure, and create employment opportunities for local people.
  - d. Augment existing GRM systems and Alternative Dispute Resolution Mechanisms (ADR) and Court User Committees, to receive and facilitate the resolution of concerns and grievances throughout the public investment cycle promptly and effectively.
  - e. Strengthen and harmonize county SRIM structures to mitigate social risks and impacts, which will

enhance opportunities and increase the overall social performance in counties.

### Potential Social Risks and Impacts

38. The KDSP II proposed investments may pose potential negative social risks and impacts, which include, but not limited to:

- a. Inadequate staff and budget allocation towards managing social risks and impacts on the Program;
- b. Loss of land, livelihoods, and other assets, and restrictions on land use;
- c. Labour influx and related impacts GBV/SEAH; Child Exploitation and Abuse (CEA), insecurity and upset to community dynamics;
- d. Lack of trust by communities due to stakeholder processes that do not meet the threshold of meaningful consultations;
- e. Inadequate targeting and inclusion of VMGs and other disadvantaged or vulnerable groups to Program information, benefits, and opportunities;
- f. Elite capture and/or political interference in beneficiary targeting as well as selection and prioritization of public investments;
- g. Escalation of or instigation of resource-based conflict between clans, ethnic groups, among others;
- h. Execution of projects for the achievement of the DLIs could result in social conflicts and grievances within the communities potentially delaying project delivery.

#### 4.5.1 ESHS Management Measures

39. The potential ESHS risks and impacts from the proposed activities shall be handled by the Program Action Plan (PAP) that has been prepared as part of the ESSA. The PAP outlines the principles, steps, procedures that will be followed during project implementation to mitigate any potential adverse risks and impacts.

40. The detail of the range of key ESHS risks associated with the proposed PforR is presented in Table 4-1.

Table 4-1: Key ESHS Risks Associated with Program Activities and Recommended Mitigations Measures

No.	Risks/Impact	Management Measures	Risk Rating
<b>Environmental Health and Safety</b>			
1.	Inadequate identification and management of environmental risks (e.g., land, air, and water pollution, land degradation), identification of adequate mitigation measures and allocation of budget in subprojects main budget	<ul style="list-style-type: none"> <li>▪ Prepare ESIA/ESMPs as per EMCA, 1999 [2015] regulations, and incorporate an adequate monitoring plan in the contract documents.</li> <li>▪ The subprojects budget should include the ESMP budget and should be included in the BoQ as a standalone item for implementation of ESMP.</li> </ul>	High
2.	Impacts on natural habitats and physical cultural resources due to poor siting, design and planning of infrastructures	<ul style="list-style-type: none"> <li>▪ Conduct feasibility and design studies which will identify proper siting, planning and execution of the subprojects to minimize impacts on natural habitats and PCR resources.</li> <li>▪ Develop an E&amp;S screening checklist for screening sub-projects to identify any potential impacts to natural habitats and physical cultural resources before undertaking environmental assessments.</li> <li>▪ Sub-projects shall consider the standard chance find procedures outlined in the ESHSM manual for the management of physical cultural resources.</li> </ul>	Low

No.	Risks/Impact	Management Measures	Risk Rating
3.	Public and workers' health and safety risks	<ul style="list-style-type: none"> <li>▪ Develop SOP guidelines for mainstreaming OHS and Community Health and Safety aspects in the ESHSM manual for adoption in Program implementation.</li> <li>▪ The Program will partner with DOSHS to enhance the capacity of counties on health and safety risks management based on national laws and regulations. This will be achieved through training of E&amp;S staff at the counties, and induction of contractors on OSHA, 2007.</li> <li>▪ Develop a simplified OHS manual for contractors.</li> </ul>	Low
4.	Inadequate management of land, air, and water pollution	<ul style="list-style-type: none"> <li>▪ Screen and prepare ESMPs (if necessary) as per EMA, 2011 regulations and monitor implementation.</li> <li>▪ Monitor implementation of the ESIA/ESMP as per the NEMA standards and regulations (and WHO where applicable)</li> </ul>	Low
5.	Poor integration of green and climate aspects into the project activities	<ul style="list-style-type: none"> <li>▪ Support development of climate change screening tools to be integrated into the subprojects design, monitoring, and tracking of climate change related risks and proposed mitigation and/or adaptation measures.</li> </ul>	Moderate
<b>Social Risks</b>			
6.	Inadequate public participation and information disclosure at the national and county levels and lack of oversight to ensure MDAs and counties conduct meaningful consultations.	<ul style="list-style-type: none"> <li>▪ Establish a systematic approach to stakeholder engagement to identify stakeholders and build and maintain a constructive relationship with them.</li> <li>▪ Promote and provide means for effective and inclusive engagement of stakeholders throughout the life of the Program including monitoring the consultation process and providing feedback on the implementation of citizens' priorities.</li> <li>▪ Provide stakeholders with opportunities to express their views on the Program and allow implementing agencies to consider and respond to them.</li> <li>▪ Disclose appropriate Program information on E&amp;S risks and impacts in a timely manner to ensure meaningful consultations, in relevant local languages, in a manner that is accessible and culturally appropriate, considering any specific needs of groups that may be differentially affected by the Program, or groups of the population with specific information needs, such as disability, literacy, gender, mobility, differences in language or accessibility.</li> <li>▪ Ensure adequate documentation of all stakeholder engagement process including discussions held, key concerns raised, responses given and agreed actions. Collect photographic evidence to the extent possible.</li> </ul>	Substantial
7.	Exclusion of VMGs and other disadvantaged groups (e.g., ethnic minorities, women, youth, elderly, children, youth, people with disabilities)	<ul style="list-style-type: none"> <li>▪ Implement measures to ensure VMGs and other disadvantaged individuals and groups are targeted and included in the development process in a timely manner, and their views considered.</li> <li>▪ Provide VMGs and other disadvantaged individuals and groups with adequate access to program benefits and opportunities that are culturally appropriate.</li> <li>▪ Ensure VMGs and other disadvantaged groups are adequately and proportionately represented through proper and meaningful consultations.</li> <li>▪ Disclose promptly relevant and easily accessible Program information, including feedback mechanisms for the Program.</li> </ul>	Substantial

No.	Risks/Impact	Management Measures	Risk Rating
		<ul style="list-style-type: none"> <li>▪ Establish a grievance mechanism that is also culturally appropriate and accessible to VMGs and other disadvantaged groups and considers the availability of judicial recourse and customary settlement mechanisms among VMGs and other disadvantaged groups.</li> <li>▪ Undertake awareness on digital literacy.</li> </ul>	
8.	Permanent and/or temporary physical and economic displacement due to anticipated land and wayleave acquisition to enable the construction of Infrastructure projects	<ul style="list-style-type: none"> <li>▪ Acquire land as guided by the national legal and regulatory frameworks, particularly, the Land Act 2012 (revised 2019), Community Land Act 2016 and ensuing regulations.</li> <li>▪ Fully disclose to affected persons their rights, entitlements, obligations as pertains land acquisition and compensation; the feasible forms of compensation and implications for each.</li> <li>▪ Review the land acquisition guidelines under the Kenya Climate Smart Agriculture Project, and adapt it to KDSP II, to manage temporary (and permanent, if any) physical and economic displacements and the acquisition of land for sub-project sites on registered and unregistered community land.</li> <li>▪ Ensure meaningful consultation with the Project affected persons to ensure they understand the extent of the risks and impacts.</li> <li>▪ Document and disclose all community consultation fora clearly providing signed verbatim minutes (with the key concerns raised and feedback given to communities) and signed lists of participants. If permitted, get photographic evidence of the meeting.</li> <li>▪ Engage qualified and adequate experts to prepare Resettlement Action Plans and compensate affected persons fairly, promptly, and justly in accordance with provisions of the national laws and land acquisition guidelines (when necessary).</li> </ul>	<i>Substantial</i>
9.	Labour influx and related impacts such as GBV/SEAH	<ul style="list-style-type: none"> <li>▪ Prepare and enforce a No GBV/SEAH Policy in accordance with national laws;</li> <li>▪ Engage the social services department to educate all workers and affected stakeholders on prevention and response to SEAH before commencement of works;</li> <li>▪ Institute confidential mechanisms and hotlines for reporting SEA/S cases;</li> <li>▪ Map GBV referral pathways for medical care, psychosocial support, legal redress, and partner with relevant national and county government agencies and NGOs to ensure that GBV/SEAH survivors access, as and when necessary;</li> <li>▪ Implement Grievance redress mechanisms that are GBV/SEAH responsive and survivor centered; and</li> <li>▪ Include SEAH provisions in all workers' and contractors' codes of conduct (CoC).</li> </ul>	Moderate
10.	Ineffective management of program related grievances	<ul style="list-style-type: none"> <li>▪ Strengthen the existing institutional-level grievance mechanisms to receive and facilitate resolution of complaints and provide for anonymous and confidential reporting and handling of grievances.</li> <li>▪ Address concerns promptly and effectively in a transparent manner that is culturally appropriate and readily accessible to all stakeholders (including VMGs and other disadvantaged groups), at no cost and without retribution.</li> </ul>	Substantial



No.	Risks/Impact	Management Measures	Risk Rating
		<ul style="list-style-type: none"> <li>▪ Ensure that the GRM facilitates the resolution of Program related disputes that may arise at any stage of the Program, at the lowest level, and where feasible and suitable for the Program, the grievance mechanism will utilize existing formal and informal grievance mechanisms, supplemented as needed by Program-specific arrangements.</li> <li>▪ Inform the stakeholders about the grievance process, as well as the appeal process including the national judiciary, to which unsatisfied grievances may be referred when the resolution of the grievance has not been achieved.</li> <li>▪ Where there is workplace grievance mechanisms, ensure that contractors implement this without recrimination.</li> </ul>	
11.	Insufficient application of data protection and security provisions on personal data	<ul style="list-style-type: none"> <li>▪ Adhere to national Data Protection Laws.</li> <li>▪ Secure data centres.</li> <li>▪ Implement non-disclosure agreements for all agencies to be involved in data collection and handling.</li> <li>▪ Anonymize all data and information that is publicly displayed.</li> <li>▪ Limit the number of people with access to non-anonymized data/ information.</li> <li>▪ Encrypt data and information collected.</li> <li>▪ Assess level of knowledge, attitude, and practice for implementing agencies' staff on data protection and security.</li> <li>▪ Undertake Cybersecurity Audit to determine whether Implementing agencies have proper data protection and security mechanisms and complies with relevant regulations. The Audit should include review of policies, standards, guidelines, and procedures, as well as a review of professional certifications of IT technical personnel.</li> <li>▪ Undertake staff capacity building on data protection and security, which should include certification of personnel with access to public data and information.</li> </ul>	Moderate
<b>Safeguards Implementation, Monitoring and Reporting</b>			
12.	Inadequate Environment and Social Staffing and budget allocation for ESHS risks management.	<ul style="list-style-type: none"> <li>▪ Enhance human resource staffing and resourcing of ESS departments at the counties. Each participating county should have an environment and social specialist as a minimum condition to access the Service Delivery Investment Grant (Level 2 Grants)</li> <li>▪ The Program will partner with NEMA to train and build capacity of the newly recruited and/or seconded Environment experts on EMCA 2015 and related regulations.</li> <li>▪ The SRIM Unit will work with the counties to train all social experts in SRIM.</li> <li>▪ The county governments should allocate <b>adequate</b> budget and resources (vehicles and equipment) as part of the subproject budgets for proper supervision of safeguards during subprojects implementation</li> </ul>	Substantial
13.	Poor enforcement of ESHS requirements	<ul style="list-style-type: none"> <li>▪ Review the contract documents to strengthen the existing ESHS clauses to ensure OHS, community health and safety, GBV/SEAH, labour management and GRM are adequately incorporated, including integrating the NEMA licence conditions.</li> <li>▪ Include template for incident/accident reporting in contracts, on site.</li> </ul>	Substantial



No.	Risks/Impact	Management Measures	Risk Rating
		<ul style="list-style-type: none"> <li>▪ Induct implementing agencies and contractors on ESHS.</li> <li>▪ Include a clause on monthly reporting of sub-project incidents/accidents on site by the contractor.</li> <li>▪ Counties should work together with the relevant MDA's (NEMA, DOSHS, social protection, labour, gender) to enforce compliance with ESHS laws and regulations.</li> </ul>	
14.	Gaps in ESHS monitoring and reporting	<ul style="list-style-type: none"> <li>▪ Prepare biannual and annual ESHS implementation reports.</li> <li>▪ Continuously monitor non-compliance to ensure implementation of agreed actions.</li> <li>▪ APA to include Climate Budgeting indicators.</li> </ul>	Substantial

## **5 ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY MANAGEMENT SYSTEMS ASSESSMENT IN RELATION TO THE PforR CORE PRINCIPLES AND PLANNING ELEMENTS**

41. The assessment of how the ESHS management systems functions in practice is presented in Table 5-1, which is structured as a SWOT analysis of the institutions' capacity to manage the ESHS risks and impacts in line with the country's policies, legal and regulatory frameworks as written, and whether these are in line with the PforR Financing requirements. This section builds on the capacity assessment of institutions (Chapter 6) mandated to manage ESHS risks as per the country systems against the PforR's Core Principles.

Table 5-1: Analysis of the Borrower ESHS System in Relation to the PforR Core Principles

<p><b>Core Principle 1: Promote E&amp;S Sustainability, avoid, minimize, mitigate adverse impacts and promote informed-decision making</b></p>	
<p>Bank Policy for Program-for-Results Financing: Environmental and social management procedures and processes are designed to:</p> <ul style="list-style-type: none"> <li>a) promote environmental and social sustainability in Program design;</li> <li>b) avoid, minimize, or mitigate against adverse impacts; and</li> <li>c) promote informed decision-making relating to a Program’s environmental and social effects.</li> </ul>	
<p>Bank Directive for Program-for-Results Financing: Program procedures will:</p> <ul style="list-style-type: none"> <li>a) Operate within an adequate legal and regulatory framework to guide environmental and social impact assessments at the Program level.</li> <li>b) Incorporate recognized elements of environmental and social assessment good practice, including:                             <ul style="list-style-type: none"> <li>• early screening of potential effects of all projects.</li> <li>• consideration of strategic, technical, and site alternatives (including the “no action” alternative).</li> <li>• explicit assessment of potentially induced cumulative, and trans-boundary impacts.</li> <li>• identification of measures to mitigate adverse environmental or social impacts that cannot be otherwise avoided or minimized.</li> <li>• clear articulation of institutional responsibilities and resources to support implementation of plans.</li> <li>• Responsiveness and accountability through stakeholder consultation, timely dissemination of Program information, and</li> <li>• responsive grievance redress measures.</li> </ul> </li> </ul>	
<p><b>Applicability –APPLICABLE</b></p> <p>Core Principle 1 is considered relevant in terms of E&amp;S management during implementation of the program. The PforR component of the program finances investments which includes civil work activities such as rehabilitation and construction of infrastructure in health, education, agriculture, trade, transport, cultural and public entertainment, water, fire, and disaster management sectors, among others.</p> <p>The implementation of these type of investments is likely to have a physical footprint with varying degree of E&amp;S risks and impacts during the lifecycle of the project investments (construction, operation, and maintenance, and during decommissioning phases). Although expected to be localized, manageable and in some cases temporal, these risks and impacts require mitigation. Potential impacts may be due to materials sourcing and excavation, solid waste generation and management, health and safety risks and environmental (land, air, water) pollution issues. This therefore requires undertaking E&amp;S assessment and providing appropriate mitigation measures to adverse E&amp;S impacts.</p>	
<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>• The Government has a robust environmental legal and policy framework in place to protect, conserve, and mitigate adverse impacts.</li> <li>• The national system provides a comprehensive framework for environmental screening, impact assessment, and management consistent with the core principles outlined in Program for Results Financing.</li> <li>• Existing legislation also helps minimize or mitigate possible adverse impacts on the natural habitats, archaeological sites, and cultural resources.</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>• The implementation of the existing legal/regulatory provisions face challenges due to lack of adequate and qualified staff within the implementing agencies to manage E&amp;S risks, budgetary constraints, limited understanding of the law by public servants and the public.</li> <li>• The National EIA system mainly focuses on environmental aspects and does not comprehensively cover the social, health and safety issues such as labour, occupational/community health and safety, land management, GBVSEAH, conflict management, among others</li> </ul>

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<ul style="list-style-type: none"> <li>• The country has developed policies and legislation that advance social issues relevant to the Program such as on public participation, data protection, inclusion of minority and marginalized groups, disability mainstreaming, national values and principles on governance, gender mainstreaming, Gender-Based Violence (GBV), among others.</li> <li>• Kenya has demonstrated commitment to public participation through policy and legal frameworks, including the Participation Guidelines by the State Department for Public Service Commission and County Public Participation Guidelines by the Ministry of Devolution and Arid and Semi-Arid Lands (ASALs) in collaboration with the Council of Governors, the Public Participation Policy and national curriculum for civic education. The Constitution and the PFM Act strengthen the requirement for public consultations. Further, the Judiciary has integrated public participation by establishing Court Users’ Committees and the National Council on the Administration of Justice.</li> <li>• The GoK has developed a draft Green Fiscal Incentives Policy Framework (2022) that seeks to steer Kenya’s economy onto a desired low-carbon climate-resilient green development pathway through a variety of fiscal and economic mechanisms.</li> <li>• Previous (KDSP and KUSP) and ongoing (FFLoCA) PforR programs have helped to develop program-specific E&amp;S risk management systems/capacity. These projects have sensitized counties on the importance of having such systems in place. However, sustainability of the capacity and systems enhancement are limited to the lifecycle of these programs.</li> <li>• Most counties are aware on the need for GRM systems (through KDSP/KUSP), although in many cases the systems are not well structured and functional.</li> <li>• The counties have several environmental, social, labour, gender, DOSHS and public health officers, and coordination of the functions when needed is well structured, although they are spread out in different departments.</li> <li>• Some counties have retained E&amp;S specialists who have been trained under KDSP/KUSP/FFLoCA, who can play the role of E&amp;S specialists for the program.</li> </ul>	<ul style="list-style-type: none"> <li>• The laws related to SRIM are defined however the systems of their management thereof, are not well coordinated. This is because, relevant SRIM laws are fragmented across different MDAs which makes implementation of SRIM difficult to synchronize. Further, the newly formed SRIM unit at the Ministry of Labour and Social Protection under the Directorate for Social, is still developing, and there is no legal framework to constitute and operationalize the Social Risk Management Committees at the county level.</li> <li>• The Implementing Agencies lack enough and qualified human capacity to support Environmental and Social Management Systems (ESMS) of the Program.</li> <li>• Insufficient capacity building activities on implementing agencies and county E&amp;S officers to ensure compliance to required E&amp;S standards during project implementation.</li> <li>• Poor coordination among the various implementers and inadequate attention to E&amp;S concerns, due to poor allocation of resources (human and financial) for oversight authorities such as NEMA, DOSHS, Social, Gender, Children, Labour Officers (etc), for E&amp;S management.</li> <li>• The implementation of ESMP is inconsistent, due to poor or no budgetary allocation for the mitigation measures in the bidding/contract documents.</li> <li>• Lack of integrating ESHS clauses as part of the bidding/contract documents which makes it difficult to enhance compliance during project implementation.</li> <li>• Poor compliance with national environmental regulations and good practices in waste management, including e-waste management.</li> <li>• Public participation at national and county levels does not meet the threshold of meaningful consultation, with no clear sanctions for not aligning with the Constitutional provisions.</li> <li>• Stakeholder engagement is still weak and ad hoc.</li> <li>• Weak coordination across MDAs in delivering their respective mandates due to limited financial and human resources, lack of interagency implementation agreements, silo mandates, bureaucracies, and no clear entity to oversee the coordination.</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• The program will assist the implementing agencies to: <ul style="list-style-type: none"> <li>○ Develop and implement an ESHS manual with guidelines, and protocols to comply with the national ESHS legislation;</li> <li>○ Develop and implement an E-waste recycling and disposal management guidelines that apply for the E-waste stream to be generated during operations of the Program;</li> <li>○ Harmonize and strengthen the existing GRMS;</li> </ul> </li> </ul>	<p><b>RISKS</b></p> <ul style="list-style-type: none"> <li>• Inadequate mainstreaming of existing ESHS risk management regulations in the E&amp;S protocols to be developed under the Program.</li> <li>• Insufficient allocation of budgets and human resource capacity for ESHS risk management during Program planning and implementation.</li> <li>• Incomprehensive identification and mitigation of social risks and impacts in the ESMP.</li> <li>• Limited supervision, monitoring and reporting on ESHS risks and impacts management impeding identification and execution of corrective action plans.</li> </ul>

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<ul style="list-style-type: none"> <li>○ Enhance the ESHS clauses in the contract and bidding documents to include key ESHS aspects;</li> <li>○ Ensure All PIMIS reports (DLI 2.2) include ESHS components as part of monitoring;</li> <li>○ Build the capacity of social specialists to guide and oversight all SRIM activities; and</li> <li>○ Enhance the coordination of SRIM activities through strengthening county coordination structures.</li> </ul>	<ul style="list-style-type: none"> <li>● Political interference in decision-making on budgets and investment leading to poor ESHS risk management plans and compliance.</li> </ul> <p><b>LEVEL OF RISK – SIGNIFICANT</b></p>
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<p><b>Core Principle 2: Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program.</b></p>	
<p>Program E&amp;S management systems are designed to avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program. Program activities that involve the significant conversion or degradation of critical natural habitats or critical physical cultural heritage are not eligible for PforR financing.</p>	
<p>As relevant, the Program to be supported:</p> <ul style="list-style-type: none"> <li>▪ Includes appropriate measures for early identification and screening of potentially important biodiversity and cultural resource areas.</li> <li>▪ Supports and promotes the conservation, maintenance, and rehabilitation of natural habitats; avoids the significant conversion or degradation of critical natural habitats, and if avoiding the significant conversion of natural habitats is not technically feasible, includes measures to mitigate or offset impacts or program activities.</li> <li>▪ Takes into account potential adverse effects on physical cultural property and as warranted, provides adequate measures to avoid, minimize, or mitigate such effects.</li> </ul>	
<p><b>Applicability – APPLICABLE</b></p> <ul style="list-style-type: none"> <li>● The provisions in Core Principle 2 are considered as part of the environmental and social management assessment process analysed under Core Principle 1.</li> <li>● It is expected that the Program will have moderate impacts on natural habitats and physical cultural resources since most of the investments will be in already developed areas, such as peri-urban and urban areas. The Program will not support investments that would either affect, convert or degrade critical natural habitats and cultural heritage sites.</li> </ul>	
<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>● The existing system especially the EMCA, 1999, amendment (2015) and National Museums and Heritage Act, 2006 (2012), Forest Conservation and Management Act, 2016, the Wildlife Management and Conservation Act, 2013 and the Water Resources Management Rules, 2006 provide for protection of natural habitats and physical cultural resources, including screening for archaeological, historical, and cultural sites to ensure environmental and social sustainability.</li> <li>● National Museums of Kenya (NMK) under the Ministry of Sports, Culture and Heritage has developed a Chance Finds Management Plan that defines the requirement for the management of archaeological, paleontological and other cultural deposits, finds and features encountered during development activities in Kenya.</li> </ul>	<p><b>WEAKNESSES</b></p> <p>The weaknesses identified for Core Principle # 1 apply to Core Principle # 2. Others include:</p> <ul style="list-style-type: none"> <li>● Physical cultural resources (PCRs) are not well documented or exhaustively mapped out at national and county levels;</li> <li>● Identified PCRs are inadequately protected or totally unprotected in some areas;</li> <li>● Weak enforcement of civil contracts and laxity in monitoring damage to critical habitats, endangered species, and PCRs during construction;</li> <li>● Weak staff capacity to assess the potential impacts on natural habitats and physical cultural resources through intense assessment of critical habitats and endangered species, especially in water catchment areas;</li> <li>● Budgets necessary for the protection of the critical habitats and PCRs are inadequate or unavailable, which may result in high risk of destruction/degradation of the same;</li> </ul>

Core Principle 2: Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program.	
<ul style="list-style-type: none"> <li>• There are existing institutions legally established that mainly guide on the protection of Natural habitats in watershed areas such as Kenya Forest Service (KFS), Water Resource Authority (WRA), Kenya wildlife Service (KWS), and NMK.</li> <li>• The national systems require EIA to incorporate the program design and implementation of appropriate measures to minimize or mitigate possible adverse impacts on the natural habitats, archaeological sites, and cultural resources, with monitoring involvement from strong institutions such as NEMA and National Museums of Kenya.</li> <li>• Some counties have developed requisite frameworks to guide conservation of natural habitats, e.g. Kakamega, Nakuru, and Nyandarua (ongoing). Bomet has draft county Forest Act, Water policy. Nandi County has enacted the wetland conservation and management Act, climate change Act. Kericho has an approved Spatial plan mapping out all the natural habitats for conservation and protection.</li> <li>• Some counties have also mapped sacred sites (eg Taita Taveta) to ensure protection and adequate compensation as necessary (such as Kericho have an approved Spatial plan that maps out all the natural habitats for conservation and protection)</li> </ul>	<ul style="list-style-type: none"> <li>• Limited engagement of relevant institutions with mandates in management of natural habitats (KWS, KFS) and PCR (NMK) to provide necessary technical support in management of E&amp;S risks relating to such resources; and</li> <li>• Lack of appropriate frameworks within counties for management of PCRs.</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• Develop SOPS on protection of PCR as part of the ESHS manual.</li> <li>• Strengthen the screening procedures to include a checklist to assess whether a subproject has the potential for disturbing and affecting a known cultural or religious site.</li> <li>• Build on ongoing efforts by counties to safeguard their environments.</li> <li>• Allocate sufficient budget and resources for the identification and management of natural habitats and PCRs.</li> <li>• Improve the level of awareness on safeguarding endangered/threatened natural habitats, climate change and PCRs during stakeholder and public participation.</li> <li>• Due to critical nature of some potential subprojects (e.g. water intakes in forests). involve multisectoral agencies early in the project design (such as with KFS, KWS, NMK, NEMA) to better identify and develop mitigation measures to manage the natural habitats and physical cultural resources during project implementation.</li> <li>• Enhance awareness on safeguarding PCR and natural habitats in the counties.</li> </ul>	<p><b>RISKS</b></p> <ul style="list-style-type: none"> <li>• Inadequate screening of subprojects leading to adverse impacts to the physical cultural resources and natural habitats.</li> <li>• Exclusion from the subproject cost, specific measures to manage impacts on PCRs and natural habitats.</li> <li>• Improper identification of known or unknown endangered species, critical habitats, PCRs, during preparation and excavation works,</li> <li>• Lack of commitment and resources to implement actions on PCRs as part of the Program Action Plan.</li> <li>• Lack of coordination among the different institutions with mandates on environment and natural habitats.</li> <li>• Inadequate engagement of local communities to tap on their cultural knowledge and expertise.</li> </ul> <p><b>LEVEL OF RISK – LOW</b></p>

Core Principle # 3: Public and Workers Safety	
<p>Program E&amp;S management systems are designed to protect public and worker safety against the potential risks associated with</p> <ol style="list-style-type: none"> <li>a) the construction and/or operation of facilities or other operational practices under the Program;</li> <li>b) exposure to toxic chemicals, hazardous wastes, and otherwise dangerous materials under the Program; and</li> <li>c) reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards.</li> </ol>	
<p>Program procedures:</p> <ul style="list-style-type: none"> <li>• Promotes community, individual, and worker health, safety, and security through the safe design, construction, operation, and maintenance of Program activities; or, in carrying out activities that may be dependent on existing infrastructure, incorporate safety measures, inspections, or remedial works as appropriate.</li> <li>• Promote measures to address child and forced labour.</li> <li>• Promote the use of recognized good practice in the production, management, storage, transport, and disposal of hazardous materials generated under the Program activities.</li> <li>• promotes the use of integrated pest management practices to manage or reduce pests or disease vectors, and provides training for workers involved in the production, procurement, storage, transport, use, and disposal of hazardous chemicals in accordance with international guidelines and conventions.</li> <li>• Include adequate measures to avoid, minimize, or mitigate community, individual, and worker risks when the Program activities are in areas prone to natural hazards such as floods, hurricanes, earthquakes, or other severe weather or climate events.</li> </ul>	
<p><b>Applicability –APPLICABLE</b></p> <ul style="list-style-type: none"> <li>• The provisions in Core Principle # 3 are considered as part of the ESIA process analysed under Core Principle # 1. This could be through:                             <ul style="list-style-type: none"> <li>○ Improper and indiscriminate disposal of E-waste (old IT equipment) may result in soil and water contamination through the release of heavy metals (lead, arsenic, and cadmium);</li> <li>○ Air pollution by release of hydrocarbons in the atmosphere through melting of materials if not properly managed;</li> <li>○ Transformer and backup generator equipment may potentially contain used oils, Polychlorinated Biphenyls (PCBs) which can pollute water and soils, while cooling equipment may contain refrigerants (potential Ozone Depleting Substances [ODSs]);</li> <li>○ Construction phase related impacts such as disturbance of existing vegetation, air pollution from dust; nuisances such as noise, vibration impacts, and traffic interruptions;</li> <li>○ Water and soil pollution from the accidental spillage of fuels or other materials associated with civil works;</li> <li>○ Environment risks occupational health and safety incidents through injuries or accidents to the workers at construction sites and/or managing/maintaining IT equipment and infrastructure;</li> <li>○ GBV/SEAH; and</li> <li>○ Child labour.</li> </ul> </li> </ul>	
<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>• The country has legal statutes and provisions to protect the workers such as the Occupational Health and Safety Act (OSHA) 2007 and the Workers Injury and Benefits Act (WIBA), 2007.</li> <li>• Kenya has several regulations under the EMCA, 1999 (amended 2015), such as on waste management, water and air quality, noise and excessive vibration as summarized in table 5 that aims to protect the environment</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>• The National EIA system does not adequately cover aspects on public and worker’s health and safety. This results to ESIA/ESMP prepared do not broadly incorporate the health and safety requirements and mitigation measures. Aspects of community/public health are not covered adequately as well.</li> <li>• Limited awareness, capacity, and enforcement of the relevant provisions for addressing community health and safety risks and impacts related to construction sites such as</li> </ul>

Core Principle # 3: Public and Workers Safety	
<p>from all forms of pollution and environmental degradation across different sectors.</p> <ul style="list-style-type: none"> <li>• The draft Green Fiscal Incentives Policy Framework (2022) seeks to steer Kenya’s economy onto a desired low-carbon climate-resilient green development pathway through a variety of fiscal and economic mechanisms.</li> <li>• The National Climate Change Act, 2016 and the related National Climate Change Policy Framework provides guidance on use of climate resilient technologies.</li> <li>• Employment Act No 11 of 2012 [2007] provides protection for workers and has provisions on terms of employment, conditions of work, forced labor, etc. It also confides the rights of children and has penalties on unlawful employment of children.</li> <li>• The Government standard contract conditions for contractors have ESHS clauses provided such as; a) the requirement to maintain an accident prevention officer on site; b) maintain logs of any accident/incident at the work sites and report on incidents occurred; c) create awareness to workers on HIV and other sexually transmitted diseases; d) labour laws (working hours, facilities for staff and labour, prohibition of forced, compulsory or child labour). However, there is an opportunity to strengthen the existing contract documents.</li> <li>• The country systems have guidelines/regulations, and promotion of workers safety through agencies such as DOSHS and NCA on aspects concerning the management of construction sites, including public and worker safety risks from construction/operation of investment projects.</li> <li>• The Children Department has a Helpline for GBV that is operated nationally with response teams present in most counties.</li> <li>• GBV referral pathways have been refined across the country with various one-stop facilities (such as the one at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu and the Lodwar Diocese in Turkana).</li> </ul>	<p>environmental pollution, labour influx risks (GBV- SEAH, spread of HIV/AIDS and communicable diseases, child labour).</p> <ul style="list-style-type: none"> <li>• Limited human and financial resources allocation to DOSHS staff and Labour Officers resulting to poor supervision of infrastructure projects to ensure compliance to required national standards as per the OSH Act - some counties do not have DOSHS representatives.</li> <li>• Limited capacity in technical personnel, safety equipment provision, and poor budget allocation by consultants/contractors to comply with national requirements and international good practices.</li> <li>• Poor collaboration and coordination among the various implementing agencies, especially DOSHS, Labour and Public Health departments, in addressing OHS related issues, because they are rarely involved in providing health and safety oversight at the construction, resulting in inadequate attention to OHS, and public safety concerns, particularly at the County level.</li> <li>• There is a general lack of awareness for workers on health and safety issues, particularly concerning exposure to workplace safety hazards in hazard-prone areas, etc.</li> <li>• Weak workers’ grievance redress mechanisms which fail to address workers’ complaints and concerns on OHS.</li> <li>• There are weak structures of disposal of hazardous wastes, especially e-waste, and capacity in the private sector is limited to dispose such waste.</li> <li>• E-waste disposal is costly considering the value of items being disposed.</li> <li>• Strict disposal requirements as specified in the Public Procurement and Disposal Act (PPDA) which discourages disposal of e-waste effectively within MDAs.</li> <li>• Poor integration of green and climate aspects into the costed strategies and budget policies and adapting to its impacts and embracing digitalization and advanced technologies for low-emission green development. Child labour is a norm, especially in rural and marginalized areas.</li> <li>• Contractors, sub-contractors and supervision consultants, employees, and the public are not adequately sensitized on the existence of labour institutions. Consequently, they either suffer in silence when their labour rights are violated, or, in the case of Bank financed projects, they complain directly to the Bank instead of to the institutions that are legally established to support them.</li> <li>• The National Policy on GBV aligns well with international best practices on GBV issues. However, its operationalization and entrenchment into the country systems at all levels is still weak.</li> </ul>
<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• Promote collaboration with DOSHS for oversight and enforcement on technical and OHS requirements during implementation of infrastructure sub-projects.</li> </ul>	<p><b>RISKS</b></p> <ul style="list-style-type: none"> <li>• Improper management and limited enforcement of public and worker safety can result in physical injuries, including loss of life to the workers and public at and near construction sites.</li> <li>• Non-compliance by Implementing agencies, suppliers/consultants/contractors on EHS issues, and inaction by IAs to enforce contract ESHS clauses.</li> </ul>



Core Principle # 3: Public and Workers Safety	
<ul style="list-style-type: none"> <li>• The Program will partner with DOSHS to enhance the capacity of counties and their staff on the H&amp;S management based on the national laws and regulations. Among the activities that shall be supported by DOSHS in collaboration with NPCT include: (i) training and capacity building of environmental and social staff on the occupational safety and health act (OSHA) 2007 requirements and related regulations; and (ii) induction and training of contactors on OSHA 2007 so that they be familiar with OHS issues at their workplace.</li> <li>• ESIA reports submitted for sub-projects should cover public and workers' health and safety requirements.</li> <li>• Identify the gaps in contract and bidding documents to incorporate the ESHS clauses such as on; a) Contractor's requirement to register work sites with DOSHS and obtain the permits; b) application of employee's insurance to comply with WIBA requirements; c) requirement on contractors' key ESHS personnel; d) Code of conduct to the contractor/sub-contractor employees; d) contractors general ESHS obligations and penalties e) template for reporting ESHS progress, among other key requirements.</li> <li>• Have in place a functional worker's grievance mechanism to handle workers' conflicts including incorporating health and safety aspects.</li> <li>• Create awareness and sensitise contractors on legal prohibitions on use of forced and child labour and its implications.</li> <li>• Create awareness to contractors and the public on OHS and CHS aspects.</li> <li>• Sensitize all workers and contractors on OHS and Labour safeguards.</li> </ul>	<ul style="list-style-type: none"> <li>• Improper management of solid, liquid waste, and e-waste may pose health risks.</li> </ul> <p><b>LEVEL OF RISK – SIGNIFICANT</b></p>

Core Principle # 4: Land Acquisition and Loss of access to natural resources
<p>Program E&amp;S systems manage the land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement and assists affected people in improving, or at the minimum restoring, their livelihoods and living standards</p>
<p>The program to be supported:</p> <ul style="list-style-type: none"> <li>• Avoids or minimizes land acquisition and related adverse impacts;</li> <li>• Identifies and addresses economic and social impacts caused by land acquisition or loss of access to natural resources, including those affecting people who may lack full legal rights to assets or resources they use or occupy;</li> <li>• Provides compensation sufficient to purchase replacement assets of equivalent value and to meet any necessary transitional expenses, paid prior to taking of land or restricting access;</li> </ul>

Core Principle # 4: Land Acquisition and Loss of access to natural resources	
<ul style="list-style-type: none"> <li>• Provides supplemental livelihood improvement or restoration measures if the taking of land causes loss of income-generating opportunity (e.g., loss of crop production or employment); and</li> <li>• Restores or replaces public infrastructure and community services that may be adversely affected</li> <li>• Program activities for which the borrower’s land acquisition and resettlement (LAR) processes have significant gaps with this principle, or for which the borrower lack sufficient capacity to manage LAR impacts in a manner consistent with this principles, should not be considered eligible for the PforR Financing regardless of the number of people affected, unless supplemental arrangements are agreed with the Program authorities and endorsed by the CESSO, GSUSS, and/or the Regional Standard Advisor).</li> </ul>	
<p><b>Applicability –APPLICABLE</b></p> <ul style="list-style-type: none"> <li>• The Program’s proposed investments menu excludes Subprojects resulting in displacement or relocation affecting more than 200 people. However, in the event of temporary displacements and relocations affecting less than 200 persons, RAPs will be prepared to ensure full and prompt compensation as provided for in the Constitution of Kenya, 2010. Guidelines on preparation of RAPs will be outlined in the ESHSM manual.</li> <li>• The government's right to acquire land compulsorily will only be used where it is unavoidable and implemented per the relevant national laws, and where households are physically displaced, the counties will provide options to the PAPs in line with the guidance provided in the POM.</li> </ul>	
<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>• The policy, legal and regulatory framework for land acquisition, resettlement and compensation in Kenya are spread through several provisions. The CoK, 2010 provides guidance on ownership, acquisition, conversion, payment of compensation and devolving public land management to counties. The Land Act, 2012 (revised 2019) is the substantive land law that defines the land management framework (sustainable administration and management of land and land-based resources) compulsory acquisition and compensation of occupants in good faith, guarantees the right to fair and just compensation, outlines procedures for sensitizing project affected population and for consultation on implications and grievance procedures.</li> <li>• The Land Registration Act (2012) guides on registration and ownership.</li> <li>• The Land Laws Act 2016 amends the laws relating to land, while the National Land Commission Act (2012) establishes the National Land Commission (NLC), outlines the powers and functions of the Commission.</li> <li>• The NLC monitors and oversees land use planning including the management of public land on behalf of the national and county governments and is mandated by the Constitution to compulsorily acquire private and community land for public purposes. The NLC has officers in counties that can be engaged on land acquisition aspects.</li> <li>• The Community Land Act (2016) provides for community land ownership, rights, management, and administration. As much as county governments hold in trust all unregistered community land, they are prohibited by law to transact on them.</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>▪ The legal frameworks, in particular the Land Act 2012 (revised 2019), do not define the practical meaning of “full, prompt and just” compensation.</li> <li>▪ Legal frameworks do not explicitly stipulate provisions for livelihoods restoration as compensation is focused on land/assets replacement and relocation. Legal frameworks do not provide for compensation of assets built or extended on public land and their entitlement. They are subjected to evictions and demolitions.</li> <li>▪ Weak capacities to ensure compliance to required national standards within the implementing agency and Counties.</li> <li>▪ Lack of human capacity and financial resources at NLC and State Department for Land (e.g., for logistics for NLC and Land’s staff) to undertake their mandates, or to handle multiple land acquisition for different projects at the same time sometimes delays project implementation. Further, there are delays with the registration of titles at the Land’s office.</li> <li>▪ Weak coordination among the various implementers (NLC and relevant ministries) and inadequate attention to livelihood restoration concerns, particularly within the County level.</li> <li>▪ Lack of budgetary allocation for land acquisition and livelihood restoration processes by the counties during the project planning, leading to project delays and cost overruns.</li> <li>▪ Land in some counties is un-adjudicated, and public land such as road reserves are unmarked, leading to encroachment. Conflicts arise during wayleave acquisition due to unclear land boundaries or delayed compensation, or due to weak collaboration and coordination between key departments and entities at the national and county</li> </ul>

Core Principle # 4: Land Acquisition and Loss of access to natural resources	
<p>Under the law, in-kind compensation for unregistered community land is acceptable.</p> <ul style="list-style-type: none"> <li>• NLC has mapped out public and community land in line with its mandate to identify and keep records on behalf of national and county governments.</li> <li>• The counties have robust processes of considering the technical designs of projects, conducting project feasibility studies, and a review by the land department through a pre-land examination and land use approval process to avoid or minimize land acquisition.</li> </ul>	<p>levels, such as NLC, NEMA, and State Department for land and road corridor users such as KENHA<sup>7</sup>, KURA<sup>8</sup>, KeRRA<sup>9</sup>, KPLC<sup>10</sup>, among others.</p> <ul style="list-style-type: none"> <li>▪ In ASAL counties community land remain unregistered. There are challenges with transacting on unregistered community land since communities do not wish to have their compensation monies held in trust by the county governments as stipulated in the Community Land Act 2016, thus making it harder to acquire and compensate for unregistered community land.</li> <li>▪ In-kind compensation in form of priority infrastructure projects is acceptable under the national law, and a preferred form of compensation for communal land. World-Bank funded projects including KOSAP, <sup>11</sup>EEHP<sup>12</sup> and KEMP <sup>13</sup>have implemented this form of compensation. However, a notable challenge is the inadequate engagement of all segments of the community to obtain a broad consent on the nature of investment.</li> <li>▪ The Land Act does not recognize any persons occupying land without the consent of the owner (e.g., squatters/encroachers), and does not compensate them for any improvements made on the land they unlawfully occupy. This is contrary to the PforR Directive which require that economic and social impacts caused by land acquisition or loss of access to natural resources, including those affecting people lacking full legal rights to resources they use or occupy are identified and they are compensated for. Further, ESS 5 and other international best principles require those without recognizable legal rights or claims to the land or assets they occupy or use at least receive compensation for any improvements made on the land before the declaration of the cut-off date.</li> <li>▪ The Land Act compensates for affected livelihoods; however, it is silent on the restoration/enhancement of livelihoods.</li> <li>▪ The unwillingness of some county governments to compensate for land losses and/or inconveniences caused to the PAPs during project implementation.</li> </ul>
<b>OPPORTUNITIES</b>	<b>RISKS</b>

<sup>7</sup> Kenya National Highways Authority

<sup>8</sup> Kenya Urban Roads Authority

<sup>9</sup> Kenya Rural Roads Authority

<sup>10</sup> Kenya Power and Lighting Company

<sup>11</sup> Kenya Off-grid Solar Access Project

<sup>12</sup> Eastern Electricity Highway project

<sup>13</sup> Kenya Electricity Modernization Project

Core Principle # 4: Land Acquisition and Loss of access to natural resources	
<ul style="list-style-type: none"> <li>Strengthening of country and county systems to manage and implement the land acquisition process and associated risks to acceptable standards, to be included in the ESHS manual. The guidelines will guide temporary displacements and relocation, and acquisition of sub-project sites on unregistered community land to support affected persons and avoid adverse impacts on their socio-economic status, assets and/or activities.</li> <li>Strengthening counties capacities to enforce Land acquisition implementation measures, including development of RAP guidelines that aligns with national regulations and PforR core principles.</li> <li>Establishment of appropriate and transparent consultation mechanisms and documentation in the regions that operate under a communal land system.</li> <li>NLC with the support of World Bank developed the land access guidelines. The guidelines have however not been widely disseminated to government MDAs, and this could be done for their consideration and adoption as SOPs.</li> </ul>	<ul style="list-style-type: none"> <li>Poor systematic implementation of land acquisition procedures as required by the WB PforR principles due to weaknesses of the local policies.</li> <li>Potential involuntary resettlement without compensation to informal settlers occupying public land illegally.</li> <li>Delay of land acquisition and registration due to lack of capacity at the NLC and State Department for Lands.</li> <li>Lack of financial resources within the Counties for land acquisition and livelihood restoration for affected person, and registration of community land.</li> <li>Potential for disputes and litigation where guidelines and procedures for land acquisition and compensation are not adhered to.</li> </ul> <p><b>LEVEL OF RISK – SIGNIFICANT</b></p>
Core Principle # 5: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities	
<p>Program E&amp;S systems give due consideration to the cultural appropriateness or and equitable access to, Program benefits, giving special attention to the rights and interests of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and to the needs or concerns of vulnerable groups.</p>	
<p>Program to be supported:</p> <ul style="list-style-type: none"> <li>Undertakes free, prior, and informed consultations if Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are potentially affected (positively or negatively) to determine whether there is broad community support for the program.</li> <li>Ensures that Indigenous Peoples can participate in devising opportunities to benefit from the exploitation of customary resources or indigenous knowledge, the latter (indigenous knowledge) to include the consent of the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.</li> <li>Gives attention to groups vulnerable to hardship or disadvantage, including as relevant the poor, the disabled, women and children, the elderly, or marginalized ethnic groups. If necessary, special measures are taken to promote equitable access to program benefits.</li> </ul>	
<p><b>Applicability –PARTIALLY APPLICABLE</b></p> <p>The Program will be implemented in areas where Indigenous Peoples/Sub-Saharan Africa Historically Underserved Traditional Local Communities, known in Kenya as Vulnerable and Marginalized Groups (VMGs), exist. There is potential to exclude VMGs and other disadvantaged groups from accessing information and other Program benefits and opportunities due to inadequate stakeholder engagement, disability, literacy, and mobility challenges.</p>	
<p><b>STRENGTHS</b></p> <ul style="list-style-type: none"> <li>Article 260 of the Constitution provides for the inclusion of minorities, marginalized communities, and groups in the development agenda of the country. Further, under Section 56, the Constitution requires that the</li> </ul>	<p><b>WEAKNESSES</b></p> <ul style="list-style-type: none"> <li>There are no clear guidelines, for targeting and inclusion of VMGs and other disadvantaged groups. The lack of meaningful consultation and engagement hampers their effective participation in the development process and access to culturally appropriate Program benefits and opportunities.</li> </ul>

<p>State shall put in place affirmative action programmes designed to ensure minorities and marginalised groups access public services.</p> <ul style="list-style-type: none"> <li>Articles 10 and 232 of the Constitution provides for public institutions to institutionalize affirmative action programmes to address the needs of the VMGs and work towards removing barriers which impede their progress and participation in public service.</li> <li>The County Government Act, 2012, promotes the interest and rights of minorities, gender equity and representative citizen engagement in county planning.</li> <li>The National Gender and Equality Commission (NGEC), established under the National Gender and Equality Act, 2011, facilitates the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities, and marginalized communities.</li> <li>County systems have articulated the minimum requirements for equitable access and benefits for vulnerable groups including PWDs, women, and youth.</li> <li>VMG communities have internal governance structures, although some are clearly defined than others. These structures ensure VMGs, and the government interact to facilitate access to information, service delivery and discharge of rights and responsibilities on both sides. For instance, the Sengwer community has a Council of Elders (CoE) registered by the Registrar of Society. The CoE presides over internal and external affairs of the community and liaises with the government on service delivery. The Sengwer Indigenous Community Trust with representation from the CoE handles technical issues that relate to the community.</li> <li>In addition, NGOs and CBOs exist to promote the inclusion of VMGs and other disadvantaged groups in the development process. For instance, the Hunter Gatherers Forum (HUGAFO) of Kenya representing minority VMGs (Ogiek, Sengwer, Yaikku, Watta, Sanye), offers a united voice in national matters concerning VMGs and facilitates their access to service delivery, while the Ogiek Peoples Development Program (OPDP) strives to defend Indigenous Peoples’ land rights, promoting inclusion in climate action and participation in local and international decision-making processes. Lastly, several VMG CBOs across Kenya, constituting men, women, and youth aim to enhance the socio-economic status of VMG communities.</li> </ul>	<ul style="list-style-type: none"> <li>Non-compliance by implementing agencies to required national principles and values on inclusiveness, equity, equality, social justice, non-discrimination, protection of the marginalized, good governance, transparency and accountability and promotion of human rights, and sustainable development. This is due to weak multi-sectoral coordination, limited human resources capacity and budgets, lack of an effective monitoring and evaluation system, inadequate engagement of VMGs and other disadvantaged groups and information disclosure, lack of awareness among the VMGs on their rights and entitlements, and weak compliance enforcement.</li> <li>The existing stakeholder engagement, grievance resolution, and feedback mechanisms are not positioned to address challenges that are specific to VMGs and other disadvantaged groups such as representation and access to infrastructure, because they focus on issues that affect the mainstream society.</li> <li>Despite the existence of the National Policy on Gender and Development, 2019: and the 2/3s gender rule in procurement, employment and appointive positions, gender equality is still far from being achieved at all socio-political, economic, and developmental levels with women still trailing men at all these levels.</li> <li>The activities of the NGEC are yet to be devolved despite its equality oversight roles, although there are ongoing efforts to have coordinators in each county.</li> <li>Affirmative action to mainstream vulnerable groups such as PWDs in the service delivery is yet to be fully realized.</li> <li>The inclusion of VMGs and PWDs in employment opportunities in the country is still below par, gender equity in employment remains a challenge for most public (and private) sector institutions in Kenya.</li> </ul>
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<p><b>OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>• Enforce the Access to Information Act 2016, to ensure relevant information held by public offices is availed to all segments of the public.</li> <li>• Create the awareness of individuals and businesses on proposed tax measures.</li> <li>• Undertake meaningful consultations with all segments of the public, including VMGs and other disadvantaged groups, informed by the Constitution and the Public Participation Policy 2023.</li> <li>• Utilize communication techniques beyond wide stream media such as public forums, use of local languages, websites translated into Kiswahili, mainstreaming disability in public participation, etc.</li> <li>• Enhance the functionality and effectiveness of the institutional grievance mechanisms, to ensure they are accessible and culturally appropriate, ensure anonymous and confidential reporting and handling of complaints.</li> </ul>	<p><b>RISKS</b></p> <ul style="list-style-type: none"> <li>• Weak compliance enforcement, leading to the exclusion of VMGs and disadvantaged groups from the consultation process and access to Program benefits and opportunities.</li> <li>• Introduction of barriers that hinder progress towards achieving the objective of social inclusion and increased equity brought about by elite capture, political interests, corruption, cultural, ethnic and gender disparities.</li> </ul> <p><b>LEVEL OF RISK – SIGNIFICANT</b></p>
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## **6 CAPACITY ASSESSMENT FOR MANAGING PROGRAM ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY EFFECTS**

42. This section analyses the performance of key implementing institutions/agencies associated with the E&S legal/regulatory framework for the proposed Program. The section also highlights the challenges of the institutional framework along with an assessment of the current capacities. Further, the section analyses the processes of planning, monitoring, and decision making in the Program, the strategy adopted by the country, and the current grievance redress systems in place; all from an E&S perspective.

43. The ESSA team assessed the quality and efficacy of the E&S management system, particularly focusing on institutional capacity, structure, practices, procedures, mechanisms, and effectiveness of implementation agencies. The team also consulted with the PIU and stakeholders, including NEMA, to understand their role in the implementation of this Program. The assessment was conducted based on previous similar engagements of the systems within these institutions, and their performance records on IPF and PforR projects funded by WB in Kenya.

### **6.1 Environmental, Health and Safety Management Systems**

#### **6.1.1 National Environment Management Authority (NEMA)**

##### ***Policy and Legislative Framework Support***

44. Kenya has a robust legal framework for environmental management, known as EMCA, which provides the legal ground for the establishment of NEMA as well as other institutions responsible for the protection and management of the environment. Several guidelines and regulations have also been prepared by NEMA including EIA/EA regulations, which are aimed at ensuring that projects are subjected to E&S risk analysis to determine their likely adverse impacts before commencement. NEMA is mandated by the EMCA 1999 (amended 2015) to commit resources and implement actions necessary for effective E&S management.

45. NEMA is charged with enforcing EMCA provisions as well as other subsidiary legislation that has been passed over the last decade. The subsidiary legislation includes water quality, waste management, e-waste, controlled substances, biodiversity, wetland, river and seashore, and environmental impact assessment (EIA) regulations. Most of the provisions contained in the EMCA, as well as the subsidiary legislations, are intended to provide regulations for the usage and type of allowable activity in the different ecosystems and habitats in Kenya. Thus, NEMA's main task is to review EIA Project Reports and grant licenses to proponents that plan to change the land-use. To complete this task, EMCA grants NEMA the power to compel any project proponent, authority, or ministry to comply with existing environmental regulations.

46. The EMCA has gaps in addressing social issues as mandated by law and in practice. NEMA has no internal capacity to review social risks, with poor coordination and collaboration with the department of social security and protection under the Ministry of Labour, Social Protection (MLSP) to support in this role. In most cases where there are sub-projects with land acquisition and resettlement issues, the matters are handled by the NLC. The new proposed SRIM Unit under department of social security and protection will be very instrumental in management of social issues and NEMA will collaborate with the department during the ESIA process.

47. NEMA has extensive experience in environmental assessment and management capacity (including monitoring and enforcement) as provided for by the EMCA.

### **Organization and capacity**

48. The NEMA officers at the National and County levels are qualified and possess the requisite skills necessary for ensuring the management of environmental impacts of projects. However, most NEMA offices at the County level are understaffed, with most County NEMA Offices having a maximum of two environmental officers – the County Director of Environment and an Environment Officer, with the additional help of a few interns. This has made it difficult for the staff to handle the workload of EIA reports reviews, monitoring for compliance, and enforcement for County projects. Further, staff composition in most of the Counties do not always include officers specialized in social safeguards. It is however notable that NEMA has an opportunity to tap into county governments' environmental officers.

49. NEMA's lack of sufficient resources create a situation where projects with possibly huge environmental and social impacts and risks are not regularly supervised or monitored to ensure that they are complying with license obligations and regulations or implementing mitigation measures. In the end, monitoring is often left to self-monitoring by the proponent of a project with little oversight from NEMA independent view.

### **Challenges at NEMA on ESHS Management**

50. The main challenges of NEMA at the national and county levels are:
- i. The County Environmental Committees (CEC) have not been formed in all the counties as per the EMCA, and where they have been formed are not fully operational;
  - ii. Understaffing at County levels – most of the counties are represented by 1 County Director of Environment (CDE) and supported by one Environmental Compliance Officer and a few interns;
  - iii. Lack of financial resources, technical equipment, and transportation allocation for effective monitoring and supervision;
  - iv. Poor coordination with other multi-agencies in charge of managing construction activities, ESHS risks management;
  - v. Political interference which results to non-compliance on E&S process and management, where NEMA county office is not able to intervene; and
  - vi. Understaffing within the directorates to enhance Compliance levels.

### **Recommendations to enhance ESHS Management**

- i. Integrate NEMA early into the program planning process, including participating in a rigorous screening of E&S risks for the sub-projects.
- ii. Collaborate with NEMA to upscale public awareness and education, and capacity building of the NEMA officers at county levels, program's implementation agencies, and contractors' workers on ESHMP implementation to enhance compliance.
- iii. Assistance to institutionalize CECs as per the EMCA.
- iv. The Program to assist the Directorate of Compliance to work with the private sector associations such as KEPSA, KMA, among others, to enhance compliance.

### **Directorate of Occupational Safety and Health Services (DOSHS)**

51. The DOSHS is one of the Departments in the State Department for Labour and Skills Development in the Ministry of Labour. The State Department of Labour deals with all aspects that involve the protection of the working population in their day-to-day nation building activities. These



include protection from incidents that may bring about injuries and ill-health in the course of their work.

52. DOSHS has the mandate of workplace inspection, promotion of safety and health at work and work injury compensation. This is in accordance with the Article 41 of the Constitution of Kenya, the Executive Order No. 1/2023, the National Occupational Safety and Health Policy, 2012 the Occupational Safety and Health Act, 2007 and the Work Injury Benefits Act, 2007.

53. In fulfilment of its responsibility of identifying hazards at workplaces and assessment of risks with a view of preventing accidents, diseases and damage to property, the Directorate will play a key role in the Program by inspecting and auditing of workplaces to promote best practices and ensure compliance with safety and health standards as set out in OSHA, 2007 and its subsidiary legislations.

54. The Department is represented in 29 counties across the country, with most of the counties in the North-Eastern and Western region having no representation. The officers at these counties are fairly qualified and possess the requisite skills necessary in health and safety. However, the offices are understaffed, with the capacity assessment findings revealing that most officers are not able to cover their regions as required, especially those who have been assigned multiple of large counties, with limited human and financial resources provided to them. This has made it difficult for the staff to enforce and monitor the health and safety requirements as per the OSHA and WIBA requirements, especially for infrastructure projects.

55. Some of the challenges faced by the Directorate include but not limited to:

- i. Lack of presence in all the Counties: currently, DOSHS has 29 county offices (out of 47 counties);
- ii. Functions of the Directorate are not devolved and remain as a function of the State Department for Labour nationally;
- iii. Inadequate staffing levels in counties where DOSHS is represented;
- iv. Lack of continuous professional development of its technical staff; and
- v. Inadequate allocation of financial resources and provision of other resources such as vehicles, office space, specialized surveillance equipment, vehicles, protective equipment; and
- vi. Lack of information management system to collect and collate OHS data and statistics for policy and decision making.

#### **Recommendations to enhance Occupational Health and Safety Management**

- i. KDSP II to facilitate training of DOSHS staff to enhance monitoring of the subprojects at the county level;
- ii. Collaborate with DOSHS to carry out capacity building of the Program's implementation agencies, and contractors' workers on OHS;
- iii. Create linkages between DOSHS with Labour and Public Health Officers at the county level to augment the activities under DOSHS;
- iv. The training for SRIM includes a Unit on OHS (the content could be expanded), which could enhance understanding across sectors;
- v. The ESHSM manual shall include guidelines on OHS to be adopted by all implementing agencies and contractors for the program's activities; and
- vi. Integrate DOSHS early into the program planning process, including participating in the screening of health and safety risks for the sub-projects.

## **6.2 Social Management Systems**

### **6.2.1 The State Department for Social Protection and Senior Citizens Affairs**

56. The State Department for Social Protection and Senior Citizens Affairs is mandated with formulation, review and implementation of social security, employment, programme for Persons with Disabilities, national human resource planning and development, national labour productivity, child labour and regulation management, facilitating and tracking employment creation, co-ordination of national employment, internship and volunteers for public service, community development, protection and advocacy of needs of Persons with Disabilities, social assistance programmes, workplace inspection and workman’s compensation. The department has an existing grievance redress system, although not well structured. The FLLoCA program is supporting on enhancing the existing GRM system.

57. The State Department also has other directorates relevant to the program including: Children Services - mandated to Safeguard and protect the rights and welfare of children for national prosperity as per the Children Act 2001, and lead, oversee, plan and coordinate child protection programmes and services in Kenya); and Social Development (mandated to mobilize and empower individuals, families, groups and communities to facilitate the process of social change for growth and improved livelihoods). The Department has an existing grievance redress system, although not well structured. FLLoCA program is supporting the enhancement of the existing GRM system.

58. A SRIM Unit was established in 2020 at the Directorate of Social Development, with current funding from the ongoing Bank funded FLLoCA Program. SRIM screening is guided by a checklist developed by the Unit. With no specific SRIM legal frameworks, other legislations are considered such as the Kenya National Social Protection Policy 2011, EMCA 2015, Children Act 2022, and CoK 2010. However, the application of these legislations to SRIM is uncoordinated. To this end, the SRIM unit has developed the draft Kenya Social Risk and Impact Management Policy, developed, and pre-tested the SRIM curriculum, is currently preparing MoUs with the Kenya School of Government (KSG) and University of Nairobi (UoN) for accreditation of the curriculum and trainings on SRIM. Further, a National Multi-sectoral Committee was established with membership from NEMA, Labour department, UoN, children department, NCPWD, KSG, Interior, Devolution, among others.

#### **Challenges**

- i. SRIM committees are not functional in all the counties.
- ii. There is limited human personnel capacity to manage all projects under the counties.
- iii. Inadequate sensitization on SRIM as a key development area.
- iv. Poor coordination and collaboration with other agencies responsible for social risks and impacts management, e.g., GBV, labour issues, resettlement, etc.

#### **Recommendations to enhance Social Risk Management**

- v. The ESHS manual will include guidelines to manage social risks and impacts under the Program, including stakeholder engagement and inclusion of VMGs and other disadvantaged groups, grievance management, child protection, GBV-SEA/SH, management of personal data, among others.
- vi. The Program will engage institutions with oversight on social issues such as the Directorate of Social Development, NGEC, NLC, State Department for Lands, NCPWD, CAJ, for concurrence on the social protocols to be included in the ESHS manual and adopted by implementing agencies.
- vii. The SRIM Unit will be supported to strengthen/support the establishment of proposed County SRIM Committees to guide, support and oversight projects implemented at the county level.
- viii. Capacity building will be a key investment for the project staff, county SRIM committees and those of implementing agencies. The SRIM courses will be offered on need basis.

### 6.3 Other Implementing agencies

#### 6.3.1 The State Department of Devolution (SDD)

59. The SDD is the lead implementing agency, and coordinator of all Program activities. The SDD will oversight all project-related matters including policy guidance, supervision, and monitoring of E&S management. The National Project Coordination Unit (NPCU) will vet all projects as guided by PIM guidelines.

60. The main role of the SDD in the E&S management process of the program will include:
- i. Screening of proposed investments under the Program;
  - ii. Preparing the ESHSM Management for the E&S management process;
  - iii. Supervising and monitoring of E&S aspects during project investment implementation; and
  - iv. Preparing quarterly E&S management project progress reports.

#### **SDD institutional capacity and staffing**

61. The SDD has experience in the implementation of PforR, having implemented the KDSP I. SDD has two Social Specialists, who have been trained on E&S aspects through the FLLoCA program, but no Environmental Specialist. Lessons learned from KDSP I indicates the need for having a fulltime environmental specialist and a social specialist to be appointed as part of the PCU to provide capacity building, proper coordination, and management of ESHS aspects of the program.

62. There is no formal GRM mechanism at SDD, apart from an email that mainly focuses on public complaints.

#### **Recommendations to enhance ESHS Management for SDD**

- i. Establish GRM mechanisms for effectiveness in complaints and grievances management. Key areas of focus should include: (a) develop GRM structures, clearly outlining procedures for management of grievance, responsible persons and timelines for resolution and feedback; b) designate the GRM focal persons for handling grievance; enhancing its documentation and provide timely feedback, and (c) disclosure of grievance uptake channels to relevant stakeholders;
- ii. KDSP II NPCT should have an adequate budget (clear costed work plan) for supervision and monitoring of sub-projects at county levels to ensure compliance with safeguard requirements;
- iii. Review and update the existing safeguards reporting templates to improve on review of the sub-projects, safeguards monitoring and reporting; supervision and monitoring of sub-projects at the county level should be increased from bi-annually to tri-annual for close safeguards follow-up especially during the implementation of infrastructure sub-projects; and
- iv. Recruit experienced safeguards staff to include (1) environmental specialists and (1) social specialist to enhance ESHS management.

#### 6.3.2 The Council of Governors (CoG)

63. The Council of Governors (CoG) provides a mechanism for consultation amongst County Governments, shares information on performance of the counties in execution of their functions, facilitates capacity building for Governors, and considers reports from other intergovernmental forums on national and county interests amongst other functions. The Council is guided by legal frameworks that include the Intergovernmental Relations Act 2012, with provisions for the explicit mandate to coordinate counties and establish sectoral committees. In the case of limited legislation guidance, County governments consider requisite legislations, apply good will, and resources, at their

disposal. The Council provides a platform for standardization amongst County governments, facilitates disputes resolution, and is an agent of intergovernmental relations as it considers any matter referred from any member of the public.

64. The Council is structured in sectoral committees including the Environment and Climate Change Committee, Social, and Water, Forestry and Natural Resources, among others. The Environmental and Social committees are served by 3 ‘technical’ environmental and social officers in each committee. Although the environmental officers are qualified environmentalists, the social officers do not have requisite skills on social issues.

65. The CoG is mandated to receive complaints from the public, including use of public resources. However, there CoG has no functional grievance management structure through which disputes/complaints are handled. Grievances can be escalated to the summit, involving expertise from the specific affected sector, and mediation and dispute resolution can be cascaded to the county level.

### **Challenges**

- i. Lack of qualified social specialists with subject matter experience in social issues.
- ii. Lack of structured GRM to receive grievances.
- iii. Poor allocation of financial resources – there is no specific budget allocated for E&S safeguards management.

### **Recommendations to enhance ESHS Management for CoG**

- i. CoG to employ permanent qualified social safeguards specialists to handle social aspects of the Program.
- ii. Establish a dedicated ESHS unit to anchor, coordinate and oversight E&S structures/aspects within counties.
- iii. Conduct training to E&S officers at CoG.
- iv. Assist the CoG to form and operationalize a functional GRM to receive complaints.
- v. Use the CoG strategic position to create awareness and garner support from county governments for the Program and E&S safeguards.

#### **6.3.3 National Construction Authority (NCA)**

66. The NCA is a parastatal established is to regulate the construction industry and coordinate its development. The Authority is in-charge of, among other functions; (i) accrediting and registering contractors and regulate their professional undertakings;(ii) accredit and certify skilled construction workers and construction site supervisors; (iii) develop and publish a code of conduct for the construction industry. Although not directly involved in environment and social management, the authority has the oversight for the management of construction sites including safety aspects of the projects.

67. NCA is present in 14 regional offices across the country, 13 liaison offices and is represented in 52 Huduma centres. Each of the Huduma Centres has two officers. The Authority collaborates with other MDAs given that all project sites need to be approved by e.g., NEMA, county planning department, and registered with DOSHS. To improve on NCA’s monitoring activities, the Authority has implemented a Regulatory Construction Information System (RCIS) to automate and integrate its processes. The Authority is currently working on improving the share point system to strengthen the engagement and collaboration amongst relevant departments to improve the business processes and systems.

68. In the proposed Program, NCA will play a critical role in: a) license building projects; (b) ensuring contractors and skilled construction workers engaged by the Counties are registered with

NCA; c) ensure quality construction standards and contract management; and (d) ensure good health and safety of the workers.

### **Challenges**

- i. Lack of capacity across all the counties. The regional staff is not able to monitor all projects for compliance, especially for vast counties, and projects that are in remote and rural areas.
- ii. Poor coordination of activities with other regulators like NEMA and DOSHS.
- iii. Inadequate coordination with County Government systems.

### **Recommendations to enhance ESHS Management**

- i. All projects under the program have to be approved by NCA before commencement of civil works.
- ii. All projects to adhere to the requirements of the NCA during execution including allowing for regular inspection of the site health and safety, and adherence to the requirements of the NCA.
- iii. NCA to work closely with the other MDAs and county governments in all its processes.

#### **6.3.4 National Land Commission (NLC)**

69. The National Land Commission (NLC) is an independent entity established with provisions of the Constitution of Kenya, 2010. Chapter 5 of the CoK provides for the NLCs critical oversight and advisory roles on the various aspects of land, environment, and people management. The Commission policies and procedures also consider aspects on the preservation of natural habitats, vulnerable communities, and indigenous people. The Commission is mandated through the Land Act 2012 (revised 2019) provisions to facilitate the fostering of resilience due to climate change, management of ecological sensitive landscapes or ecosystems, including conservation and protection as sustainable environmental management is directly hinge on land.

70. The NLC has presence in all 47 counties in the country with coordination at the national level utilizing an online land resource management system. The Commission has provided channels for aggrieved persons to lay complaints at their offices or via email with common grievances related to compulsory acquisition and evictions. Once complaints are received at the Commission, mostly through the chairman's or CEO's offices, they are referred appropriately to the respective technical department. There is collaboration with all government entities including the Ministry of Agriculture, Ministry of Environment, State Department for Livestock, State Department for Fisheries and Blue economy and Kenya Wildlife Service. NEMA involves the NLC as a lead agency in the review of ESIA's to enhance sustainable land management and protection of critical habitats.

71. The Commission has the mandate to issue eviction orders where there is encroachment on public land. Counties have a responsibility to monitor land usage and may issue specific orders for encroachment cases where public land has been reserved for development. Under the ongoing Bank funded Kenya Climate Smart Agriculture Project, the Commission has developed guidelines on access to different land types for public investments. The program will review and adapt these guidelines to KDSP II, to guide the acquisition of land/wayleaves. The NLC can give guidance on approaches for integrated land use planning, inclusive stakeholder management, resilience building and reduce environmental degradation.

#### **6.3.5 Commission on Administrative Justice (CAJ)**

72. The Commission on Administrative Justice (CAJ) also known as the Office of the Ombudsman is an independent Commission established under Article 59(4) of the Constitution of Kenya, and the Commission on Administrative Justice Act, 2011. Its mandate is to promote administrative justice, by ensuring effective and efficient service delivery by addressing maladministration in the public sector.

The Commission is also mandated to promote the right to information through the oversight and enforcement of the Access to Information Act, 2016.

73. The CAJ has a footprint in 17 counties across Kenya with 6 regional offices and at 12 Huduma Centres for accessibility and decentralization of services. Traditionally, the CAJ investigates both reported complaints and own-motion complaints. There exists synergy between the Commission and other government entities to enhance complementarities in the provision of public services; particularly the Integrated Public Complaints Referral Mechanism (IPCRM) which has greatly contributed to the non-duplication of efforts in complaint management. Among the said entities are: the National Human Rights Commission, National Gender Equality Commission, Ethics and Anti-Corruption Commission, and the Department of Justice among other state departments.

74. The Commission with the support of the GIZ, has developed a Complaints Management Systems that has automated the complaint-handling function and worked closely with at least 6 counties in the setup and operationalization of complaint-handling structures. Additionally, through the support of the FLLoCA, the Commission has developed a Model Complaint Handling Policy for County Governments that has been disseminated to at least 28 counties. The Model Policy provides for among others, the establishment of a County Ombudsman to enhance at-source complaint resolution. Under KDSP I, a grievance redress mechanism guide for all counties was developed and KDSP II will leverage the above efforts to enhance the existing GRM structures across the 47 counties. The CAJ will provide technical expertise in institutionalizing and operationalizing GRMs in all 47 Counties.

**Recommendations to enhance ESHS Management by CAJ:**

- i. Conduct a study to establish the status of GRMs in all the Counties;
- ii. Build the capacity and provide technical support to the Counties towards set up, strengthening, and institutionalization of GRMs, to ensure a standardized approach in grievance management across counties; and
- iii. Conduct monitoring, evaluation, and certification of Counties on GRMs.

**6.3.6 The Office of the Auditor General (OAG)**

75. The OAG will support the Program in the final year of Program implementation through; (i) financial and accounting audits of county governments; (ii) audit of E&S performance; and (iii) follow-up on external audit recommendations.

76. OAG has formed a new unit tasked with management of ESHS aspects. The unit's mandate is to audit compliance with environmental and social regulations. This unit is however new and requires capacity building through training on environmental and social risk management.

77. OAG conducts public engagements through the website and public outreach. In addition, it publishes public and internal magazines with its reports available in Kiswahili and on vernacular radios. OAG has a physical presence in fifteen regional offices across the country. OAG has physical complaint boxes at the institution. The legislative relations office manages coordination between the OAG and parliament.

**Recommendations to enhance ESHS Management for the OAG:**

- i. Constitution of audit committees to include E&S persons;
- ii. Enhance the capacity of the newly formed unit on ESHS audit and climate change, stakeholder engagement, information disclosure and grievance;
- iii. OAG to provide input on the ToRs for the IVA on ESHS audit; and
- iv. Engage with and support County GRM committees to function optimally.

## 7 MEASURES TO STRENGTHEN SYSTEM AND INSTITUTIONAL PERFORMANCE

78. This chapter summarizes measures recommended to strengthen the ESHS existing systems and institutional performance in line with the gaps and risks identified in the ESSA. The proposed measures should be executed during Program implementation to address identified gaps and risks considering the existing country system and capacity versus the PforR core principles and key planning elements.

### 7.1 Key Lessons Learned from previous and ongoing PforR projects

79. Both KDSP I and KUSP I delivered substantial institutional and capacity building support on ESHS management to national and county governments, including institutions that managed the programs. In addition, key achievements noted under KDSP I include; development of GRM guidelines; E&S safeguard tools; GEMS tools for monitoring and reporting; training the County officials on social risks management; and availability of E&S focal persons in most counties. KDSP II will strengthen the quality, inclusiveness, effectiveness, and capacities of county governments on improving the institutional performance of these governments for service delivery.

80. The key E&S aspects to be scaled-up under KDSP II based on experience from previous and ongoing PforR experiences, include: (i) E&S staffing arrangements and technical capacity at the NPCT and County levels for enhanced ESHS management; (ii) update of the bidding and contract documents for civil works to include ESHS clauses, to promote ESHS compliance; (iii) promote targeting and inclusion of vulnerable and marginalised groups to access program benefits; (iv) review of KUSP II E&S screening checklists to include climate change screening; (v) early collaboration between the E&S safeguards officers and the project design team during design and more involvement in implementation phases; (vi) enhanced collaboration with other MDAs (e.g. NEMA, DOSHS, SRIM, NCA) for increased scrutiny of ESIA/ESMP reports and compliance monitoring; (vii) Review and operationalization of GRM systems to create more awareness of uptake channels and documentation; (viii) develop and train on ESHS monitoring tools to promote monitoring and compliance; (ix) ESHS budget allocation for implementation of corrective measures in cases of unforeseen adverse impacts; (x) implementation of OHS provisions as per the OHS Act, 2007; (xi) strengthen the collaboration between NCPT and CPCT safeguards teams; (xii) sensitization of county leadership and contractors on ESHS management; (xiii) scale-up on use of the GEMS tool for monitoring of sub-projects and portfolio mapping for coordination across projects.

### 7.2 ESSA Findings

81. The ESSA established that:

- Kenya has well-developed and robust written systems consistent with the PforR six Core Principles, which, if effectively applied, will enhance the ESHS opportunities under the Program.
- Social risks and impacts management functions are fragmented across various institutions with limited coordination mechanisms. Further, the newly formed SRIM Unit under the Directorate for Social Development is still developing, and there is no legal framework supporting the SRIM Committees at the county level.
- Counties have benefited significantly under KDSP I, KUSP I, KISIP I and II, and FLLoCA in terms of training E&S persons. However, there is still low-level commitment towards E&S sustainability.
- Counties have established the environment, climate change and natural resource management departments, with limited functionality and coordination across board.
- The existing county GRM systems are fragmented, non-institutionalized and ineffective impeding timely resolution of complaints. These systems do not adequately address VMG-specific issues since they are customized to receive, record and handle issues that concern mainstream communities.



- Public participation at national and county levels does not meet the threshold of meaningful consultation, with no clear sanctions for not aligning with the Constitutional provisions.
- Inadequate targeting and inclusion of VMGs and other disadvantaged and vulnerable groups in participation and accessing Program information, benefits, and opportunities.
- VMG communities have internal governance structures, although some are clearly defined than others. These structures ensure VMGs, and the government interact to facilitate access to service delivery and discharge of rights and responsibilities.
- Civil society organizations such as the HUGAFO OPDP representing minority VMGs across Kenya, offer a united voice in national matters concerning VMGs (e.g., land, climate change and inclusion), while CBOs constituting men, women, and youth aim to enhance the socio-economic status of VMG communities and other disadvantaged groups.
- There are challenges with transacting on unregistered community land since communities do not wish to have their compensation monies held in trust by the county governments as stipulated in the Community Land Act 2016.
- In-kind compensation in form of priority infrastructure projects is acceptable under the national law and a preferred form of compensation for communal land. However, a notable challenge is the inadequate engagement of all segments of the community to obtain a broad consent on the nature of investment.
- The commitment of the contractors to enforcing E&S provisions in the contracts remains a key challenge for the Program.
- Limited monitoring and reporting on E&S risks and impacts management potentially affecting the identification and implementation of mitigation measures.
- Lack of inclusion and/or implementation of E&S clauses the contract and bidding documents.
- Inadequate (a) collaboration and coordination of activities between the Program teams with lead agencies i.e., DOSHS, NGEN, NLC, CAJ and NEMA; (b) E&S staffing in some of the counties (although under KDSP I all E&S staff were trained on SRIM, some of those trained have since been removed or transferred to other departments, contracts expired or retired from public service), and (c) contract management and ESMP supervision.
- MDA's limited interaction with and knowledge of country data protection provisions amidst the data security challenges that face government platforms. This is in relation to the Human Resources (HR), sskills, and payroll audits proposed under the Program.

### 7.3 ESSA Recommendations

82. To mitigate identified ESHS risks and impacts, the Program interventions will undergo a screening process including the implementation of an exclusion criterion for certain activities which would result into high and substantial risks and significant negative ESHS risks and impacts which are irreversible or unprecedented on the environment and/or affected people. In addition, the ESSA has recommended the following to the Program Action Plan.

- Enhance capacity to manage ESHS risks and impacts:** The NPCT will hire an EHS specialist and a social specialist to coordinate the management of ESHS risks and impacts. Counties will appoint and maintain qualified one environmental specialist, and one social specialist during the implementation of the Program, as a minimum condition to access the Governance and Institutional Support Grants (GISG). The counties will supplement the inhouse capacity with consultancy services to support the various ESHS aspects, including preparing ESIA/ESMPs/RAPs and carrying out regular ESHS audits.
- Establish a unit to coordinate ESHS activities at the counties:** Counties to establish structures that bring together all the different ESHS specialists managing county and WB PforR programs for efficient ESHS management. This will harmonize monitoring and supervision of the WB PforR projects, and projects undertaken by the counties.
- Engage early into the program planning process key stakeholders involved in ESHS management.** Implementing institutions and agencies with mandates for ESHS risks and



- impacts management such as NEMA, DOSHS, NLC, CAJ, NGEC, NCPWD, and SRIM unit will be integrated early into the program planning process, including participating in the screening of E&S risks and potential impacts of Program interventions, and to ensure that they participate fully in the program, and make an input into the decisions being made throughout the Program cycle.
- iv. **Allocate adequate resources for ESHS aspects in the proposed investment budgets.** Evidence from past and present PforRs in Kenya illustrates that safeguards management is often not adequately supported, especially the ESHS staff assigned to the programs. The Program should ensure that ESHS risks and impacts management strategies, including provision of adequate resources for ESHS staff, and enough budget allocation in the Bill of quantities for safeguards implementation during the investment identification, screening, planning and design processes. The resources shall also include budgets for preparing ESMPs/ESIAs and RAPs, capacity building of ESHS staff, and monitoring and evaluating the ESHS performance during implementation.
  - v. **Support counties to enhance and/or operationalize the GRM systems.** To strengthen stakeholder feedback and grievance redress mechanisms, the NPCT in collaboration with CAJ will conduct a survey of existing GRM mechanisms across counties and rollout a harmonized and functional GRM system (tier 1) in all counties. The Counties shall develop feedback mechanisms and GRM structures at each subproject level. The GRM systems will be culturally appropriate and readily accessible to all stakeholders (including VMGs and other disadvantaged groups) and streamlined to address VMG-specific challenges.
  - vi. **Strengthen implementation and monitoring of ESHS risks and impacts for successful ESHS outcomes.** To ensure proper management of ESHS risks, the Program will develop procedures for assessing performance on E&S management that will rely on a performance protocol, that will be outlined in the ESHS Manual and the POM. Building on lessons learned from the other PforRs, the Annual Performance Assessment (APA) Terms of Reference (ToRs) shall also include E&S performance assessment procedures to ensure a robust verification process. In addition, the Program Action Plan (PAP) recommends: (i) incorporation of ESMP and OSH contractor/supplier clauses in the bidding and contract documents for civil works, including signing of code of conduct; (ii) Program to partner with relevant lead agencies in the ESHS risks and impacts management including DOSHS, NEMA, SRIM Unit, NCA and NLC to capacity build the capacity of county teams and contractors.
  - vii. **Build the capacity of institutions managing EHS.** The Program will support DOSHS and NEMA on capacity building through (i) training of DOSHS staff at the county levels, (ii) training project workers at county, sub-county and ward levels on statutory OHS courses and general awareness creation on OHS, (iii) institutionalization of County Environmental Committees (CEC) in line with EMCA, 2015, (iv) assist the Directorate of Compliance within NEMA to enhance compliance of the private sector players, by working with private sectors organizations such as KEPSA, KAM, among others, and (v) upscale public education and awareness on gazette regulations including new Sustainable Waste Management regulations.
  - viii. **Social Risk Management: KDSP II will advance building country systems for social risks and impacts management** by focusing on the following areas: (i) support the stakeholders engagement process for the Kenya SRIM Bill; (ii) build on County SRIM capacity through training and peer to peer learning; (iii) support the institutionalization of SRIM within counties; (iv) advance dialogue on SRIM within relevant government agencies.
  - ix. **Strengthening the ESHS risks and impacts management systems to enhance the understanding of the country systems on ESHS and their application.** The NPCT at SDD, in partnership with NEMA, SRIM Unit, DOSHS, NLC, CAJ, NCPWD, among others, will conduct training for implementing agencies and other key stakeholders on: (i) screening, management and reporting of ESHS risks and impacts; (ii) occupational health and safety; (iii) labour and working conditions; (iv) stakeholder engagement and social inclusion, (v) grievance management; and (vi) protection of personal data; (vii) statutory requirements for land acquisition and compensation, and (viii) training of contractors on ESHS. Other topics such as economic and physical displacement, and land acquisition will also be included. The training

- shall be done before project effectiveness, with regular training sessions provided during program implementation to respond to specific Program needs.
- x. **Include in contracts and bidding documents provisions for E&S management with attendant budgets.** Facilitate ESHS Officers to monitor project sites and give recommendations to the contractors on ESHS aspects. Final payment for completed works should be certified by the E&S specialists. Evidence from KDSP I and KUSP I has demonstrated inadequate attention by contractors to quarries, burrow pits and spoils that become a burden to communities. Procurement Officers for all the counties will be sensitized on ESHS requirements.
  - xi. **Review the land acquisition guidelines under the Kenya Climate Smart Agriculture Project and adapt to KDSP II.** The guidelines provide procedures on the acquisition of land and wayleaves under the Program, particularly, for sub-project sites on unregistered community land.
  - xii. **Include protocols on gender, VMGs, PWDs and other disadvantaged/vulnerable groups, in the proposed public participation guidelines.** Mainstreaming of inclusivity in the public participation guidelines will all segments of the public are meaningfully consulted.
83. The Program action plan is summarized in the Table below.

**PROGRAM ACTION PLAN (PAP)**

**Table 7-1: Program Action Plan**

No.	Action Description	DLI/IPF	Responsibility	Timing	Expected Output
<b>Actions to strengthen Environmental, Health and Social Management Systems (EHSMS)</b>					
1.	Develop an Environmental, Social, Health, and Safety Risk Management Manual (ESHSRIM), as an annex to the POM.	IPF	SDD	Condition of Program effectiveness	ESHSRIM Manual.
2.	Train counties on the implementation of the <b>Environmental, Social, Health and Safety Risks Management (ESHSRIM) manual</b> that includes guidelines, Standard Operating Procedures (SOPs) and templates for managing ESHS risks and impacts of investment grants to counties as part of the Program Operational Manual (POM). Also, training will focus on the national laws and regulations.	IPF	NPCT/ County E&S focal points	Before program effectiveness	<ul style="list-style-type: none"> <li>▪ Training county E&amp;S staff on the ESHSRIM manual.</li> <li>▪ Annual training calendar delivered on ESHS capacity building and confirmed through progress reports.</li> </ul>
3.	Analyze the county ESHS structures and recommend measures to enhance their sustainability.	IPF	NPCT	Within 1 year after project effectiveness	<ul style="list-style-type: none"> <li>• Recommendations to enhance sustainability of county ESHS structures.</li> </ul>
<b>Actions to build the capacity for staff of implementing agencies, involved in the Program to enhance environmental and social management risk performance</b>					
4.	Deploy adequate, qualified, experienced, and full-time <b>environmental and social safeguards staff</b> in Counties.	DLI XXXX	County Governments	Before disbursement of grants to counties	<ul style="list-style-type: none"> <li>• Qualified and experienced staff assigned.</li> <li>• At least 1 environment and 1 social specialist and confirmed annually through APA.</li> </ul>
5.	Deploy full time 1 environmental specialist, 1 health and safety specialist, and 1 social specialist at the NPCT.	IPF	NPCT	Condition of Program effectiveness	<ul style="list-style-type: none"> <li>• Qualified and experienced staff assigned, 1 environmental, health and safety specialist, 1 social specialist, and confirmed annually through APA.</li> </ul>
6.	Establish a dedicated ESHS unit within the CoG to anchor, coordinate and oversight E&S structures/aspects within counties.	IPF	NPCT/ CoG	Before APA	<ul style="list-style-type: none"> <li>• A dedicated ESHS Unit within the CoG.</li> </ul>

Actions to strengthen the implementation and monitoring of the environmental and social risk management					
7.	Include a robust ESHS risks and impacts management verification protocol in Annual Performance Assessment (APA). NPCU to conduct an annual ESHS independent audit for all infrastructure investments, and shared with the Bank	DLI xxx	NPCT WB	Before APA  After APA	<ul style="list-style-type: none"> <li>• Inclusion of APA verification indicators in the ToRs for APA.</li> <li>• Inclusion of a chapter on E&amp;S in the main APA reports.</li> <li>• Annual ESHS Audit report</li> </ul>
8.	Include all the applicable ESHS clauses and budgets in the bidding and contract documents for civil works.	IPF	NPCT  County PIT	Prior to procurement being launched	<ul style="list-style-type: none"> <li>• Bidding and Contract document templates with ESHS aspects.</li> <li>• Percentage expenditure on ESHS aspects in line with the allocated budget.</li> <li>• Supervision and monitoring reports and confirmed through APA.</li> </ul>
9.	Collaborate and partner the lead ESHS agencies, including DOSHS, NEMA, SRIM, NCA, CAJ and NLC to train counties and contractors on ESHS risk management.	IPF	NPCT CoG	Continuous	<ul style="list-style-type: none"> <li>• Number of trainings and technical assistance provided in collaboration with relevant agencies. Confirmed through progress reports.</li> <li>• Training reports.</li> </ul>
10.	Conduct a survey of existing GRM mechanisms across counties.  Develop an automated GRM system (tier 1) to be rolled out in all counties.  Counties to develop and manage functional GRM structures levels	IPF  DLI xxxx	NPCT/CAJ  County Governments	Within 1 year after project effectiveness  Before disbursement of grants to counties	<ul style="list-style-type: none"> <li>• Automated GRM systems rolled out in all counties.</li> <li>• GRM constituted and grievances being logged, responded, and resolved at county level.</li> <li>• Confirmed annually through APA.</li> </ul>

## 8 Annexes

### 8.1 Annex 1: Relevant Policy, Legal, and Regulatory Framework for Environment, Social, Health and Safety Management

	Policy/ Legislations /Guidelines	Provisions	Relevance
<b>RELEVANT LEGISLATIONS TO KDSP II</b>			
1.	Constitution of Kenya (CoK) 2010	<p>The Constitution of Kenya (CoK) 2010 is the supreme law of the Republic and binds all persons and State organs at all levels of government. Concerning the environment, Article 42 of Chapter Four, The Bill of Rights, confers to every person the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative measures, particularly those contemplated in Article 69. Section 69 (2) states that every person must cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources, while section 70 provides for enforcing environmental rights. The Constitution further places the citizens at the centre of development and related governance processes and provides for public participation as one of the principles and values of governance.</p> <p>Articles 10 and 232 provides for public institutions to mainstream national values and principles of governance into their business processes and other promotional Strategies, including, providing a dignified environment for clients who seek services in the institutions; ensuring fairness and impartiality in execution of their mandates; giving individuals fair treatment and a just share of the benefits; affording all people an opportunity to contribute to the development agenda; treating everyone equally irrespective of their status such as gender, religion, social status, tribe or race; institutionalize affirmative action programmes to address the needs of the vulnerable and marginalized groups and work towards removing barriers which impede their progress and participation in public service, among others.</p> <p>Chapter 4, part III, Application of Rights (clause 54) states: A person with any disability is entitled: - (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning; (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person; (c) to reasonable access to all places, public transport and information; (d) to use Sign language, Braille or other appropriate means of communication; and (e) to access materials and devices to overcome constraint arising from the person’s disability, and that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.</p>	<p>The CoK, 2010 is well aligned to the ESF by upholding the requirements for E&amp;S sustainability. Implementation of Program activities will promote environmental sustainability, and ensure equitable sharing of accruing benefits by beneficiaries, including VMGs and other disadvantaged groups as foreseen by the CoK, and adherence to the national principles and values of governance. Program activities shall be conducted to ensure compliance with the CoK on all aspects related to E&amp;S management, including public participation, management of grievances, inclusion of marginalized and minority groups, e-waste management, gender, and disability mainstreaming, among others.</p>

	Policy/ Legislations /Guidelines	Provisions	Relevance
		Article 260 provides for the inclusion of marginalized communities and groups in the development agenda of the country. Further, under Section 56, the Constitution requires that the State shall put in place affirmative action programmes designed to ensure minorities and marginalised groups access to water, health services and infrastructure.	
2.	The County Government Act (No 17), 2012	The Act is established to give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution. Part V in Section 35 defines the roles of the executive committee in urban area or city planning. The roles include inter alia oversight in the planning, formulation, and adoption of integrated development plans. Part VII in Section 87 outlines principles of citizen participation in counties including timely access to information, access to the process of formulating and implementing policies, laws and regulations, promotion of interest and rights of minorities, grievance redress and regional balance in decision making process. Part XI of the Act empowers County Governments to oversee planning of development projects by coordinating and ensuring integrated planning including coordinating the public participation and environmental protection.	County governments are mandated to provide services in line with the devolved sectors. The Program will adhere to the Act provisions by obtaining all the required permits and licenses, facilitate consultations with key organs and the public, and ensure environmental protection and sustainable management resources.
3.	National Government Co-ordination Act (No.1 of 2013)	The Act establishes an administrative and institutional framework for co-ordination of national government functions at the national and county levels of governance; to give effect to Articles 131(1) (b) and 132 (3) (b) of the Constitution and for connected purposes	The Program will align with the Act in the coordination of mandates between county and national government stakeholders on the Program.
4.	Public Finance Management Act 2012	This Act provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies.	The Program will align with the provisions of the Act to ensure sustainable management of public finances in service delivery.
5.	Land Act, 2012 (revised 2019)	The Act gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources which includes water resources and sets out the functions of the National Land Commission (NLC) over management of public land and the process of compulsory acquisition and the MoLPP for implementing settlement schemes. The Act prescribes the statutory processes for acquiring land and creation of public rights of ways. <b>Land Tenure:</b> The Act applies to all land declared as (a) public land under Article 62 of the Constitution; (b) private land under Article 64 of the Constitution; and (c) community land under Article 63 of the Constitution and any other written law relating to community land. <b>Compensation:</b> The Act provides for the payment of full, prompt and just compensation to all persons whose interests in the land have been determined; and provides for the creation of a public rights of way (ROW) or wayleave by the National Land Commission (NLC).	It is anticipated that there will be the acquisition of land, the creation of public rights of way under the Program, and the subsequent destruction of crops, trees, and other assets. However, all construction works are of small scale, no resettlement is anticipated, and no, or very little, land acquisition is foreseen, thus unlikely to have significant adverse impacts on project-affected persons. In this respect, the provisions of the Land Act will be applied, together with other relevant land laws. The Land Act is aligned with the ESS5 requirements on compensation for land, trees, crops, and other assets

	Policy/ Legislations /Guidelines	Provisions	Relevance
		<p>Section 148(6) mandates NLC to make Regulations prescribing the criteria to be applied in the payment of compensation. In 2017, the National land Commission made the regulations as demanded by the Act. Section 152(4) on rights of entry provides that <i>“If any person authorized under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damage”</i></p> <p><b>Occupants in Good Faith:</b> The Constitution, the Land Act and the Land value Amendment Act require compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land. This compensation is assessed based on several factors, including; The number of persons in actual occupation of the land for an uninterrupted period of six (6) years immediately before the publication of the notice of intention to acquire the land and other improvements done before the date of publication in the Gazette of the notice of intention to acquire the land. Further, where boundaries of the land are ascertainable, prompt payment in full of just compensation may be made to occupants in good faith, in the case of land lawfully held, managed, or used by individuals or families as ancestral land and land traditionally occupied by individuals, families, or entities pending adjudication. The Act further notes that The Act states that occupants in good faith do not include persons unlawfully occupying any land without the owner's consent.</p> <p><b>Unlawful occupiers of land:</b> The Act defines a squatter as a person who occupies private, public, or communal land that legally belongs to another person without that person’s consent. This implies that squatters are not considered occupants in good faith and are thus not entitled to any form of compensation under the national law when acquiring land compulsorily. The Act also notes that anyone occupying land without the owner’s consent shall be evicted, and the Act establishes the legal process to be followed in evicting unlawful occupiers. For instance, the mandates for evicting unlawful occupiers and the procedures to be followed, including issuing eviction notices, and identifying people taking part in the eviction process.</p> <p><b>Settlement Schemes:</b> The Act mandates the Ministry of Lands and Physical Planning (MoLPP) to settle squatters, the poor, landless, and those displaced by disaster, conflicts, and development projects, or other such reasons that may lead to movement and displacement. Settlement programs provide access to land for shelter and livelihoods to target beneficiaries.</p> <p>Encroachers/squatters are one of the beneficiaries of settlement programs implemented by the MoLPP. This means that they can receive land settlement. On its motion or as requested by the national or county government, MoLPP may initiate the settlement of encroachers/squatters who are not beneficiaries of any other settlement program.</p>	<p>affected by the acquisition of land and the creation of public rights of way.</p> <p>The Land Act also provides for the settlement of the poor, landless, those displaced by disaster, conflicts, and development projects, or other reasons that may lead to movement and displacement through the MoLPP-implemented settlement schemes.</p> <p>The Land Act further recognizes and compensates occupants in good faith and establishes measures to determine their eligibility and assess compensation payable to them.</p>

	Policy/ Legislations /Guidelines	Provisions	Relevance
		<p><b>Dispute Resolution:</b> The Act outlines procedures for consultations with affected population by NLC and grievance management procedures. The Act clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through the Land Acquisition Tribunal as established by the Land Value (Amendment) Act 2019 and Environmental and Land Court as established by the Constitution 2010. Lastly, NLC has a duty to encourage Alternative Dispute Resolution Mechanisms (ADRM) in resolving land disputes pursuant to Article 69 of the Constitution.</p>	
6.	Community Land Act, 2016	<p>The Act gives effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes. Community land maybe held as (a) communal land; (b) family or clan land; (c) reserve land; or (d) in any other category of land recognized under this Act or other written law. The Act provides guidance for the ownership and tenure system; the protection of community land rights; the role of county governments; the procedure for registration of communities, recognition, and adjudication of community land; registration of community land; functions and powers of the community land management committee; and use and development planning of community land. The Act also provides guidance on transaction over community land and how unregistered community land may be acquired, which is mainly through either compulsory acquisition or through conversion. The Act mandates county governments to hold community land in trust for the concerned communities, until such a time that the community has been registered. It however prohibits the county government from transacting on, or otherwise disposing of community land. The Act further provides for compensation of compulsorily acquired community land to be deposited in an interest-bearing account held by the county government until such a time that the community has been registered, after which the compensation amount, together with interest earned, is transferred to the community account.</p>	<p>The Act will be applicable to the Program since program activities are being implemented in areas with unregistered community lands. The provisions of this Act shall be considered together with the provisions of the Land Act 2012 (as amended in 2019), and other relevant legislation, in the event that some of the proposed Program’s activities requiring land will be implemented in the areas of Kenya in which this Act applies. All affected community land (registered or un-registered) will be compensated in accordance with the provisions of the Community Land Act 2016.</p>
7.	Land Value Amendment Act 2019	<p>The Act amended various sections of the Land Act, the Land Registration Act as well as the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Act aims at standardising the value of land in Kenya for the primary purpose of enhancing efficiency and expediting the compulsory land acquisition process. The Act;</p> <ul style="list-style-type: none"> <li>• Provides for assessing land value index regarding the compulsory acquisition of land;</li> <li>• Highlights “just’ compensation” in relation to compulsorily acquired land or creation of wayleaves, easements, and public rights, to mean a form of fair compensation that is assessed and determined through criteria set out under the Act;</li> </ul>	<p>Compensation for affected land/rights of way and other assets will be in accordance with this Act, especially in assessing compensation using the criteria prescribed under the Act, and diverse modes of compensation available to affected persons.</p>



	Policy/ Legislations /Guidelines	Provisions	Relevance
		<ul style="list-style-type: none"> <li>Outlines various forms of compensation for land that is acquired compulsorily. They include monetary payment, alternative land, government bonds, equity shares in a government-owned entity, grant, or transfer of development rights, and any other lawful compensation; Stipulates that compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land.</li> </ul>	
8.	The Land Laws (amendment) Act, 2016	An Act of Parliament to amend the laws relating to land to align them with the Constitution, to give effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes.	The Program will align to the amendments in the Act, as applicable.
9.	Land Registration Act, 2012	The Act gives provisions to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. The Act applies to a) registration of interests in all public land as declared by Article 62 of the Constitution; (b) registration of interests in all private land as declared by Article 64 of the Constitution; and (c) registration and recording of community interests in land.	The Program will traverse private land and community land (registered and unregistered). People whose land is traversed by the project will need to be verified, compensated, and an easement registered in their title deeds.
10.	Valuers Act, 2010	This Act provides for the registration of valuers and the regulation of the valuation profession and practice in Kenya. Section 21 of Cap 532 prohibits any person who is not a registered Valuer and whose name does not appear in the register to prepare and submit a valuation report.	The Program will engage registered valuation experts during RAP preparation.
11.	Climate Change Act (2016)	The Climate Change Act (2016) is national legislation that provides for an enhanced response to climate change and provides mechanisms and measures to achieve low carbon and promote climate-resilient development. The Act adopts a mainstreaming approach that includes integration of climate change considerations into all sectors and in County Integrated Development Plans. The Act establishes the National Climate Change Council, chaired by His excellency the President. The Council is responsible for overall coordination and advisory functions. The Act also establishes the Climate Change Fund – a financing mechanism for priority climate change actions and interventions. This Act requires the Government to develop five-year National Climate Change Action Plans (NCCAP) to guide the mainstreaming of adaptation and mitigation actions into sector functions of the National and County Governments. NEMA is assigned the responsibility to monitor, investigate and report on compliance and the assigned climate change duties.	<p>The Act will be considered in mainstreaming of climate change aspects to enhance adaptation and mitigation of potential adverse effects, in Program activities.</p> <p>The Program incorporates disaster risk assessment in public investment management, sustainable procurement, and audit of climate related expenditures.</p>
12.	Access to Information Act (No. 31 of 2016).	The Act’s purpose is to: (a) give effect to the right of access to information by citizens as provided under Article 35 of the Constitution; (b) provide a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles; (c) provide a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law; (d) promote routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access	This Act is aligned to the ESS 10 on information disclosure and will be upheld by the Program in relation to ensuring stakeholders have timely information on all Program activities, including the effects of each Program activity.

	Policy/ Legislations /Guidelines	Provisions	Relevance
		to information; (e) provide for the protection of persons who disclose information of public interest in good faith; and (f) provide a framework to facilitate public education on the right to access information under this Act.	
13.	Environmental Management and Coordination Act, 1999 and the amendment Act of 2015, Legal Notice No. 31 of April 2019 on the EMCA.	<p>The EMCA of 1999, and the amendment act of 2015, is an act of Parliament that provides for the establishment of an appropriate regulatory and institutional framework for management of the environment and matters connected there with and incidental thereto. Part II of the Act states that every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. Part VI of the Act directs that any new Program, activity, or operation should undergo EIA and a report prepared for submission to the National Environment Management Authority (NEMA) for review, who in turn may issue license as appropriate with specific conditions of approval to be adhered to during project implementation.</p> <p>The legal notice 31 provides for the categorisation of projects as either Low-Risk, Medium-Risk, or High Risk, and provides a longlist of projects pre-screened into each of these categories.</p>	<p>The Program is expected to:</p> <ol style="list-style-type: none"> <li>Ensure all activities are carried out in an environmentally friendly manner throughout the preparation and implementation phases of sub-projects.</li> <li>Screen potential subprojects using the criteria provided in the legal notice 31 of the Act to determine the risk category, and the level of environmental and social assessment required.</li> </ol> <p>The NEMA will be engaged for technical guidance and undertake training and capacity building on the Act and related regulations, as needed.</p>
14.	Sustainable Waste Management Act, 2022	<p>This Act of Parliament establishes the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to a clean and healthy environment.</p> <p>Section 19 of this Act provides guidelines on the preparation of Waste Management Plans (WMPs) by counties, private entities and individuals.</p>	The Act will be considered in the development of e-waste management plans.
15.	HIV/AIDS Prevention and Control Act (Act No. 14 of 2006)	Part 11, Section 7 requires HIV and AIDs education in the workplace. The government is expected to ensure provision of basic information and instruction on HIV and AIDs prevention and control to employees of all Government Ministries, Departments and Agencies, and employees of private and informal sectors. The information on HIV/AIDs is expected to be treated with confidentiality at the workplace and positive attitudes shown towards infected employees/ workers.	The Act provisions and workplace HIV/AIDs policies will be applied during E&S capacity building for implementing entities and other relevant stakeholders. Related information will be availed at implementing entities premises and websites, to enhance HIV/AIDs awareness, prevention and management for workers and the public.
16.	Occupational Safety and Health Act (OSHA) (2007)	The Act promotes safety, health, and welfare of all workers at the workplace, preventing work related injuries and sickness, protecting third party individuals from being pre-disposed to higher risk of injury and sickness associated with activities of people at places of work. The scope of OSHA 2007 covers all workplaces including offices, schools, construction sites among others. It establishes	The Program shall promote workplace safety, general health, and basic welfare of workers.

	Policy/ Legislations /Guidelines	Provisions	Relevance
		codes of practices to be approved and issued by the Directorate of Occupational Safety and Health Services (DOSHS) for practical guidance of the various provisions of the Act. Inspection and enforcement systems exists with a bearing to occupational safety, health, and labour inspections. DOSHS have a core responsibility to carry out inspections related to environment at work, safety of workplaces, general health, and basic welfare of workers to ensure compliance with the OSH Act. In section 97 the act prohibits employment of persons below age of 18 years at the workplace or perform work likely to harm the persons safety or health.	
17.	The Work Injury Benefits Act (2007)	The Act was enacted to ensure that workers who sustain work related death, injuries, and diseases, are compensated. The Act applies to all employees including those employed by Government, other than the armed forces, in the same way, and to the same extent as if it was a private employer. An employee who is involved in an accident resulting in the employee’s disablement or death is subject to the provisions of this Act and entitled to the benefits provided under this Act.	The Act is applied to the Program as a measure to ensure the safety and health of workers, at workplaces.
18.	Employment Act No 11 of 2012 [2007]	This Act declares and defines the fundamental rights of employees; minimum terms and conditions of employment; the basic conditions of employment of employees; and regulation of employment of children, among other rights. Key sections of the Act elaborate on the employment relationship; protection of wages; rights and duties in employment; termination and dismissal and protection of children, among others.	This Act provides guidance to enhance employer-employee relationships and adherence to labor regulations, as provided by law.
19.	Labour Institutions Act, 2007	The Act in Part II Sections 5 – 7 establishes the National Labour Board whose functions include inter alia, advising on legislation affecting employment and labour, advising on codes of good practice, and setting of compensation benefits related to work injuries. Part V Section 30 – 35 of the Act establishes the offices of the Commissioner of Labour, Director of Employment, and Labour officers, whose main functions include monitoring and enforcing compliance with labour laws. Part VI Section 43 of the Act establishes the Wage Council whose functions include inter alia, investigating the remuneration and conditions of employment in any sector, and recommending on minimum wage remuneration and conditions of employment. The Act in Section 46 also provides for the publication of a Wage Order setting the minimum rates for remuneration among other work-related provisions, to be adhered to in employment of workers	Program activities will require employment of workers, and goods and services providers. Employers will be required to adhere to published Wage Orders that dictate the minimum rates for remuneration, among other provisions
20.	National Gender and Equality Commission Act 2012 [2011]	The Act establishes the National Gender and Equality Commission mandated to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution; co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof; co-ordinate and advise on public education Programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination; and, work with the National Commission on Human Rights, the Commission on Administrative Justice and other related institutions to ensure	The Program will adopt gender inclusive mechanisms in the delivery of the proposed reforms. The Program will consider the inclusion of VMGs, and other disadvantaged groups in consultations and access to Program benefits.

	Policy/ Legislations /Guidelines	Provisions	Relevance
		<p>efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration in the protection and promotion of rights related to the principle of equality and freedom from discrimination, amongst other functions.</p> <p>Section 8(d) of the Act mandates the Commission to co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized communities and groups in national development and to advise the Government on all aspects thereof. The law further mandates the Commission to work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws.</p>	
21.	Sexual Offences Act, 2009 [2006]	The Act in Sections 3 – 21 identifies and prohibits sexual offences including rape, assault, indecent acts, defilement, harassment, including offences against minors. The Act in Section 26 also prohibits the deliberate transmission of HIV or any other life threatening sexually transmitted disease. Other prohibited acts include administering a substance with intent (Section 27), and distribution of a substance by juristic person (Section 28).	The Program will establish measures that prohibit and act against sexual offences listed in the Act for staff, contractors, and suppliers. The Program will put in place mechanisms which are necessary to achieve or promote the objects of this Act, including Codes of Conduct for staff, contractors, and suppliers.
22.	Persons with Disability Act, 2003	The Act provides for the establishment of a National Council for Disability, its composition, functions, and administration for the promotion of the rights of persons with disabilities set out in international conventions and legal instruments, the constitution and other laws, and for other connected matters.	The Cok and Act provisions shall be applied in the facilitation of inclusion of PWD's in provision of services and access to information and financial management systems.
23.	Child Rights Act, 2012 [2010]	The Act makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care, and protection of children. It also makes provision for the administration of children's institutions, gives effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Section 15 states that a child shall be protected from sexual exploitation and use in prostitution, inducement, or coercion to engage in any sexual activity, and exposure to obscene materials.	The Program shall ensure measures are in place to observe the rights of children as well as avoid forced and child labour.
24.	Children Act, 2022	The Act in Section 22 provides that No person shall subject a child, to child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child's education or is likely to be harmful to the child's health or physical, mental, moral or social development.	The Act is aligned to ESS2 that prohibits child labour in Bank financed projects and the Program activities will uphold the provisions of this Act. The Program will be required to comply with provisions of the Act during Program implementation by ensuring that measures are in place to prevent violation of children's rights particularly protection from child

	Policy/ Legislations /Guidelines	Provisions	Relevance
			labour. No child will be employed under the Program as per the Act.
25.	Protection of Traditional Knowledge and Cultural Expressions Act, 2016;	The Act of parliament provides a guideline for the protection and promotion of traditional knowledge and cultural expressions. Section 3 requires every person dealing with matters relating to traditional knowledge or cultural expressions to be guided by the national values and principles of governance set out in Article 10 of the Constitution.	The Program is likely to be implemented in areas of cultural importance, and it will observe the requirements of this Act to protect and promote traditional knowledge and cultural expressions.
<b>RELEVANT POLICIES TO KDSP II</b>			
26.	Kenya Vision 2030	Kenya’s Vision 2030 is the current national development blueprint covering the period 2008 to 2030. The blueprint aims at transforming Kenya into “a newly industrializing, middle-income country providing a high quality of life to all its citizens in a clean and secure environment.” The Vision is anchored on three key pillars: Economic; Social; and Political Governance. The political governance pillar envisages public participation during project development, while social pillar envisages development through equitable social development.	This policy is relevant and aligns well with the ESF E&S sustainability requirements. It conforms with the objective of the Program which aims to improve the management, transparency, and accountability of county resources for service delivery. The political pillar of Vision 2030 is people-centred, result-oriented, and accountable to the public. Vision 2030 advocates for adherence to the rule of law applicable in Kenya, as well as public participation as envisaged under ESS1 and ESS10. In this regard, all activities to be implemented under the Program will be required to comply with the established environmental and social laws foreseen in Vision 2030, which are aligned to the World Bank’s requirements for effective management of E&S risks and impacts.
27.	Land Assessment of Just Compensation Rules, 2017	Outlines the rules of NLC to implement provisions of the Land Registration Act in respect of the amount of compensation to be awarded for land acquired under the Act. The Rules further set out factors to be considered when assessing compensation and provides that NLC shall determine an award based on the market value of the land to be acquired.	The assessment of compensation for land and other assets affected by the Program shall be based on the provisions of the se Rules.
28.	National Policy for Prevention and Response to Gender Based Violence, 2014	The Policy acknowledges that GBV is a serious global health, human rights, and development issue, and although affecting women, girls, men and boys, women and girls have however been found to be disproportionately affected. Forms of recognised GBV issues include sexual violence, physical violence, emotional/psychological violence, harmful traditional practices, and socio-economic violence (through discrimination and/or denial of opportunities and services, social exclusion etc). The Policy expresses the government’s commitment to the elimination of all forms of GBV and to the effective provision of quality and accessible services to all survivors. Aims of the Policy include; improving the enforcement of laws and policies towards GBV prevention and response; increasing	This policy aligns well with the Bank’s Directive and Guidance Note on GBV prevention with emphasis on SEA/SH. The Program will require to the client and their consultants to prepare SEA/SH prevention and response management plans for all activities that may involve the influx of labour into the project areas. The program will also support the establishment and/or enhancement of the client’s internal GBV (especially

	Policy/ Legislations /Guidelines	Provisions	Relevance
		access to quality and comprehensive support services across sectors; and improving sustainability of GBV prevention and response interventions. Actions proposed to realise the policy objectives include inter alia: gender mainstreaming into all legislation, policies, plans and programmes; Developing work place policies addressing GBV prevention and response in public and private set ups; Implementation of Standards and guidelines for GBV prevention at public and private service delivery centres; Establishment and strengthening health, legal, social infrastructure to ensure integration of GBV response; Establishing an elaborate communication strategy incorporating all actors including the public, service providers, government agencies and non-state actors so as to effectively respond to GBV	SEA/SH) policies and strategies and support their entrenchment at all levels including within SDD and CoG, its contractors and its suppliers, in alignment with this National Policy.
29.	National Policy on Gender and Development, 2019	The Policy outlines the national agenda for gender equality and how Kenya intends to realize these ideals. It details the overarching principles, which will be adopted and integrated into the National and County Government sectoral policies, practices, and programmes and by all state and non-state actors. Aims of the policy include achieving equality of opportunity and outcomes with respect to access to and control of national and county resources and services, and equality of treatment that meets the specific and distinct needs of different categories of women and men. Special focus is however given on the empowerment of women who are currently the marginalized gender. Policy applies specifically and directly to all Government Ministries, Independent Bodies, Quasi-autonomous entities, and Departments and Agencies both at the national and county levels of government. The principles, strategies and approaches in the policy also apply to the private sector and civil society. The proposed policy actions include inter alia: developing and implementing national guidelines for mainstreaming gender, and standards for measuring compliance to gender mainstreaming in all sectors at all levels; Strengthening capacity of institutions with the responsibility of implementing and monitoring gender-related interventions; Enacting legislation to enhance women participation in economic, social and political spaces in both public and private spheres; Strengthening the legal and administrative framework for labour administration to integrate women in non-traditional trades such as construction, mining, infrastructure development, among others; Implementing labour policies that support minimum wage guidelines, regulations on work hours, and protection for trade union and collective bargaining rights, particularly for women to close the differences in access to economic opportunities, earnings and productivity gaps; and enforcement of sexual and gender based violence (SGBV) related laws and policies	Compliance with the Policy aims and objectives of ensuring gender equality will be necessary under the Program. SDD, CoG, counties, contractors and suppliers will require to demonstrate commitment to gender equality in their operational policies and in employment opportunities.
30.	Environmental Management and Co-Ordination (E-Waste	The e-waste Guidelines have been developed to streamline the procedures of handling and disposal of e-waste generated by various sectors. The e-waste guidelines provide a framework for identification, collection, sorting, recycling and disposing of electrical and electronic waste (e-waste).	The guidelines shall be considered in the management of e-waste generated from Program investments.

	<b>Policy/ Legislations /Guidelines</b>	<b>Provisions</b>	<b>Relevance</b>
	Management) DRAFT Regulations, 2013	The guidelines also provide the basis for developing legal instruments to enhance enforcement. The purpose of these guidelines is to assist the government, private sector, learning institutions among others to manage e-waste in a manner that enhances environmental conservation.	
31.	National Occupational Safety and Health Policy, 2012	The overall objective of this policy is to establish National Occupational Safety and Health systems and Program geared towards the improvement of the work environment. The Policy seeks to reduce the number of work-related accidents and diseases, provide compensation and rehabilitation to those who may be injured at work or contract occupational diseases. The specific objectives of this policy are, among others: a) to guide the development of laws, regulations and any other instruments on occupational safety and health; b) to recommend establishment and strengthening of responsible and accountable institutions for management of occupational safety and health issues; c) to recommend enforcement and compliance mechanisms for occupational safety and health laws and regulations; d) to create mechanisms for cooperation between employers, workers and their representatives at workplaces in the promotion of occupational safety and health; and e) to strengthen capacities of state and non-state actors in occupational safety and health. Among other safety issues, the policy provides the framework for mandatory use of appropriate personal protective gear, protection of workers against of occupational hazards, and workplace provisions for First Aid and emergency medical evacuation.	The DOSHS will be engaged on offering technical OHS expertise and capacity building in the Program, as needed.
32.	National Museums of Kenya Chance Finds Procedures	The Chance Finds Procedures define requirements for the management of archaeological, paleontological, and other cultural deposits, finds and features, encountered during construction and development activities within Kenya. The objectives of the procedures is to provide protocols that will minimize disruption to construction scheduling while promoting the preservation of prehistoric and cultural heritage.	Vegetation clearing and civil works might uncover cultural sites which can only be removed by the appropriate governmental structures and consultation with the traditional authorities. The Program will apply the Chance Finds Procedures where finds and features are encountered during construction.
33.	Public Participation Policy 2023	The policy provides the framework for the management and coordination of public participation in Kenya for the fulfilment of the constitutional requirement on citizen engagement in development and governance processes in the country. Public bodies in Kenya will comply with this policy as a constitutional requirement. This policy seeks to address gaps and challenges in public participation in order to improve and entrench public participation in development and governance processes in Kenya. The policy is organized into nine policy areas that highlight the key policy concerns and objectives and sets the standards for public participation in Kenya. These standards legally bind all public bodies at the National and County levels. The policy areas include access to information; civic education; capacity building; planning, budgeting, and implementation; inclusion of minorities and	The policy aligns with the World Bank’s provisions on inclusive stakeholder engagement, information disclosure and grievance management as outlined in ESS 10. The Program will adhere to the provisions of the Act to ensure all segments of the public are meaningfully consulted and as applicable, their views are taken into consideration in the implementation of the Program

	<b>Policy/ Legislations /Guidelines</b>	<b>Provisions</b>	<b>Relevance</b>
		marginalised groups, funding; monitoring, evaluation, and learning; feedback and Reporting mechanisms; and complaints and redress mechanism.	
34.	National Policy on HIV and AIDS at work, 2009 (Revised in 2018)	This policy entails a framework for action by government employees and workers to deal effectively with HIV/AIDS at the workplace. Main objectives are to strengthen the legal & policy framework for HIV/AIDS; enhance capacities of policies implementation; reduce on new infections and HIV related deaths; strengthen financing and sustainability of HIV Programs; eliminate stigma and discrimination as well as enhance capacity for the informal and small enterprise sector for effective HIV response.	The Program will comply with the provisions of the policy as well as the workplace HIV/AIDS policies for implementing agencies to ensure the prevention and management of HIV/AIDS under the Program.



**8.2 Annex 2: Result Areas, associated Disbursement Linked Indicators and Disbursement Sub-Indicators**

Table 8-1. KDSP II- KRA 1

Key Governance Bottlenecks	National Actions and Results			County Actions and Performance		Resolved Bottleneck
	IPF Financed Activities	PforR (DLI 1)	Level 1 Grant	Level 2 Grant		
			Minimum Conditions (DLI2)	Minimum Conditions (DLI3)	Performance Measures (DLI3)	
<b>KRA 1: Sustainable Financing and Expenditure Management</b>						
<b>OSR collection is below what is planned and below potential, reducing available resources to fund county service delivery</b>	(i) A county revenue forecasting framework with simple realism rules agreed (ii) Guidelines providing technical specifications for the Integrated County Revenue Management System (iii) Guidelines for cleaning county tax registers and cadasters and assessing taxpayer obligations (iv) Guidelines on revenue mapping	N/A	Revenue enhancement plan developed	The county government has disclosed, on its website, total OSR collected (disaggregated by revenue stream) for the period of 12 months ending March 31	(i) Annual increase in OSR collected, (ii) The revenue base of registered taxpayers has been expanded and tax assessments updated. (iii) Revenue collected has increased by at least the level projected in the budget (iv) Taxpayers registers and cadasters have been clean and uploaded into automated revenue system (v) Automated revenue system in place	<b>Increase in Own source revenue collected, as planned, and is closer to potential</b>
<b>Disbursements to counties is delayed and affects service delivery</b>	(i) Model framework(s) for county A-in-A and A-I-E have been prepared (ii) Template for financial reporting for sub counties.	Average time taken to process county exchequer requisitions	Timely releases of KDSP II funds from the CRF to the SPA (from Y2 onwards)	N/A	Average time taken (days) to process county exchequer requisitions	<b>Timely disbursements to counties for service delivery</b>
<b>Commitments are not kept within resources availability, bills are not paid on time, and stock of pending bills is high, affecting supply of goods and services to counties (including remittances of pensions)</b>	Validation of county pending bills action plans and verification of implementation via the APA	N/A	N/A	County government has (i) verified stock of commitments and pending bills and (ii) disclosed this on their website	County government has (i) updated its list of commitments and verified pending bills (ii) reduced the stock of pending bills and (iii) disclosed commitments, the stock of pending bills and payments made on its website.	<b>Commitments are kept within resources; action plans are implemented on time; bills are paid on time and the stock of pending bills are kept to a minimum</b>
<b>Weak compliance with requirements for development partner funding undermines delivery of development projects</b>	Job descriptions and schemes of service for County Single Project Management Units (SPMUs)	N/A	(i) County workplans, cash plans, and budgets prepared (ii) Qualified or unqualified audit opinion (iii) Signed participation agreements (iv) KDSP II CPCT established	(i) Structure of County SPMUs approved by county government  (ii) Training of gender officers aligned with approved training programs	CPCT established	<b>Effective compliance and management of development partner funding</b>

Table 8-2. KDSP II- KRA 2

Key Governance Bottlenecks	National Actions and Results			County Actions and Performance		Resolved Bottleneck
	IPF Financed Activities	PforR (DLI 1)	Level 1	Level 2 Grant		
			Minimum Conditions (DLI2)	Minimum Conditions (DLI3)	Performance Measures (DLI3)	
<b>KRA 2: Intergovernmental Coordination, Institutional Performance and Integration of HR and payroll data</b>						
<b>Intergovernmental structures are not fully operationalized for more efficient coordination of institutional mandates, functions, and funding for service delivery</b>	(i) Guidelines for development of Joint Reform Action Plans to address county bottlenecks (ii) Frameworks and operationalization of all intergovernmental sectoral forums, inter-city, and inter-municipality forums (iii) Annual Summit reports and monitoring of implementation of recommendations (iv) Legislative bills aligning sector frameworks with transfer of devolved functions (v) Framework for monitoring resolution of intergovernmental disputes (vi) Framework for monitoring the implementation of inter-county agreements and inter-county projects (vii) Joint action plan developed and agreed across sectors	N/A	N/A	N/A	N/A	<b>Improved coordination of functions and mandates for service delivery</b>
<b>County departmental structures and requisite staffing are not fit for purpose, efficient nor aligned to performance and service delivery objectives; there are weak payroll management controls and Human Resource (HR) records are not up to date to inform decision-making</b>	(i) Guidelines for Staffing and Skills Audit to ascertain: (a) staff employed (b) where they are employed (c) the skills they have and (d) the term of employment. (ii) Special Audits on County Payrolls (iii) Capacity Building Plans for County Public Service Boards (iv) Model organizational structures and staff establishment control guidelines (for customization by counties) (v) County integrated performance management guidelines.	N/A	N/A	Counties have conducted HR and Payroll Audits, developed implementation plans, and approved staff establishment	(i) HR records, approved staff establishment, and payroll are linked, and cleaned payrolls with UPN are uploaded in the automated system  (ii) Counties are implementing an integrated (budget, performance contracting, staff performance appraisal) performance management system	<b>Consolidated HR data for decision-making, improved payroll integrity, and budget control on staffing Accountability for results through performance management</b>

Table 8-3. KDSP II- KRA 3

Key Governance Bottlenecks	National Actions and Results			County Actions and Performance		Resolved Bottleneck
	IPF Financed Activities	PforR (DLI 1)	Level 1 Grant	Level 2 Grant		
			Minimum Conditions (DLI2)	Minimum Conditions (DLI3)	Performance Measures (DLI3)	
<b>KRA 3: Strengthened Oversight, Participation &amp; Accountability</b>						
<b>County public investment is weak, with fragmented information and participation in planned and ongoing projects</b>	(i) Rollout of county project management guidelines (ii) Guidelines on county project stock taking (iii) Rollout of County PIM framework- regulations, guidelines, circular (iv) Guidelines providing technical specifications for county investment dashboard (v) Guidelines on climate change risk screening and preparedness, including assessment of the climate resilience of existing infrastructure assets	N/A	N/A	Counties have (i) conducted feasibility studies of identified infrastructure to be funded by KDSP II proceeds, including climate risk screening.  (ii) allocated at least one percent of level 1 grants to climate change actions	Counties have: (i) up to date county investment dashboard with a citizen feedback mechanisms (ii) pipeline of projects prepared in accordance with the PIM framework (iii) county projects stocktake (iii) Community-led project management committees feedback is captured in the public investments dashboard, and reports published on how the county has incorporated this feedback	<b>Improved county public investments which are aligned to citizen service delivery needs</b>

### 8.3 Annex 3: Eligible expenditures of KDSP II

1. **Size and allocation of the GISG.** The GISG is set at a fixed amount of US\$150,000 -200,000 per year for each county government meeting the MACs. It is expected that all county governments will meet the MACs for all years. Eligible (and ineligible) activities for the GISG are outlined in the Table below.

Table 8-4: Eligible and Ineligible Activities for the GISG

#	Area	Indicative List of Eligible Expenditures for GISGs
1	Policy/regulatory	Facilitating dialogue and provision of consultancy services for review, development, and implementation of policies relating to KDSP II RAs.
2	Guidelines and regulations	Developing and/or reviewing existing guidelines, regulations, and operational procedures relating to the KDSP RAs.
3	Management Information Systems Development and Rollout	Improvements in the existing management information systems AND the development of new systems
4	Training <sup>14</sup>	Training by certified subject matter experts from an accredited pool and workshops for detailed technical knowledge support (relevant to the KRAs and the achievement of PMs under the Program). The accreditation list to be verified and confirmed by the PStC.
5	TA	TA from an accredited pool. The accreditation list to be provided by the technical RAs teams and verified by the PStC.
6	Learning and Knowledge exchange platform	Peer to peer learning with other counties related to the performance under the Program.
7	Equipment	Office and training equipment to enhance efficiency of the working of county governments to achieve Program results
8	Program-related Technical Committee meetings and consultations	Facilitation of committee meetings and consultations related to the achievement of Program results.
9	Program coordination meetings and consultations	Facilitation of Program coordination meetings and consultations.
10	Program preparation activities	Preparatory activities related to potential project investments including feasibility assessments, ESIA's etc.
<b>Non-Eligible Expenditures</b>		

<sup>14</sup> Training must take place in-country and by qualified training providers verified by the PStC.

#	Area	Indicative List of Eligible Expenditures for GSIGs
		<ul style="list-style-type: none"> <li>• Infrastructure or infrastructure maintenance<sup>15</sup></li> <li>• Construction of office buildings<sup>16</sup></li> <li>• Purchase and maintenance of vehicles</li> <li>• Recurrent expenditures, such as salaries, utility costs (for example, electricity and water), and rent.</li> <li>• International travel costs</li> <li>• Scholarships or foreign study tours</li> </ul>

2. **Size and allocation of the SDIG.** The overall (maximum) annual budget envelope of the SDIG is set at US\$28.5 million. 30 percent of the total envelope will be allocated to counties for achievement of MPCs. The other 70 percent of the envelope will be allocated on the basis of scores for the PMs (above the average county performance score). Differences in scores of the PMs will affect the actual allocations. Not all counties may meet the MPCs and PMs (as they are a bit more challenging), and the average amount counties may receive per year will vary between US\$300,000 and US\$3 million. Eligible (and ineligible) activities for the SDIG are outlined in Table 1.4.

<sup>15</sup> Only eligible for SDIG.

<sup>16</sup> Only eligible for SDIG.

Table 8-5. Eligible and Ineligible Activities for the SDIG

Examples of Eligible Expenditures for SDIGs
<p><b>Indicative infrastructure investments</b></p> <ul style="list-style-type: none"> <li>● <b>Agriculture:</b> Construction, rehabilitation, and equipping of Agri processing plants, dairy production parks, and fisheries.</li> <li>● <b>County Health</b> <ul style="list-style-type: none"> <li>○ Construction, rehabilitation/upgrading, and equipping of county hospitals, dispensaries, and other health facilities.</li> <li>○ Purchase of ambulances and mobile clinics (within a maximum limit/threshold defined in the POM)</li> </ul> </li> <li>● <b>Cultural activities, public entertainment, and public amenities:</b> Construction, rehabilitation, beautification, and equipping of county libraries, museums, sports, cultural activities, parks, beaches, and recreation facilities.</li> <li>● <b>County transport:</b> Construction and rehabilitation/upgrading of roads and bridges.</li> <li>● <b>Trade development:</b> Construction, rehabilitation/upgrading, and equipping of markets.</li> <li>● <b>Education:</b> Construction, rehabilitation/upgrading, and equipping ECDEs, village polytechnics, and childcare facilities</li> <li>● <b>County Public Works:</b> Construction rehabilitation/upgrading of piping, drainage, toilets, gutters, and so on.</li> <li>● <b>Firefighting and disaster management</b> <ul style="list-style-type: none"> <li>● Construction, rehabilitation/upgrading, and equipping of county fire stations.</li> <li>● Purchase of fire engines (within a maximum limit/threshold defined in the POM)</li> </ul> </li> </ul>
Examples of ineligible expenditures for SDIGs
<ul style="list-style-type: none"> <li>● Activities on the negative list of the ESSA.</li> <li>● Investments in loans, other micro-credit schemes, and other securities</li> <li>● Investments made outside the CIDPs and annual development plans.</li> <li>● Recurrent expenditures, such as salaries, utility costs (for example, electricity and water), and rent.</li> <li>● School bursaries and scholarships</li> <li>● Foreign study tours</li> <li>● Expenditures for infrastructure funded by other development partner programs/grants.</li> <li>● Any projects that may involve forced displacement or resettlement (the proposed project will not be eligible for financing if it is likely to result in the relocation of more than 200 people)</li> <li>● Involve procurement of (a) works, estimated to cost US\$50,000,000 equivalent or more per contract; (b) goods estimated to cost US\$30,000,000 or more per contract; (c) information technology systems and consulting services, estimated to cost US 20,000,000 equivalent or more per contract; and (d) consultants' services, estimated to cost US\$15,000,000 equivalent or more.</li> </ul>

8.4 Annex 4: List of Stakeholders Consulted for the ESSA

**Kenya County Governance and Performance Program (CGPP) ESSA National Stakeholders Meeting**  
**Date: Monday, July 24, 2023**  
**World Bank Office, Room 1105**

**Attendance List**

No.	NAME	ORGANIZATION/INSTITUTION	POSITION/ROLE	EMAIL & TELEPHONE NUMBER
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7.	Lucy Njaramba	Judiciary	Head - RMU	Lucy.njaramba@
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Kenya County Governance and Performance Program (CGPP) ESSA National Stakeholders Meeting

Date: Monday, July 24, 2023

World Bank Office, Room 1105

Attendance List

No.	NAME	ORGANIZATION/INSTITUTION	POSITION/ROLE	EMAIL & TELEPHONE NUMBER
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STAKEHOLDER CONSULTATIONS ON ENVIRONMENTAL AND SOCIAL SYSTEMS ASSESSMENT (ESSA) FOR THE PROPOSED KENYA COUNTY GOVERNANCE AND PERFORMANCE

VENUE: NAKURU, MERICA HOTEL

DATE: JULY 31, 2023

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**STAKEHOLDER CONSULTATIONS ON ENVIRONMENTAL AND SOCIAL SYSTEMS ASSESSMENT (ESSA) FOR THE PROPOSED KENYA COUNTY GOVERNANCE AND PERFORMANCE**

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8.5 Annex 5: ESSA Assessment Tool

Core Principles	Key Planning Elements	Guiding Questions
<p><b>Core Principle 1: Program E&amp;S management systems are designed to (a) promote E&amp;S Sustainability in the Program design; (b) avoid, minimize, or mitigate impacts; and (c) promote informed decision-making relating to a Program’s E&amp;S effects.</b></p>	<p>Operate within an adequate legal and regulatory framework to guide E&amp;S impact assessments, mitigation, management and monitoring at the PforR Program level.</p>	<ol style="list-style-type: none"> <li>1. What relevant policies, laws, regulations, procedures, decrees, strategies, or other mandatory legal instruments are available at the national and county government levels that address E&amp;S considerations that apply to the Program activities?</li> <li>2. Do these instruments (laws/policies) sufficiently and objectively address the E&amp;S aspects of the Program? (If no, what changes are necessary?) (If yes, give examples)</li> <li>3. Do the Program implementing agency/agencies (national and county levels) have the legal and/or regulatory authority to commit resources to implement the E&amp;S aspects?</li> <li>4. If not, are critical legal or regulatory framework changes needed before the Program can proceed? (If yes, what changes?)</li> <li>5. How will the E&amp;S aspects under the Program be coordinated between the implementing agencies and the various compliance authorities, such as NEMA, Social Risk Management Unit, Commission on Administrative Justice (Ombudsman), State Department for Citizen Services, Public Service Commission, Data Protection Commission, etc?</li> <li>6. What are the foreseen gaps and challenges that may impede the effective implementation of the E&amp;S aspects under the Program?</li> </ol>
	<p>Incorporate recognized elements of good practice in E&amp;S assessment and management including:</p> <ol style="list-style-type: none"> <li>i. Early screening of potential impacts.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do applicable procedures require E&amp;S screening or assessment of activities associated with the proposed PforR operation that presents risks?</li> <li>2. Is there a criterion for screening E&amp;S risks and impacts in place?</li> <li>3. Does the implementing agency apply the screening criteria in the E&amp;S assessment?</li> </ol>

	<p>Clear articulation of institutional responsibility and resources to support the implementation of plans.</p>	<ol style="list-style-type: none"> <li>1. Are the roles and responsibilities of national and county governments clearly articulated regarding the management of E&amp;S risks and impacts in public investments?</li> <li>2. Are counties well placed to manage E&amp;S risks and impacts that relate to their functions? (see list of devolved functions)?</li> <li>3. What E&amp;S responsibilities are shared between county and national authorities?</li> <li>4. Are national and county responsibilities supported by adequate human and financial resources to implement the E&amp;S aspects?</li> <li>5. Are Program entities responsible for E&amp;S aspects adequately staffed-in terms of skills, qualification, and the number of personnel – to ensure effective administration, planning, design, implementation, and monitoring functions?</li> <li>6. Are E&amp;S experts in-house or outsourced?</li> <li>7. Do entities have E&amp;S Specialist (s)? If so, what is the scope of work for the specialists?</li> <li>8. How often are the E&amp;S staff re-trained on E&amp;S aspects? If not, why? And what can be done?</li> <li>9. Are you aware if counties have SRIM Committees? If so, what is their scope of work? How are their activities coordinated across MDAs? If not, what are the challenges?</li> <li>10. How can the SRIM committees proposed under the Program be enhanced to deliver their mandates?</li> <li>11. What structural arrangements are in place to ensure effective and timely coordination of the Program in light of the multi-agencies involved in the delivery of services?</li> <li>12. Is there a coordinating body empowered to resolve coordination issues or delays in necessary actions?</li> <li>13. Are the Program entities effective at applying their E&amp;S frameworks in practice?</li> <li>14. Do Program entities have access to contingency funds for unexpected impacts or budget shortfalls?</li> <li>15. How can the capacity of the counties to manage E&amp;S risks and impacts be strengthened?</li> <li>16. How can the capacity of the national government to provide oversight be strengthened?</li> </ol>
	<p>Responsiveness and accountability through stakeholder consultation, timely dissemination of the PforR information, and responsive GRM.</p>	<p><b>Stakeholder Consultation and timely dissemination of the PforR information (Public Participation)</b></p> <ol style="list-style-type: none"> <li>1. What mechanisms are available for Program entities to ensure that stakeholders are identified, mapped, consulted, and engaged and that their views, concerns, and suggestions are systematically considered?</li> <li>2. Does the sampling of stakeholders capture jurisdictional, geographical diversity?</li> <li>3. Are consultations conducted early enough that stakeholder feedback can be considered in designing new or changing Program activities?</li> <li>4. Are consultations conducted in a manner that encourages an open exchange of views without fear, coercion, or intimidation?</li> </ol>

		<ol style="list-style-type: none"> <li>5. Do consultation processes promote communication and informed decision-making? Do those affected have prior access to information about the topics for consultations?</li> <li>6. Is information relating to E&amp;S effects made available to the people or communities that are potentially affected in a timely manner?</li> <li>7. What kind of information do you give the program-affected people to enable them to make informed decisions?</li> <li>8. How much time/notice is given to the public to provide their input? Is this notice adequate to guarantee meaningful consultations?</li> <li>9. Are documents published and distributed in a language and form that the public can use? E.g., Is the information accessible to persons with disabilities?</li> <li>10. Is there a feedback mechanism for affected persons on decisions made by the responsible authorities?</li> <li>11. Are there sanctions/penalties for the responsible institution due to non-compliance with the constitutional provisions on public participation?</li> <li>12. Does the borrower have a Stakeholder Engagement Framework or Plan that can be adapted to the Program?</li> </ol> <p><b>Oversight</b></p> <ol style="list-style-type: none"> <li>1. Do the county systems include mechanisms for independent oversight and monitoring where appropriate? If yes, which ones? If not, why?</li> <li>2. What E&amp;S areas is oversight from national authorities critical?</li> </ol> <p><b>Responsive GRM</b></p> <ol style="list-style-type: none"> <li>1. Do counties have an accessible and functional GRM with established procedures for submitting grievances (including several uptake channels, established routines, and standards, grievance logs, etc.)?</li> <li>2. If so, to what level is the GRM decentralized? If no GRM system is in place, why?</li> <li>3. Are complaints addressed consistently, objectively, and timely?</li> <li>4. Are complainants/whistle-blowers protected from, e.g., retribution?</li> <li>5. Do the established GRMs accept and process grievances relating to E&amp;S management? etc.</li> <li>6. Is the GRM responsive to sensitive issues, e.g., SGBV cases? If yes, what measures are in place to promote confidential reporting and handling SGBV complaints?</li> </ol>
<p><b>Core Principle 2: Program E&amp;S management systems are designed to avoid, minimize or mitigate adverse impacts on</b></p>	<p>Identify and screen for adverse effects on potentially important biodiversity and cultural resource areas and provide adequate measures to avoid, minimize, or mitigate adverse effects.</p>	<ol style="list-style-type: none"> <li>1. Has Program screening identified potential impacts on modified, natural, or critical natural habitats or physical cultural resources?</li> </ol>



<p>natural habitats and physical cultural resources resulting from the Program. Program activities that involve the significant conversion or degradation of critical natural habitats or critical physical cultural heritage are not eligible for PforR financing.</p>		<ol style="list-style-type: none"> <li>2. Are there areas where if the Program activities are implemented will affect environmentally sensitive habitat areas with local importance, such as streams, wetlands, ponds, and vegetated riparian areas?</li> <li>3. If such impacts involve the significant conversion or degradation of critical natural habitats, have the activities been excluded from the Program?</li> <li>4. Does screening include the use of the best available science (e.g., reference to authoritative source materials such as maps, lists of threatened or endangered species prepared by recognized experts, direct advice from recognized experts, advice from peer-reviewed technical literature) to inform the assessment of potential impacts?</li> <li>5. Are Program activities planned and carried out in the context of land use or other management plans that identify sensitive habitat areas?</li> <li>6. Is screening at a sufficient level of detail and granularity to identify the location and geographical extent of natural and critical habitats?</li> <li>7. Would Program activities lead to the fragmentation of existing habitat areas, both at the level of localized Program activities and at larger landscape levels?</li> <li>8. Do management plans require appropriate conservation and mitigation measures to be in place, including those required to maintain ecological services?</li> </ol>
	<p>Support and promote the protection, conservation, maintenance, and rehabilitation of natural habitats.</p>	<ol style="list-style-type: none"> <li>9. Does the Program include management measures to protect, conserve, or rehabilitate habitats that are at risk? Are these measures consistent with recognized international good practice?</li> <li>10. Do management systems include measures to avoid, restrict, or otherwise forbid the introduction of exotic or invasive species that may threaten ecosystems or value?</li> <li>11. Are monitoring measures in place to determine the extent to which habitats are affected by the Program?</li> <li>12. If Program activities affect protected areas are such activities consistent with approved and up-to-date protected area management plans?</li> <li>13. Have the relevant management authorities and other key stakeholders for such protected areas been consulted or otherwise involved in decisions that may affect the legal status of habitat values of the area? If the Program involves any support for establishing forest plantations or other forest management activities for conservation, forest regeneration, or non-timber forest production purposes, does it do so in a manner consistent with internationally recognized standards of responsible, sustainable forest management and use?</li> </ol>
	<p>Avoid significant conversion or degradation of critical natural habitats (modified habitats, natural are defined as in ESS 5 in the Bank’s ESF)</p>	<ol style="list-style-type: none"> <li>14. Are arrangements in place to ensure that significant conversion or degradation of critical natural habitats does not occur and that Program activities do not otherwise contravene international environmental agreements relating to natural habitats or forests?</li> </ol>

		<p>15. When available data are insufficient to determine the extent or severity of biodiversity impacts, are new biodiversity surveys or inventories, conducted by qualified individuals or organizations, required as part of the Environmental Impact Assessment process?</p> <p>16. Are appropriate measures in place to ensure that incidents of non-compliance are dealt with in a timely and effective manner (e.g., through work stoppage, penalties, or other legal remedies)?</p>
	If avoiding the significant conversion of natural habitats is not technically feasible, include measures to mitigate or offset the adverse impacts of the PforR Program activities.	<p>17. If Program activities may cause conversion or degradation of non-critical natural habitats, do Environmental Impact Assessment procedures include considerations of measures to avoid or minimize the severity of impacts (for example, through the systematic consideration of viable alternatives)?</p> <p>18. Do plans require appropriate conservation offset measure to be in place, including measures to maintain ecological services?</p>
	Take into account potential adverse effects on physical cultural property and provide adequate measures to avoid, minimize or mitigate such effects.	<p>19. Does the screening review involve careful attention to avoiding impacts (damage to, relocation of and restriction to access) on resources of archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance?</p> <p>20. Is the mitigation hierarchy principle applied in the management of potential adverse impacts on the physical cultural property?</p> <p>21. Are management measures in place to avoid, minimize or mitigate such effects?</p> <p>22. Do procedures require the use of authoritative source materials or field-based surveys to identify existing physical cultural resources before works commence?</p> <p>23. Do borrower systems include “chance find” procedures to take effect whenever Program activities result in the discovery of, or disturbance to, physical cultural resources?</p>
<b>Core Principle 3: Program E&amp;S management systems are designed to protect public and worker safety against the potential risks associated with (a) the construction and/or operation of facilities or other operational practices under the Program; (b) exposure to toxic chemicals, hazardous wastes, and otherwise dangerous materials under the Program; and (c) reconstruction or rehabilitation of infrastructure</b>	Promote adequate community, individual and worker health, safety and security through the safe design, construction, operation, and maintenance of Program activities, or, in carrying out activities that may be dependent on existing infrastructure, incorporate safety measures inspections or remedial works as appropriate.	<p><b>Management of E-Waste</b></p> <p>1. Does the Program include adequate measures to protect people and the environment from the effects of e-waste that will be generated under the Program?</p> <p>2. Do applicable systems include skills development of staff for management of e-waste?</p> <p>3. In terms of technical scope, have trainings/capacity building on management of e-waste been provided? If so, are they sufficient?</p> <p>4. What good industry practice on management of e-waste have been adopted? Are there systemic constraints in application of good industry practices?</p>

<p>located in areas prone to natural hazards.</p>		
<p><b>Core Principle 4: Program E&amp;S systems manage the land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement and assists affected people in improving, or at the minimum restoring, their livelihoods and living standards.</b></p>	<p>Avoid or minimize land acquisition and related adverse impacts.</p>	<ol style="list-style-type: none"> <li>1. Do entities screen all planned activities to determine whether they may require the involuntary taking of land or restrictions on access to natural resources?</li> <li>2. What requirements are in place for identification and mitigation of all significant land acquisition-related impacts?</li> <li>3. What are the conditions MDAs must meet before accessing funding from the exchequer for public investments?</li> <li>4. Is provision of adequate compensation budgets and timely compensation of affected persons a requirement?</li> <li>5. Do systems adequately protect individuals and communities against “forced evictions?”</li> <li>6. What measures are in place to mitigate the forceful removal of persons from land identified for the project?</li> <li>7. Do systems require the preparation of Resettlement Action Plans (RAPs) where physical and/or economic impacts are anticipated, and disclosed to affected persons?</li> <li>8. If so, are RAPs prepared by qualified experts? How are these qualifications/skill sets determined?</li> <li>9. Who reviews and approves the RAP?</li> <li>10. Are the approved RAPs proportionate to the scale, magnitude and nature of the impacts related to land acquisition and resettlement?</li> <li>11. Do the RAPs clearly outline responsibilities to prepare, implement, monitor RAP activities, and audit RAP completion?</li> <li>12. Are these responsibilities aligned with provisions in applicable laws e.g., in the management and administration of land as mandated by the Land Act 2012 and ensuing regulations?</li> </ol>
	<p>Identify and address economic or social impacts caused by land acquisition or loss of access to natural resources, including those affecting people who may lack full legal rights to resources they use or occupy.</p>	<ol style="list-style-type: none"> <li>13. What measures are in place to identify or recognize that an area intended for the project is a communal property/ customary claimed or belongs to indigenous groups?</li> <li>14. How do you address impacts on such groups?</li> <li>15. What procedures are in place to identify and mitigate all significant impacts affecting squatters/encroachers of land (or other resources)?</li> <li>16. What governance arrangements exist between counties and VMGs that own or claim or utilize land within county boundaries?</li> <li>17. Do VMGs have their own internal governance systems?</li> <li>18. Are systems available to ensure VMGs and county authorities interact to facilitate access to service delivery and discharge of other rights and responsibilities on both sides?</li> <li>19. What are some of the issues that relate to management of community land?</li> </ol>

	<p>Provide compensation sufficient to purchase replacement assets of equivalent value and to meet any necessary transitional expenses, paid before taking land or restricting access.</p>	<p>20. What compensation arrangements are in place for land and other assets? E.g., Do you consider the replacement cost (prevailing market value of land or resource and transactional costs) when land acquisition or physical relocation is required?</p> <p>21. If not, are supplemental payments provided to meet this requirement?</p> <p>22. Are transitional expenses and resettlement assistance allowed under the borrower’s systems? If not, are there mechanisms to mobilize additional resources to support this requirement, if foreseen?</p> <p>23. What are the compensation arrangements under the system for loss of land/wayleaves, other assets, damage to livelihood sources (trees, crops)?</p> <p>24. Does the borrower’s system allow for post-compensation/resettlement monitoring?</p> <p>25. Is financial literacy training provided to persons receiving cash compensation to mitigate impoverishment of affected persons?</p>
	<p>Restore or replace public infrastructure and community services that may be adversely affected by the Program.</p>	<p>26. In case of physical relocation, what provisions are there to restore or replace public infrastructure lost or damaged because of public investments?</p>
	<p>Include measures in order for land acquisition and related activities to be planned and implemented with appropriate disclosure of information, consultation, and informed participation of those affected.</p>	<p>27. Under the land acquisition procedures what requirements are there for the participation of program affected peoples? Which institutions are mandated to ensure they are effectively consulted?</p> <p>28. What kind of information do you give affected people to enable them to make informed decisions?</p> <p>29. Does information on land acquisition and/or resettlement provide sufficient notification of the obligations and rights and entitlements of those affected, including rights to compensation, timely resolution of grievances or complaints as well as notice to vacate?</p> <p>30. Does the Program entity ensure that just compensation is paid promptly and in full in line with the Constitutional provisions?</p> <p>31. What happens in the event complaints/grievances or disputes on land acquisition and compensation arise? What measures are in place to ensure that these complaints/grievances are timely and adequately redressed?</p> <p>32. Any recommendations regarding aspects of land acquisition and compensation of affected persons?</p>
<p><b>Core Principle 5: Program E&amp;S systems give due consideration to the cultural appropriateness or and equitable access to, Program benefits, giving special</b></p>	<p>Undertake meaningful consultations if the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are potentially affected (positively or negatively), to determine whether there is</p>	<p><b>Meaningful Engagement of VMGs/IPs and Disadvantaged Groups</b></p> <p>1. Do consultations include socially and culturally distinct groups e.g. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, or other ethnic minorities, the poor, or other groups that might be underrepresented)?</p> <p>2. How are these groups sampled?</p>

<p><b>attention to the rights and interests of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and to the needs or concerns of vulnerable groups.</b></p>	<p>broad community support for the PforR Program activities.</p> <p>Give attention to groups of vulnerable to hardship or discrimination, including, as relevant, the poor, the disabled, women and children, the elderly, ethnic minorities or other marginalized groups; and if necessary, take special measures to promote equitable access to PforR Program benefits.</p>	<ol style="list-style-type: none"> <li>3. What are the efforts/mechanisms made by the National and County governments to identify the presence of distinct social, cultural, religious, and vulnerable groups and ensure their inclusive participation and access to Program benefits and opportunities?</li> <li>4. What barriers hamper the inclusion/participation?</li> <li>5. What considerations are given to alleviate these barriers and ensure their participation and access to Program benefits and opportunities?</li> <li>6. Does the incentive structure within Program agencies promote outreach measures to encourage equitable and affordable access to Program benefits?</li> <li>7. What changes are required to ensure these groups are meaningfully engaged under the Program?</li> <li>8. What gender mainstreaming strategies are in place that facilitate gender considerations and equity for Program benefits?</li> <li>9. Do Program entities regularly review and consider consultation results to obtain or broaden community support?</li> <li>10. What monitoring &amp; evaluation system exists for measuring equitable access to Program benefits?</li> <li>11. Any recommendations?</li> </ol>
<p><b>Core Principle 6: Program E&amp;S systems avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.</b></p>	<p>Consider conflict risks, including distributional equity and cultural sensitivities.</p>	<ol style="list-style-type: none"> <li>1. Is the Program being implemented in areas with known disputes or conflicts?</li> <li>2. If so, what risks will the Program's actions introduce or reinforce?</li> <li>3. Could the Program contribute in any way to underlying tensions or civil strife by reinforcing inequities or grievances?</li> <li>4. Are Program agencies open to discussion with the Bank and consultation with stakeholders on potentially sensitive issues?</li> </ol>

## 8.6 Annex 6: Capacity Assessment Tool

### **The Enabling Environment**

1. Based on the institutional mandate, what role can the institution play to deliver or enhance the delivery of the Governance Program?
2. What is the specific entity's mandate as related to the E&S risk management?
3. What policies, legal and regulatory frameworks guide the institution (s) in fulfilling its environmental and social mandates?
4. What institutional compliance enforcement measures are in place for management of environmental and social effects?
5. Are there inter-agency relationships that facilitate effective environmental and social management?
6. Who coordinates such relations?
7. What oversight measures will be utilized under the Program to ensure the delivery of reforms as well as the anticipated E&S considerations?

### **Skills Assessment/Resources/Organizational Structure**

8. Is there an operational institutional environmental and social management system (ESMS) in place?
  - E&S Policy Statement;
  - Support from Management;
  - Adequacy and qualification of staff;
  - E&S management strategies, plans;
  - E&S training modules and trainings held etc.,
9. Are technical resources available to support Program entities to manage the E&S risks?
10. Is there an institutional budget that is adequate for managing the environmental and social effects?
11. Elaborate on coordination/synergy with other key agencies in the governance sector.

### **Public Participation and Grievance Management**

12. What measures and capacity are in place to carry out meaningful consultations and stakeholder engagements (include disadvantaged groups, access to services etc.)?
13. What feedback and grievance redress mechanisms are in place at the entity and how effective are they? E.g., uptake channels, grievance logs, responsibility to log etc.
14. How does the entity handle grievances/issues relating to their operations from the members of the public? (response time, implementing resolutions, inter-agency collaborations, feedback mechanisms etc.)

### **Lessons Learned/Best Practices**

15. What has been the entity's experience (positive and negative) of World Bank funded projects in the management of E&S issues?
16. Propose key recommendations for adoption in the Governance Program based on lessons learned from implementation of related projects.