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

FOR THE

**FINANCING LOCALLY-LED CLIMATE ACTION
PROGRAM (FLLCA)
(P173065)**

REPUBLIC OF KENYA

Program-for-Results (PforR) Operation

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ABBREVIATIONS & ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
ADRM	Alternate Dispute Resolution Mechanism
ASAL	Arid and Semi-Arid Lands
APA	Annual Performance Assessment
BP	Bank Policy
CAJ	Commission of Administrative Justice
CCCF	County Climate Change Fund
CEC	County Executive Committee
CESMP	Contractor Environment and Social Management Plan
CIDP	County Integrated Development Plan
CDI	County Development Index
CLB	Community Land Board
CoB	Controller of Budget
CoG	Council of Governors
CRA	Commission of Revenue Allocation
CRM	Climate Risk Management
CCD	Climate Change Directorate
CDM	County Director of Meteorology
CIS	Climate Information Services
DPF	Development Project Financing
DLI	Disbursement-Linked Indicator
DOSHS	Directorate of Occupational Safety and Health Services
E&S	Environmental and Social
EA	Environmental Audit
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Co-ordination Act
ESIA	Environmental and Social Impact Assessment
ESMMP	Environmental and Social Management and Monitoring Plan
ESMS	Environmental and Social Management Systems
ESSA	Environmental and Social Systems Assessment
ESC	Economic, Social and Cultural
FPIC	Free Prior and Informed Consent
FLLCA	Financing Locally Led Climate Action Program
GCF	Green Climate Fund
GBV	Gender-Based Violence
GoK	Government of Kenya
GRM	Grievance Redress Mechanisms
HIV	Human Immune Virus
IPF	Investment Project Finance
IIED	Ada Consortium
ICRM	Integrated Climate Risk Management
KDSP	Kenya Devolution Support Program
KNCHR	Kenya National Commission on Human Rights

KMD	Kenya Meteorological Department
KRCS	Kenya Red Cross Society
KUSP	Kenya Urban Support Program
LN	Legal Notice
MC	Minimum Condition
M&E	Monitoring and Evaluation
MoTIHUD	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
MLSP	Ministry of Labour and Social Protection
MTP	Mid Term Plan
NAP	National Adaptation Plan
NCA	National Construction Authority
NDMA	National Drought Management Authority
NDC	National Determined Contribution
NEMA	National Environment Management Authority
NGEC	National Gender Equality Commission
NLC	National Land Commission
NLP	National Land Policy
NNCAP	National Climate Change Action Plan
NPCT	National Program Coordination Team
NUDP	National Urban Development Policy
NT	National Treasury
NIE	National Implementing Entities
NGO	Non-Governmental Organizations
OAG	Office of Auditor General
OHS	Occupational Health and Safety
OP	Operational Policy
OSHA	Occupational Safety and Health Act
PAD	Project Appraisal Document
PAPs	Project Affected Persons
PforR	Program for Results
PDO	Program Development Objective
PID	Project Integrated Document
POM	Program Operations Manual
PPEs	Personal Protective Equipment
PSC	Program Steering Committee
PTC	Program Technical Committee
PWD	Persons with Disability
RA	Resilience Assessment
RM	Resource Mapping
STD	Sexually Transmitted Diseases
TAMD	Tracking Adaptation and Measuring Development
ToR	Terms of Reference
UACA	Urban Areas and Cities Act
WB	World Bank
WCCPC	Ward Climate Change Planning Committee

WIBA	Work Injury Benefits Act
WWW	World Wide Web
VMG	Vulnerable and Marginalized Groups
\$	Dollar

EXECUTIVE SUMMARY

Project Description

1. The Financing Locally Led Climate Action (FLLCA) Program (Program for Results (PforR) and Investment Project Financing (IPF) components) will support the implementation of the National Climate Change Action Plan (NCCAP) and the County Climate Change Fund (CCCF) Scale-out Program for the benefit of communities in the forty-seven (47) counties in Kenya. There will be a focus on communities identified as most vulnerable to climate change within each county, as determined by the vulnerability assessments to be developed at the onset of the Program. The Program will aim to strengthen local resilience to the impacts of climate change, natural hazards, and other shocks/stressors by building counties’ capacity to plan, budget, implement, environment and social sustainability, and monitor climate change adaptation and mitigation actions in partnership with communities. It will emphasize the governance, social inclusion, and citizen participation aspects of climate and disaster risk management, and support actions identified by counties. The Program will be national in scale and operate in all forty-seven (47) counties and at the central government level, linking local level action to national-level coordination and planning. It will build county governments’ capacities and systems for understanding, planning, and administering climate actions while at the same time funding the actions.
2. The PforR component of FLLCA will deliver performance-based financing in support of the implementation of the NCCAP’s seven plus one Action Areas and five Enabling and Readiness Actions in all 47 counties. The Program’s multi-hazard risk approach will address the “plus one” risks which interact with or are affected by climate risks, such as COVID-19, disease outbreaks, and locust infestations. Activities in support of the Climate Finance Enabling and Readiness Action will be dictated by the CCCF Scale-out Program. The PforR component will be implemented over five years (2021-2026), cross-cutting the current and next NCCAP and the duration of the CCCF Scale-out Program. In total, the PforR component will have an attached total cost of US\$270 million in support of the GoK’s program of US\$1 billion over five years.
3. The PforR component is divided into two Result Areas as follows:
 - a) **Result Area 1: County readiness and institutional capacity building for locally-led climate action:** Implementing the county-level Enabling and Readiness Actions of the NCCAP and Readiness Phase actions of the CCCF Scale-out Program. This result area will also support the strengthening of Social Risk Management (SRM) work in county governments in collaboration with the Ministry of Labor and Social Services.
 - b) **Result Area 2: Locally-led climate action:** Supporting prioritized climate change adaptation and mitigation actions, which reduce climate and disaster risk while helping communities to adapt to current and future climate scenarios. Climate actions will support the seven-plus one NCCAP Action Areas and emerging climate-relevant issues: disaster risk management; food and nutrition security; water and blue economy; forestry, wildlife, and tourism; health, sanitation, and human settlement; manufacturing; energy and

transport; as well as emerging related risks as prioritized by communities, such as those associated with the impacts of COVID-19. The program has four components with funds for county-level activities provided through Disbursement Linked Indicators (DLIs) aligned to the expenditure areas and supporting national-level activities through an Investment Project Financing Instrument (IPF).

4. **The IPF component will finance activities at the national government level in support of local climate action.** These will include (i) reviewing and updating the climate change policy and legal framework to align with emerging issues (for example, involvement of the private sector in climate finance) and developing regulations for the CCA as needed; (ii) operational and technical capacity building of key stakeholder to improve their service delivery to counties in term of carrying out county-level climate change actions, particularly of the NT, CCD, and CoG, including online connectivity; (iii) facilitation of cross-sectoral coordination between the Climate Change Directorate (CCD), Council of Governors (CoG), National Drought Management Authority (NDMA), Kenya Meteorological Department (KMD), Kenya School of Government (KSG), Ministry of Labour and Social Protection (MLSP), Commission on Revenue Allocation (CRA), Controller of Budget (COB), Office of the Auditor General (OAG), and other actors which play key roles in coordinating, monitoring, and reporting on climate change and disaster risk management activities in the country, by supporting the functions of the National Climate Change Council; (iv) improving the operational and technical capacity of the CoG Maarifa Center¹ and CCD resource centers to serve as state of the art pioneer centers for sharing of climate knowledge; (v) conducting vulnerability assessment of counties to identify priority needs in partnership with pioneer partners such as the Kenya Red Cross Society (KRCS); and (vi) financing a Project Implementation Unit within the Climate Finance and Green Economy Unit of the National Treasury (NT).
5. **The IPF component will technically assist the Ministry of Labour and Social Protection (MLSP) to institutionalize Social Risk Management (SRM) at the national and county levels.** As an implementation partner, the MLSP will be responsible for formalizing the creation of a multi-stakeholder committee, with representation from national institutions, which are responsible for specific aspects of SRM both at national and devolved levels, such as the National Environment Management Authority (NEMA), National Land Commission (NLC), National Gender and Equality Commission (NGEC), CoG, and others. Once the national framework and unit are in place, the component will also include technical assistance to counties to institutionalize the application of the framework at devolved levels of government. In parallel, the IPF component will include capacity development activities for MLSP staff and support the academic institutions in developing programs to train practitioners and possibly establish regulation, which will register social professionals, manage their continuous professional development, and regulate their professional conduct.
6. The Program Development Objective (PDO) is to strengthen county governments' capacity to plan, budget, implement, and monitor climate mitigation and adaptation actions in partnership with communities. The PDO Level Results indicators will be

¹Maarifa Center was established by the CoG and its partners as Kenya's premier devolution knowledge sharing and learning platform. The Center serves as an important national platform to document and share experiences, innovations, and solutions on Kenya's devolution process. See <https://maarifa.cog.go.ke/about/> for more information.

- Average county capacity and performance score (DLI-2)
 - National government capacity and performance score
7. Five County Governments – Garissa, Isiolo, Kitui, Makueni, and Wajir – have established County Climate Change Funds (CCCFs) that identify, prioritize and finance investments to reduce climate risk and achieve adaptation priorities. Community-level planning committees identify adaptation needs, guided by transparent decision-making criteria. CCCF investments to build climate resilience have largely focused on livestock, water, natural resource governance, and climate information services. The CCCFs work through the government’s established planning and budgeting systems; and will be linked with the Climate Change Fund established under the Climate Change Act (2016). The County funds are structured to blend resources from international climate finance, development partners, the private sector, National Government, and County budgets. Climate change fund legislation was enacted in Makueni, Wajir, and Garissa Counties in 2015, 2016, and 2018 respectively. Makueni’s regulations mandate that the County Government set aside 1% of its annual development budget for climate change, and the legislation in Wajir and Garissa requires an annual allocation of 2%. This amounts to approximately KES 85 million in the 2017/18 fiscal year for Wajir and KES 75 million in Makueni.

The ESSA Scope and Methodology

8. **The Environment and Social Systems Assessment (ESSA) for the Financing Locally Led Climate Action has been undertaken to ensure consistency with six “core principles,”² outlined in the World Bank’s Operational Policy 9.00 and Directive – Program-for-Results Financing** – The Policy and Directive set out core principles and planning elements used to ensure PforR operations are designed and implemented in a manner that maximizes potential environmental and social benefits while avoiding, minimizing or mitigating adverse environmental and social impacts and promote the environment and social sustainability of the Program. The ESSA was been undertaken by the Environmental and Social Development Specialists and consultants of the World Bank and examines Kenya’s existing legal, regulatory, and institutional framework guiding the program’s environmental and social management systems. It also defines measures to strengthen the systems and integrates these measures into the overall program.
9. ***Stakeholder Engagement and Consultations:*** The ESSA process included extensive stakeholder consultations, data collection from County Governments, and disclosure of the ESSA Report following the guidelines of the World Bank’s Access to Information Policy. Consultations with stakeholders indicated that there is a willingness to address gaps identified for the efficiency and effective application of the environmental and social management processes, and this feedback has been instrumental in designing and revising the program’s ESSA action plan.
10. ***Institutional Analysis:*** An institutional analysis was carried out to identify the roles, responsibilities, structure and relations of the relevant institutions responsible for implementing the PforR funded activities, including coordination between different entities at the national, regional and local levels. Sources included: existing assessments of key institutions focusing on environmental and social assessment and management processes.
11. ***Desk Review of policies, legal framework, regulations and program documents;*** The review examined the set of policies and legal requirements related to environment and social management at the national and county government level in Kenya. The review also examined technical and implementation support documents from previous and ongoing World Bank PforR programs i.e. Kenya Urban Support Program (KUSP) and Kenya Devolution Support Program (KDSP) that are implemented at both national and county level in Kenya. The World Bank Related Documents reviewed included: Program Aide Memoire; Program Concept Note; Draft Program Appraisal Document; Relevant reports and ESSA reports for other PforR projects in Kenya (KUSP, KDSP); and other ESSAs under World Bank financing.

Program Environmental and Social Risks and Impacts

12. Considering the significant geographic dispersion of the participating counties, different scales of proposed investments, and the potential cumulative environmental and social impacts associated with the program, the overall environmental and social risk of the Program is classified as ***Substantial***. However, the program will exclude high risks projects (projects that

² ESSA core principles are described in Chapter 2.

have significant and high negative environmental and social impacts that are sensitive, diverse, irreversible, or unprecedented).

13. The investment menu options under FFLCoA is likely to have low to moderate environmental and social impacts. The impacts will vary depending on the context, local communities' priorities, and investment choices of each County, based on the type, scope, and scale of works.

Potential Positive Benefits for the Program

14. The positive benefits are likely to include but are not limited to; creating awareness on the meaning and impacts of climate change to local communities, empowerment of local communities by their involvement in the project selection process, reduced risks due to climate change impacts such deforestation, improvement in biodiversity regeneration, better sanitary conditions through improved waste management systems, increase in surface and groundwater recharging capacity and reduced environmental degradation through mitigations against flooding and soil erosion as a result of drainage improvements, among others.

Environment Risks and Impacts for the Program

15. The adverse impacts are expected to be typical construction impacts that are site-specific and generally limited to construction phase that includes disturbance of existing vegetation, air pollution from dust and vehicles exhaust; nuisances such as noise, vibration impacts, traffic interruptions, and blocking access paths; water and soil pollution from the accidental spillage of fuels or other hazardous materials associated with construction works, as well as solid and liquid wastes from construction sites and worker campsites; traffic interruptions and accidents; occupational health and safety incidents through injuries or accidents to the workers; and disruption and/or damage to public utilities such as internet cables, electricity, wastewater, and water facilities. The long term impacts during the operation phase include solid waste and wastewater projects that can exacerbate contamination of soil and groundwater from poorly planned and manage/maintained systems, boreholes could deplete surface or groundwater sources over time particularly as climate change is expected to reduce water resources, among others.
16. The majority of adverse potential impacts can be prevented, are reversible, and can be mitigated with standard operational procedures and good construction management practices. These procedures will be included in the technical manual, environment and social risks and impacts management manual and be a standard part of environmental management plans included in bidding documents for contractors.

Environment Mitigation Measures

17. While no high-risk projects are expected under the program, the screening process will include criteria to exclude certain categories of projects as well as projects that are high risks and significant negative impacts that are sensitive, diverse, irreversible, or unprecedented on the environment and/or affected people. Such types of investments will be excluded from the Program. The screening procedure will be done during the sub-project appraisal and will be

guided by the NEMA’s Environment and Coordination Act (EMCA, 2015) which will be outlined in detail on Environment and Social Risk Management Manual and highlighted in the Project Operations Manual (POM). This exercise will be carried out by the counties in coordination with National Treasury (NT) environment and social specialists, Ministry of Labour and Social Protection, and the National Environment Management Authority (NEMA).

18. Other than requiring that all sub-project investments under the FFLCoA to be subjected to screening and further environmental analysis, the program has developed a set of principles that will act as measures to minimize sub-project risks at the concept level. The Environment and Social Risk Management Manual will operationalize the Program Action Plan. Further, the World Bank team will undertake a post-screening audit to ensure that all the selected sub-projects meet the outlined criteria.

Main Social Risks and Impacts of the Program

19. Activities to be supported by the Program are expected to generate socio-economic gains and have an overall positive effect. The anticipated potential positive impacts include but not limited to, empowering local communities including vulnerable groups through community consultation processes, building local communities resilience to impacts of Climate Change; building capacity of women for leadership and decision-making positions; inclusion to community development for people living with disabilities, women and the youth; creation of employment, and increased equality, gender-equity, and culturally appropriate access to the benefits provided by the program to women, youth, and Vulnerable and Marginalised Groups (VMGs).
20. Depending on the type, scope, and extent of eligible works under the FLLCA, the potential risks are likely to be those that are typically related and limited to the construction phase and are generally work site-specific. Risks are expected to be of medium to low magnitude and may be related to temporary disturbances caused by construction works, including but not limited to:
 - Elite capture in the identification process of investment projects during the community consultation process.
 - Lack of transparency and trust by local communities due to poor consultations and stakeholder engagement with project beneficiaries, vulnerable groups, and vulnerable and marginalized groups.
 - Inadequate consultations with local communities and an ineffective project Grievance Redress Mechanism resulting in persistent project complaints and project stoppages by local communities leading to project implementation delays.
 - Poor labour management practices, such as child labour or employers’ lack of compliance with safety or employment commitments.
 - Social conflict may arise due to lack of inclusion as beneficiaries of minority groups, VMGs women, based on marginalized regions and disability.
 - Disempowerment of vulnerable groups as a result of inadequate representation of women, vulnerable, and VMGs in the ward and county climate change committees.
 - Land acquisition, involuntary resettlement, and loss of livelihoods.

- Disruption of access, traffic deviations, noise, vibration, dust, etc., that could generate disturbances in normal activities in neighborhoods.
- Disruption and/or damage to public utilities such as electricity, wastewater, and water facilities.
- Social conflicts may arise between the local community(ies) and the influx of construction workers, which may be related to religious, cultural, or ethnic differences, or based on competition for local resources.
- The influx of workers and service providers into communities may violate cultural norms, increase the rate of crimes and/or perception of insecurity by the local community.
- Gender-based violence and sexual exploitation and abuse (SEA) of community women and girls by project workers.
- Poor community health and safety practices.

Social Mitigation Measures

21. In addition to screening, the Program has developed a set of principles and minimum standards that will act as measures to minimize project risks early in the preparation stages of the investment, preferably in parallel to technical feasibility. The principles that will apply to all investments as a mechanism for mitigating adverse social impacts shall include but not be limited to the following mitigation measures:

- a) Involve a robust locally-led community engagement process outlined in the Environment and Social Risk Management Manual, to avoid elite capture for the investment project
- b) Prepare a stakeholders' engagement plan for each county. Each plan will ensure stakeholder mapping, analysis, and consultation process that ensures that all members of the community are involved in the consultation process, including the vulnerable groups, VMGs, and women.
- c) Establish an effective and adequately financed project-specific grievance redress mechanism that is accessible to all project beneficiaries.
- d) Elaborate clear processes that will guide land acquisition, use agreements and/or voluntary land donation –depending on the context- where land is under customary rights and preparation of a Resettlement Action Plan for land acquisition, resettlement and livelihood restoration measures as outlined in the Environment and Social Risk Management Manual.
- e) Exclude projects likely to create or exacerbate social conflict within communities or counties
- f) Promote participatory project monitoring by the vulnerable and marginalized groups during the investment project construction phase.
- g) Put in place GBV-action plans to prevent and respond to gender-based violence experienced within the context of the program's investment projects, possibly involving county gender officers who are under the Department of Gender Affairs.
- h) Give due consideration to the cultural appropriateness of, and equitable access to program benefits, giving special attention to the needs or concerns of vulnerable groups and the rights and interests of these groups of peoples;

- i) Incorporate contractual responsibilities and obligations with appropriate mechanisms for addressing non-compliance of social issues of the sub-projects by the contractor and the respective County in the Environment and Social Risk Management Manual
- j) Include citizen participation and gender equity under the project’s key result areas.
- k) Utilize already established community leadership structures to support communication and grievance redress mechanisms.

Exclusion Criteria

22. The exclusion principle applies to Program activities that meet these criteria, regardless of the borrower’s capacity to manage such effects. In the PforR context, the concept of exclusion means that an activity *is not* included in the identified program of expenditures. Also, an activity is not included if it requires the completion of a non-eligible activity to achieve its contribution to the Project Development Objective (PDO) or any specific Disbursement Linked Indicators (DLI). The six principles under the PforR will apply to all investments as a mechanism for mitigating adverse environmental and social impacts.

23. The program shall exclude projects that are likely to:

- i. Significant conversion or degradation of critical natural habitats or cultural heritage sites.
- ii. Air, water, or soil contamination leading to significant adverse impacts on the health or safety of individuals, communities, or ecosystems.
- iii. Workplace conditions that expose workers to significant health and personal safety risks.
- iv. 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.³
- v. Large-scale changes in land use or access to land and/or natural resources.
- vi. Adverse E&S impacts covering large geographical areas, including transboundary impacts, or global impacts such as greenhouse gas (GHG) emissions.
- vii. Significant cumulative, induced, or indirect impacts.
- viii. Activities that involve the use of forced or child labour.
- ix. The marginalization of, or conflict within or among, social groups; or
- x. Activities with high risk of GBV and SEA.
- xi. Activities that would (a) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause the relocation of VMGs from land and natural resources that are subject to traditional

³ As per the PforR financing Environment and Social Systems Assessment Guidance (July 2019), Resettlement includes physical relocation of individuals and communities as well as the acquisition of land for program purposes. Because of the extreme sensitivity of land acquisition and resettlement, the Bank exercises caution when proceeding with any resettlement when the borrower cannot demonstrate that its systems meet the core principles and attributes or cannot ensure consistently satisfactory resettlement outcomes.

It is not necessarily helpful to define fixed numerical thresholds for “large scale” because the significance of impacts depends very much on local contextual factors. The definition of significant resettlement impacts is closely related to the extent to which the borrower’s systems align with the core principles and to the borrower’s capacity to carry out land acquisition and resettlement in accordance with policy principles and requirements. The emphasis should be on the potential for significant impacts on affected people regardless of scale, as significant adverse impacts are not acceptable to the Bank even if they affect only a small number of people. When the Bank team’s assessment is that the borrower is not able to demonstrate resettlement practices consistent with PforR core principles, regardless of the size or severity of resettlement impacts, the PforR operation should proceed only after a separate review of agreed resettlement systems and capacity-building actions by the SA or, in very sensitive cases, with senior management in GSURR and the Chief Environment and Social Standards Officer (CESSO).

ownership or under customary use or occupation; or (c) have significant impacts on cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected communities.

24. The following list provides examples of activities that are normally excluded from PforR financing. These include new or significant expansion of:

- Power plants;
- Major transport infrastructure, for example, new highways, expressways, urban metro systems, railways, and ports;
- Operations in mining and extractive industries;
- Commercial logging or large-scale forest-products-processing operations;
- Large-scale water (surface and groundwater) resource infrastructure, including large Dams, or activities involving the allocation or conveyance of water, including inter-basin Water transfers or activities resulting in significant changes to water quality or availability, Manufacturing or industrial processing facilities; and
- Expansion of protected areas.

Key Findings on the Environmental and Social Systems Assessment

- (i) The national government has well developed and robust legislation, regulations, and systems to manage environmental, health, and safety risks. The assessment identified the weakness in supervision/monitoring and enforcement at both the national and County levels which should be strengthened to address the potential environmental challenges that might be encountered during the implementation of the FLLCA. However, there is no equivalent legislation or systems to manage distinctly social risks, at the national or county levels. Kenya does not have a developed and defined Social Risk Management System. Social risk management functions are fragmented across various ministries and institutions without any coordination mechanisms in place. The World Bank has undertaken Kenya's Social Risk Management legal and institutional review that is currently under internal review.
- (ii) County governments have not developed nor domesticated national legislations and institutionalized systems for the management of environmental or social risks for investment projects. Through the Kenya Devolution Support Program (KDSP) and Kenya Urban Support Program (KUSP) financed by the World Bank as PforRs, Counties have been sensitized and are now aware of the importance and need to have these systems in place. The two PforR programs have developed program-specific systems to support their program operations in the management of environmental and social impacts. This presents an opportunity to build on the existing program-specific environmental and social systems at the County level and adopt good lessons learned.
- (iii) The Program's implementing unit at the National Treasury's and County Climate Finance Units do not have an Environment and Social specialists with experience in PforR. The implementing units (at National and County levels) will need to be established and trained on PforR to strengthen the management of potential environmental and social risks along with a framework for monitoring.

- (iv) The capacity (human and financial resources) within the Counties and supporting institutions (NEMA, National Construction Authority (NCA), Department of Occupational Health and Safety (DOSHS), etc.) responsible for managing environmental, health, and safety risks need strengthening and training.
- (v) The Counties have no environmental, health, and safety management systems in place for the management of the Environment Health and Safety (EHS) risks and impacts. Also, there is no specific department or unit that is charged with the role of supervision and ensuring compliance and enforcement within the Counties.
- (vi) National officers at the county level such as Social Development, Labour and Gender Officers, and county officers, are not currently managing social risks. Counties and institutions (County departments) have uneven levels of readiness to manage social risks. The program will develop an Environmental and Social Risk Management Manual that outlines this involvement.
- (vii) On public consultation and participation, the Constitution of Kenya and the devolution process has put in place robust requirements for citizen participation in the project and budget development process. The Climate Change Act (2016) required robust citizen engagement in the prioritization process for climate change projects through the ward and county climate change committees. However, public consultation and participation are poorly funded and not adequately carried out. Furthermore, there is a weak formal and documentation of citizen feedback and grievance redress mechanisms that allow for a transparent, timely, and efficient redress process in county-level projects.
- (viii) The Constitution of Kenya (2010), has legislations under the Land Act (2012), to manage social risks related to land acquisition. However, the County governments have not sufficiently mainstreamed the land acquisition procedures into the planning and development process. To address the potential of land acquisition challenges under the FLLCA, there is a need to strengthen the county-level NLC representatives responsible for the land acquisition process. The specific areas of strengthening are presented in the Program Action Plan.
- (ix) The CoK, 2010, Article 260 provides a platform to identify the vulnerable and marginalized groups of people and communities in Kenya, however, most counties' interpretation of this is viewed in the context of poverty and social welfare of these groups; for example, reserving business and employment opportunities to Persons with Disabilities (PWD), the Youth and Women. There is a lack of appreciation or resources dedicated to ensuring that marginalized communities who lack political representation and economic power can participate effectively or access social and economic benefits from the projects carried out by the National and County governments.
- (x) The Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in 2016, in partnership with VMGs.

These guidelines are not widely known by National and County Governments thus not applied.

- (xi) There are formal and documented systems in the management of social conflicts at the national and County systems during the implementation of projects, especially to manage conflicts between Counties and labour influx issues. These systems include the ombudsman, national security systems, and local communities conflict management, among others.
- (xii) There is weak annual environment and social performance verification audit procedures for minimum conditions related to environmental and social safeguards under the Kenya Urban Support Program and the Kenya Devolution Support Program.

Program Action Plan Summary

- 25. Though the potential environmental and social risks and impacts of investments and activities under this Program are expected to have minor impacts, the Program provides an opportunity not only to strengthen the weaknesses in the procedures mentioned above to identify and mitigate these potential effects but also to strengthen the Country and County systems in three areas: (i) strengthening of environmental and social management systems, (ii) ensuring implementation and monitoring of environmental and social management; and (iii) building capacity for environmental and social management. To fill the gaps identified in the ESSA, the Program will support specific measures to enhance Kenya’s environmental and social management system performance. These measures will be implemented through two main areas namely, the support of the establishment of a Social Risk Management unit at the Ministry of Labour and Social Protection, support the County Environment Committees established through the National Environmental Management Authority and the Program will collaborate with the Directorate of Occupational, Safety and Health Services to enhance Counties capacity to manage OHS risks.
- 26. These measures have been consolidated into the ESSA Action Plan that guides the overall formulation of the Program. Implementation by Counties of environmental and social procedures contained in the Program’s Operational Manual and Environmental and Social Risk Management Manual will be performance criteria in the Program Assessment System that will be implemented for the Program.
- 27. The implementation of some of these measures will be enhanced by their integration into the overall Program Action Plan and legally incorporated into the financing agreement of the Program. These action plans for the Program are grouped into three areas.
 - i. actions to strengthen the environmental and social management systems.
 - ii. actions to strengthen the implementation and monitoring of the environmental and social management of sub-projects; and
 - iii. actions to build the capacity of relevant County staff involved in the Program to enhance environmental and social management performance.

Table 1: Measures to Strengthen Systems Performance for Environment and Social System

<p>Development and application of Environment and Social Risk Management System (ESMS)</p>	<ul style="list-style-type: none"> (i) Support the Ministry of Labour and Social Protection (MLSP) to develop a Social Risk Management mechanism to review and clear social impact assessment before the approval of development projects and programs both at the national and county level, beyond this particular program. (ii) Establish Social Risk Management (SRM) committees at the local level and enhance the capacity of these committees and county MLSP officers at various levels on SRM. (iii) Collaborate with NEMA to provide targeted capacity building to Senior Management of the Counties, County Environmental Committees, and implementing departments on national environmental requirements. (iv) Strengthen the Environment and Social Impact Assessment process under the program by including the Ministries and Departments involved in Social Development in the development and review of ESIA's under the program. (v) Collaborate with DOSHS to provide targeted capacity building to Senior Management of the Counties, County Environmental Committees, and implementing departments on national OSH requirements. (vi) Collaborate with DOSHS to prepare a simplified checklist for building and construction works that Counties can easily follow and adopt. (vii) Develop Program Operation Manual (POM) incorporating environmental and social management procedures before launching of the Program. (viii) Develop a standalone Environment and Social Risk Management Manual. (ix) Develop guidelines to manage social conflicts related to labour influx to be incorporated into the Environment and Social Risk Management Manual. (x) Establish coordination mechanisms with other institutions/entities/departments including the directorates of Occupation, Health, and Safety, labour, gender, social development etc. (xi) Establishment of a Grievance Redress Mechanism for the program that is accessible to the project beneficiaries. The environment and social risk management manual will provide a full description of the GRM process. (xii) Use lessons learned and coordination of efforts of the actions under the KUSP and KDSP project's Environmental and Social Management System (ESMS). (xiii) Hiring safeguard specialists (Environment specialists and Social risk management specialists) at the Program Management Team at National Treasury and County levels. (xiv) Ensure that all the bidding documents for specific investment include the environment and social clauses and the related costs. (xv) Establish community and stakeholder engagement process for the program that integrates the County Integrated Development Plan process. (xvi) Implementation by Counties of land acquisition and involuntary resettlement procedures and voluntary land donation procedures documented in the Environmental and Social Manual. (xvii) Prior approval of the environmental and social screening and review forms by PIU.
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	<p>xviii) Build a system to manage any social conflict that might arise that will include ombudsman, national security systems, and local communities conflict management, among others.</p>
<p>Strengthening of implementation and monitoring of the environmental and social management system</p>	<p>(i) Incorporation of environmental and social management implementation and monitoring procedures documented in the Program Operation Manual and Environmental and Social Risk Management Manual by implementing units for:</p> <ul style="list-style-type: none"> • Supervision or monitoring of the ESMPs • ES Reporting • GRM monitoring • Monitoring Contractor performance in terms of E&S issues <p>(ii) Application by Counties of environmental and social procedures documented in the Environmental and Social Risk Management Manual.</p> <p>(iii) Public disclosure of the ESIA and ESMP and other documents.</p> <p>(iv) Program supervision teams to include environmental and social specialists.</p> <p>(v) Monitoring of complaints and issues related to land acquisition and involuntary resettlement.</p> <p>(vi) Implementation by Counties of mitigation and compensation measures.</p> <p>(vii) Reporting of environmental and social incidents and accidents by Counties.</p> <p>(viii) Develop procedures for assessing the performance of the program on environment and social management that relies on environment and social performance protocol, this will be outlined on the environment and social risk management manual.</p> <p>(ix) Incorporating ESMP and OSH contractor clauses in the bidding and contract documents.</p> <p>(x) The annual environment and social performance verification audit procedures will be strengthened under this Program (as observed under the Kenya Devolution Support Program and the Kenya Urban Support Program). The current program will ensure a robust verification process, building on lessons learned.</p>
<p>Strengthening of environmental and social management capacities</p>	<p>(i) Integration of environmental and social management into the Program’s general capacity building plan, including land acquisition, user agreements, and voluntary land donations, stakeholder engagement/consultation, and use of the principles of Free Prior and Informed Consent (FPIC) (Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in 2016) to guide the participatory process in the fourteen (14) VMGs counties and support the Program capacity building plan. These guidelines present the key principles and element of Free, Prior and Informed Consent, considering that this is a locally-led operation in defining local actions to be supported under the project, a robust meaningful consultation process with local communities is required in developing local action plans that candidly represent community needs and priorities.</p> <p>(ii) Training on environmental and social risk management for technical staff and counties official.</p> <p>(iii) Training on incorporating environmental and social risks in the bidding documents and the associated cost for the County Finance, Chief Officers, and Procurement officers.</p> <p>(iv) Capacity building of counties on systems of managing social conflict that</p>

	include the ombudsman, national government agencies, and local communities.
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1 CHAPTER ONE: INTRODUCTION AND PROGRAM DESCRIPTION

1.1 Introduction and Program Description

28. The Financing Locally Led Climate Action (FLLCA) Program (Program for Results (PforR) and Investment Project Financing (IPF) components) will support the implementation of the National Climate Change Action Plan (NCCAP) and the County Climate Change Fund (CCCF) Scale-out Program for the benefit of communities in the forty-seven (47) counties. There will be a focus on communities identified as most vulnerable to climate change within each county, as determined by vulnerability assessments to be developed at the onset of the Program. The Program will aim to strengthen local resilience to the impacts of climate change, natural hazards, and other shocks/stressors by building counties' capacity to plan, budget, implement, safeguard, and monitor climate change adaptation and mitigation actions in partnership with communities. It will emphasize the governance, social inclusion, and citizen participation aspects of climate and disaster risk management, and support actions identified by counties. The Program will be national in scale and operate in all 47 counties and at the central government level, linking local level action to national-level coordination and planning. It will build county governments' capacities and systems for understanding, planning, and administering climate actions while at the same time funding the actions.

1.2 Pilot Program: Devolution and Locally-Led Climate and Disaster Risk Management⁴

29. KADP is a Bank-managed multi-donor trust fund that has mobilized financial, technical, and partnership support for initiatives to develop stronger institutions, enhance service delivery, and increase citizen engagement in governance. Through KADP, the Bank has supported activities on devolved climate finance and participatory climate risk management through county governments. KADP started in 2012 to support the devolution process in Kenya. In 2015, climate change was incorporated into KADP a cross-cutting issue. The activity on Devolution and Locally-Led Climate and Disaster Risk Management was initiated in 2017 under KADP II to strengthen county capacity to address climate and disaster risk management with a focus on integrating climate into local development planning and facilitating partnerships between communities and local/county governments to collaborate on strengthening resilience in a socially inclusive and sustainable manner.

30. The initiative targeted 4 counties (Kwale, Makueni, Narok, and Siaya) and worked with a broad set of government and non-governmental partners at national and local levels, including the National Treasury, the Climate Change Directorate, the Council of Governors, Kenya Red Cross, Ada Consortium (IIED), Kenya School of Government, Maarifa Center, etc. While the project had a short implementation timeframe (less than one year), important milestones were achieved in the four (4) pilot counties, including:

- Buy-in from county leadership and establishment of technical teams.
- Capacity building and draft Integrated Climate Risk Management (ICRM) action plans developed in the target counties to help identify gaps and key actions to be taken.
- Introduction of the County Climate Change Fund mechanism.

⁴ Source : Kenya Accountable and Devolution Program World Bank Reports 2018-2019.

- Engagement with National Treasury and gap analysis completed to support the Council of Governors for accreditation to Green Climate Fund.
 - Linkage of county technical officers with Kenya Metrological Department (KMD) partners and development of Climate Information Services (CIS) plans for Kwale, Narok, and Makueni.
 - Launch of mobile-based early warning system for recurrent flash floods in Narok County with Kenya Red Cross Society (KRCS), Kenya Metrological Department (KMD), the Communication Authority of Kenya (CCK), and telecommunication companies.
31. Five County Governments – Garissa, Isiolo, Kitui, Makueni, and Wajir – have established County Climate Change Funds (CCCFs) that identify, prioritize and finance investments to reduce climate risk and achieve adaptation priorities. Community-level planning committees identify adaptation needs, guided by transparent decision-making criteria. CCCF investments to build climate resilience have largely focused on livestock, water, natural resource governance, and climate information services. The CCCFs work through the government’s established planning and budgeting systems; and will be linked with the Climate Change Fund established under the Climate Change Act (2016). The County funds are structured to blend resources from international climate finance, development partners, the private sector, National Government, and County budgets. Climate change fund legislation was enacted in Makueni, Wajir, and Garissa Counties in 2015, 2016, and 2018 respectively. Makueni’s regulations mandate that the County Government set aside 1% of its annual development budget for climate change, and the legislation in Wajir and Garissa requires an annual allocation of 2%. This amounts to approximately KES 85 million in the 2017/18 fiscal year for Wajir and KES 75 million in Makueni.
32. The activities undertaken under KADP II were shared with a larger set of counties and have generated a large demand for similar types of support. Bank support under KADP II was key to convening a broad set of actors and to promoting productive dialogue across government agencies to collaborate on advancing the climate change adaptation agenda. This proposed program will build on the learning and momentum gained under KADP II. The Bank is uniquely placed to support technical, financial, and governance aspects of the climate change agenda in Kenya. The program will build on existing structures, data, and institutions. Under KADP II, a substantial amount of information and data was collected, and productive dialogue/coordination among relevant stakeholders was initiated. The program will, therefore, build upon the momentum gained under KADP II.

1.3 The Program Description

33. The proposed Operation will be financed through a hybrid of the Investment Project Financing (IPF) and Program for Results (PforR) instruments.

Program for Results (PforR) Component (US\$ 270m)

34. The PforR component of FLLCA will deliver performance-based financing in support of the implementation of the NCCAP’s seven plus one Action Areas and five Enabling and Readiness Actions in all 47 counties. The Program’s multi-hazard risk approach will address the “plus

one” risks which interact with, or are affected by climate risks, such as COVID-19, disease outbreaks, and locust infestations. Activities in support of the Climate Finance Enabling and Readiness Action will be dictated by the CCCF Scale-out Program. The PforR component will be implemented over a five-year period (2021-2026), cross-cutting the current and next NCCAP and the duration of the CCCF Scale-out Program. In total, the PforR component will have an attached total cost of US\$270 million in support of the GoK’s program of US\$1 billion over five years.

35. The PforR component is divided into two Result Areas as follows:

- c) **Result Area 1: County readiness and institutional capacity building for locally led climate action (US\$ 18.8m):** Implementing the county-level Enabling and Readiness Actions of the NCCAP and Readiness Phase actions of the CCCF Scale-out Program through Readiness Grants, focusing on readiness and county capacity, including: operationalization and adoption of county-level legislation; community education and awareness raising, business, and information centers; capacity development of county governments based on self-assessments, including CCUs and county assemblies, for climate change response, climate finance, and monitoring and reporting (including having county officers and their partners complete training on the Climate Change curriculum, Climate Finance, the CCCF module, and regulations at the KSG); developing climate information services and early warning systems to communities and other local stakeholders; building counties’ capacities to develop bankable projects; and establishing M&E systems for actions and an MRV+ system for mitigation. This result area will also support the strengthening of Social Risk Management (SRM) work in county governments in collaboration with the Ministry of Labor and Social Protection.

- d) **Result Area 2: Locally-led climate action (US \$ 251.2m):** Supporting prioritized climate change adaptation and mitigation actions, which reduce climate and disaster risk while helping communities to adapt to current and future climate scenarios. The implementation phase of the CCCF Scale out Program will be rolled out, and resources will be channeled directly to the CCCFs to finance prioritized climate actions. Communities will prioritize climate actions through the Ward Climate Change Planning and Budgeting Committees, and these will be approved by the County Climate Change Planning and Budgeting Committees. Climate actions will support the seven plus one NCCAP Action Areas and emerging climate relevant issues: disaster risk management; food and nutrition security; water and blue economy; forestry, wildlife, and tourism; health, sanitation and human settlement; manufacturing; energy and transport; as well as emerging related risks as prioritized by communities, such as those associated with the impacts of COVID-19. The program has four components with funds for county-level activities provided through Disbursement Linked Indicators (DLIs) aligned to the expenditure areas and supporting national-level activities through an Investment Project Financing Instrument (IPF).

Investment Project Financing (IPF) Component (US\$ 30m)

36. **The IPF component will finance activities at the national government level in support of local climate action (US\$ 27m).** These will include (i) reviewing and updating the climate

change policy and legal framework to align with emerging issues (for example, involvement of the private sector in climate finance) and developing regulations for the CCA as needed; (ii) operational and technical capacity building of key stakeholder to improve their service delivery to counties in term of carrying out county-level climate change actions, particularly of the NT, CCD, and CoG, including online connectivity; (iii) facilitation of cross-sectoral coordination between the CCD, CoG, NDMA, KMD, KSG, Ministry of Labour and Social Services, Commission on Revenue Allocation (CRA), Controller of Budget (COB), Office of the Auditor General (OAG), and other actors which play key roles in coordinating, monitoring, and reporting on climate change and disaster risk management activities in the country, by supporting the functions of the National Climate Change Council; (iv) improving the operational and technical capacity of the CoG Maarifa Center⁵ and CCD resource centers to serve as state of the art pioneer centers for sharing of climate knowledge; (v) conducting vulnerability assessment of counties to identify priority needs in partnership with pioneer partners such as the KRCS; and (vi) financing a Project Implementation Unit within the Climate Finance and Green Economy Unit of the NT.

37. **The IPF component will technically assist the Ministry of Labour and Social Protection (MLSP) to institutionalize SRM at the national and county levels (US\$ 3m).** As an implementation partner, the MLSP will be responsible for formalizing the creation of a multi-stakeholder committee, with representation from national institutions, which are responsible for specific aspects of SRM both at national and devolved levels, such as the NEMA, National Land Commission (NLC), National Gender and Equality Commission (NGEC), CoG, and others. The committee will provide wide-based stakeholder engagement to ensure broad institutional support to the process. Concurrently, the MLSP will establish an internal unit, most likely under the MLSP’s State Department for Social Protection, which will focus exclusively on SRM of development projects (including both infrastructure and human development), government programs, and possibly policies. The development of a policy framework will be pursued to crystalize the specific responsibilities of the unit, including coordination of screening, review, and clearance of social impact assessments, most likely in partnership with committee members. This process will require extensive consultation, public participation, and dissemination activities with committee members at the national and county levels. Once the national framework and unit are in place, the component will also include technical assistance to counties to institutionalize the application of the framework at devolved levels of government. In parallel, the IPF component will include capacity development activities for MLSP staff and support the academic institutions in developing programs to train practitioners and possibly establish regulation, which will register social professionals, manage their continuous professional development, and regulate their professional conduct.
38. The PforR will be applied to county-level components and an IPF instrument for the national level component, which mainly focuses on capacity building and coordination. This approach will allow the program to bridge the challenges experienced by other PforRs related to capacity building of national-level entities, while at the same time continuing to support the GoK’s program on devolution as it relates to climate change. This approach was agreed with the GoK.

⁵ Maarifa Center was established by the CoG and its partners as Kenya’s premier devolution knowledge sharing and learning platform. The Center serves as an important national platform to document and share experiences, innovations, and solutions on Kenya’s devolution process. See <https://maarifa.cog.go.ke/about/> for more information.

1.4 Program Development Objectives (PDO) and PDO Level Results Indicators

39. The PDO is to strengthen county governments’ capacity to plan, budget, implement, and monitor climate mitigation and adaptation actions in partnership with communities. Table 2 presents the PDO Level Indicators to be used to measure the PDO’s outcome.

Table 2 . Program Outcomes and Indicators

PDO-Level Result	PDO-Level Indicators
Strengthened county government capacity to plan, budget, implement and monitor climate mitigation and adaptation actions	<ul style="list-style-type: none"> • Average county capacity and performance score (DLI-2) • National government capacity and performance score

1.5 Disbursement Link Indicators (DLIs) and Verification Protocols

40. Table 3 summarizes the DLIs and the amounts of IDA financing associated with each that will apply to the PforR component.

Table 3 . Summary of Program Disbursement Linked Indicators

Item	Activity	US\$ DLI Allocation
DLI-1	Counties that meet the Minimum Access Conditions for the Readiness Grant	14,100,000
DLI-2	Average county capacity and performance score	261,900,000
Subtotal of IDA and other partners financing of PforR component DLIs		276,000,000

41. The program funds would be provided through Disbursement Linked Indicators (DLIs) aligned with the expenditure areas as follows:

42. **DLI-1** will be disbursed against Minimum Access Conditions based on a self-assessment process by counties. The Inter-Agency Climate Finance Technical Advisory Committee (CF-TAC, see Implementation Arrangements below) will verify the reports from each county and confirm the achievement of the Minimum Access Conditions. The DLI will be based on the following Minimum Conditions: (i) a county has opted into the Program, (ii) a county has opened a special purpose account for the CCCF, (iii) CCUs established, (iv) a designated County Executive Committee Member (CECM) in charge of climate change in place, and (v) climate change mainstreamed into CIDP or annual plans. Grants under DLI-1 will be disbursed from YR1 of the Program to all counties that meet the Minimum Conditions. For each qualifying county, it will be a one-off grant upon meeting the conditions, and counties that will not meet the Minimum Conditions in YR1 could access the funds once they meet the conditions in the next round. Counties should meet the minimum conditions within three years.

43. Funds under DLI-1 will be utilized to support community mobilization, conduct risk assessments, develop county climate change action plans, support and strengthen CCUs,

conduct training and capacity building, and other activities to enable them to meet the conditions set forth under DLI-2.

44. **Verification of DLI-1:** All counties are eligible to receive grants under DLI-1 upon confirmation of the Minimum Access Conditions and verification by the CF-TAC. The verification protocols will be elaborated to detail the menu and format of evidence required to demonstrate compliance with the Minimum Access Conditions.
45. **DLI-2** will be assessed annually based on counties' demonstration of meeting a set of Minimum Performance Conditions (MPCs) and Performance Standards. The MPCs will include (i) participatory climate change risk assessment (exposure to hazards and social vulnerability), (ii) county climate change action plans, (iii) minimum social and environmental safeguards, including a grievance redress mechanism (GRM), and (iv) timely financial and implementation reporting.
46. **Verification of DLI-2:** All counties are eligible to receive grants under DLI-2 upon confirmation of MPCs, verification by the CF-TAC, and endorsement by the Program Steering Committee (PSC, see Implementation Arrangements below).
47. **Disbursement under DLIs 1 and 2 will be annual.** The basis for verification for DLI-2 will be the annual capacity and Annual Performance Assessment (APA) starting in YR2. Performance standards will determine how much each county will receive. An independent firm (with expertise in climate change and participatory processes) will be hired to conduct the assessment. The APA process will include field assessments, sensitization, and final verification of compliance with set conditions and the achievement of agreed results.
48. Counties will be required to spend a minimum of 10 percent and up to 20 percent of grants under DLI-2 to ensure the sustainability of institutions and capacities developed under DLI-1, such as the county level CCUs.
49. Counties that meet the Minimum Access Conditions will receive a one-off grant under DLI-1 not exceeding US\$300,000. The DLI-2 grants will average \$1.4 million per county annually; given the performance-based nature of the Program, counties will receive more or less than this amount based on their performance. An allocation formula will be developed bearing in mind several factors that may include performance, population, county size, number of wards, and level of climate risk.
50. **The World Bank will retain the right to make the final decision on whether a DLI has been achieved.** In addition, the World Bank may undertake regular independent quality assurance checks to ensure the continued robustness of the system.

1.6 Institutional and Implementation Arrangement

Institutional Arrangements

51. The National Climate Change Framework Policy outlines the objective of establishing and maintaining an effective and efficient institutional framework to mainstream climate change responses across relevant sectors and into integrated planning, budgeting, decision-making, and implementation, at both the national and county levels. The CCA further outlines several key institutions at both levels which are critical in the governance and implementation of climate change in the country. These institutions are categorized mainly as State and non-State actors. The State institutions comprise ministries, departments, and agencies of government while non-State actors include civil society organizations, private sector players, and development partners.

Table 4 . Summary of Program Institutional Arrangements

Entity	Program Role
State Actors	
<i>National Government</i>	
National Assembly, Departmental Committee on Environment and Natural Resources, Budget, and Appropriations Committee, Senate Standing Committee on Land, Environment and Natural Resources	Fast track passing of legal instruments to safeguard and enhance implementation of the Program through the provision of oversight
Judiciary and relevant commissions	Provision of legal support to the Program
National Treasury Climate Finance Green Economy Unit, Resource Mobilization, and Debt Management Department	Implementing Agency and host of the PIU. Mobilize CCF resources to counties, determine procedures and requirements for accessing it, eligibility, and disbursement, ensure financial fiduciary standards as well as coding, tracking, and reporting
National Climate Change Council	Administer the CCF and ensure cross-sectoral coordination and guidance to the Program
State Department of Planning (MED)	Support M&E (through the National Integrated Monitoring and Evaluation System (NIMES) and County Integrated Monitoring and Evaluation System (CIMES)), support national and county level planning processes, specifically mainstreaming climate change into planning
Ministry of Environment and Forestry, CCD	Provide technical and analytical assistance to county governments based on needs identified by them; identify with county governments low carbon development strategies and coordinate MRV+
Ministry of Environment and Forestry, National Environment Management Authority (NEMA)	Ensure enforcement of and compliance with environmental standards, conduct environmental screening, create awareness on environmental standards
Ministry of Devolution and ASAL, NDMA	Coordinate and supervise projects at the national level particularly in the ASAL
Ministry of Labour and Social Protection	Implement the IPF component’s SRM technical assistance activities
Directorate of Occupational, Health and Safety Services (DOSHS)	Implement Occupational, Health and Safety Services and ensure compliance of the same
<i>County Government</i>	
Council of Governors	Implement the county climate change action plan in the CIDPs and sectoral plans; report on the implementation of actions at the end of each financial year to the County Assembly (copy forwarded to the CCD); conduct consultations with national and county-level stakeholders on actions; facilitate peer learning

Entity	Program Role
	among counties; support capacity building initiatives to governors and officers; develop IEC materials.
County CCUs	Coordinate actions within counties across all country government departments, sub-county, and ward administrators; identify priorities and communicate them to the county and national governments for budgeting; set country-specific targets for actions and develop strategies to achieve them; update CIDPs; establish and manage a registry of actions; identify training needs and develop public education and awareness-raising strategies; report on county-level actions, and mobilize resources.
County Assemblies	Approve quarterly and annual reports.
Ward Climate Change Planning and Budgeting Committees	Mobilize communities and other stakeholders in the ward to design and implement activities; facilitate research and knowledge management at the ward level; facilitate public education, awareness creation, and capacity building at the ward level; coordinate, facilitate, and manage community consultations; participate in county planning and budgeting; coordinate and facilitate the provision of technical support to communities in developing project proposals for funding by the CCCF; oversee implementation of projects and report to the Planning Committee; coordinate and mobilize communities and other stakeholders in the ward to design and implement activities.
Non-state Actors	
Donors/Development Partners	Implementing portions of the GoK’s climate change program as identified above.
Private Sector	Invest in counties’ low carbon investments. Banks and financial institutions, including insurance companies, savings, and credit co-operative organizations (SACCO) and microfinance institutions will develop and provide innovative products and services that support the delivery of the Program, for example, green credit schemes targeting the base of the pyramid especially women and youth at the local level; support training and development on business and product development.
International and Local Non-Government Organizations	Capacity building and awareness-raising for communities, support implementation of projects, MRV+. Provide inputs into the development of a national and county-level SRM institutional framework.
Academia/Research Institutions	Provide science-based evidence for decision making on activities; generate needed knowledge; pilot innovative activities and technologies; train country government entities, CBOs, and NGOs on climate change effects and adaptation. Develop learning programs to develop SRM capacity in the country.
Community-based Organizations	Community advocacy and engagement in activity selection, planning and implementation; capacity building for local entities and communities; local dissemination of information.
Media	Program information dissemination and advocacy.

Implementation Arrangements

52. **The NT Climate Finance and Green Economy Unit will be the main Program counterpart for both the PforR and IPF components**, while the CoG, the CCD, the Ministry of Devolution and ASAL, and others will play important roles per their mandates as described in Table 10. The respective counties will be responsible for implementing the Program at the local level.
53. **High-level cross-sectoral coordination and guidance will be provided to the Program by a Program Steering Committee (PSC)**, comprising the Permanent Secretary (PS) in charge of

NT, the PS in charge of Environment and Forestry, the PS in charge of Ministry of Devolution and ASAL, the PS in charge of Ministry of Labor and Social Services, and the Chair of the CoG. The PSC will be co-chaired by the PS NT and the PS Environment and Forestry.

54. **An Inter-Agency Climate Finance Technical Advisory Committee (CF-TAC)**, already established by the NT, will provide technical and advisory services to stakeholders, including non-State actors on climate finance. The Committee comprises representatives from relevant line ministries, the Chairperson of the CoG, and representatives from the private sector, civil society, vulnerable and marginalized groups, academia, and development partners. The Committee’s members have already been nominated by their PSs and Chief Officers in 2017.

55. **A PIU with key technical specialists was set up at the NT** during the preparation of the Program. During Program implementation, it will ensure that the operational, financial management, procurement, disbursement, safeguards, M&E, and reporting aspects of the Program are implemented per the Financing Agreement and the Program Implementation Manual (PIM). It will coordinate the day-to-day management of the Program and ensure that the Program’s objectives are achieved. The PIU will ensure economy, efficiency, and effectiveness in the overall program implementation. In discharging its mandate, the PIU will inculcate best practices in its program operations. It comprises a program coordinator (the Head of the Climate Finance and Green Economy Unit), a program manager, assistants to the program manager for devolution, national government, and special program, respectively, specialists and officers responsible for M&E, legal affairs, communication, procurement, financial management, and environmental and social standards, country officers, assistant accountants, office administrator, support staff, and drivers.

56. **At the county level**, the CCUs will take a lead role in coordinating actions across all country government departments, sub-county, and ward administrators. The CCUs will be supported by (i) counties’ Climate Change Steering Committee, overseeing climate change response in the county, (ii) counties’ Climate Change Planning and Budgeting Committee, coordinating planning and implementation of climate actions.

2 CHAPTER 2: OBJECTIVE, SCOPE, AND METHODOLOGY FOR THE ENVIRONMENTAL AND SOCIAL SYSTEM ASSESSMENT

2.1 Objective and Scope of ESSA

57. An Environmental and Social Systems Assessment (ESSA) was undertaken by the Bank team for the Program as per the requirement set forth under Program for Results Financing. The ESSA aimed to review the capacity of existing government (national and county) systems to plan and implement effective measures for environmental and social risks and impact management for the program, including determining if any measures would be required to strengthen them. This included assessing the environmental and social systems in place, the human resources, the competencies, the gaps /weaknesses, extent, and nature of necessary improvements that would form the basis for a program action plan. The assessment also evaluated the environment and social performance and lessons learned from the ongoing PforRs for KDSP and KUSP.

58. Specific Objectives of ESSA are to:

- (a) identify the potential environmental and social impacts/risks applicable to the Program interventions,
- (b) review the policy and legal frameworks related to the management of environmental and social impacts of the Program interventions,
- (c) assess the institutional capacity for environmental and social impact management within the Program system,
- (d) to prescribe institutional arrangements for the identification, planning, design, preparation and implementation of the sub-projects under the proposed program to adequately address environmental and social sustainability issues,
- (e) specify appropriate roles and responsibilities and outline the necessary program management and reporting procedures for managing and monitoring environmental and social concerns related to the proposed program,
- (f) assess the consistency of the Borrower's systems with six core principles and attributes defined in the Bank's Policy – Program for Results Financing, to include assessment of monitoring and evaluation systems for environmental and social issues,
- (g) to describe actions to fill the gaps identified that will input into the Program Action Plan to strengthen the Program's performance concerning the core principles of the PforR instrument.

59. The ESSA is undertaken to ensure consistency with the six “core principles” outlined in paragraph 8 of the World Bank's policy on Program-for-Results Financing to effectively manage Program risks and promote sustainable development. The six core principles are:

Core Principle 1: Program E&S management systems are designed to (a) promote E&S Sustainability in the Program design; (b) avoid, minimize, or mitigate impacts; and (c) promote informed decision-making relating to a Program's E&S effects.

Core Principle 2: Program E&S management systems are designed to avoid, minimize, or mitigate adverse impacts on 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.

Core Principle 3: Program E&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 located in areas prone to natural hazards.

Core Principle 4: Program E&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.

Core Principle 5 : Program E&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.

Core Principle 6: Program E&S systems avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.

2.2 Methodology of the ESSA

Methodology Overview

60. The assessments were carried out through a comprehensive review of relevant government (national and county) policies, legislation, institutional roles and capacities, program procedures, and assessment of the available capacity in twenty (20) out of forty-seven (47) Counties of the Republic of Kenya to implement the existing systems consistent with Bank Program for Results Financing. A structured questionnaire prepared by the ESSA team was used to guide discussions and data collection at the national and county level agencies, regulators, and respective environmental and social implementing units that will be involved in the Program implementation.
61. This information collected was used to understand the key institutions charged with the management of environmental and social risks at the National and County level of Government, stakeholder's perspectives about social and environmental aspects, and the available environmental and social management system in place to assess and manage the social and environmental risks and impacts. The gaps identified through the ESSA and subsequent actions recommended to fill those gaps will directly contribute to the Program's Action Plan to enhance the effectiveness and performance of National Treasury and County institutional structures and related implementing agencies (IAs) for FLLCA.

Methodology

62. To assess the existing systems as well as analyze how these systems are applied in practice, the process of preparing the ESSA was drawn on a wide range of data. Inputs analyzed for this ESSA included the following.

- i. ***Desk Review of Policies, Legal Framework, Regulations, and Program Documents:*** The review examined the set of policies and legal requirements related to environment and social management at the national and county government level. The review also examined technical and implementation support documents from previous and ongoing World Bank PforR programs i.e. Kenya Urban Support Program (KUSP) and Kenya Devolution Support Program (KDSP) that are implemented at both national and county level in Kenya. This included but not limited to;

Policies and Legislative Documents

- Constitution of Kenya, (2010)
- Environmental Management and Coordination Act (1999) and (Amendment), (2015)
- Environmental Impact Assessment and Audit Regulations, (LN No. 101 2003) and Environmental Impact Assessment and Audit Amendment Regulations (2016)
- Environment and Land Court (No 19 of 2011)
- The Environmental Management Coordination, Water Quality Regulations, 2006 (Legal Notice No. 120 of 2006)
- The Environmental Management Coordination, Waste Management Regulations, 2006 (Legal Notice No. 121 of 2006)
- The Environmental Management Coordination, Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing Regulations, 2006 (Legal Notice No. 160 of 2006)
- The Environmental Management Coordination, Controlled Substances) Regulations, 2007 (Legal Notice No. 73 of 2007)
- The Environmental Management Coordination, Wetlands, Riverbanks, Lakeshores & Seashore Management Regulations, (L.N 19/2009)
- The Environmental Management Coordination, Air Quality Regulations, 2007 (Legal Notice No. 34 of 2014)
- The Environmental Management and Coordination, Noise and Excessive Vibration Pollution Control Regulations (2009)
- Occupational Safety and Health Act (No. 15 of 2007)
- Work Injury Benefits Act (No. 13 of 2007)
- Land Act, 2012 and its amendments 2016, and the Land amendment bill (2019)
- National Land Commission Act, (2012)
- Community Land Act (2016)
- Kenya Constitutional provision for vulnerable and marginalized groups.
- National Gender and Equality Commission Act (2011)
- Employment Act (2007) and the Employment Act (Amendment Bill, 2019)
- Sexual Offenses Act (2012)
- Children Act (2001)

- Labour Relations Act 2012 and the Labour Relations Amendment Bill (2019)
- Matrimonial Property Act (No 49 of 2013)
- Constitutional Provisions for Disability
- HIV/AIDS Prevention and Control Act (Act No. 14 of 2006)
- Prevention, Protection and Assistance to Internally Displaced Persons And Affected Communities (No. 56 of 2012)
- The Protection of Traditional Knowledge and Cultural Expressions Act (2016)
- Protection Against Domestic Violence (No. 2 of 2015)
- Sexual Offenses Act (No. 3 of 2006)
- Social Assistance Act (No. 24 of 2013)
- National Cohesion and Integration Act (No. 12 of 2008)
- Access to Information Act (No. 31 of 2016)

World Bank Related Documents

- Program Aide Memoire
- Program Concept Note
- Draft Program Appraisal Document
- Relevant reports and ESSA reports for other PforR projects in Kenya (KUSP, KDSP)
- Draft review of Kenyan legislation related to social risk management funded by the World Bank in coordination with the Ministry of Labor and Social Protection.
- Other ESSAs under World Bank financing

- ii. ***Institutional Analysis:*** An institutional analysis was carried out to identify the roles, responsibilities, and structure of the relevant institutions responsible for implementing the program, including coordination between different entities at the National and County levels. Sources included existing assessments of key institutions focusing on environmental and social assessment and management processes. These were.
- Climate Change departments at National level and county governments
 - Ministry of Labor and Social Protection
 - Department of Social Development, Children, Labour
 - Directorate of Occupational Safety and Health Services (DOSHS)
 - National Gender and Equality Commission
 - National Land Commission
 - County Executive Committee (CEC) Members and their staff
 - Departments of Environment, Water and Natural Resources, Infrastructure (Roads, etc.), Health, Social Development among others
 - The National Environmental Management Authority (NEMA) (Headquarters and respective County Directors)
 - Environment and Social Ministries within the County Governments structures.
- iii. ***Focus Group Discussions:*** FGDs with local communities involved in the pilot counties of Isiolo, Kitui, Makueni, Wajir, and Garissa.
- iv. Consultations with vulnerable and marginalized groups and their representatives.

- v. ***Field Visits and Stakeholders’ Consultations:*** Field visits were conducted to the selected Counties to assess the Counties’ systems and capacities for implementing the program. A total of 20 out of 47 counties were assessed during the ESSA process. See Annex 2 and 3 for the questionnaire and the list of stakeholders consulted.

Selection of Counties involved in the ESSA

63. The Kenya County Climate Change Fund (CCCCF) mechanism, initially piloted as the Climate Adaptation Fund in Isiolo and subsequently scaled out to Isiolo, Garissa, Kitui, Makueni and Wajir Counties, is a pioneering mechanism to facilitate the flow of climate finance to county governments and simultaneously empower local communities, through strengthening public participation in the management and use of those funds, to build their resilience to a changing climate. It is a practical example of how climate finance can support climate-resilient development and effective adaptation as set out in the Paris Agreement. It has been piloted successfully in five counties, and its expansion is one of the priorities in the National Climate Change Action Plan, 2018-2022. Thus, these five Counties were purposively selected to be involved in the assessment: Isiolo, Kitui, Makueni, Wajir and Garissa.
64. The counties were also stratified by regions, into the following regional blocks (formerly the provinces of Kenya) namely: Rift Valley; Western; Eastern Region; Coastal; North Eastern and Central and Nairobi Regions.
65. Within these seven regions, Counties that have either a Climate Change Policy or Climate Change officer were purposefully selected. These included: Embu, Tharaka Nithi, Taita Taveta, Kwale, Machakos, Narok, Kisumu, Siaya, Vihiga, Kakamega, Nandi and Kisii Counties. Simple random sampling was used to pick counties with regions that had low representations. These were: Nyeri, Muranga, Bomet, Elgeyo Marakwet, Samburu, Nairobi and Mombasa. Summary Methodology: a total of 20 Counties were selected to participate in the ESSA Process. County consultations were held in selected Counties with the view of getting their views and perceptions of what they consider aspects of capacity concern regarding the project as an approach. Consultations targeted national ministries and departments, County Government’s CECs, and their respective departments.

Analysis

66. The ESSA analysis essentially follows the Strengths, Weaknesses, Opportunities and Risks approach. The study team used a Capacity Assessment Tool (CAT) in undertaking this assessment aimed at assessing in a participatory manner the following components of institutions namely:
- Management systems and structures - planning, personnel, risk management, information systems, program reporting, and ethics;
 - Human resource /technical capacity - personnel policies and procedures, staffing, work organizations, performance management, volunteer management, occupational safety, diversity and gender considerations, human resource development;
 - Monitoring and evaluation; and

- External relations - stakeholder relations, inter-NGO collaborations, government/local authority collaborations, funding partner collaborations, public relations, local resources, media, regional inter-governmental relations.

67. The sections that follow in this document provide further information: details of Program activities, institutions involved and the implementing agency's experience in implementing similar projects, the potential environmental and social benefits, risks/impacts of the Program, the Country and Counties existing environmental and social management systems, assessment of the adequacy of the existing systems, and identification of gaps. Based on this analysis, actions to address the identified risks and gaps are identified and proposed.

Disclosure of ESSA

68. Disclosure of the draft ESSA was carried out on May 19, 2020, through virtual validation workshop involving National and County levels participants, invitations were sent out to all the relevant County Ministries and department representatives and other relevant stakeholders such as non-governmental organizations (NGOs) and development partners to give comments on the draft ESSA report. Although not obliged, the final ESSA incorporating comments from stakeholders shall be disclosed on the client's website before the appraisal of the program. The World Bank will also disclose the ESSA report on the World Bank external website.

3 CHAPTER THREE: ENVIRONMENTAL AND SOCIAL RISKS AND IMPACTS OF THE PROGRAM

3.1 Introduction

69. This section presents the anticipated environmental and social impacts, benefits, risks, and opportunities of the Program. The risks have been identified by looking at existing and possible impacts on the environmental and social context, the Program strategy and sustainability, the institutional complexity and capacity. The risks associated with the program can be mitigated through proposed measures, which include capacity building of implementing entities and partners to enhance inclusion, participation, and strengthening mechanisms on accountability and grievance redress mechanisms. These measures are included in the Program’s integrated risk management.

3.2 Scope of projects under the Program

70. The investments under FLLCA will be prioritized by local communities supported by robust local communities' engagement process through the ward climate change committees. The investment menu will have small to medium scale civil works that include construction, rehabilitation, and expansion of:- water facilities that include sand dams, water boreholes, water pans, small irrigation projects, construction of small buildings that would include radio stations or weather forecast stations, small waste management projects, stormwater drains, off-grid solar installation and equipping of community water points, livestock holding areas, among others. The allocation for investments will, however, be based on the counties meeting the thresholds for the program.

71. Based on the scope and scale of sub-projects to be financed under the program, environmental and social impacts are expected to be low to moderate in scale, with the most adverse impacts limited to the construction phase and being site-specific and temporary. All investments will undergo an environmental and social impact screening and assessment process as per the national environmental and social management systems requirements. These procedures will be outlined in the Environment and Social Risk Management Manual and Program Operation Manual (POM), which has been prepared for the Program, with technical guidance from the World Bank, and consultations with relevant technical staff at NT, and other Program stakeholders at the national and county levels.

3.3 Environment and Social Risk Rating

72. The program will exclude activities that are categorized as High risks according to NEMA Classification of Risk (Circular of March 12 2020) and or WB categorization of High risks projects and activities, such as: Power plants, major transport infrastructure (new highways, expressway, urban metro systems, railways & ports), engineered landfills, operations in mining and extractive industries, commercial logging or large scale forest produces processing operations, large scale water (surface and groundwater) resource infrastructure including the large dam, manufacturing or industrial processing facilities.

73. The exclusion principle applies to Program activities that meet these criteria, regardless of the borrower’s capacity to manage such effects. In the PforR context, the concept of exclusion means that an activity is not included in the identified program of expenditures. In addition, an activity is not included if it requires the completion of a non-eligible activity to achieve its contribution to the Project Development Objective (PDO) or any specific Disbursement Linked Indicators (DLI). The six principles that will apply to all investments as a mechanism for mitigating adverse environmental and social impacts.

74. The program shall exclude projects that are likely to:

- i. Significant conversion or degradation of critical natural habitats or cultural heritage sites.
- ii. Air, water, or soil contamination leading to significant adverse impacts on the health or safety of individuals, communities, or ecosystems.
- iii. Workplace conditions that expose workers to significant health and personal safety risks.
- iv. 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.
- v. Large-scale changes in land use or access to land and/or natural resources.
- vi. Adverse E&S impacts covering large geographical areas, including transboundary impacts, or global impacts such as greenhouse gas (GHG) emissions.
- vii. Significant cumulative, induced, or indirect impacts.
- viii. Activities that involve the use of forced or child labour.
- ix. The marginalization of, or conflict within or among, social groups; or
- x. Activities with high risk of GBV and SEA.
- xi. Activities that would (a) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause the relocation of marginalized communities/indigenous peoples from land and natural resources that are subject to traditional ownership or under customary use or occupation; or (c) have significant impacts on marginalized communities’/indigenous peoples’ cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected communities.

75. Because of the significant geographic dispersion of the participating Counties, different scales of proposed investments, and the potential cumulative environmental and social impacts associated with many sub-projects in the Program, and the capacity of the Counties to manage environmental and social risks the ESSA has determined that the overall risk of the program is rated as ***Substantial***.

76. Experience from the implementation of similar on-going programs in Kenya indicates poor adherence of the existing environmental and social management systems, especially in the areas of

- Lack of capacity to implement the environmental and social management systems.
- Bidding and contract documents do not include ESMP provisions/clauses plus the cost estimates of implementation of ESMP.

- Non-compliance in preparation of Environmental and Social Assessments tools for proposed projects/investments.
- Poor supervision and implementation of ESMPs.
- Low compliance to occupational health and safety measures.
- Poor enforcement of contractual obligations.
- Poor provision of resources on safeguards (budget allocation, human resources, and other resources e.g. transport and allowances).

77. The program has proposed measures as part of the Program Action Plan to strengthen the country's environmental and social management systems for the implementation and monitoring of the program activities to close the gaps in areas of weak capacity and other risks associated with project implementation, especially during implementation and operation phases.

3.3.1 Main Environmental Impacts and Risks of the Program

78. The investments under FLLCA are intended to have substantial positive environmental impacts by building community resilience associated with climate change impacts. The benefits will vary depending on the context and investment choices, but potential benefits are likely to include but not limited to;

- creating community awareness on the impacts of climate change.
- sensitization of local communities and marginalized communities/VMGs on climate change and possible mitigation measures.
- community development and provision of basic social services like water to local communities and VMGs.
- empowerment of local communities and marginalized communities/indigenous peoples in decision making and prioritization of climate changes investments in their area.
- empowerment of women and vulnerable groups to decision making positions.
- improvements in reducing surface runoff and flooding
- improvement in vegetation cover.
- increase in surface and groundwater recharging capacity
- increasing ground and surface water availability
- improvements in biodiversity regeneration.
- better and improved waste collection systems.
- improved health through the reduction of dust and waterborne diseases.
- Increased awareness on the importance of environmental management at the national and county levels that affect outside of the Program investments; and
- reduced soil erosion as a result of drainage improvements.

79. Potential adverse environmental impacts include, but not limited to.

- disturbance of existing vegetation.
- air pollution from dust and exhaust.
- nuisances such as noise and vibrations
- water, and soil pollution from the accidental spillage of fuels or other materials associated with construction works,

- solid and liquid wastes from construction sites, and worker campsites.
- disruption and/or damage to public utilities.
- traffic interruptions and accidents.
- the spread of sexually transmitted diseases (including HIV/AIDS) and other communicable diseases such as tuberculosis due to workers influx, and
- occupational health and safety incidents through injuries or accidents to the workers at construction sites and workers camps

3.3.2 Environment Risks Management Measures

80. Other than requiring that all project investments under the FLLCA to be subjected to screening, and preparation of the Summary Project Reports (SPR) or Comprehensive Project Reports (for full Environment and Social Impact Assessment) as per the EMCA requirements, the program has developed a set of principles and minimum standards that will act as measures to minimize project risks and impacts at the concept level. The principles that will apply to all investments as a mechanism for mitigating potential adverse environmental impacts and risks shall include:

- a) A project shall not be eligible if it is likely to have significant adverse environmental impacts that are sensitive (i.e. if it may be irreversible (e.g., lead to loss of a major natural habitat), diverse, or unprecedented. A project will not be eligible if it would affect an area broader than the sites or facilities subject to physical works;
- b) Projects involving activities that would significantly convert natural habitats or significantly alter potentially important biodiversity and/or cultural resource areas shall be ineligible;
- c) Projects that generate significantly (irreversible) environmental impact that will probably affect third parties (e.g. neighbouring local community(ies)) shall not be eligible;
- d) Projects that are likely to have an impact on natural forests, heritage property (e.g. religious or archaeological sites), protected natural habitats, or areas with high biological diversity (e.g. wetlands, coral reefs, mangroves), international waterways, shall not be eligible;
- e) Projects that are likely to cause serious occupational safety and health risks shall not be eligible;
- f) Projects that are likely to adversely affect water supply in a given County and/or neighbouring Counties shall not be eligible; and
- g) The Project Operation Manual and Environmental and Social Risk Management Manual will incorporate contractual responsibilities and obligations with appropriate mechanisms for addressing non-compliance of environmental, health, and safety issues of the sub-projects (by the contractor and the client).

3.4 Main Social Risks and Impacts of the Program

81. Activities to be supported by the Program are expected to generate socio-economic gains and have an overall positive effect. The anticipated potential positive impacts include but not limited to:

- Building local communities' resilience to impacts of Climate Change;
- Strengthen local communities' including vulnerable groups and VMGs voice and agency in their local development activities involving climate change;

- Building capacity of women for leadership and decision-making positions;
 - Inclusion to community development for marginalized communities/indigenous peoples, people living with disabilities, women, and the youth;
 - Creation of employment; and
 - Increased equality, gender-balanced, and culturally appropriate access to the benefits provided by the program to women, youth, and marginalized communities/indigenous peoples.
82. Consultations with the Counties confirmed that they do not have adequate experience with social risk management, social impact management, involuntary resettlement, and land acquisition, in addition to their limited capacity to manage this social risk. Given the Counties' lack of this experience, investments will undergo screening for social risks and impacts, involuntary resettlement and land acquisition will be screened during subproject selection using exclusionary criteria to minimize the social risk involved with relocation due to land acquisition. The ESSA has concluded that there is a potential risk on the Program that could be a source of social conflict. Some cases of social conflict, for example, dispute on the location/selection of the projects, project benefit-sharing, labour influx, pre-existing or historical social issues in host communities, etc, may occur during project implementation within communities or Counties. The design of the program aims to minimize social conflict through the development of appropriate mechanisms for consultations and grievance mechanisms with the communities and Counties. The program would not undertake any investment where social conflict would be anticipated between or within communities or Counties.
83. The nature of the proposed activities in FLLCA does not suggest that specific marginalized communities/indigenous peoples could be harmed by the Program. The design of the Program aims to foster the protection and integration of marginalized communities/indigenous peoples into the Program design, including consultation during project selection and monitoring, and the development of the appropriate social accountability systems.
84. Depending on the type, scope, and extent of eligible work under the FLLCA, the potential negative social impacts are likely those that are typically related and limited to the construction phase and are generally work site-specific. Potential negative impacts are expected to be temporary disturbances caused by construction works. This includes but not limited to:
- Elite capture in the identification process of investment projects during the community consultation process;
 - Lack of transparency and trust by local communities due to poor consultations and stakeholder engagement with project beneficiaries, vulnerable groups, and marginalized communities/indigenous peoples;
 - Persistent project complaints and project stoppages by local communities leading to project implementation delays as a result of inadequate consultations with local communities and an ineffective project Grievance Redress Mechanism (GRM);
 - Poor labour management practices;
 - Social conflict may arise due to lack of inclusion as beneficiaries of minority groups, marginalized /indigenous women, based on marginalized regions, and disability;

- Disempowerment of vulnerable groups as a result of inadequate representation of women, vulnerable, and marginalized communities/indigenous peoples in the ward and county climate change committees;
- Land acquisition, involuntary resettlement, and loss of livelihoods;
- Disruption of access, traffic deviations, noise, vibration, dust, etc., that could generate disturbances in normal activities in neighborhoods;
- Disruption and/or damage to public utilities such as electricity, wastewater, and water facilities;
- Social conflicts may arise between the local community(ies) and the influx of construction workers, which may be related to religious, cultural, or ethnic differences, or based on competition for local resources;
- The influx of workers and service providers into communities may increase the rate of crimes and/or perception of insecurity by the local community;
- Investments with low risk of gender-based violence and sexual exploitation of women and girls;
- Child labour and abuse; and
- Poor community health and safety practices.

3.4.1 Social Risks Management Measures

85. In addition to screening, the Program has developed a set of principles and minimum standards that will act as measures to minimize project risks at the concept level. The principles that will apply to all investments as a mechanism for mitigating adverse social impacts and risks shall include but not limited to:

- a) To avoid elite capture for the investment project, the project selection process should involve a robust locally-led community engagement process to be outlined in the Environment and Social Risk Management Manual;
- b) Stakeholders' engagement plan for each county. The plan will ensure stakeholder mapping, analysis, and consultation processes that ensure that all members of the community are involved in the consultation process, including the vulnerable groups, s, and women;
- c) Establish an effective and adequately financed project-specific grievance redress mechanism that is accessible to all project beneficiaries;
- d) Elaborate appropriate mechanisms to acquire, cede use rights or donate land voluntarily depending on whether the land is under customary rights, according to the measures as outlined in the Environment and Social Risk Management Manual for land acquisition, resettlement and livelihood restoration;
- e) Projects likely to create or exacerbate social conflict within communities or counties will not be eligible;
- f) Participatory project monitoring by the marginalized communities/indigenous peoples during the investment project construction phase;
- g) Put in measures to prevent and respond to incidents of gender-based violence within the context of the program's investment projects, involving county gender officers;
- h) Projects that are likely to have negative impacts on vulnerable and marginalized groups to give due consideration to the cultural appropriateness of, and equitable access to, program

- benefits, giving special attention to the needs or concerns of vulnerable groups and the rights and interests of VMGs;
- i) The Environment and Social Risk Management Manual will incorporate contractual responsibilities and obligations with appropriate mechanisms for addressing non-compliance of social issues of the sub-projects by the contractor and the respective County; and
 - j) Key result areas under the program to include citizen participation and gender equity under the project.
86. To screen out for these exclusions, the Program will rely on the guidelines in the Environment and Social Risk Management Manual and Program Operation Manual (POM), which will include a rigorous sub-project screening process to be done by the safeguards team in the County governments, with the assistance of the PIU Safeguards team. It is important to note that Kenya legislation on land – the Land Act, does not make any references to the rights of squatters or users of public or state lands. The constitution recognizes ‘occupants of land even if they do not have titles’ and payment made in good faith to those occupants of the land. However, this does not include what needs to be compensated to these settlers, including those who illegally acquired land. Therefore, the sub-project screening process will be applied to meet the requirement of Core Principle 4 to manage this risk.
87. The responsibility of the Contractor should be clearly defined in the contract clauses to ensure any damage to people and property during the performance of the execution of the civil works is borne by him.

3.5 COVID-19 Risks and Impacts

88. Projects involving construction/civil works frequently involve sometimes a large work force, together with suppliers and supporting functions and services. The work force may comprise workers from national, regional, and local labor markets. They may need to live in on-site accommodation, lodge within communities close to work sites or return to their homes after work. There may be different contractors permanently present on site, carrying out different activities, each with their own dedicated workers. Supply chains may involve international, regional and national suppliers facilitating the regular flow of goods and services to the project (including supplies essential to the project such as fuel, food, and water). As such there will also be regular flow of parties entering and exiting the site; support services, such as catering, cleaning services, equipment, material and supply deliveries, and specialist sub-contractors, brought in to deliver specific elements of the works.
89. Given the complexity and the concentrated number of workers, the potential for the spread of infectious disease in projects involving construction is extremely serious, as are the implications of such a spread. Projects may experience a number of the work force becoming ill, which will strain the project’s health facilities, have implications for local emergency and health services and may jeopardize the progress of the construction work and the schedule of the project. Such impacts will be exacerbated where a work force is large and/or the project is in remote or under-serviced areas, such as the case for some FLLCA program. In such circumstances, relationships with the community can be strained or difficult and conflict can arise, particularly if people feel they are being exposed to disease by the project or are having to compete for scarce resources.

The project must also exercise appropriate precautions against introducing the infection to local communities.

3.5.1 COVID-19 Risks Management Measures

90. The Program will develop a set of principles and minimum standards that will act as measures to minimize project risks against spread of COVID-19. This will include but not limited to;
- Adhere to the rules and regulation guidelines set up by the Government of Kenya;
 - Take all necessary precautions to maintain the health and safety of the Personnel involved in the program;
 - Ensure suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics at all sub-projects sites;
 - Personnel should be encouraged to use the existing project grievance mechanism to report concerns relating to COVID-19, preparations being made by the program/sub-projects to address COVID-19 related issues, how procedures are being implemented, and concerns about the health of their co-workers and other staff.; and
 - All Government protocols of health and safety are met at all Program intervention areas.

3.6 Grievance Redress Mechanisms

91. Given the various environment and social risks and mitigation measures outlined above, the program will put measures in place to mitigate possible risks, conflicts or tensions that might occur at all stages of the design and implementation of the program. The Program will respond to concerns and grievances of project-affected parties related to the environmental and social performance in a timely manner. For this purpose, a GRM will be established, specific to the sub-projects, to receive and facilitate resolution of grievances and complaints related to its activities. A well-designed and implemented GRM will considerably enhance efficiency and effectiveness of the aspects supported by the IPF component. The GRM for the Program will the following objectives:
- i. Provide the stakeholders with an effective platform to seek redress or resolve any dispute that may arise during implementation of the Program sub-projects;
 - ii. Ensure that appropriate and mutually acceptable redress mechanisms are identified and implemented to the satisfaction of complainants; and
 - iii. Reduce the need for using judicial proceedings.
92. The table below summarizes the potential risks related to the environmental and social impacts of the Program and suggests risk management measures for each risk.

Table 5 : Key Risk and Impacts Rating

Risk/Impact Description	Risk/Impact Management	Risk Rating
<p>Identification of Impacts: Potential environmental and social risks and impacts of the investment projects are not properly identified, mitigated, and monitored.</p>	<ul style="list-style-type: none"> • Environmental and Social Management System prepared by the program to guide Counties that is consistent with Kenya's national environmental and social framework and bridge gaps with the Program for Results Financing principles. Technical staff at PIU and Counties will be required to have training on the system. • Adequate identification of social impacts for the projects and consultations of all relevant stakeholders. • Ensure that the appropriate social development officers at the county and national levels review the project ESIA's or Project Reports. • ESMPs measures are incorporated into the bidding and contract documents on time. • Counties ensure that adequate resources are allocated for monitoring and supervision of the ESMPs or ongoing works • Due diligence measures related to environmental and social issues will be part of the capacity building component of the program 	Significant
<p>Environment and Social Risk Management Systems at National and County Levels Weak environment and social risk management systems at the National and County levels. Lack of clarity on the regulatory and institutional frameworks on resettlement in the country</p>	<ul style="list-style-type: none"> • The program's IPF component 3 will focus on institutionalizing a national social risk management framework followed by county-level actions to apply the new national framework. • Ensure that qualified environment and social risk management focal persons are appointed or recruited to the program by each County. • Training of the Senior County Government official on the environment and social risk management including all the CEC, chief officers, County Environmental Committee (CECs) members as well as all county assembly members. • Encourage Program peer to peer learning on the management of social and environmental risks. • 	
<p>Inclusion Risk of exclusion from consultations for vulnerable groups, VMGs, and women.</p>	<ul style="list-style-type: none"> • Stakeholder engagement plans to be developed, financed, and implemented that will ensure that men and women from, VMGs are consulted. • Ensure that marginalized communities in the project areas benefit from the program. 	Significant

Risk/Impact Description	Risk/Impact Management	Risk Rating
<p>Elite Capture During the project selection process at the Ward County Climate Change Committee (WCCC) level</p>	<ul style="list-style-type: none"> • Minority groups that include VMGs, women, and people living with disabilities to be members of the WCCC and CCCC. • Development and implementation of a stakeholder engagement plan that ensures that all the vulnerable groups and VMGs are consulted fully. • Grievance redress mechanism that is effective and accessible to all community members. • use of the principles of Free Prior and Informed Consent (FPIC) (Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in 2016) to guide the participatory process in the fourteen (14) VMGs counties. 	<p>Moderate</p>
<p>Occupational Health and Safety: Occupational health and safety measures are poorly implemented and monitored.</p>	<ul style="list-style-type: none"> • Counties should incorporate in the sub-project bidding and contracts strict clauses for OHS for implementation by the contractor and possible enforcement. • The program will be required to collaborate with the Directorate of Occupational Safety and Health Services (DOSHS) to improve the implementation of occupational health and safety issues of the sub-projects. • Incorporation of best international practices and guidelines on EHS such as WBG EHS Guidelines 	<p>Significant</p>
<p>Resettlement Action Plan: RAPs that do not meet the Core Principle 4 and in line with ESS 5</p>	<ul style="list-style-type: none"> • Eligibility criteria for resettlement and compensation consistent with the Bank’s Program for Results Financing will be included in the operation manual and included in training for FLLCA. • Land acquisition and Resettlement will only be carried out for Counties that have developed and implement Resettlement Action Plans. The procedure on land acquisition and resettlement will be clearly outlined in the Environment and Social Risk Management Manual. • Proper documentation of the Voluntary land donation or user permit process for a project that will be implemented in areas where land is under customary rights. • Application of the willing buyer and willing seller method as an option for land acquisition, only where acquisition is not site-specific. 	<p>Moderate</p>

Risk/Impact Description	Risk/Impact Management	Risk Rating
Loss of Income and Livelihoods: Risks of loss of income and livelihood for project-affected people due to inadequate land acquisition, resettlement, and compensation	<ul style="list-style-type: none"> • Preparation of a Resettlement Action Plan • Compensation plans to show evidence of consultation, consensus, and availability of funds for compensation. 	Moderate
Consultation and Public Consultation: Inadequate or no consultations are held for specific subprojects.	<ul style="list-style-type: none"> • The program will undertake inclusive, culturally-appropriate on-going consultations with stakeholders and a training program will be developed for implementers. • Consultations process between Ward Climate Change Fund and communities shall be aligned with County Systems and CIDP process 	Significant
Labour Influx: Social conflict and/or increased risk of GBV due to labour influx	<ul style="list-style-type: none"> • The program will undertake a risk profile of the labour influx and GBV risk assessment, which will govern the requirements for mitigation measures, and to be part of the contractual obligations during program implementation. 	Moderate
Grievance Redress Mechanisms: There is a formalized complaint mechanism at the local (County) level, but its effectiveness is hampered by lack of awareness	<ul style="list-style-type: none"> • The program will carry out dissemination and awareness-raising activities amongst the implementing agency and the Counties about the work of the grievance redress mechanisms. • All counties will develop and implement a GRM for all their sub-projects • As necessary, funds from the technical assistance component will be used for this process. 	Moderate
Lack of capacity for environmental and social management: Capacity gaps (staffing and skills mix) at NEMA, NT, and County levels may lead to weak planning, implementation, and monitoring of environmental and social management plans of the investments.	<ul style="list-style-type: none"> • The Program has assessed the environmental and social capacity for undertaking environmental and social risk management in Counties and ensure that all Counties and recommendations are proposed in the action plan. • The program to have separate Environmental and Social Safeguard specialists at National Level and the same at County Climate Change Fund unit. 	Significant
Budget Allocation: Inadequate budget allocated to environmental and social management, including compensation payments and supervision of activities.	<ul style="list-style-type: none"> • County Governments will be incentivized to provide adequate resources for environmental and social management as a performance is a minimum condition to achieve the program objectives and access the FLLCA grants. 	Significant

Risk/Impact Description	Risk/Impact Management	Risk Rating
	<ul style="list-style-type: none"> • Training on costing EIA/ESIA and resettlement compensation will be included in the capacity building program. 	
<p><i>Audit:</i> Annual Performance Audit does not include technical expertise to assess environmental and social management performance</p>	<ul style="list-style-type: none"> • Terms of Reference for annual capacity and performance assessment will include adequate and appropriate skills are present to assess environmental and social management systems and performance 	Low
<p><i>Approval Process:</i> Environmental and resettlement compensation approvals processes delay project implementation.</p>	<ul style="list-style-type: none"> • Bottlenecks in the approvals process of EIA/ESIA will be further defined during program preparation. Consultations with relevant authorities (NEMA, NLC etc) to streamline approvals processes while maintaining oversight. • Preparation of the Project Reports (PR) or ESIA be part of the designs of the sub-projects 	Low

4 CHAPTER FOUR: KENYA’S ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEMS RELEVANT TO THE CLIMATE CHANGE PROGRAM

4.1 Introduction

93. This section describes the existing legal and regulatory framework, relevant laws, and institutions responsible for environmental and social management in Kenya. The assessment of how these systems function as written is presented in Section 4 along with a structured analysis that identifies the strengths, weaknesses, opportunities, and risks of the systems concerning the six core principles as per the requirements Program for Results Policy.
94. Program for Results Policy requires that all PforR operations “Operate within an adequate legal and regulatory framework to guide environmental and social impact assessment at the program level”. The management of the environment and social impacts for investments financed by the FLLCA will be based on the Kenyan legal and regulatory framework, and therefore the focus on this ESSA is on these country frameworks. To assess the adequacy of these frameworks, relevant laws and institutions for impact management are summarized below, as well as the roles and responsibilities of institutions involved in the environment and management process in Kenya. A gap analysis then summarizes inconsistencies between this framework and the requirements of the Program for Results Policy.
95. Further, the institutional responsibilities, which include the division of responsibilities among different levels of government, for implementing environmental and social management, including carrying out environmental and social analysis; internal review and clearance procedures such as licensing; consultation processes required; information disclosure; grievance redress mechanisms; supervision and oversight, monitoring, evaluation, and so on; and the relevant rules and procedures and, as needed relevant regulatory framework, applicable to the Program are outlined in this section.
96. Finally, institutional responsibilities for implementing social management, which include the roles and responsibilities for areas applicable to the Program which could include resettlement/land acquisition; eligibility for compensation under resettlement and land acquisition programs; consultation requirement; stakeholder involvement in planning and implementation; social, gender and labour issues; information disclosure strategies; grievance redress mechanisms; oversight and monitoring, including indicators; funding of resettlement; and supervision, have been outlined.

4.2 Environmental Impact Assessment and Management System

Applicable Policies, Laws, and Guidelines

97. The proposed P-for-R program will support the local action and coordination aspects of Kenya’s program for addressing climate change, which is rooted in the following key policy and legal frameworks. These include:

- The **National Adaptation Plan** (NAP, 2015-2030) establishes the country’s adaptation objectives and identifies priority actions in 19 planning sectors for the national and county governments (including devolution).
- The **Climate Change Act** (2016) provides an overarching framework and calls for a climate change mainstreaming approach that includes the integration of climate change considerations into development planning, budgeting and implementation in all sectors and at all levels of government. The Act requires county governments to integrate and mainstream climate change actions, interventions, and duties, including mainstreaming the National Climate Change Action Plan (NCCAP) into County Integrated Development Plans (CIDP). The Act also establishes the National Climate Change Fund (National and County) as the mechanisms for funding priority climate change actions and interventions. The Fund is intended to be the key mechanism by which international and domestic resources will be managed and channeled towards the country’s climate change priorities.
- Kenya’s **Nationally Determined Contribution** (NDC) establishes adaptation as Kenya’s priority response to climate change and sets a goal of mainstreaming adaptation actions in the five-year development plans of Kenya Vision 2030, the country’s long-term development strategy.
- **National Climate Change Action Plan** (NCCAP) sets out priority actions for every five years. The current NCCAP (2018-2022) describes the short, medium and long-term actions for counties to take to support adaptation:

Table 6 : National Climate Change Action Plan

Short-term actions	<p>Conduct participatory county-level climate risk and vulnerability assessments</p> <p>Increase awareness of climate change impacts to communities in counties</p> <p>Build the capacity of county governments on climate change adaptation</p>
Medium-term actions	<p>Develop county adaptation plans</p> <p>Develop county climate financing mechanisms for adaptation.</p> <p>Develop appropriate climate adaptation financing tracking systems</p>
Long-term actions	<p>Implement county adaptation plans</p> <p>Upscale successful adaptation actions</p>

98. The programs to achieve the NCCAP are laid out in Kenya’s Third Medium-Term Plan (MTP III) 2018-2022, which is the second MTP to be prepared under the devolved system of governance. The MTP III is aligned with the Constitution, Kenya’s Vision 2030, and includes a focus on delivering the “Big Four” initiative. It provides a financing framework to deliver the Government’s Programs and Projects.
99. Given that Kenya has robust legal and policy frameworks and institutions, and some ongoing programs in place to address climate change, the PforR instrument has been deemed more appropriate than an IPF or DPF. Kenya continues to demonstrate a strong commitment to integrating climate change into national development planning and investment programs and is

seeking support to strengthen the institutions, coordination mechanisms, and to build capacity at the local level where the impacts of climate change are being felt. Moreover, GoK is experienced in implementing PforRs in support of the devolution program, and the Bank has seen positive results with these programs, including the Kenya Devolution Support Program (KDSP) and the Kenya Urban Support Program (KUSP).

Environment Policy, 2014

100. The aim of the Environment Policy (Sessional Paper No.10 of 2014) is to ensure that environmental concerns are part of the national planning and management processes; and that guidelines are provided for environmentally sound development. The policy has seven broad goals under which guiding principles are mainstreamed to achieve conservation and management of the natural resources (forest ecosystems, arid and semi-arid lands ecosystems, etc. that have wildlife resources, water resources, grazing lands, minerals, soils therein). Some of the principles outlined in the policy include the right to a clean and healthy environment, ecosystem approach, total economic value, sustainable resource use, equity, public participation, precautionary principle, the polluter pays principle, international cooperation, community empowerment, benefit-sharing, and good governance.
101. The policy promotes the use of ESIA as an innovative environmental and social management tool. It also calls for the Government of Kenya (GoK) to ensure that all significant development projects are subjected to ESIA and regular audits. The ESIA/ESMP Reports and Studies (that will be subjected to regular audits) will be prepared to promote sustainable development as envisaged in the policy.

Vision 2030

102. Kenya Vision 2030 is the country's new 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.
103. The political governance pillar envisages public participation during project development, while social pillar envisages development through equitable social development. The impact of climate change in many parts of the country constraints the social and economic development prospects of the area. The projects under FFLCoA are anchored to the respective County Integrated Development Plans (CIDPs) which are developed with considerations of Vision 2030.
104. The Vision 2030 policy anticipates possible environmental and social impacts during the rollout of flagship projects requiring mitigation measures to be put in place in line with the requirements of the Environmental Management and Coordination Act (EMCA), 1999 and the Environmental Management and Coordination (Amendment) Act, 2015. Hence, the implementing counties/agencies should ensure environmental and social care through mitigation of impacts as part of the achievement of the project.

Kenya Social Protection Policy

105. Addresses measure by the Government to reduce poverty and the vulnerability of the population to economic, social, and natural shocks and stresses by increasing access to social welfare services not only for those with no predictable income but also for those in employment and the self-employed who need a financial cushion against future risks such as loss of employment, injury at work, loss of assets, or sickness. The Policy aims to help individuals and households to reach a better balance between caregiving and productive work responsibilities. This Policy recognizes and builds on existing social protection initiatives such as education bursaries, school feeding programs, fee waivers in public health facilities, Orphans and Vulnerable Children's (OVC) program, older person's cash transfer and youth enterprise fund, among others. Broadly, the measures outlined in this Policy aim to ensure that all people have the requisite financial cushion to enable them to maintain a decent living standard including access to healthcare during and after their active productive ages, income security provided through household and child benefits that facilitate access to nutrition, education, and healthcare, income security through social assistance for older persons, people with disabilities, and those in active age groups who are unable to earn sufficient incomes in the labour market.

National Land Policy, 2009

106. The policy is presented to provide goals and direction for the current and future management of land in Kenya. It outlines the measures and guidelines which the government shall implement to achieve optimal utilization and management of land, and from which laws governing land administration and management shall be drawn. The Policy and its implementation are guided by the philosophy that land is not just a commodity that can be traded in the market but has multiple values that should be protected by both policy and law.

107. Clause 51(d) of the policy states that the government to establish development control standards, processes, and procedures that are efficient, transparent and accountable taking into account International Conventions and national policies relating to the sustainable use of land and the preservation of environmental values. The policy in Section 3.4.3.4 promotes Environmental (and social) Management and Audit as land management tools and encourages public participation in the process. The ESIA's to be developed for the projects under FFLCoA will have to espouse the policy recommendations key among them compliance with EMCA as the harmonized framework for sustainable use of land. The policy summaries Kenya's challenges as the decline in the supply of pastures and portable water which stirs conflicts among pastoralists, and between small and large-scale irrigation farmers, poor quality of air and water which increases disease risks in human beings, livestock, wildlife and extinction of other life forms, destruction of water catchment areas that causes shortage of water and electricity supply necessitating rationing and desertification which reduces the productivity of land leading to food insecurity, reduced income and inhibits the accumulation of economic assets. The policy pursues land use that is productive, efficient, equitable and sustainable. Balancing such concerns as; food security, human settlements, environmental protection and climate change and other economic pursuits. The Policy is cognizant of social, cultural, economic, political and spatial dimensions of development.

The National Biodiversity Strategy, 2007

108. The overall objective of the National Biodiversity Strategy and Action Plan (NBSAP) is to address the national and international undertakings elaborated in Article 6 of the Convention on Biological Diversity (CBD). It is a national framework of action to ensure that the present rate of biodiversity loss is reversed, and the present levels of biological resources are maintained at sustainable levels for posterity.
109. The general objectives of the strategy are to conserve Kenya's biodiversity to sustainably use its components; to fairly and equitably share the benefits arising from the utilization of biological resources among the stakeholders; and to enhance technical and scientific cooperation nationally and internationally, including the exchange of information in support of biological conservation. Projects under FFLCoA will have to adhere to the provisions of this Strategy.

Gender Policy, July 2011

110. The objective of this policy is to mainstream gender perspectives in the national development process to improve equality and related social, legal/civic, economic and cultural conditions in Kenya. The policy encourages the integration of measures that ensure gender-specific vulnerabilities and capacities of men and women are systematically identified and addressed. The implementation of the project will create job opportunities; through gender mainstreaming the problem of marginalizing women during employment may be addressed. The economic empowerment of women across the country is a concern as identified in many of the counties' CIDPs and will need to be considered for the proposed program.

National Land Use Policy (2017)

111. National Land Use Policy (Sessional Paper, No. 1 of 2017). The policy summaries Kenya's challenges as (1) The decline in the supply of pastures and portable water which stirs conflicts among pastoralists, and between small and large-scale irrigation farmers; (2) Poor quality of air and water which increases disease risks in human beings, livestock, wildlife and extinction of other life forms; (3) Destruction of water catchment areas that causes the shortage of water and electricity supply necessitating rationing; and (4) Desertification which reduces the productivity of land leading to food insecurity, reduced income and inhibits the accumulation of economic assets. The policy pursues land use that is productivity, efficient, equitable and sustainable. Balancing such concern as food security, human settlements, environmental protection and climate change; and other economic pursuits. The policy is cognizant of social, cultural, economic, political and spatial dimensions of development.

National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands (2012)

112. The National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands (Sessional Paper No. 8 of 2012 - Releasing Our Full Potential), addresses distinct policy challenges (particular to Northern Kenya and other arid lands: (1) how to close the

developmental gap between Northern Kenya and the rest of the country, (and thus strengthen national cohesion, by addressing historical marginalization); (2) how to protect and promote the mobility and institutional arrangements which can support productive pastoralism; and (3) how to ensure food and nutrition security across the arid and semi-arid lands, (especially with the unpredictability caused by the impacts of climate change deepens).

Country Environmental Regulatory Frameworks and Management Systems

Constitution of Kenya, 2010

113. The Constitution of Kenya (CoK) 2010 is the supreme law of the Republic and binds all persons and all 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, and to have obligations relating to the environment fulfilled under Article 70. Section 69 (2) every person has to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. Section 70 provides for enforcement of environmental rights.

Climate Change Act (2016)

114. 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 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.

Environmental Management and Coordination Act, 1999 and Amended in 2015

115. The EMCA of 1999, amended in 2015, is an act of Parliament that provides for the establishment of an appropriate legal and institutional framework for the management of the environment. This Act provides for the establishment of an appropriate legal and institutional framework for the management of the environment and matters connected therewith 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 NEMA, who in turn may issue a license as appropriate.

Environmental Impact Assessment and Audit Regulations, 2003 and Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016

116. This regulation provides guidelines for conducting EIA and Audits. It offers guidance on field study and outlines the structure of EIA and Audit reports. The legislation further explains the legal consequences of partial or non-compliance to the provisions of the Act.

Environmental Management and Coordination (Air Quality) Regulations, 2014

117. These Regulations cover air quality standards that are requisite to protect human health and allow an adequate margin of safety. These Regulations specify priority air pollutants, mobile, and stationary sources as well as stipulate emission standards.

118. The emissions/pollution likely to result from construction activities (such as dust and exhaust emissions from running vehicle and equipment engines) has the potential of polluting the immediate atmospheric environment. Bush clearing, earthworks and bulk delivery of construction material, if unmanaged may result in the generation of dust. Thus, the need for strict adherence to these Regulations and standards therein in preventing/monitoring possible pollutants and managing sources.

Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009

119. These Regulations provide thresholds within specified environments for noise and excessive vibrations. It includes provisions on noise from related sources such as the vibration of machinery, motor vehicles, blasting activities, and construction at night. Sensitive areas such as mosques, schools that might be near the projects may be affected by noisy activities during the construction phase. Construction activities such as excavations, blasting activities at quarries, movements of various mobile construction equipment (such as mixing plant) as well as powering generator (at night) have a potential of exceeding permitted levels for residential and mixed residential areas as per the Regulation.

Environmental Management and Coordination (Waste Management) Regulations 2006

120. These Regulations cover all categories of wastes that include solid waste, industrial waste, hazardous waste, toxic substances and waste, biomedical waste and radioactive substances. These Regulations also vest responsibilities to the generator of the wastes especially with regards to any consequent environmental impacts.

121. Construction activities might generate waste at different forms and quantities such as form woodwork, empty bitumen drums, excavated spoil material, wrappers, plastic containers, cuttings (plastic/metal), used vehicle tyres, among others. Wash-down from equipment and vehicle maintenance, waste from septic facilities and used oil and chemical substances are some of the liquid waste expected to be generated at the project construction stage. The wastes generated from the activities have the potential of contaminating the immediate ground surfaces

and atmosphere; thus, the need for strict adherence to these Regulations in dealing with all the wastes and handling of waste streams.

Environmental Management and Coordination (Water Quality) Regulations 2006

122. The regulation provides for sustainable management of water resources including prevention of water pollution and protection of water sources (lakes, rivers, streams, springs, wells and other water sources). It is an offense under Regulation No. 4 (2), for any person to throw or cause to flow into or near a water resource any liquid, solid or gaseous substance or deposit any such substance in or near it, as to cause pollution. Regulation No. 11 further makes it an offense for any person to discharge or apply any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permit the dumping or discharge of such matter into the aquatic environment unless such discharge, poison, toxic, noxious or obstructing matter, radioactive waste or pollutant complies with the standards for effluent discharge into the environment.

The County Government Act (2012)

123. The Act provides the management and governance of a city or municipality within the county. The Act also empowers the county government to be in charge of planning by coordinating integrated development planning within the county, ensuring and coordinating the public participation, and control of air pollution, noise pollution, other public nuisances.

124. The Act also provides for the following;

- The Constitution confers powers on the County Assemblies to receive and approve plans and policies. These plans and policies affect the management and exploitation of the county's resources and development and management of its infrastructure and institutions.
- Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

Water Act (2016)

125. The Water Act 2016 provides for the management, conservation, use, and control of water resources and for acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services. Under this Act, ownership of water resources is vested and held in trust with the national government. Nonetheless, every person has a right to access water resources that are administered by the national government.

126. The Act promotes water resources management through soil and water conservation, protection, development, and utilization of water resources. The construction of the projects under the program will have to apply water resource management measures since the project area is predominantly arid.

127. Various permits from Water Resources Authority (WRA) will be required for proposed water abstraction methods, whether surface or groundwater. In consideration that some of the projects will be in counties that have a scarcity of water, the contractors will be required to employ water-efficient technologies during construction.

Wildlife Conservation and Management Act (2013)

128. This Act through rules and regulations seeks to promote the protection, sustainable conservation, and management of wildlife resources within the Country and related matters. The Act recognizes and vests a range of responsibilities to different agencies associated with the management of biodiversity and their refugia. The Act takes cognizance that the conservation, protection, and management of the wildlife environment shall conform with the provisions of the Environmental Management and Coordination Act. Besides, the Act in its schedules have listed legally protected areas and various species of wildlife under differing categories of conservation significance (i.e. vulnerable, endangered, etc.) and whose handling requires authority from the Kenya Wildlife Service (KWS).

Public Health Act, Chapter 242

129. The Act seeks to protect and promote human health as well as prevent, restrain or suppress infectious, communicable or preventable diseases throughout the Country. This Act provides the impetus for a healthy environment and gives regulations to waste management, pollution, and human health. The Act makes it an offense for any landowner or occupier to allow nuisance or any other condition liable to be injurious or dangerous to health to prevail on his land. This would include effluent and solid waste as sources of the nuisance.

The Public Health (Drainage and Latrine) Rules

130. Rule 85 provides that every owner or occupier of every workshop, workplace or other premises where persons are employed shall provide proper and sufficient latrines for use by employees. Rule 87 requires every contractor, builder or other person employing workmen for the demolition, construction, reconstruction or alteration of any building or other work in any way connected with building to provide in approved position sufficient and convenient temporary latrines for use by such workmen. Rule 91 provides that no person shall construct a latrine in connection with a building other than a water closet or a urinal, where any part of the site of such building is within 200 feet of a sewer belonging to the local authority which is at a suitable level, and where there is sufficient water supply. The contractors executing the program will be expected to observe these provisions including ensuring adequate temporary sanitation facilities for workers.

Occupational Safety and Health Act (OSHA)(2007)

131. This Act applies to all workplaces where any person is at work, whether temporarily or permanently. The Employer should secure the safety, health, and welfare of persons at work and protect persons other than persons at work against risks to safety and health arising out of, or in connection with, the activities of persons at work. The Occupier/Employer/Contractors

have the following responsibility: (a) registration of workplace/site; (2) develop safety and health policy; (c) carry out a risk assessment; (d) appointment of site safety supervisor; (e) training of safety and health committee; (f) provision of Personal Protective Equipment; (g) cause a safety and health audit; (h) cause fire safety audit.

132. This Act covers the health, safety, and welfare of persons lawfully present at workplaces. Provisions in the Act are designed to allow measures against potential hazards and the absence of risks to health at the workplace. The OSHA was enacted to assure the health, safety, and welfare of persons employed in workplaces, and for matters incidental thereto and connected therewith. During the implementation of the projects under the program, the contractors may have construction camps, mobilize equipment and hire construction workforce. Specific health, safety and welfare measures to be implemented include:

- Ensure all relevant permits and licenses are obtained before commencement of the works,
- Train all workers on OHS measures;
- Provision of First Aid kits, and training of First Aiders
- Establishing the Safety and Health Committees
- Carry out medical examinations (Pre-employment and Annual Audiometric, Lung function and Clinical) for specific workers exposed to specific work-related hazards
- Appointment of qualified Safety and Health adviser
- Avail required personal protective equipment (PPE) at workplaces such as hand gloves, safety boots, reflective jackets, nose mask, and helmet.
- Inspection of construction equipment to ensure that they are in good working condition before beginning a job. Also, the contractor will ensure that regular inspections and maintenance of the equipment are conducted accordingly
- Carry out Annual OSH Audit & Fire Audits
- Obtain relevant Permits and licenses

Subsidiary Legislations under OSHA Chapter 514

The Factories and Other Places of Work (Hazardous substances) Rules (2007)

133. These Rules are prepared to: Mitigate against workplace exposure of persons to potentially hazardous substances, put in place safety standards against hazardous exposure; and lower performance of work in hazardous conditions or circumstances. There is a need to properly handle all the hazardous Substances that result from the construction activities of the projects under the program. The provisions will help to curb against health hazards arising from any of the harmful substances that may be in use.

The Factories and Other Places of Work (Noise Prevention and Control) Rules L.N 25 (2005)

134. These Rules make a provision for the noise levels that a worker should be subjected to at the workplace. Further, the Rules provide for noise prevention programs where noise levels exceed 85 dB (A) at the workplace. In situations where the noise levels exceed permissible

levels, the occupier is required to develop, rollout and implement a written hearing conservation program.

135. Deployment of earthmoving machines and vehicles at the onset of implementation of project road (during clearing works and bulk delivery of material) has the potential emitting noise. This legislation provides mitigation to excessive noise levels especially those beyond 85 dB(A) at the workplace.

The Factories and Other Places of Work (Medical Examinations Rules) Rules L.N.24 (2005)

136. These Rules provide for the conducting of medical exams on various occupations including work involving exposure to noise. There should be Pre-employment and annual repeat examinations within two weeks where abnormal examination results are noted. This is to ensure consistency. Examinations are to involve clinical examinations, biological monitoring, and other necessary tests depending on the type of exposure. The regulations and OSHA prescribe the activities under which workers shall undergo a medical examination. These include noisy workplaces exceeding threshold limits, and work involving exposure to tar pitch, bitumen, and creosote.

The Factories and Other Places of Work (Fire Risk Reduction) Rules L.N.59 (2007)

137. These Rules seek to promote fire safety measures at every workplace, process, and operations by:

- Vesting some responsibilities to the occupier.
- Recommendations on flammable substances on storage, marking and labeling, handling, monitoring (flammable substances), ventilation.
- Housekeeping as well as the removal of products and waste.
- Machinery/equipment layout, as well as Fire, escape exits.
- Control of the spread of smoke.
- Means of evacuation.
- Formation of fighting teams.
- Training in fire safety.
- Functions of the firefighting team.
- Fire detection system; and
- Maintenance inspection & testing of cylinders.

138. During the implementation of the project, the employer/contractor is required to comply with these regulations by conducting annual fire audits (site offices, camps, and establishments), acquiring fire safety certificates, provision of trained fire marshals, and conduct of annual fire drills of the resident workforce. If the contractor has more than 100 staff including the employer's representative; he is expected to form representative SHE committees to perform their roles per the Rules.

The Work Injury Benefits Act (2007)

139. Provides for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes. The Act applies to all employees including employees employed by the Government, other than the armed forces, in the same way, and to the same extent as if the Government were 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 workplace wellness programs include mental health, HIV/AIDs, and communicable diseases.
140. This Act provides for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes. In the event of injury, during the implementation of the projects under the program, the employer/contractor will be required to compensate workers under the Act. The contractor must, therefore, obtain and maintain relevant insurance policies in respect of this liability.

Country Social Policies, Laws, Regulations and Management Systems

Bill of Rights

141. The Constitution of Kenya (2010) contains a comprehensive Bill of Rights. Article 43 guarantees all Kenyans their Economic, Social, and Cultural (ESC) rights. It asserts the right for every person to social security and binds the State to provide appropriate social security to persons who are unable to support themselves and their dependents. This right is closely linked to other social protection rights, including the right to healthcare, human dignity, reasonable working conditions, and access to justice. Article 21 establishes the progressive realization of social and economic rights and obligates the State to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights. Underlying all these rights is the principle of equality and non-discrimination that is provided in Article 27 and requires that the State take the necessary measures to bridge the inequalities in society.

Social Inclusion including Children, Youth, People Living with Disability and Women

142. The Kenyan Constitution (2010) states that every person is equal before the law and has the right to equal protection and equal benefit of the law. It describes equality as the full and equal enjoyment of all rights and fundamental freedoms. This article entrenches the right to equal opportunities in political, economic, cultural, and social spheres. Prohibits discrimination on all grounds and also requires the state to employ affirmative action measures to address historical injustices that are responsible for the marginalization of some interest groups. It requires that persons with disabilities should form at least 5% of every elective or appointed body. It recognizes the rights of youth, minorities, and marginalized groups and elderly persons⁶ to participate in all spheres of life including political, social, and economic spheres. It sets the minimum gender quarter to not more than Two-Thirds of either gender on representation in elective and appointive positions. Article 21 (3) requires all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of

⁶ Article 57(a), Constitution of Kenya

society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. Article 27 (1 and 4) prohibits discrimination based on age. Article 55 entitles and guarantees youth the opportunities to participate in political, social, economic, and other spheres of life, the right to access employment, the right to protection from harmful cultural practices and exploitation, and the right to access relevant education and eventual employment. Youth are defined in Article 260 as persons who have attained the age of 18 years but have not passed the age of 35 years.

143. Article 53 safeguards children by entitling them to basic nutrition, shelter, and health care while guaranteeing their protection from abuse, neglect, harmful cultural practices, all form of violence, inhuman treatment and punishment, and hazardous or exploitative labour care. Article (53 b) makes the child’s best interest in the guiding parameter in every matter concerning the child.

Gender

144. The Kenyan Constitution (Article 27(3)) provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Discrimination based on sex, pregnancy, marital status, the dress is also prohibited in Article 27(4 and 5). Further, to Article 27(6) requiring affirmative action to redress past injustices, Article 27(8) requires the State to enforce the general affirmative action Clause (6), to take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Disability

145. The Kenyan Constitution (2010) Article 27(1) & (4) provides for equality between peoples; it prohibits discrimination based on health status or disability; whilst Article 54 (2) provides that 5% for the membership of elective or appointive bodies shall be reserved for persons with disability on a progressive basis. Article 21(3) creates an obligation to be borne by the State functionaries to address the needs of vulnerable groups within society, including persons with disabilities. Article 9 on Accessibility, obligates State parties to “take appropriate measures to ensure ... [that] persons with disabilities have access, to the physical environment, to transportation, to information and communications, and other facilities and services open or provided to the public” [Article 9(1)]⁷. The government is under obligation to take appropriate measures to facilitate such things as the provision of such public signage in Braille [Article 9(2)(d)] and live assistance and intermediaries, including guides, readers and professional sign language interpreters [Article 9(2)(e)]. These are crucial in facilitating public participation.
146. The COK 2010, (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

⁷Article 9(2)(a) requires the “development, promulgation and monitoring of the implementation of the minimum standards and guidelines for the accessibility of facilities and services open or provided to the public”

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.

147. Article 20, on Personal mobility, obligates the State to take appropriate measures to facilitate affordable personal mobility with the greatest possible independence for persons with disabilities. Article 24, on health, obligates State parties to recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination based on disability; and take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. Article 27, on Work and employment, requires the government to recognize the right of persons with disabilities to work, (on an equitable basis with others); “this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during employment, by taking appropriate steps, including through legislation” [Article 27(1)].

The Persons with Disability Act (2003)

148. The Persons with Disabilities Act outlines the following entitlements: (1) a legitimate expectation of being able to enjoy accessibility and mobility.⁸ (2) a legitimate expectation of being able to access public buildings (that must now be adapted to suit needs of PWDs); and (3) a legitimate expectation of being able to access public service vehicles (that must now be adapted to suit needs of PWDs). The Act further elaborates on these entitlements in its regulations, titled the Persons with Disabilities (Access to Employment, Services, and Facilities) Regulations, 2009 in the various regulations on Access to Employment, Services, and Facilities (in Part III of the regulations). The Act places a mandate upon State actors, to take ‘affirmative actions’ measures in favour of protection of the health rights of persons with a disability whose impairment ‘often’ predisposes them to be on the receiving end of less than advantageous societal-regard, socio-economic opportunities, and exemplary healthcare services; hence their health outcomes could be markedly different from the wider society.

Vulnerable and Marginalised Groups

149. Kenyan Constitution Article 260 of the constitution defines “marginalized community” to include a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole. Article 10 recognizes the participation of the people, protection of the marginalized, and sustainable development as national values and principles of governance. It also recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

150. Article 27 (1) & (4) of the CoK, 2010 provides for equality in the ‘treatment’ of people; it prohibits discrimination based on race, ethnic or social origin, colour, religion, belief, culture,

⁸ Section 21 of the Persons with Disabilities Act, [Act No 14 of 2003]

dress, language or birth. Whilst projects should be neutral on the issue of ethnicity; they occasionally run the social risk of impacting different ethnic communities differently where such projects traverse different ethnic communities and there is a perception or an effect of the dominance of benefits being enjoyed by some groups at the expense of others. Social inclusion based on ethnicity is also discussed in Article 21 (3), which requires the State to address the needs of vulnerable groups within society, including members of particular ethnic, religious or cultural communities.

151. CoK, 2010, Article 260 of the Constitution defines a “marginalized community” as (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya.
152. The uniqueness of ethnic communities is further safeguarded in Article 44 that addresses the entitlements and guarantees afforded to any/all members of any given cultural or linguistic community to the enjoyment and preservation of their culture and language. County Governments (especially those with more than one ethnic group) must provide for ways of ensuring ethnic inclusion and confront negative ethnicity that may undermine communities and development projects. In some communities, the inclusion of clans and sub-clans should be ensured when undertaking development.
153. Article 56 of the Constitution provides for the following for the marginalized and vulnerable groups:
 - a) *participate and are represented in governance and other spheres of life;*
 - b) *are provided special opportunities in educational and economic fields;*
 - c) *are provided special opportunities for access to employment;*
 - d) *develop their cultural values, languages and practices; and*
 - e) *have reasonable access to water, health services and infrastructure.*
154. The National Cohesion and Integration Act (No. 12 of 2008) prohibits discrimination on the grounds of ethnicity. It recognizes ethnic discrimination as including:
 - i. Treating a person less favorably because of their ethnicity.
 - ii. Application of different detrimental requirements, conditions or practices to a person or group of persons because of their ethnicity and such conditions or requirements are not justifiable.
 - iii. Victimization of persons who bring or participate in legal actions brought for discrimination under the Act.
 - iv. Victimization of persons who make allegations of ethnic discrimination.

155. The Act also recognizes harassment on the grounds of ethnicity; requires the composition of personnel in institutions to represent the diversity of the people of Kenya, and prohibits harassment or discrimination on the grounds of ethnicity with regards to membership of organizations; qualification for licenses; access to services of employment or training agencies and educational institutions; access to public resources; land ownership, leasing or disposal.
156. The Commission on Revenue Allocation (CRA) and the Commission on Administrative Justice (CAJ), provides a constitutional mechanism for bringing the marginalized communities and regions of Kenya into the country’s mainstream development space, and for enhancement of accessible mechanism for public feedback and grievance redress respectively. The aim is to address historical inequities in service delivery, which have exemplified the failure of the state to equalize opportunities for all Kenyans. The CRA has for example identified fourteen (14) counties (Turkana, Lamu, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta) considered most marginalized based on the County Development Index (CDI), which is a composite index, constructed from indicators measuring the state of health, education, infrastructure, and poverty.
157. The National Land Policy (NLP) recognizes and calls for the protection and promotion of customary land rights and reasserts its viability under provisions on community land. The NLP identifies subsistence farmers, pastoralists, hunters and gatherers as vulnerable groups who require facilitation in securing access to land and land-based resources; participation in decision making over land and land-based resources; and protection of their land rights from unjust and illegal expropriation. The NLP addresses the tenure issues in several ways. For example, concerning community land, the policy recognizes and protects customary land rights, and reasserts its viability.

National Gender and Equality Commission Act (2011)

158. Under Article 59 of the Kenyan Constitution that established the National Gender and Equality Commission (NGEC). Section 8 describes the role of NGEC to coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the government on all aspects thereof. Further, to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws and administrative regulations in all public and private institutions.

Social Assistance Act (No. 24 of 2013)

159. The Social Assistance Act is implemented through the Social Development Department in the Ministry of Labour and Social Protection, the Social Assistance Unit deals with orphans and vulnerable children, poor elderly persons, unemployed persons, persons disabled by acute chronic illnesses, widows, and widowers, persons with disabilities and any other persons who would be considered vulnerable. The type of assistance provided includes emergency assistance for a period not exceeding one-month, short term assistance for less than four consecutive months, long term assistance for a period of four or more consecutive months or special assistance. The Social assistance programs are intended to: (a) assist in the development of

individual, family and community capacity to become self-sufficient; (b) increase the ability of persons in need to assume greater responsibility for themselves; (c) lessen dependence by the people on public financial assistance; (d) provide support services to allow persons who may otherwise be in need to avoid dependence on public financial assistance, and (d) lessen remove or prevent the causes and effects of poverty.

Access to Information Act (No. 31 of 2016)

160. Kenyan citizen has a right to information and disclosure of information by public entities. Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, the local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.

Public Participation

161. Public participation in Kenya is considered a crucial pillar of the Kenyan Constitution. Article 1(2) all sovereign power belongs to the people of Kenya. The people may exercise their sovereignty directly through their elected representatives. Article 10 (2) a, b and c states that the national value and principles of governance include transparency and accountability. Article 61 gives the public, individuals or a group a say in matters of land including acquisition, management, transfer, disposal or ownership or private, public and/or community land. Article 69 (1) the State should encourage public participation in the management, protection, and conservation of the environment. Communities have the right to manage their affairs and to further their development. Article 196 (1) county assembly should (a) openly conduct its business, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees. Article 196 (2) a county assembly may not exclude the public, or any media, from any sitting, unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

The Public Finance Management Act (No 18 of 2012)

162. The parliamentary budget office should observe the principle of public participation in budgetary matters. The Cabinet Secretary for finance should ensure public participation in budgetary matters and should ensure public participation in the budget process. Section 125 (2) the County Executive Committee member for finance should ensure that there is public participation in the budget process for the county government.

163. The Act makes public participation in county planning processes compulsory. It stipulates the principles of public participation. They include timely access to information and reasonable access to the planning and policymaking process. Citizens have a right to petition the county government on any matter under the responsibility of the county government. A county government may conduct a local referendum on among other local issues county laws and petitions or planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty-five percent of the registered voters where the

referendum is to take place. Section 91 the County government should facilitate the establishment of modalities, and platforms for citizen participation.

164. Many other laws make public participation in Kenya as their central pillar. They include Urban Areas and Cities Act Section 21 and 22, the overarching theme is participation by the residents in the governance of urban areas and cities. The second schedule of the act provides for the rights of and participation by residents in the affairs of their city or urban areas. Public Procurement and Disposal Act 2015, emphasizes the transparency of the procurement process including requirements for procuring entities to publicly avail procurement records after the closure of proceedings, publicize notice of intention to enter into a contract on websites and public notice boards, publish, and publicize all contract awards.

The Prevention, Protection, and Assistance to Internally Displaced Persons and Affected Communities Act (2012)

165. This is an Act of parliament that applies to all internally displaced and affected communities by the development projects or programs. The prevention, protection, and assistance to internally displaced persons and affected communities are outlined in the following sections of the Act.

- Part II: Principle of prevention, protection, and assistance; The Government and any other organization, body or individual when responding to a situation of internal displacement and the needs of internally displaced persons under this Act, shall take into account their rights and freedoms as set out in the Bill of Rights of the Constitution.
- Part IV: Public awareness, sensitization, training, and education; The national Government, to prevent future instances of internal displacement in Kenya, shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons through comprehensive nation-wide education and information campaign.
- Part V: Provisions relating to development and displacement; 21. (1) Subject to the Constitution, the Government shall abstain from displacement and relocation due to development projects or projects to preserve the environment and protect persons from displacement by private actors. Finally, (4) The Government shall ensure that the displacement is carried out in a manner that is respectful of the human rights of those affected; taking in particular into account the protection of community land and the special needs of women, children and persons with special needs. This requires in particular-(a) Full information of those affected and their effective participation, including by women, in the planning, management of the displacement, and in defining suitable durable solutions; and (b) Provision of safe, adequate and habitable sites.

166. The proposed projects under FLLCA may result in some unavoidable land take and displacement of individuals. The RAP study and implementation shall consider provisions of this Act in addition to the relevant World Bank ESS 5 on Involuntary Resettlement.

Sexual Offenses Act (2012)

167. This Act of Parliament makes provision about sexual offenses, which aims at prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes. Section 15, 17 and 18 below are mainly focused on sexual offenses on the minor (children). Under Section 15 it is an offense for Any person who –

- a. knowingly permits any child to remain in any premises, to cause such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show;
- b. acts as a procurer of a child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
- c. induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;
- d. takes advantage of his influence over, or his relationship to a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
- e. threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
- f. intentionally or knowingly owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offense under this law

Under Section 17 it is an offense for Any person who -

- a. intentionally causes or incites another person to become a prostitute; and
- b. intentionally controls any of the activities of another person relating to that person's prostitution, and does so for or in expectation of gain for him or herself or a third person, is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years or to a fine of five hundred thousand shillings or to both.

Under Section 18 it is an offense for Any person who -

- (1) Any person who intentionally or knowingly arranges or facilitates travel within or across the borders of Kenya by another person and either -
 - (a) intends to do anything to or in respect of the person during or after the journey in any part of the world, which if done will involve the commission of an offense under this Act; or
 - (b) believes that another person is likely to do something to or in respect of the other person during or after the journey in any part of the world, which if done will involve the commission of an offense under this Act, is guilty of an offense of trafficking for sexual exploitation.
- (2) A person guilty of an offense under this section is liable upon conviction, to imprisonment for a term of not less than fifteen years or to a fine of not less than two million shillings or to both.

Child Rights Act (2001)

168. This Act of Parliament 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. 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. Section 5 provides that where there are any workers lawfully working whilst under the age of 18 years, there are entitled to safeguards from discrimination. Section 10 of the Act further seeks to protect persons under the age of 18 years, by providing that they enjoy the entitlement to protection from economic exploitation and work that is: hazardous or interferes with the child's education, or health; physical, mental, spiritual, moral and social development.

Labour Relations Act (2012)

169. An Act of Parliament to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management, and democratization of trade unions and employers organizations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes. This Act in Section II Part 6 provides for freedom of employees to associate; section 7 provides for the protection of rights of employees; Part 9 provides for adjudication of disputes and Part 10 provides for the protection of the employees to hold strikes and lockouts.

170. Article 41 of the Constitution of Kenya describes the rights to labour relations relating to fair labour practices, fair remuneration, reasonable working conditions, to form, join or participate in the activities and programs of a trade union and to go on strike. It also defines the rights of every employer to form and join an employer organization and to participate in the activities and programs of any employer organization. Every trade union and every employers' organization has the right to determine its administration, programs and activities, to organize and to form and join a federation. Every trade union, employer's organization and the employer has the right to engage in collective bargaining.

Matrimonial Property Act No 49 (2013)

171. Ownership of matrimonial property Part III (clause 7), States that: Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. This also includes assets like land.

HIV/AIDS Prevention and Control Act (2006)

172. This law requires HIV/AIDS education to be conducted in the workplace. Many constructions work by their nature increase risks of HIV/AIDS spread between workers and host communities and even among workers themselves in camps.

173. The appointed contractors will be expected to institute HIV/AIDS awareness and prevention plan among his staff and the host communities through service providers approved by the local public health departments. This requirement shall be incorporated in the tender documents to ensure compliance is achieved by bidders.

Employment Act (2007)

174. The Act declares and defines the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate the employment of children, and to provide for matters connected with the foregoing. The provide the basic minimum conditions for employment to include hours of work, water (for use at the place of work), food (employee properly fed) and medical attention. At the construction stage, the project contractor will hire both full-time and casual staff and the prevailing basic minimum conditions of employment will have to observe. Part VII provides specific restrictions about age. Employers are not allowed to contractual engage young persons between 13 and 16 years in written binding agreements vide Section 57 on the prohibition of written contracts for the child between 13 and 16 years of age. Work should not be harmful to the child's health or development; and should not prejudice the child's attendance at school, nor his participation in vocational orientation or training programs.

National Land Commission Act (2012) on Land Acquisition

175. The act establishes the National Land Commission to manage public land and carry out the compulsory acquisition of land for specified public purposes. Involuntary resettlement, if left unmitigated, normally gives rise to severe economic, social, and environmental risks. People face impoverishment when their productive assets or income sources are lost, and social networks are weakened. Some of the impacts of resettlement, if not mitigated, include landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, educational loss, loss of access to common property, and social displacement.

Land Registration Act (2012)

The law provides for the registration of absolute proprietorship interests overland (exclusive rights) that has been adjudicated or any other leasehold ownership interest on the land. Such land can be acquired by the state under the Land Act 2012 in the project area.

The Land Adjudication Act (Cap 284)

Provides for the ascertainment of interests prior to land registrations under the Land Registration Act 2012 through an adjudication committee that works in liaison with adjudication officers.

The Valuers Act 532 (2002)

The act establishes the valuers registration board, which has the responsibility of regulating the activities and conduct of registered valuers following the provision of the act.

Environment and Land Court Act, (2011)

This act establishes Environment and Land Court, a court with the status of the high court, which shall facilitate the just, expeditious, proportionate, and accessible resolution of disputes related to land and environment, including compulsory land acquisition, land tenure, titles, boundaries, compensation, valuations, rates, land use, and environmental planning.

Community Land Act (2016)

Provides for allocation, management, and administration of community land. Establishes Land Allocation Committees and Community Land Board. County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held. The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land. Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition. Any such monies shall be deposited in a special interest-earning account by the county government. Any land which has been used communally, for a public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.

Kenya Constitution on Compulsory Land Acquisition

176. The Constitution of Kenya, 2010, protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except under law. Article 40(3) states: *“The State shall not deprive a person of property of any description, or of any interest in, or right over, the property of any description, unless the deprivation” –*
- a) Results from the acquisition of land or an interest in land or a conversion of an interest in land, or title to land, following Chapter Five; or*
 - b) Is for a public purpose or in the public interest and is carried out following this Constitution and any Act of Parliament that –*
 - (i) Requires prompt payment in full, of just compensation to the person; and*
 - (ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.*
177. The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act, 2012 designates the NLC as the institution empowered to compulsorily acquire land. Article 40 of the Constitution provides that the state may deprive owners of the property only if the deprivation is "for a public purpose or in the public interest," but neither the Constitution nor any law provides an exclusive list of permissible public purposes or interests. The state's exercise of this power is left at the discretion of NLC and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to the court.
178. Article 40(3) (a) refers to the acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to “occupants in good faith” of land acquired by the state who do not hold the title for such land. An occupant in good faith is a

“bona fide” occupant. On the other hand, under the Constitution, those who have acquired land illegally are not regarded as deserving of any compensation.⁹

179. In addition to Article 40, Chapter 5 of the Constitution is relevant to compulsory acquisition. This chapter, entitled "Land and Environment," is divided into two parts. Part 1 deals with land, and Part 2 deals with the environment and natural resources. Part 1 of Chapter 5, articles 60 – 68, describes the principles of land policy. Land should be held, used, and managed in a manner that is equitable, efficient, productive, and sustainable and per security of land rights, sound conservation, and protection of ecologically sensitive areas. These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.¹⁰

Land Act (2012)

180. The Land Act is Kenya’s framework legislation regulating the compulsory acquisition of land (i.e. land, houses, easements, etc.). The Act provides for sustainable administration and management of land and land-based resources including compulsory acquisition. The Act is based on the 2010 Constitution that recognizes the rights of the landowner and the necessity for fair and just compensation. Under the current Constitution, the LA 2012 empowers the NLC (under the guidance of Cabinet Secretary for Lands) to exercise the power of compulsory acquisition on behalf of the State.

Land Laws (Amendment) Act (2016)

181. This Act amends the laws relating to the 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 Act has repealed sections of the following Acts: Land Registration Act, 2012, Land Act, 2012 and National Land Commission Act, 2012. At the implementation stage, the project will adhere to land requirements under the Act especially where land take is necessary from private owners.

The National Land Policy

182. The National Land Policy (“NLP” or “Policy”) was adopted in August 2009 to provide an overall framework for new legislation and define key measures required to address critical issues such as land administration, access to land, land use, and restitution related to historical injustices and an outdated legal framework. The NLP addresses constitutional issues such as compulsory acquisition and development control Section 45 of the NLP defines compulsory acquisition as “the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation.” According to the NLP, the exercise of compulsory acquisition in the past has been conducted with abuses and irregularities:

⁹ Constitution of Kenya. Id. at art. 40(6).

¹⁰ Id. at art. 60(2).

The Land Tenure System in Kenya

183. Land tenure in Kenya is classified as public, community or private. Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as a community forest, grazing areas or shrines”), government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas.

Customary Land Tenure

184. This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions, and cultural practices.

Public Tenure

185. This is where land owned by the Government for her purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012. Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships, and other urban centers and open water bodies.

Community Land

186. Community Land in Kenya is governed by the Community Land Act and this regulation provides for the allocation, management, and administration of community land. Community land follows a tenure system that defines land owned by the traditional community, identified based on ethnicity, culture or similar community of interests. This law establishes Land Administration Committees (LAC) to allocate customary land rights to community members. However, LACs are subject to the jurisdiction of the Community Land Board (CLB). The CLB exercises control over the allocation and the cancellation of customary land rights by the LAC. CLB also established and maintains a register and a system of registration for recording the allocation, transfer, and cancellation of customary land rights and rights of leasehold.

187. The CLB also holds and manages community land on behalf of those communities to regulate all transactions relating to community land and to facilitate the recording and issuance of title in community land. The LAC, on the other hand, allocates the right in respect to the specific portion of land to community members by agreement with notification of the CLB for registration. They also determine the size of the portion and the boundaries of the portion of land in respect of which the right is allocated. LACs have the powers of cancellation of rights with approval of CLBs.

Freehold Tenure

188. This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period, or in perpetuity. Freehold land is governed by the Land Registration Act, 2012. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto.

Leasehold Tenure

189. Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed e.g. relating to developments and usage.

The Process of Land Acquisition in Kenya

Proof that Compulsory Possession is for Public Good

190. It is very explicit in the Land Act, 2012, Section 107, that whenever the national or County government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for a public purpose or public interest, such as, in the interests of public defense, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and the necessity, therefore, is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

Respective Government Agency or Cabinet must seek Approval of NLC

191. The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The NLC will prescribe criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. But at the same time, the NLC may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

Inspection of Land to be acquired

192. NLC may physically ascertain or satisfy itself whether the intended land is suitable for the public purpose that the applying authority intends to use as specified. If it certifies that indeed the land is required for a public purpose, it shall express the satisfaction in writing and serve necessary notices to landowners and or approve the request made by acquiring authority intending to acquire land.

Publication of Notice of Intention to acquire

193. Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette and County Gazette*.¹¹ It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar. The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body. NLC will, therefore, be required to make a comprehensive notice that includes a description of the land, public purpose for which the land is acquired, and the acquiring public body. The Land Registrar shall then make an entry in the master register on the intention to acquire as the office responsible for survey, at both national and County level, geo-references the land intended for acquisition.

Serve the Notice of Inquiry

194. Thirty days after the publication of the Notice of Intention to Acquire, the NLC then schedules a hearing for a public inquiry. NLC must publish notice of this hearing in the *Kenya Gazette and County gazette 15 days before the inquiry meeting* and serve the notice on every person interested in the land to be acquired. Such notice must instruct those interested in the land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.

Holding of a Public Hearing

195. The NLC convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, the NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value, and the amount of compensation payable to each legitimate claimant.

196. Besides, at the hearing, the Commission shall— make a full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the NLC of documents of title to the land. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide an opportunity to those interested in the land to hear the justification of the public authority in laying claims to acquire the land.

Valuation of the Land

197. Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the persons interested in the land have or have not appeared at the inquiry.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae stipulated that it will develop.

¹¹ The *Kenya Gazette* is the official government journal in Kenya published by the Government Printing Press.

The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

Matters to be considered in determining Compensation:

198. The market value of the property, which is determined at the date of the publication of the acquisition notice. Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial, or industrial.

Award of Compensation

199. Under the Land Act 2012 section 117, the State may award a grant of land in lieu of monetary compensation (“land for land”), upon agreement, and provided the value of the land awarded does not exceed the value of the monetary compensation that would have been allowable. The law stipulates that any dispossessed person shall be awarded the market value of the land. The new law is silent on relocation support or disturbance allowance support.
200. Upon the conclusion of the inquiry, and once the National Land Commission (NLC) has determined the amount of compensation, the NLC prepares and serves a written award of compensation to each legitimate claimant.¹² The NLC will publish these awards, which will be considered “final and conclusive evidence” of the area of the land to be acquired, the value of the land, and the amount payable as compensation.¹³ LA, Section 115 further stipulates that an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney’s fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

Payment of Compensation

201. A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that “first offer compensation shall be paid promptly” to all persons interested in land¹⁴ before a notice of acquisition is issued. Section 119 provides a supplementary condition and states that if the size of the land is greater than the size of land in respect of which the award has been made, then NLC shall compensate for excess size “as soon as practicable.”¹⁵ Where such amount is not paid on or before the taking of the land, the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment.¹⁶
202. In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly. If the amount of any compensation awarded is not paid, the Commission shall on

¹² *Land Act*, 115

¹³ *Land Act*, 115

¹⁴ *Land Act*, This language reflects the language of the Kenya Constitution, 1963.

¹⁵ *Land Act*, 119

¹⁶ *Land Act* 115.

or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.

Transfer of Possession and Ownership to the State

203. Once first offer payment has been awarded, the NLC serves notice to all persons with interest in the property indicating the date the Government will take possession. Upon taking possession of the land, the commission shall ensure payment of just compensation in full. When this has been done, NLC removes the ownership of private land from the register of private ownership and the land is vested in the national or County Government as public land free from any encumbrances.

Temporary Possession

204. The Commission has also the power to obtain temporary occupation of land. However, the commission shall as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

Opportunity for Appeal

205. The Kenya Constitution establishes the Environment and Land Court. Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavor to encourage the application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the *Environment and Land Court Act, 2011* empowers the Environment and Land Court, on its motion, or on the application of the parties to a dispute, to direct the application of Alternative Dispute Resolution (ADR), including traditional dispute resolution mechanisms.

206. Any person whose land has been compulsorily acquired may petition the Environment and Land Court for redress with respect to:

- *The determination of such a person's right over the land.*
- *The amount offered in compensation; and*
- *The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land.*

207. Parties will pay fees as determined by Environment and Land Court, which may waive them completely or in part on grounds of financial hardship. The willing buyer and willing seller process of land acquisition is consistent with the above process, however, the intention to buy land by government agencies is advertised in the local dailies and willing person apply to be considered. This is in line with international good practice and does not involve coercion.

Analysis of Land Acquisition Laws and Practices

208. “Just” compensation has been determined in Kenyan courts as compensation that is quantified in accordance with the market value of the land being acquired. Under the principle of equivalence, Kenya courts have held that claimants should be paid compensation which is no more or no less than the loss resulting from the compulsory acquisition of their land. Legislation often requires that compensation amounts be determined in relation to “market value.” The NLC is required, under section 112 (2) of the Land Act, to formulate regulations governing the calculation of compensation in the context of compulsory land acquisition. However, since as the regulations are yet to be effected, the provisions of the schedule to the Land Acquisition Act continue to apply. The Land Acquisition Act¹⁷ defines the term “market value” of the land to be acquired as “the market value of the land at the date of publication in the Gazette of the notice of intention to acquire the land” and lays out the principles to guide the compensation of land using market value¹⁸.

209. Valuation in Kenya is guided by the Valuers Act, 2012 (Cap 532). Agencies acquiring land engage the services of a registered valuer to determine the types and amount of compensation triggered by the acquisition process. According to the Valuers Act, which regulates the valuation profession and practice in Kenya, only a registered valuer whose name appears in the register can prepare and submit a valuation report (clause 21 of the Act). A valuation report prepared by a person or firm not registered under the provision of Clause 21 is invalid and cannot be used for the bases of compensation. The valuation report is submitted to the NLC who send its own valuers to countercheck the proposed values. Sometimes the values proposed by private valuers may be higher than those of the government valuers, and this is one cause of disputes in land acquisition.

210. Standards on how to value land and other property differ internationally and some governments provide compensation for intangible elements. In Kenya two other principles regulate the compensation payable in compulsory land acquisition. The principle of injurious affection requires compensation if the remaining property (moveable or immovable) of the affected person is made less valuable by the land acquisition. Compensation for disturbance¹⁹, also known as solarium, is also required and is assessed at 15% of the market value of the property and added to the award for compensation made by the NLC. In addition, courts in Kenya have tended to take into account the nearness of the land in question to the main town and its nearness to the road access in assessing the compensation payable.^{20 21}

¹⁷ As mentioned in Section 2, the regulations to the repealed Land Acquisition Act continue to remain in force until the regulations of the newer 2012 Acts are put in place.

¹⁸ In addition, in assessing compensation, Courts have defined “market value” as “the price which a willing seller might be expected to obtain from a willing purchaser, the purchaser may be a speculator, but a reasonable one...In determining the amount of compensation which ought to be paid the court should take into account comparable sales and awards on other acquisition of land of similar character” (*Kanini Farm Ltd v Commissioner of Lands (1986) KLR 310 and Petition 613 of 2014 Patrick Musimba v NLC & 4 Other*).

¹⁹ Costs incurred by the affected persons that are not directly related to the land lost but are incurred due to the acquisition. Typical disturbance costs include relocation costs, legal costs and valuation fees incurred in connection with the acquisition, stamp duty paid when purchasing land for relocation, etc.

²⁰ *Limo v Commissioner of Lands KLR (E&L) 175*

²¹ In determining the compensation payable, the following matters are not considered in Kenya: the urgency necessitating the acquisition; reluctance of the owner of the land to part with the land; damage sustained by the person interested which, if caused by

These standards approximate international norms for “replacement cost”. Under international norms, “replacement cost” is the appropriate benchmark for valuation of assets. The focus is on calculating the full cost of replacing the lost asset (s) and international practice determines that the replacement cost value is the market value plus any transaction costs. In comparison, compensation costs under Kenyan regulations constitute not only compensation of the land and the developments on the land, but also adds 15% disturbance allowance and provides for compensation for any loss in the value of the remaining land due to the acquisition. Thus, Kenya’s valuation of compensation approximates international practice of determining the replacement cost value.

211. Affected parties are also entitled to prompt payment according to the Constitution (Article 40 (3)). International practice determines prompt payment as that which is made without undue delay and it should be in the form of currency, land, or other goods/services that the recipient can readily make use of and that serve to put the recipient in at least as good a position as he or she was in prior to the expropriation. The Constitution of Kenya (Article 40 (3)) requires prompt payment in full to the affected party once land has been compulsorily acquired. No further definitions of prompt payment are made in the legislation²².

212. Restoration of livelihoods is an important aspect of “fair” compensation but has been neglected in the Kenyan legislation. The overarching objective of livelihood restoration is to enhance, or at least restore, the livelihoods of all displaced people in real terms relative to pre-project levels and to improve the standards of living of the displaced poor and other vulnerable groups. A recent World Bank study notes that only a few countries have legal frameworks and procedures aimed at ensuring that land acquisition and involuntary resettlement go beyond compensating for lost assets, requiring that affected livelihoods be restored or even improved²³.

213. Restoration of livelihoods needs legislation support. Restoration of livelihoods is established through resettlement action planning which is required should any population displacement be anticipated in the land acquisition. As mentioned in Section 2, both the NLC process for submitting a land acquisition request and the ESIA preparation require RAP preparation. However, the resettlement planning process should be guided by legislation, similar to the preparation of the ESIA that is regulated by the EMCA (2003) and the consequent Environment (Impact Assessment and Audit) Regulations, 2003.

214. **Requirements for Consultation are supported by the Constitution and Multiple Court Rulings:** A participatory consultative process is extremely important in cases of involuntary land acquisition. Landowners need to be identified; their extent of their rights clarified; as well as their understanding of the value of their property. The Constitution assigns the responsibility to ensure, facilitate and build capacity of the public to participate in the governance to the county

a private person, would not be a good cause of action; damage likely to be caused to the land after publication of the notice of intention to acquire the land or in consequence of the use to which the land will be put; increase in the actual value of the land likely to accrue from the use to which the land will be put when acquired; any outlay on additions or improvements to the land, incurred after the date of publication in the Gazette of the notice of intention to acquire the land, unless the additions or improvements were necessary for the maintenance of any building in a proper state of repair.

²² The Commission is tasked with the development of the rules for the assessment of just compensation.

²³ Roquet, V., L. Bornholdt, K. Sirker and J. Lukic, “Urban Land Acquisition and Involuntary Resettlement: Linking Innovation and Local Benefits” (2015) World Bank: Washington, DC, March, p. 5.

government through function 14 (Schedule 4 Part 2). As such, county governments are required to:

- Create mechanisms of engagement by ensuring and coordinating the participation of communities and locations in governance; and
- Build capacity by assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers.

215. Public participation is provided in the Constitution and supported by a Supreme Court Opinion. The Supreme Court in its binding Advisory Opinion (*Number 2 of 2014*), and using cases touching on the environment and natural resources, reiterated the duty placed upon State organs to consult the people, and to engage communities and stakeholders, before making decisions affecting the environment. The cases used were decided before and after the 2010 Constitution was promulgated, and the Courts have held that state organs that made or make decisions without consulting or engaging the people, the community or other interested stakeholders, acted or act outside their powers and such actions stand to be quashed²⁴. The EMCA also mandates consultations in the process of land acquisition during the process of developing ESIA's.

216. Identifying the Legitimate Rights' Holders of the Land is a Persistent Challenge. In Kenya, as in many countries, people who have lived on and used land for long periods of time will not have any formal documentation of their rights. This is especially the case for people who hold secondary and tertiary rights – including women (who often control but do not own parcels for food production); those (men and women) who own trees, but not land; those (men and women) who have rights to use water sources or pastures but only at certain times of the year; those (men and women) who may collect forest products, etc. According to international statutes, these users of the land are considered legitimate rights' holders due for compensation. In some countries, their legitimate customary rights are recognized under the formal law; in other cases they are not recognized.

217. These legitimate rights' holders are recognized in the Kenya legislation but can be difficult to conclusively determine who is eligible and their compensation dues. The Constitution of Kenya 2010 provides for compensation for *occupants in good faith who may not hold title to land that is subsequently compulsorily acquired*. Based on this provision, compensation in Kenya is not linked to ownership of registered interests in land and squatters and other occupiers in good faith are entitled to some form of compensation. For this reason, agencies acquiring land must perform the due diligence required to identify these occupants, a process which lacks guidelines. Further, the repealed Land Acquisition Act allows compensation to title-holders only which, as long as regulations for the 2012 Land Laws have not been gazetted, will remain a stipulation contradictory to the Constitution.

²⁴ (see *Meza Galana and 3 Others v. AG and 2 Others* HCCC No. 341 of 1993; [2007] eKLR, *Hassan and 4 Others v. KWS* [1996] 1 KLR (E&L) 214; *Mada Holdings Ltd t/a Fig Tree Camp v. County Council of Narok* High Court Judicial Review No. 122 of 2011; [2012] eKLR; and *Republic v. Minister of Forestry and Wildlife and 2 Others ex parte Charles Oduor Okello and 5 Others* HC Miscellaneous Application No. 55 of 2010)

218. In addition, poor land records management systems have made it difficult to find even the formal rights' holders of the land. Confusing laws and procedures for land registration have resulted in registries of poor integrity, which may be marred by false ownership claims or replete with inaccurate or outdated ownership information. This has undercut trust in the registries and in this case, contributed to an incomplete compensation process. A common issue with compensating formal title-holders is when succession takes place without transfer of the formal rights. The titles are therefore often still in the name of the deceased.
219. The Land Laws (Amendment) Act 2016 presents another hurdle to identifying legitimate rights' holders. In an apparent contradiction to the constitutional provision for compensation of occupants in good faith, the Land Laws (Amendment) Act prohibits unlawful occupation of public and private land. The Constitution allows forced evictions to take place under certain conditions but mandates the passing of legislation to guide the procedures guiding forced evictions. The procedure to be followed during eviction have been included in the Land Laws (Amendment) Act (2016) and stipulates that certain measures are to be taken into account during evictions but does not explicitly mention compensation as one such measure. The new amendment to the Land Act 2016, criminalization of unlawful occupation of land.
- A new section in the Land Act prohibits unlawful occupation of public, private or public land.
 - An unlawful occupant of all classes of land shall be evicted in accordance with the Act
 - Unlawful occupants are entitled to notice prior to eviction.
220. The following eviction procedure shall be followed:
- prior identification of all person participating in the eviction
 - prior presentation of formal authorization for the action
 - where groups of people are being evicted, government officials or their representatives be present during the eviction
 - be carried out in a manner that respects the dignity, right to life and security of those affected
 - include special measures to ensure effective protection of the rights of vulnerable groups
 - include measures to ensure that there is no arbitrary deprivation of property or possession as a result of the eviction
 - include mechanisms to protect property and possessions left behind involuntarily from destruction
 - respect the principles of necessity and proportional use of force
 - give affected person first priority to demolish and salvage property

221. Provisions for Due Process Standards and Judicial Review are clear but Resolutions Take Long: Courts in Kenya have stressed strict adherence to due process²⁵ and fair procedure. Using the specific provisions for land acquisition in Article 40 of the Constitution and Sections 107 and 133 of the Land Act, courts have often stressed the need to follow the stipulated

²⁵ Mutungi J. in *Virenda Ramji Gudka and 3 Other v Attorney General* [2014] eKLR

procedure on compulsory acquisition by acquiring bodies. Even where title to the land has been acquired by unlawful means, due process must be followed to invalidate and acquire the land²⁶.

222. Multiple provisions are made in Kenya to allow aggrieved parties to practice their right to due process and right to appeal in case of disputes. The Constitution states that the process of inquiry is to be fair, equitable, transparent and accountable. Two avenues for grievance redress are provided namely (a) the public inquiry and (b) provision for recourse to courts of law. The 2012 Land Act (section 112) mandates the NLC to hold an inquiry where anyone with interest in the land and who feels aggrieved by the acquisition process can lodge a complaint. The public inquiry stage is critical as it provides for an open grievance redress mechanism. The notice of the Inquiry must be advertised in the Gazette 15 days before the date. In addition, the NLC must proactively seek out any persons of interest in the land and hand them this Notice of Inquiry. Any disputes brought forward must be resolved within the period of the Inquiry. Accessibility of these inquiries to the most vulnerable is provided for as the hearings are held on site. In addition, the Constitution of Kenya 2010 provides for aggrieved parties access to a court of law. Aggrieved parties may file a court case in addition to, or instead of, using the Inquiry set up by the NLC. The Environment and Land Court was established to focus on disputes arising from land or the environment has exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under the Land Act, 2012.

Land dispute cases in Kenyan courts take time to be resolved. The time cost of land disputes filed in court is significant and this severely affects project implementation. A case audit carried out in 2013 revealed that 66% percent (5,782) of the cases filed in the Environment and Land Court (ELC) had been ongoing for more than a year, and of those nearly half had been going on for over 60 months. While these cases may include issues of land disputes outside public investment and projects, at best, there would only a 33% chance of any dispute of this kind filed in the ELC will be concluded within 12 months.

223. Any lodging of an appeal results in suspension of project works. The Environment Management and Co-ordination Act provides for automatic stay of implementation of development projects upon lodging of an appeal. This provision is intended to ensure that due process is carried out. Given the backlog of cases in the Land and Environment Court, however, the automatic stay can result in project delays and cost overruns.

224. Analysis **indicates** that the legal framework in Kenya related to land acquisition has strengths but contains important gaps when compared against World Bank Standards. Restoration of livelihoods need to be considered as an element of compensation, the RAP process while guided through existing processes needs legislative support, and the emerging contradiction brought on by the Land Laws (Amendment) Act 2016 as far as eligibility for

²⁶ Other principles regulating due process are: that due process should be defined in law with specified time limits so that people can understand and meet important deadlines; procedures should be transparent and flexible, and undertaken in good faith; notice should be clear in written and oral form, translated into appropriate languages, with procedures clearly explained and advice about where to get help; assistance should be provided so owners and occupants can participate effectively in negotiations on valuation and compensation; the process should be supervised and monitored to ensure that the acquiring agency is accountable for its actions and personal discretion is limited; and the government should take possession of the land after owners and occupants have been paid at least partial compensation, accompanied by clearly defined compensation guarantees.

legitimate rights’ holders needs clarification. The legislation is, however, strong on laying out clear standards for determining property valuation and compensation, supporting requirements related to stakeholder engagement and consultation with affected individuals and groups, and providing the right to due process and appeal in an independent forum in cases of dispute.

Free Prior and Informed Consent

225. The Ministry of Environment and Forestry supported the development of the National Guidelines for Free Prior and Informed Consent in Kenya in 2016. These guidelines present the key principles and elements of Free Prior and Informed Consent. Considering that this is a locally-led operation in defining local actions to be supported under the project, a robust meaningful consultation process with local communities is required in developing local action plans that candidly represent community needs and priorities.

226. These principles, however, should only be used as a guide for a participatory process in the 14 counties where the Bank and GoK have identified Vulnerable and Marginalised Groups indigenous peoples under ESS7. Counties, where sound and inclusive participatory structures exist, will use those mechanisms in conducting consultations and local action prioritizations.

Key Steps To Conducting Free, Prior And Informed Consent (FPIC)

227. Community-level FPIC processes involve a cross-section of members of the concerned indigenous and local communities, including youth, poor families, elders, persons with a disability, and women. In practice, about 5 distinct yet interdependent steps and/dimensions of participation have emerged i.e. information sharing, consultation, joint decision-making, consent, and empowerment. All these dimensions of full and effective participation of IPs/VMGs, require thorough culturally appropriate information dissemination and awareness-raising.

STEP I: Information Disclosure and Dissemination

228. Information dissemination is a precondition for the full and effective participation and FPIC of IPs/VMGs, in the investment project. This is an inactive form of participation. At this stage, the initial sharing of information is necessary to inform the community through their leaders and representatives of the plan to consult them to formally request their FPIC concerning a proposed policy, program or project. Initial consultation meetings with community leaders shall only focus on coordination in terms of sharing information, defining the objectives and the content/issues for the consultation, providing clarity on how feedback from communities will be assessed and treated in the consultations, and preliminary arrangements to the process of the consultation. After this initial or preliminary meeting by outside parties, the concerned community leaders must organize a meeting with other community leaders and representatives to discuss and agree on the details of the process of the consultations.

STEP II: Consultation, Participation, and Representation

a) Consultation

229. This is a two-way information flow with an exchange of opinions, views, and feedback. Consultation serves as a mechanism for continuous exchange and interaction between IPs/VMGs, and other entities relating to Climate change projects for a more accountable, transparent, and inclusive decision-making process. It also serves as a forum to discuss and reach a common understanding of climate change processes and mechanisms. At the same time, it addresses the issues and concerns of IPs/VMGs, as well as defines terms of engagements and or agreements in certain cases.

b) Organs/Structures of Decision Making at the Community Level and Key Requirements:

230. Consultations at the *community level* shall be arranged through their existing traditional governance structures and institutions (council of elders, age set leadership structures), if any, or through recognized community leaders and/or selected representatives and/recognized Indigenous Peoples and Local Communities Organizations (IPCOs and their recognized umbrella networks of IPs/VMGs. The final agenda, participants, and processes of the consultation must also be designed in a participatory manner between the project proponent and IPLCs’ representatives/leaders at the initial stages of engagement.

231. *Documentation of the Consultation Process:* Accurate documentation and recording of consultations processes and outcomes are very important to ensure that the process and content of the consultations are properly reflected. At the onset, there should be an agreement on who will do the official documentation, and copies of the documents need to be given to the communities for validation and approval.

232. *Conducting the Consultations:* Consultations shall be conducted in an open, comprehensive, and transparent way. It should be conducted in the language understood by IPs/VMGs, This will not only facilitate their understanding but will also allow them to freely and comfortably express their thoughts, ideas, views, and concerns. Consultation should be free from any form of intimidation or harassment and no form of condition shall be imposed on IPs/VMGs. The objectives and agenda shall be clear to everyone.

233. IPs/VMGs, are given adequate time to understand and ask questions and clarifications, to share their opinions and views, and to receive responses. There should also be adequate time to deliberate on the issues and concerns of IPs/VMGs and to come up with a common understanding of these concerns and how they will be addressed by identifying key steps of further engagements if required. At the end of the consultations, there should be a summary of what has been discussed and

c) Participation and Representation

234. Careful identification of IPs/VMGs, representatives is an essential part of the preparation for the consultation process. When selecting and/or nominating representatives, target IPs/VMGs, communities and project proponents should consider the following:

- Who are the elected persons of the territorial jurisdictions impacted by the project or measure?

- To what extent do these authorities adequately represent IPs/VMGs?
- Who are the traditional leaders of the IPs/VMGs in the project area?
- Given that indigenous communities are not necessarily homogenous; are there groups, such as women, youth, the elderly, and persons with disabilities, who are not represented by either of the above? And are parallel communications needed for these groups?

d) Ensuring Accountability and Transparency of VMGs/IP Representatives at All Levels

Accountability means being/making oneself answerable for one's actions and taking full *responsibility* for its consequences and implications. The respective constituency-stakeholder representative should, therefore, be trustworthy in the sense that they uphold the interest and welfare of their constituents above personal interest and benefit. Transparency refers to taking action in an open manner that can be easily checked and verified by others. This is against secretive actions or decisions intended for personal benefit. Transparency also includes the immediate disclosure of information on any action or decision taken or on activities that one has participated in as part of these tasks or duties.

STEP III: Indigenous Peoples and local communities' Collective/Joint decision-making:

235. Community members should be granted sufficient time and opportunity to independently process and compare the information from alternative sources and then discuss and deliberate on their understanding, views, and concerns collectively to facilitate prudent and informed collective decision-making leading to FPIC.
236. The decision-making process should be based on jointly pre-agreed timelines. The project proponents should avoid unilaterally predetermined deadlines which may hasten the consultation process, ultimately affecting IPs/VMGs, and parties with limited access to information and experience in decision-making.
237. Further, community decision making should be conducted in a manner defined by the community and should ensure the active participation of women, youth, the elderly, and persons with a disability, to take into account their views, specific concerns and rights. For indigenous communities or groups with strong or functioning systems of self- governance, they can use their traditional system of decision-making (consensus decision-making) such as the Council of elders.
238. Local decision-making processes of the communities, including the time needed for sufficient internal deliberations to foster common understanding either to say "yes" or "no," should be respected. The engagement of external actors should be avoided, except to clarify issues of uncertainty, if requested by the communities.
239. Indigenous communities may include terms and conditions for consent as part of their collective decision. These terms and conditions must be clear, measurable, or quantifiable and provide measures on how they will be implemented or achieved including the allocation of resources as needed. This is to prevent misinterpretation or confusion on how the terms will be implemented. These conditions may relate to the security of land tenure rights, preservation of

cultural rights, access to cultural and sacred sites, the participation of monitoring processes, modalities for benefit distribution, etc.

240. The collective decision-making process of the indigenous communities must be properly documented and recorded by the community themselves, and to be validated by them before it is submitted to any party or made public. It is therefore important that members of the community be assigned to do the documentation and recording of the decision-making process - and not only the outcomes. The community should ensure the proper safekeeping of the record of their collective decisions. If this record is in the local language, trusted translators of the community should be tasked with translating it accurately to the national language and English and subject to validation in terms of accuracy.

STEP IV: Giving or withholding consent:

241. Giving or withholding consent is a freely given decision by the indigenous communities based on clear, understandable information given to them, which will determine the further actions to be taken in the indigenous communities' land/territories.
242. The consent-seeking process should be *transparent, inclusive, and well-informed* with meaningful and accountable participation of the indigenous leaders in the consultation processes and the collective decision-making process.
243. Where necessary, the capacity of the IPLCs should be enhanced to facilitate informed decision-making, which includes the option of withholding consent. Indigenous communities must have the right to withdraw the consent if conditions are not met. Any agreement reached should be written in a form fully understood by community members and the project proponent. Project proponents must respect a no consent decision where made.
244. Strong division with opposing views within indigenous communities means the absence of consent. On the other hand, consent does not mean unanimity. Based on the traditional systems of marginalized communities/indigenous people, decision-making, consensus is always the desired outcome of a collective decision-making process in upholding the common good and the collective interest and welfare of the community.
245. Even if there are views or positions that run counter to those of the majority, as long as those with opposing views agree to abide or respect the position of the majority, then this is considered as a consensus on either "consent" or "no consent" decision. Thus, the outcome still upholds the collective voice, views, and interests of the community as one social and collective entity. Giving consent or withholding consent should, therefore, be understood to be a collective and independent decision of affected communities after undergoing their process of decision-making.

STEP V: Informing the project proponents of the result of the decision-making process

246. The final decision of the community, whether consent or no consent, including the accompanying terms and conditions, should be made known to the proponent by the appropriate or designated community representatives. The decision may be written and/or formally or

officially relayed to the proponent through an appropriate means of communication. The proponent must respect the decision of the community, including a no consent decision.

STEP VI: Entering Agreement with Indigenous Peoples/Vulnerable and Marginalized Groups

247. If a decision is reached by the community to give consent, this will likely result in the signing of an agreement/MoU between the indigenous community and the project proponent regarding the proposed project or activity. It is essential that agreements reached are mutual and recognized by all parties. In the event that consent is withheld, further steps for future engagement can be explored, if this is agreed to by the local communities.
248. Once consent has been reached, it is important to ensure that agreements made through the consultation process are respected in their practical implementation. If agreements are not respected, sanctions and/or mechanisms of redress need to be activated. Modes of monitoring and verifying agreements should be jointly defined before an agreement is finalized, and the monitoring and verification procedures should be described in the agreement.
249. The signing of an agreement, be it in the form of a Memorandum of Agreement or an Impact Benefit Agreement, between the Climate Change project proponent and the community, signifies the commitment of both parties to abide by the obligations they negotiated and agreed upon in the process of FPIC. Agreements should be formal legal contracts anchored in relevant national legislation.

STEP VII: Feedback Grievance Redress Mechanism (FGRM)

250. Project level Feedback and Grievance Redress Mechanisms should be jointly developed by IPs/VMGs, and project proponents at project onset as part of the consultation and FPIC process. The FGRM procedures should be available for use at pre-agreement stages and should be part of the final agreement reached.
251. All agreements should specify the grievance procedures and mechanisms of redress for any violation committed by either the communities or the project proponent. IPLCs and project proponents should jointly designate a recognized authority to monitor FGRM to enhance the confidence of project actors in the FGRM system.
252. Grievance mechanisms may take various forms. These may include community based alternate dispute resolution mechanisms (ADRM)s e.g. traditional justice systems, mediating institutions, and national judicial procedures. Elements of a robust FGRM:
- It should incorporate and demonstrate high levels of fairness, impartiality, transparency, accountability, integrity, accessibility and gender and intergenerational equity standards including full and effective participation in all FGRM processes by all participating parties
 - Demonstrate practicality in enforcement abilities to act on complaints brought before it.
 - Demonstrate potential to facilitate clear documentation and complete capturing of issues and concerns raised by all parties.

- The FGRM should provide clear procedures for receiving, registering, investigating, responding, and closing out grievances.
- The FGRM should provide clear and popularized guidelines on the process of raising concerns, turn-around times for complaints registered, processes of decision making, communicating the decision, and appealing the decision.
- The established FGRM should incorporate clear structures for implementation, monitoring and enforcement.

STEP VII: Participation in Monitoring and Evaluation

253. The participation of IPLCs in the monitoring, reporting, and evaluation of a project within their territories should be guaranteed and provided in the terms and conditions of the agreement arrived at between the indigenous community and the external entity implementing the project.
- Monitoring and evaluation committees - a joint committee of self-selected representatives of IPs/VMGs, with requisite M&E competence and relevant government agencies and project proponents
 - Develop community sensitive indicators for use in the monitoring process-These could be related to the security of land tenure, access to cultural and sacred sites, and biodiversity and sensitive ecological zones.
 - Design participatory approaches to monitoring of climate change project related activities including during the design, data collection, monitoring and, undertaking and validating impact assessment
 - Establish monitoring and evaluation related information sharing and feedback sessions with clear provisions for timelines within the project lifespan-These platforms will provide avenues for sharing monitoring and evaluation reports.
 - IPs/VMGs, should also be given an opportunity to review and submit comments on impact assessments, to ascertain that the final assessments reflect the actual conditions in the affected communities before final adoption of the impact assessment report.

5 CHAPTER FIVE: INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL AND SOCIAL SYSTEMS

5.1 Institutional Responsibilities for Environmental Systems

Ministry of Environment and Forestry

255. The Ministry of Environment and Forestry is responsible for the environment at the policy level. The Ministry of Environment and Forestry mission statement and the key objective is to facilitate good governance in the protection, restoration, conservation, development and management of the environment, water and natural resources for equitable and sustainable development.
256. The mandate of the ministry is to monitor, protect, conserve and manage the environment and natural resources through sustainable exploitation for socio-economic development aimed at eradication of poverty, improving living standards and ensuring that a clean environment is sustained now and in the future. The ministry comprises of various directorates at the headquarters and the following parastatals and departments including the National Environment Management Authority.

National Environment Management Authority (NEMA)

257. NEMA is the principal instrument of Government in the implementation of all policies relating to the environment. NEMA is the administrative body that is responsible for the coordination of the various environmental management activities in Kenya. NEMA is also responsible for granting Environmental and Social Impact Assessment (ESIA) approvals and for monitoring and assessing activities in order to ensure that the environment is not degraded by such project activities.

County Environmental Committees

258. The County Environmental Committees also contribute to decentralized environmental management and enable the participation of local communities. These environmental committees are to be constituted by the governor and are responsible for the proper management of the environment within the County for which it is appointed.

National Environmental Complaints Committee

259. The National Environmental Complaints Committee (NECC) is established under Section 31 of EMCA. The NECC is concerned with the investigation of complaints relating to environmental damage and degradation generally. The NECC has powers to investigate complaints against any person or even against NEMA or on its own motion investigate any suspected case of environmental degradation. The NECC is required by law to submit reports of its findings and recommendations to NEMA.

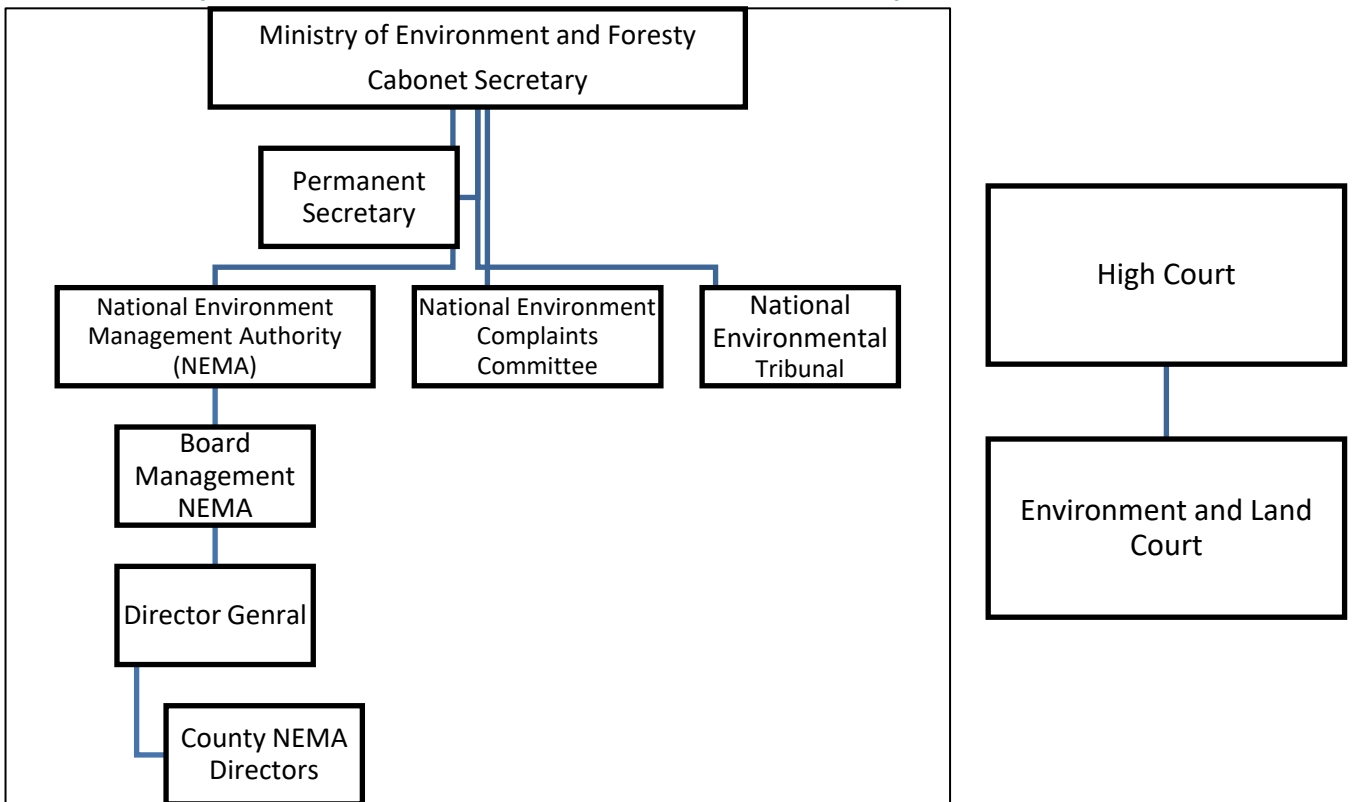
National Environment Tribunal

260. EMCA established the National Environment Tribunal which has the jurisdiction to hear appeals from the decision of National Environment Management Authority particularly on, the grant of a license or permit or a refusal to grant a license or permit, or the transfer of a license or permit; the imposition of any condition, limitation or restriction on a license the revocation, suspension or variation of a license; the amount of money payable as a fee and the imposition of an environmental restoration order or environmental improvement order. These appeals must be brought with 60 days of the decision so appealed. The tribunal is prohibited from extending this timeline by Rule 7 of the National Environmental Tribunal Procedure Rules, 2003, and thus does not hear any appeals brought outside it. EMCA gives the Tribunal the power to hear appeals against decisions of the Director-General of NEMA, NEMA itself, or NEMA Committees.

Environment and Land Court

261. The court facilitates the just, expeditious, proportionate, and accessible resolution of disputes related to land and environment, including compulsory land acquisition, land tenure, titles, boundaries, compensation, valuations, rates, land use, and environmental planning.

Figure 1: Summary of the Administration of the Environment in Kenya



The

Environment and Social Impact Assessment Process in Kenya

262. The Environmental Impact Assessment (EIA) is a process and management technique, which allows consideration of the likely environmental and social impacts of development prior to its proceeding. This provides an opportunity to ensure that the design is optimized in an integrated manner, minimizing negative environmental and social impacts, and maximizing positive impacts. The EIA process in Kenya is shown schematically in the figure below.

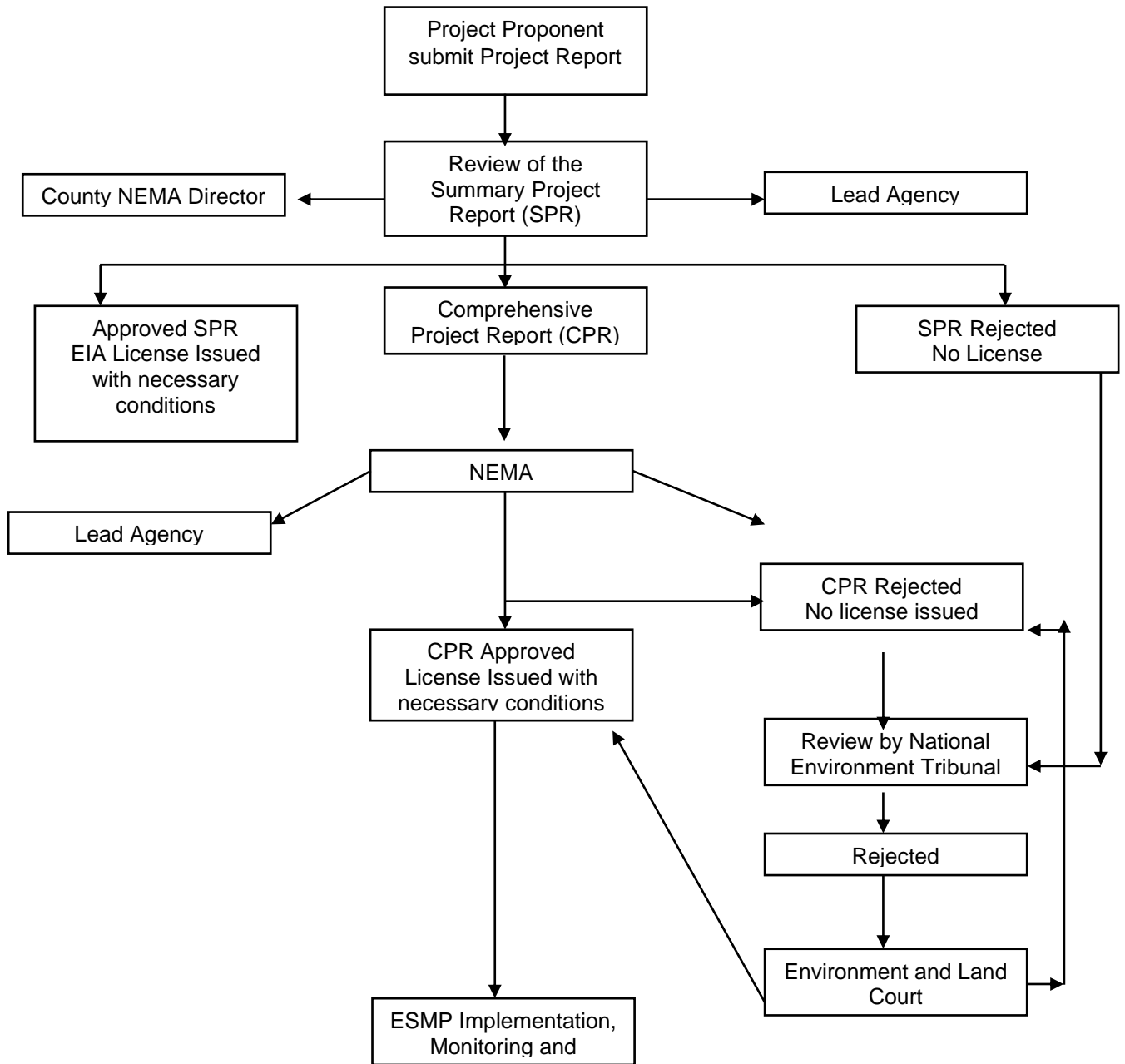


Figure 2 : The Environment and Social Impact Assessment Process in Kenya

The National Construction Authority (NCA)

263. The object for which the Authority is established is to oversee the construction industry and coordinate its development. The Authority is in-charge of, among others; (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. The authority will issue licenses for any construction projects under FLLCA and will also have supervision roles as part of their mandate to manage quality assurance in the construction industry.

Directorate of Occupational Safety and Health Services (DOSHS)

264. The Directorate of Occupational Safety and Health Services (DOSHS) is one of the departments within the Ministry of Labour and East African Community Affairs, whose primary objective is to ensure the safety, health, and welfare of all workers in all workplaces. DOSHS is mandated to develop and implement effective systems for the prevention of workplace diseases, ill health, and accidents to reduce damage to property and work injury compensation claims for improved productivity. The Directorate enforces the Occupational Safety and Health Act, 2007 (OSHA, 2007) with its subsidiary legislation which aims at the prevention of accidents and diseases at work.

265. 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. The Directorate is also the lead agent in implementing the National Policy on Occupational Safety and Health. In fulfillment 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 FLLCA 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.

5.2 Institutional Responsibilities for Social Systems

266. Social Risk management in Kenya is not clearly defined by law or the regulatory framework. Social risk management functions are scattered in various institutions and departments within National Government Agencies as well as County Government Ministries. The following institutions have the responsibility to manage social risks.

Department of Social Development under the State Department of Social Protection, Ministry of Labour and Social Protection

267. The Department of social development derives its mandate from Executive Order No. 1 of 2018 that includes: community mobilization, family promotion and protection, community development policy, registration of self-help groups, implementation of the Social Protection Policy, policies and programs for persons with disabilities, policies, and programs for older

persons, national volunteerism policy, vocational training and rehabilitation of persons with disabilities. Focuses on the empowerment of families and communities for sustainable social development towards improving their livelihoods.

Table 7 : Mandate for Department of Social Development

Mandate	Selected Ongoing Programs
Social Protection Policy	Economic inclusion project.
Policies and programs for persons with disabilities	Cash transfer for persons with severe disabilities support the National Council for Persons with Disabilities to register PWDs
Policies and programs for older persons	Cash transfer program for older persons over 70 years. Institutionalization of older persons in severe need.
Community mobilization	Developed a National Community Development Policy Developing a National Community Mobilization Strategy
Family promotion and protection	Lay counselors and family counseling programs.
Community development policy	Community organizing, PRA in community initiatives Registration, capacity building and conflict resolution of self-help groups
Vocational training and rehabilitation of persons with disabilities.	Manage and train Vocational Rehabilitation centers for PWDs

The State Department for Social Protection in the Ministry of Labour and Social Protection

268. Development policy, sectoral oversight, and management, of all matters concerning the elderly and the social protection policy, and policy and programs for older persons. The department also has oversight and management, of all matters concerning persons with disabilities. Protection and advocacy of needs of persons with disabilities, policy, and programs for persons with disabilities and vocational training and rehabilitation of persons with disabilities. In February 2020 the National Development Implementation Technical Committee (NDITC) confirmed that the Ministry’s mandate to lead on matters related to the management of social risks is established through Executive Order No.1 of 2018.

National Council for Persons with Disabilities (NCPD)

269. Oversight of all matters concerning persons with disability with the statutory responsibility for facilitation of disability mainstreaming programs, formulating and developing measures and policies designed to achieve equal opportunities for PWDs, cooperating with the government during the National Census to ensure that accurate figures of PWDs are obtained; issuing orders requiring the adjustment of buildings that are unfriendly for use by PWDs, recommending measures to prevent discrimination against PWDs, encouraging and securing the rehabilitation

of PWDs within their communities and social environment, registering persons with disabilities and institutions and organizations giving services to PWDs and raising public awareness on disability.

State Department of Labour in the Ministry of Labour and Social Protection

270. The Labour Department under the Ministry of Labour and East African Community Affairs responsible for the implementation of the three major laws namely: The Employment Act, 2007, The Labour Institutions Act, 2007, and The Labour Relations Act, 2007.
271. This is done through the formulation and implementation of the National Labour Legislation and policy through the National Labour Board and sectoral wages councils as well as the National Tripartite Consultative Council. The Department is also responsible for operationalizing the tripartite mechanism in handling labour issues through a tripartite dialogue process which involves consultation between workers, employers, and government representatives. The Labour Department will be responsible for ensuring the labour laws and other legislation under its mandate are addressed under the Program.

The Department of Children Services in the Ministry of Labour and Social Protection

272. This department has the sectoral oversight and management, of all matters concerning children, policies on children and social development, management of statutory children's institutions, and children's welfare and penal protection.
273. The Department of Children Services, the National Council for Children Services and the Child Welfare Society of Kenya are the three structures with the functions of overseeing Children Services Welfare and Protection. The Child Welfare Society of Kenya (CWSK) is a state corporation for the care, protection, welfare, and adoption of children. It is the National Adoption Society for Kenya and the National Emergency Response, Welfare, and Rescue Organization for children. The Agency was established and gazetted in 1955 as an approved society and the Adoption Society for Kenya in 1969. Whilst its functions largely focus upon children faced with adverse societal risks/ills, it is the proper placement agency for an affected child, whilst a social risk is being managed.
274. The Children Act in Part IV on the administration of children's services established the National Council for Children's Services under Section 30. The Council's focus is the exercise of general supervision and control over the planning, financing, and coordination of child rights and welfare activities and to advise the Government on all aspects thereof.

Child Welfare Society of Kenya

275. Has the statutory responsibility for the provision of care, protection and welfare services to all children (especially those who are socially-marginalized); and primary adoption agency for children.

The State Department of Public Service and Youth in the Ministry of Public Service’ Youth and Gender

276. Sectoral oversight and management, of all matters concerning the youth and mainstreaming Youth in National Development, Youth Policy and Empowerment, Internship and Volunteer Policy for Public Service, and Counselling Policy and Services.

National Cohesion and Integration Commission (NCIC)

277. Oversight commission on all matters concerning social cohesion by eliminating all forms of ethnic or racial discrimination and discourage persons, institutions, political parties and associations from advocating or promoting discrimination; enhancing tolerance, understanding, and acceptance of diversity in all aspects of national life and promoting respect for religious cultural and linguistic diversity in a plural society.

Kenya National Human Rights and Equality Commission (KNCHR)

278. Oversight commission on all matters concerning the violation of the Constitution’s ‘Bill of Right’; hence receives and investigates complaints alleging discrimination and stigmatization based on the tribe in the provision of services.

The State Departments of Gender in the Ministry of Public Service and Gender

279. Provides sectoral oversight and management, of all matters concerning gender. Gender policy management, special programs for women affirmative action social empowerment, gender mainstreaming in ministries/departments/agencies, community mobilization, domestication of international treaties/conventions on gender, and policy and programs on gender violence. Provides the sectoral oversight and management, of all matters concerning gender. Further provides gender policy management, special programs for women affirmative action social empowerment, gender mainstreaming in ministries/departments/agencies, community mobilization, domestication of international treaties/conventions on gender, and policy and programs on gender violence.

National Gender and Equality Commission (NGEC)

280. NGEC has the oversight and surveillance of all matters concerning gender equality and equity. Promoting gender equality and equity; coordinating gender mainstreaming in national development; and facilitating gender mainstreaming in national development.

The State Department of Devolution in the Ministry of Devolution and the Arid and Semi-Arid Lands

281. The department has the statutory oversight and management of all matters concerning the traditionally marginalized regions (include the Arid and Semi-Arid Lands) (ASAL). ASAL policy, coordination of planning and development for and semi-arid lands, implementation of special programs for the development of arid and semi-arid areas, implementation of arid and

semi-arid programs, coordinating research for sustainable arid and semi-arid land resource management, development and livelihoods, promotion of livestock development, marketing and value addition of resources within arid and semi-arid areas, enhancing livelihoods resilience of pastoral and agro-pastoral communities, coordinating responses against drought and desertification and peace-building and conflict management within arid and semi-arid areas.

National Disaster Management Authority

282. Has the mandate of overall coordination and advisory mandate over all matters relating to drought management. Implementation of drought management policies/programs; coordination of stakeholders’ drought-response; development and management of drought early-warning system, national/county-level drought contingency plans, and drought preparedness strategies, publishing/dissemination drought-management/prevention reports, manuals, codes or guidelines, and information, coordination of the declaration of a national/international disaster, coordination of the implementation of the country’s drought-management (regional/international) commitments.

The Commission on Administrative Justice (CAJ) – the Ombudsman is the Public Feedback and Grievance Redress Mechanism

283. Kenya now has a formal Feedback and Complaints Handling Mechanism. The Commission is the national/constitutional stakeholder instrument for grievance redress. Its mandate is to receive and address complaints against public officers and public institutions to improve service delivery. Three types of complaints can be made to the office of the Ombudsman including (i) Citizen against State/public officers and institutions; (ii) Public Officers against fellow public officers; and, (iii) Public Institutions against other public institutions. The table below provides the steps and processes for feedback and complaints redress by the Ombudsman. The Ombudsman has a three-step and time-bound mechanism for feedback and grievance redress, as shown below.

Table 8 : Feedback and Complaints Redress by the CAJ (the Ombudsman)

<p>Step 1</p>	<p>Complainant fills in a Complaint Form A complaint is assessed for compliance with CAJ Mandate; If within the mandate, CAJ commences inquiries and complainant is issued with a copy of communication – CAJ 2 [Sec. 43]; If NOT within CAJ mandate, Complainant is advised accordingly and/or referred to appropriate government agencies; If a response is not received from the respondent after 14 working days, CAJ sends a first reminder giving the respondent 7 days to comply; If no response is received after this, a final reminder of 7 days is sent; If there is still no response after 28 days, summonses are issued to the respondent in line with [Sec. 27(a)].</p>
<p>Step 2</p>	<p>If after the summonses the respondent still fails to comply, the Ombudsman proceeds to: Determines the complaint in the absence of the respondent; Institutes legal proceedings against the respondent [according to Sec. 52];</p>

	Cites the respondent as an unresponsive State or Public Office or Officer, and/or declares such State or Public Officer to be unfit to serve in the Public Service;
Step 3	<p><i>How the Ombudsman undertakes grievance redress action:</i> In resolving a complaint, the Ombudsman may:</p> <p>Conduct investigations according to articles [A.59 (2)(i)] [Sec 8 b)] [A.252(1)(g)] [Sec. 53 (1)];</p> <p>Demand and obtain information or documents [S.26 (d)];</p> <p>Conduct an inquiry [A.252(1)(g)]</p> <p>Undertake mediation, negotiation and conciliation [A.252 (1) (b)];</p> <p>Constitute a hearing panel;</p> <p>Invite or summon any person or persons to attend to the Commission [S.26 (f)];</p> <p>Obtain orders from the Court authorizing Searches or Seizures [Sec.26 (e)].</p> <p>Obtain warrants of arrest for breach of any summons or orders of the Commission.</p>

284. *The Office of the Ombudsman is yet to be devolved to the County and grassroots levels and is not well known.* The custodians of the public FGHM are not accessible to the public as they are not devolved yet, and the public, in particular, the civil society, including IPOs, still need to become more familiar with the constitutional provisions and to know where to seek information from the appropriate bodies.

The National Land Commission (NLC)

285. The National Land Commission (NLC) is an independent commission tasked with registering land transfers, resolving land disputes and addressing historical land injustices. The National Land Commission is tasked with facilitating and increasing access to fair and equitable mechanisms for resolving land and natural resource-based disputes and conflicts: National Land Commission Act, 2012 specifies the role of NLC as: To identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for a survey; Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and Acquire land for public purposes, Solve land disputes and deal with historical land injustices, Share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or May require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or another instrument.

The Commission on Revenue Allocation (CRA)

286. CRA is the COK, 2010’s mechanism for bringing the marginalized communities and regions of Kenya into the country’s mainstream development agenda. The mandate of CRA includes to: (i) Recommend on equitable sharing of revenues between National and County Governments and among Counties;(ii) Recommend on financing and financial management of County Governments; and to (iii) Determine, publish and regularly review a policy which sets out the criteria by which to identify the marginalized areas. The constitution has further established the Equalization Fund as the instrument with which CRA it to achieve its mandate. The objective of the equalization fund is to eradicate marginalization and other forms of

economic inequalities in Kenya and to bring all groups into mainstream development within 20 years from the date of promulgation of the COK, 2010. There is clear overlap between the Counties designated as marginalized by the CRA and the location of marginalized groups. According to article 204 (2) The National Government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation. The CoK 2010 establishes an Equalization Fund which is one half percent (0.5%) of all the revenue collected by the national government each year.

Opportunity for Appeal

287. The Kenya Constitution established an Environment and Land Court, which is a Superior Court that has the same status of a High Court. Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Article 159 on the principles of judicial authority, indicates that courts will endeavor to encourage the application of ADR mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the *Environment and Land Court Act, 2011* empowers the Environment and Land Court, on its own motion, or on the application of the parties to a dispute, to direct the application of ADR, including traditional dispute resolution mechanisms.

288. Any person whose land has been compulsorily acquired may petition the Environment and Land Court for redress with respect to:

- The determination of such person's right over the land;
- The amount offered in compensation; and
- The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land

Parties will pay fees as determined by Environment and Land Court, which may waive them completely or in part on grounds of financial hardship.

289. *Several challenges remain related to land management structures:* While many former land management institutions or structures such as District Land Tribunal are no longer recognized in the new constitutional dispensation, the new structures meant to assume these functions, such as the County Land Management Boards (CLMB), were abolished in 2016. The setting up of a full functioning NLC is central to the land agenda, including land for the vulnerable and marginalized communities.

National Gender Equality Commission

290. National Gender Equality Commission (NGEC) is a constitutional Commission established by an Act of Parliament in August 2011, as a successor commission to the Kenya National Human Rights and Equality Commission according to Article 59 of the Constitution. NGEC derives its mandate from Articles 27, 43, and Chapter Fifteen of the Constitution; and section 8 of NGEC Act (Cap. 15) of 2011, with the objectives of promoting gender equality and freedom from discrimination.

291. The over-arching goal for NGECC is to contribute to the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalized communities

State Department of Gender Affairs

292. The state department of Gender affairs, under the Ministry of Public Service, Youth and Gender Affairs was created from the Ministry of Devolution and Planning in November 2015, to promote gender mainstreaming in national development processes and champion and socio-economic empowerment of women. The department promotes gender equality and the empowerment of women as an effective way to combat poverty, hunger, and disease, and to stimulate sustainable development. Gender rights and gender equality are entrenched in the Constitution of Kenya 2010, and the department has the responsibility of ensuring equality in gender representation. Gender concerns are anchored in Article 27 (3) of the Constitution which states that “women and men have the right to equal opportunities in political, economic, cultural and social spheres”.
293. The relevant functions related to the Program the department is in-charge includes: promotion of equitable socio-economic development between women and men; monitoring of 30% access to government procurement opportunities for women, youth and persons with disabilities; establishment and implementation of the gender management system; and coordination of programs for the reduction of gender-based violence (GBV). The department will be used to ensure gender mainstreaming and reduction of GBV is complied with during the Program implementation.

Kenya National Commission on Human Rights

294. The Kenya National Commission on Human Rights (KNCHR) is an autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. The Commission plays two key broad mandates;
- It acts as a watch-dog over the Government in the area of human rights.
 - It provides key leadership in moving the country towards a human rights state.
295. The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor the compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya.

5.3 Management of Environmental and Social Procedures

296. Section 58 of the EMCA has been amended and directs that proponent of any project specified in the second schedule shall undertake a full EIA study prepared by a registered and licensed EIA and audit expert and submit the EIA study report to NEMA prior to being issued with any license. In recognition that certain projects may not require full EIA, the EMCA gives NEMA the power to direct a project proponent to forego the submission of the EIA report in certain cases.
297. The social management systems in Kenya are not as well developed as those for Environmental management except in the context of land acquisition. Since the social management procedures are not explicit in the EMCA, the social risks of the projects are supposed to be analyzed and reported as part of the EIA process of the project, together with their mitigation measures.

EIA and Monitoring

298. Monitoring has been defined as a process whereby states observe, measure, evaluate and analyze by recognized scientific methods the risks or effects“ of pollution or environmental harm. It is a continuous or periodic determination of actual and potential effects of any activity or phenomenon of the environment whether short-term or long-term. Unlike prior EIA, monitoring is generally undertaken after the project has begun, to check initial EIA predictions and determine whether further measures are needed to abate or avoid pollution or environmental harm. It is also done for purposes of conducting research or identifying patterns and trends, which reflect the state of the environment. Under Article 1 of the 1992 OSPAR Convention, monitoring has been defined as the “repeated measurement” of the following three factors;
- i) The quality of the environment and each of its compartments;
 - ii) Activities or natural and anthropogenic inputs which may affect the quality of the environment; and
 - iii) The effects of such activities.

Environmental Audit

299. Section 68 of EMCA obligates NEMA with the responsibility of carrying out an environmental audit of all activities that are likely to have significant effect on the environment such as ongoing projects commenced prior to the coming into force of the regulations or new projects undertaken after completion of an environmental impact assessment study report. In carrying out an environmental audit study the auditor must carry out an appraisal of all the project activities including the production of goods and services; give adequate consideration to environmental regulatory frameworks, environmental health and safety measures and sustainable use of resources. The principles applicable to EIA are also relevant in an environmental audit.

5.4 Screening of proposed FLLCA Investments as Part Project Preparation

300. Screening of investments will commence right at the project inception phase as soon as the specific investment details are known including nature and scope, proposed location, and area among other parameters, regardless of the level of risk. This will be carried out in parallel with the technical studies of the projects, with a scenario analysis based on social and environmental risks. The screening process could result in any of the following determination; -
- i) Summary Project Report (SPR)
 - ii) Comprehensive Project Report (full ESIA)

5.4.1 Project Screening

301. NEMA is the institution designated to decide on whether a full-scale ESIA is necessary for proposed investments or otherwise. To make this determination, a project report must be submitted to NEMA in order to make a determination and this is part of the screening.
302. Project Reports for proposed investments under the program will be prepared by NEMA registered Lead EIA and audit experts, and reviewed by environmental and social County focal points in beneficiary Counties then submitted to the NEMA for further determination. It is recommended that under this Program, each County benefiting will designate qualified and experienced environmental and social County focal point to support the preparation of the required instruments.
303. It must be noted that the FLLCA will not support projects of high risks as categorized under the amended EMCA (2015), often projects under Schedule 2, and under Public Notice issued in March 2020 on the processing of EIA reports. The Public Notice categorizes projects that require a Summary Project Report (SPR) or Comprehensive Project Report (CPR) based on the risks. EIA regulations allow for approval of proposed projects at the project report stage and have been effectively used by NEMA to grant EIA license to low/medium risk projects without requiring a full EIA study to be done.

5.5 Overall Project Compliance and Reporting

304. 6 provides a summary of the stages and institutional responsibilities for the screening, preparation, assessment, approval and implementation of the FLLCA activities. It reflects the current environmental screening stages, however the equivalent stages for social risk management will be an outcome developed by the Ministry of Labor and Social Protection.

Table 9: Screening Responsibilities

No.	Stage	Institutional responsibility	Implementation responsibility
1.	Screening of Environmental and Social Infrastructure Project to assist in project formulation using the checklist	County Government, Implementing Agency, NT	Environmental and Social Officer (ESO) in respective Counties, Environment, and Social Specialist at NT
2.	Statutory Environmental Registration of sub-projects	County Government, Implementing Agency, NT	Environmental and Social Officer (ESO) in respective Counties, Environment, and Social Specialist at NT
3.	Determination of appropriate environmental assessment level/ category	NEMA	Follow up by County
4.	If ESIA is necessary, reject the investments	County Government, NT	NT, Counties, NEMA

6 CHAPTER SIX : PROGRAM INSTITUTIONAL CAPACITY AND PERFORMANCE ASSESSMENT IN MANAGING ENVIRONMENTAL AND SOCIAL RISKS

305. This section analyses the implementation related to the performance of key implementing institutions/agencies associated with the environmental and social legal/regulatory framework for the FLLCA program. The section also highlights the challenges of the institutional framework along with an assessment of their current capacities. The section then goes on to analyze the processes of planning, monitoring, and decision making in the program, the strategy adopted by the country and counties, and the current grievance redress systems in place; all from an environmental and social perspective.
306. The ESSA team assessed the quality and efficacy of the environment and social management system, particularly focusing on institutional capacity, structure, practices, procedures, mechanisms, and effectiveness of implementation at the National and County levels. Consultations with NEMA representatives in the Counties visited were done to understand their program administration, planning, and design, implementation, and monitoring functions within the Counties. The team also consulted NEMA head office to understand their role in the implementation of this program. The assessment was reviewed based on previous engagements of the systems at national and county levels, and their performance records on PforR projects funded by WB.
307. The ESSA team also carried out an analysis of the Bank’s ongoing discussions with the Ministry of Labour and Social Protection on Social Risk Management in Kenya on the social legal and institutional assessment having been undertaken by the Bank Team to improve the national and county social risk management systems.
308. This assessment indicates that there is a robust environmental management system, as it exists and designed at the national level, but weak at the County level. The assessment noted the overall social risk management systems are scattered and weak at both the national and county level. However, there is unevenness in the implementation of environmental and social risk mitigation measures, which can be traced to either lack of capacity or lack of legislation support and technical knowledge for effective implementation at the national and County levels, especially on social issues. Therefore, implementation of the environmental and social systems for FLLCA will largely rely on capacity building at the national and county levels for personnel that will be involved in program implementation.

6.1 National Environment Management Authority

6.1.1 *Policy and Legislative Framework Support*

309. Kenya has a fairly robust legal framework for environmental management, known as the Environmental Management and Coordination Act (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 environmental analysis to determine likely adverse impacts before commencement.

NEMA is mandated by the Environmental Management and Coordination Act (EMCA 1999, Amended 2015) to commit resources and implement actions necessary for effective environmental and social management.

310. NEMA is charged with enforcing EMCA’s provisions as well as other subsidiary legislation that has been passed over the last decade. The subsidiary legislation includes water quality, waste management, 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 legislation, 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.
311. NEMA has extensive experience in environmental assessment and management capacity (including monitoring and enforcement) as provided for by the EMCA. NEMA has developed several regulations and guidelines that are relevant for this program including;
- Noise regulations
 - Wetland
 - Water quality
 - Waste management
 - Controlled substances
 - Air Quality
 - Biodiversity
 - National sand harvesting guidelines
 - Strategic Environmental Assessment guidelines
 - E-waste guidelines

6.1.2 Organization and Program Structure

312. The EMCA, 1999, was amended in 2015 to align it to the 2010 Constitution of Kenya, which led to devolved governance, including governance of some environmental aspects by the Counties. NEMA has established a County Office in all the 47 Counties and is headed by a County Environmental Director.

6.1.3 Human Resources (County Levels)

313. The NEMA officers at the County level are fairly qualified and possess the requisite skills necessary for ensuring the management of environmental impacts for projects. The County Environmental Directors (CED) and their assistants possess undergraduate and postgraduate qualifications in the environment and natural resources with practical years of experience. However, all NEMA offices visited at the County level are understaffed, with the capacity assessment findings revealing that most County NEMA Offices have a maximum of two environmental officers, 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. Staff composition does not currently include social scientists specialized in social safeguards.

314. Certain Counties are large in terms of landmass and this limits the capacity of NEMA to supervise all on-going projects and enforce compliance through on-site monitoring. NEMA officers, therefore, focus mostly on the review and monitoring of high-risk projects at the expense of other projects. Yet, low to moderate projects could have sizeable adverse impacts, e.g. a small waste disposal site. Moreover, the combination of a number of small developments in one area can lead to potential cumulative impacts, each contributing to a part of the overall harm to the environment. This is a concern for the FLLCA, because the proposed investments under the program might not get enough attention in terms of enforcement and supervision by NEMA officers, due to their fairly small size and low risk on environmental and social impacts.
315. NEMA's lack of sufficient resources creates a situation where projects with possibly huge impacts on the environment 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.

6.1.4 Budget Resources/Financial Capacity

316. Much of the funding is from the Government of Kenya (GoK) after NEMA licensing fees were abolished in 2016. It is important to note that NEMA's review process is handicapped by a lack of adequate funding for the scale of its mandate. With the minimal annual budget, NEMA is stretched so thin that it is unable to carry out its auditing and monitoring mandate. It must review, on average, 1600 EIA reports per year (*Ibid.*).
317. Funds are disbursed from NEMA headquarters in Nairobi and most of the officials could not provide the current financial year budget allocation for the County, even though they thought that the funds allocated were insufficient. This explains human resource deficit and reasons why NEMA Officers at the County level are forced to take up multiple roles such as accounting, technical tasks, and administrative tasks.

6.1.5 Capacity Building Recommendations

318. The training and capacity building efforts proposed for the County officers would also include NEMA officers at the Counties and headquarters to familiarize them with the ESSA and their roles and responsibilities in the program.

6.2 Directorate of Occupational Safety and Health Services (DOSHS)

6.2.1 Policy and Legislative Framework Support

319. The Directorate of Occupational Safety and Health Services (DOSHS) is one of the departments within the Ministry of Labour and East African Community Affairs, whose primary objective is to ensure the safety, health, and welfare of all workers in all workplaces.

DOSHS is mandated to develop and implement effective systems for the prevention of workplace diseases, ill health and accidents to reduce damage to property and work injury compensation claims for improved productivity.

320. The Directorate enforces the Occupational Safety and Health Act, 2007 (OSHA, 2007) with its subsidiary legislation which aims at the prevention of accidents and diseases at work. 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.
321. In fulfillment 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 FLLCA 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.

6.2.2 Institutional Capacity and Resources

322. The department is represented in 29 counties across the country, with the majority of the counties in the North-Eastern region not represented. The officers at these counties are qualified and possess the requisite skills necessary for managing health and safety risks. However, the offices are understaffed, with the capacity assessment findings revealing that most officers are not able to cover their regions as required. The officers are also not given enough resources (including budget) to cover the wide regions assigned. 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.

6.2.3 Capacity Building Recommendations

323. The assessment has recommended close collaboration with DOSHS and the Program to support Counties on OHS risk management and national OSHA requirements. Also, the Program will work and sensitize DOSHS with other key agencies to enhance their understanding and role in the Program.

6.3 County Governments

324. The passing of the new constitution in 2010 ushered Kenya into a new system of governance, replacing the old centralized system with a new devolved system of governance. The new system consists of a national government and 47 County governments.

6.3.1 Organization and Program Structure on Environmental Management

325. The main role of County Governments in the EIA process includes;
- i. Procure qualified EIA consultants to prepare EIA reports for investments determined to require full EIA
 - ii. Preparation of project reports for submission to NEMA in cases where they are the project proponent

- iii. Ensure environmental, social, health and safety clauses are incorporated in bidding and contract documents
 - iv. Undertake monitoring as per the ESMP during project investment implementation
 - v. Prepare Annual Environmental Audit Reports for submission to NEMA
326. The County governments are responsible for monitoring and implementation of Environmental and Social Management Plans (ESMP) for projects within their County. None of the Counties visited have prepared and operationalized an environmental and social policy; however, most Counties have established ministries or departments that handle environmental issues.
327. All the Counties have gazetted the County Environmental Committees (CEC) as required by EMCA, 2015, which are supposed to act as coordination forum for environmental issues in the Counties. However, some of the CECs are not operational and others have not undergone training and capacity building on how to manage environmental issues in the counties.

6.3.2 County Institutional Capacity

328. Counties have established County Executive Committees (CEC) offices, which head County departments of Environment, Transport and Infrastructure, Urban Development, Housing, Natural Resources, Lands, Water, Agriculture, Health, Education, Gender, and Social Service, among others. The CEC member for the Environment docket is in charge of environmental aspects within the County.
329. Through other Bank-funded PforR programs (KUSP and KDSP), the majority of the counties have nominated the environmental and social safeguards focal points to support the management of environmental and social risks and impacts for the projects implemented by the Counties. The focal points have undergone training carried out by the respective Project Implementation Units (PIUs), the World Bank, DOSHS, and NEMA on the environment and social safeguards and have acquired necessary competencies to manage, supervise and monitor the environmental and social risks on a project implemented by the Counties, including handling tasks such as the EIA process.
330. However, the personnel are still not enough to support the management of environmental issues, ensure compliance of environmental regulations, and provide the required support to new and on-going projects being implemented by the counties.

6.3.3 County Budget Resources/Financial Capacity

331. The average annual budget allocation for the environment department in the Counties is usually below Kshs 100 million. The environmental and social management units at the County level are not adequately supported through budgetary allocations and provision of necessary facilities, equipment, and supplies and there is a need for supplementary support for the same.

6.3.4 Environmental Capacity and Performance Assessment

Preparation and Implementation of the Environmental Social Impact Assessment (ESIA)

332. Since the commencement of the devolved units, some infrastructure-related projects have been or are being executed by the County Governments. Most of these projects have not prepared the necessary instruments such as the ESIA to comply with relevant country systems and procedures due to poor planning, ignorance, and sometimes lack awareness. The Counties also indicated that the implementation of environmental aspects of projects is weak due to poor coordination and transparency between different agencies/ministries within the Counties that are responsible for the role of enforcement and compliance. It was also noted that the bidding/contract documents do not include ESHS clauses thus it is impossible to enforce compliance during implementation.
333. Although the counties have been made aware of the national environment framework requirements through training, the main environmental risk to the program is related to non-compliance by counties not preparing the environmental and social impact assessment reports i.e. the ESIA and ESMP for the proposed projects, and commencing civil works without the relevant assessments and approval licenses as required by the national environmental framework.
334. The other risk has been political interference on the execution of the projects, where the administration put development first, with compliance on environmental issues lagging. Based on experience from other PforR projects, the major risk is the seriousness and commitment by the counties to supervise and monitor the actual implementation of the environmental safeguards.

Public and Worker Safety

335. The Counties indicated they have no procedures and documentation in place for the management of the Occupational Health and Safety (OHS), with no specific department charged with the supervision and compliance on OHS issues. The County Governments depend on the National Construction Authority (NCA) and DOSHS to oversee the training of contractors and quality assurance on specific project sites. Also, NEMA does support the Counties in ensuring compliance of the contractors as per the ESMP at the project sites.
336. Experience from ongoing PforR projects has widely shown non-compliance in the areas of occupational health and safety for the workers on many sites visited across the counties. The workers were found to have inadequate and proper PPEs, and site safety was a concern due to poor protection, especially against falls for those working on heights. Although the county safeguard teams are sensitized on the need to supervise the sites often, and to ensure the contractors adhere to the occupational health and safety of the workers, poor compliance in this area is a big risk to the program.
337. Due to capacity problems, monitoring and enforcement by DOSHS are mostly missing throughout the counties, with many active construction sites not being registered or visited by an officer as required by the national framework on safety.

6.3.5 Social Capacity and Assessment

338. A detailed analysis (currently in draft) of the Kenyan regulatory system shows that the social management systems are not as well developed as those for environmental management except in the context of land acquisition. Although the Counties have Social Welfare departments, the social management is usually handled by individual ministries/departments executing the projects, without any involvement of the Social Departments. The understanding of social aspects and management is however weak, and not well understood in comparison to the needs of the PforR principles.

Land Acquisition and Involuntary Resettlement

339. Some Counties have in the past acquired land for use on their projects on a willing seller willing buyer principle. There are no dedicated Social Units or Directorates with mandates to manage the involuntary land acquisition and compensation for projects within the Counties; the respective ministries undertaking projects that require land acquisition take lead in the sensitization, land acquisition, and compensation process. The Counties are not clear on considerations of involuntary resettlement and livelihood restoration procedures due to disruptions of businesses or services to Project Affected Persons (PAPs). In particular, the management of social risks by Counties in the management of projects is poorly addressed, with the few available social staff scattered in different administrative units within the County government have no experience or capacities to support social safeguards.

Social Conflicts and Management

340. Some Counties have experienced some level of social conflicts, as a result of inadequate or culturally inappropriate consultations with communities. Among the projects that have resulted in social conflicts include; water abstraction from neighbouring Counties, expansion of roads and markets within the urban areas, and selection of solid waste dumpsites. The Counties have engaged the communities through their leaders to resolve the contentious issues amicably or suspended the projects altogether. No social conflicts were reported in post-conflict areas or in areas of territorial disputes.

Vulnerable Groups

341. The Counties indicated that they consider the women, youth, and disabled persons as a category of vulnerable and marginalized groups and have initiated special targeted opportunities in employment and businesses. However, there was a lack of appreciation in ensuring that minority groups who lack political representation and economic power within the Counties are able to participate or access the social and economic benefits of projects.

Public Participation Citizen Engagement, and Grievance Redress Mechanisms

342. As part of the devolution process, the Counties have a formalized mechanism for public participation in the budget-making and policy preparation process. Through other WB funded projects such as KDSP and KUSP, the Counties have started formalizing and documentation of public participation, citizen feedback mechanism, and grievance redress mechanism that enable

the citizens or project-affected persons to channel their grievances. However, more capacity building is needed in these areas to strengthen these systems.

6.4 Implementing Agency – The National Treasury

343. The National Treasury is the executing *ministry* for FLLCA at the national level and will, therefore, provide oversight of all Program activities to be funded. The CFU under NT will be the key implementing agency of the FLLCA program. CFU will be in charge of the overall project implementation of the program performance grants to be managed by CFU under the County Governments. CFU will be responsible for oversight of all related matters including policy guidance, supervision, and monitoring. organization and program structure on environmental and social management

344. The main *role* of the Implementing Agency in the environmental and social management process of the FLLCA will include;

- i. Preparation of Program operation manuals for the environment and social management process
- ii. Procure qualified consultants to prepare EIA/ESIA reports for investments determined to require full EIA/ESIA
- iii. Undertake supervision and monitoring of environmental and social aspects during project investment implementation
- iv. Prepare quarterly environmental and social management project progress reports

6.4.1 *NT institutional capacity and staffing*

345. The NPCT at NT has no past experience in direct implementation of World Bank-financed infrastructural projects. The NPCT will hire qualified and experienced environmental and social specialists as part of the team to oversee safeguards implementation at the National level and supporting the Counties.

6.4.2 *Budget Resources/Financial Capacity*

346. The safeguards personnel at NPCT level will require adequate support through budgetary allocations and provision of necessary facilities, equipment, and supplies to monitor implementation of safeguards for the program.

6.4.3 *Environment and Social Capacity and Performance Assessment*

Preparation and Implementation of the Environmental and Social Impact Assessment (ESIA)

347. The NT has in the past been involved with WB funded projects, but mainly on Technical Assistance. There is *limited evidence* that the directorate of Public Debt Management, under which the Climate Finance Unit will be located has prepared and successfully implemented the necessary instruments such as the ESIA or land acquisition to comply with relevant country systems and procedure for projects funded by the Bank and the Government of Kenya. The main risk will be the preparedness and capacity the directorate will build to implement

environmental and social safeguards, especially in overseeing their counterparts at the county levels where the projects will be implemented under the program.

7 CHAPTER SEVEN: ASSESSMENT OF PROGRAM SYSTEM WITH PROGRAM FOR RESULTS FINANCING CORE PRINCIPLES

348. This section summarizes the assessment of the capacity of Program institutions to effectively implement the Program environmental and social management system as defined in various rules, procedures, and implementing guidelines consistent with the core principles of *Program for Results Financing*. The section assesses the applicability of the core principles, Strengths, Weaknesses, Opportunities and Risks with respect to the policy and legal framework, the institutional context, and existing environment and social management procedures against these core principles.

7.1 Assessment of Environmental Program Systems

Core Principle 1: Program E&S management systems are designed to (a) promote E&S Sustainability in the Program design; (b) avoid, minimize, or mitigate impacts; and (c) promote informed decision-making relating to a Program’s E&S effects.

OP 9.00: Environmental and social management procedures and processes are designed to (a) promote environmental and social sustainability in Program design; (b) avoid, minimize or mitigate against adverse impacts; and (c) promote informed decision-making relating to a Program’s environmental and social impacts.

BP 9.00: Program procedures will:

- Operate within an adequate legal and regulatory framework to guide environmental and social impact assessments at the program level.
- Incorporate recognized elements of environmental and social assessment good practice, including (a) early screening of potential effects; (b) consideration of strategic, technical, and site alternatives (including the “no action” alternative); (c) explicit assessment of potential induced, cumulative, and trans-boundary impacts; (d) identification of measures to mitigate adverse environmental or social impacts that cannot be otherwise avoided or minimized; (e) clear articulation of institutional responsibilities and resources to support the implementation of plans; and (f) responsiveness and accountability through stakeholder consultation, timely dissemination of program information, and responsive grievance redress measures.
- While the Program seeks to improve the conditions of the poor and vulnerable groups in all Counties in Kenya, if adverse impacts are not well-managed, it is possible that these vulnerable groups could be impacted negatively.

Applicability – FULLY APPLICABLE

- **Core Principle 1** is considered in terms of environmental and social management (ESM) for the climate change sector during implementation the proposed Program, as a key instrument to establish and strengthen the existing environment and social management systems under the executing agency (NT) and implementing units (County Governments). The principle becomes more relevant because the Program will include investments in civil works related to construction, rehabilitation, and extension of new infrastructure services such as water pans, floods and storm water management, among others.
- These investments are likely to have physical footprint with a varying degree of environmental and social impacts, though expected to be localized, manageable and temporary, requiring mitigation.
- Certain type of investments, such as water supply and sanitation, abattoir, agricultural projects, etc. could potentially generate environmental and social impacts due to raw materials extraction; solid and liquid waste discharges; land acquisition; occupational health and safety for workers, as well as air and water pollution due to construction activities.
- Program-related activities will, therefore, be required to undertake environmental and social assessment and implementing measures stated in the Environmental and Social Management Plan/Preliminary Environmental Reports to mitigate adverse environmental and social impacts.

STRENGTHS

- The Government has a solid environmental legal and policy framework in place to protect, conserve, and mitigate adverse impacts.
- The national ESIA system provides a comprehensive framework for environmental screening, impact assessment, and management consistent with the core principles outlined in Program for Results Financing. However, it is weak in social screening and assessment.
- Existing legislation also helps minimize or mitigate possible adverse impacts on the natural habitats, archaeological sites, and cultural resources.
- Most counties have developed policies and legislation on public participation and social development.
- There is also a well-defined policy framework to enhance transparency on the development projects.
- The ongoing programs under KDSP and KUSP have helped to develop project-specific environment and social risk management systems/capacity. These two projects have

WEAKNESSES

- The implementation of the existing legal/regulatory provisions face challenges due to lack of enough and qualified human capacity within the implementing agency (NT) and at County levels to support Environmental and Social Management Systems (ESMS)
- Relevant SRM laws are fragmented across different ministries and departments.
- The social risk management systems at the national and county level are not well defined, developed, and coordinated.
- Insufficient capacity building activities on implementing agency, county organizational structures, and county environmental and social officers to ensure compliance to required environmental and social standards during project implementation
- Weak coordination among the various implementers and inadequate attention to environmental and social concerns, particularly at the County level.

<p>sensitized counties on the importance of having such systems in place.</p>	<ul style="list-style-type: none"> • Low budget allocation for NEMA, DOSHS, Social, Gender, Children, Labour Officers (etc), County governments for Environmental and Social management. • Poor community involvement and participation in environmental management and conservation because of low environmental awareness and information dissemination programs. • Inadequate local communities’ consultations during CIDP process, especially on the marginalized communities/indigenous peoples. • Poor facilitation (of resources e.g. transport, office equipment, communication services, office space, enough human personnel, e.t.c) at the County levels to conduct monitoring and inspection of subprojects implemented by the counties. • The implementation of ESMP is inconsistent due to the weak capacity of the county staff. This is as a result of poor or no budgetary allocation for the mitigation measures in the bidding/contract documents. • Lack of integrating ESHS clauses as part of the bidding/contract documents which makes it difficult to enhance compliance during project implementation.
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • FLLCA has an opportunity to learn from KDSP and KUSP who have put ESRM systems in place, and this project will promote peer-to-peer learning between these projects. • The counties have been sensitized on the need to have ESMS in place under KDSP and KUSP and are familiar with requirements in implementing WB funded projects • Development of County environmental and social policy frameworks 	<p>RISKS</p> <ul style="list-style-type: none"> • During projects execution, there is a risk of poor implementation or mainstreaming of existing environmental and social management regulations in program guidelines • Addressing the environmental and social management needs and challenges depend on capacity building of the key sector organizations both in terms of human and financial resources, training, and strong monitoring. Poor and inconsistent consultations with the Community members and stakeholders in environmental and social issues identification and mitigation.

<ul style="list-style-type: none"> • Development of appropriate guidelines, checklists, technical options, and manuals to ensure compliance with environment and social legislation within the Program. • The counties have social development officers, health, children officers, environment officers, among others where the program can reach out to this expertise for support in the management of the environment and social risks • The PIU has an opportunity to build and strengthen Country and County systems to manage environmental and social risks under the IPF component 	<ul style="list-style-type: none"> • Staffing and skills mix at the National and County levels are inadequate to handle environmental and social risks and management. The World Bank supervision will not focus on individual transactions but the procedural aspects. <p>LEVEL OF RISK - SIGNIFICANT</p>
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Core Principle 2: Program E&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.

OP 9.00: Environmental and social management procedures and processes are designed to avoid, minimize, and mitigate against adverse effects on natural habitats and physical cultural resources resulting from Program.

BP 9.00: As relevant, the program to be supported:

- Includes appropriate measures for early identification and screening of potentially important biodiversity and cultural resource areas.
- 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.
- Takes into account potential adverse effects on physical cultural property and, as warranted, provides adequate measures to avoid, minimize, or mitigate such effects.

Applicability – APPLICABLE

- The provisions in Core Principle 2 are considered as part of the environmental and social management assessment process analyzed under Core Principle 1. The Program will not support investments that would either affect or convert critical natural habitats and will avoid the conversion of natural habitat.

<p>Core Principle 2: Program E&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>	
<ul style="list-style-type: none"> • The proposed sites under the program will be situated in built-up areas, or deep in the rural areas and away from the rural villages where farm fields, open communal lands, and other territories may adjoin natural habitats, wetlands, or places with unknown physical cultural resources. • Activities funded under the program will not likely generate adverse impact on natural habitats, physical and cultural resources since civil works will only be limited to urban areas and confined to a small geographical location. • In addition, the subprojects are expected to have a smaller physical footprint, and therefore preventive approach will be used in siting the proposed infrastructures to avoid adverse impacts on natural habitats and physical resources • Construction of some infrastructures such as the location of solid waste disposal facilities and water projects could pose some risk to natural habitats and physical cultural resources if not sited appropriately. 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • The existing legislation for Kenya ESIA process considers physical cultural resources, includes screening for archaeological, historical, and cultural sites to ensure environmental and social sustainability. • The assessment incorporates 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 involvement from strong institutions such as NEMA and National Museums of Kenya. 	<p>WEAKNESSES</p> <p>The weaknesses identified for Core Principle # 1 apply to Core Principle # 2.</p> <p>Others include;</p> <ul style="list-style-type: none"> • Physical cultural heritages are not well documented or exhaustively listed at national and county levels. • Weak enforcement of civil contracts and laxity in monitoring during construction. • Weak capacity to assess the potential impacts on natural habitats and physical cultural resources.
<p>OPPORTUNITIES</p> <p>The opportunities and actions identified for strengthening the system for Core Principle # 1 apply to Core Principle # 2.</p> <p>Others include;</p> <ul style="list-style-type: none"> • Allocate sufficient budget and resources for the identification and management of natural habitats and PCRs. • Improve the level of awareness on safeguarding threatened habitats and PCRs 	<p>RISKS</p> <p>The risks identified for Core Principle # 1 apply to Core Principle # 2.</p> <ul style="list-style-type: none"> • Inability to screen subprojects and impacts on natural habitats and PCRs. • Specific measures to manage impacts on PCRs and natural habitats are not included in the subproject cost.

<p>Core Principle 2: Program E&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>	
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> During excavation works, known or unknown physical cultural resources, tangible and intangible resources like antiquities, relics of cultural and religious valued resources might not be properly identified and might be affected. Lack of commitment and resources to implement E & S actions on PCRs as part of the Program Action Plan. <p>LEVEL OF RISK - MODERATE</p>

<p>Core Principle # 3: Program E&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 located in areas prone to natural hazards.</p>	
<p>OP 9.00: Environmental and social management procedures and processes are designed to protect public and worker safety against the potential risks associated with (a) construction and/or operations of facilities or other operational practices developed or promoted under the program; (b) exposure to toxic chemicals, hazardous wastes, and otherwise dangerous materials; and (c) reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards.</p>	
<p>BP 9.00: Promotes community, individual, and worker safety through the safe design, construction, operation, and maintenance of physical infrastructure, or in carrying out activities that may be dependent on such infrastructure with safety measures, inspections, or remedial works incorporated as needed.</p> <ul style="list-style-type: none"> Promotes the use of the recognized good practice in the production, management, storage, transport, and disposal of hazardous materials generated through program construction or operations; and 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. 	

<p>Core Principle # 3: Program E&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 located in areas prone to natural hazards.</p>	
<ul style="list-style-type: none"> ▪ Includes measures to avoid, minimize, or mitigate community, individual, and worker risks when program activities are located within areas prone to natural hazards such as floods, hurricanes, earthquakes, or other severe weather or climate events. 	
<p>Applicability – FULLY APPLICABLE</p> <ul style="list-style-type: none"> • The provisions in Core Principle # 3 are considered as part of the ESIA process analyzed under Core Principle # 1. • Rehabilitation, construction, and operation of various physical infrastructures under the program will expose the general public, as well as construction workers to risks such as dust, air pollution, noise, water pollution, solid waste, and toxic or hazardous materials at sites during civil works, which directly or indirectly resulted in occupational safety impacts. Therefore, Core Principle 3 is <i>fully applicable</i> to the Program. 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • The Government’s standard contract conditions for contractors include provisions for public and worker safety (for example, regulations on the use of explosives, provision of barricades at the construction site, use of personal protection gear by workers, disposal of construction debris and wastewater, preventing the creation of conditions conducive to disease vectors, etc.). • The country systems have guidelines/regulations through agencies such as DOSH and NCA on aspects concerning the management of construction sites, including public and worker safety risks from construction/operation of facilities. 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> • Limited capacity and poor supervision to ensure compliance to required national standards within DOSHS and other relevant agencies at the Counties • Limited capacity in technical personnel, safety equipment provision, and budget by contractors to comply with national requirements and international good practices • Weak coordination among the various implementing agencies, and inadequate attention to OHS concerns, particularly at the County level. • There is a general lack of awareness on health and safety issues, particularly concerning exposure to workplace safety hazards aspects in hazard-prone areas, e.t.c • There is poor maintenance of infrastructures by implementing agencies after completion, e.g. stormwater drainage systems.
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • Strengthening of Country and County systems to manage OHS risks 	<p>RISKS</p>

<p>Core Principle # 3: Program E&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 located in areas prone to natural hazards.</p>	
<ul style="list-style-type: none"> • Improve awareness and implementation/enforcement capacity of implementing partners and contractors on OHS through training and orientations. • Creation of development of good practices and procedures for (i) construction site management, (ii) post-construction site rehabilitation, and (iii) proper disposal of waste and waste management. • Include worker’s Code of Conduct in contract documents. • Enforcement of health and safety provisions in the contract. • Update the standard bid documents and contracts to spell out specific OHS measures, where required, preparation, and implementation of Contractor ESMP. • Inclusion of appropriate requirements in civil works contracts and preparation of the required instruments of management plans such as Waste Management Plan, Traffic Management Plan, Air, and Noise Pollution, among others. 	<ul style="list-style-type: none"> • Systematic implementation of OHS provisions requires enhanced awareness in the key sector organizations and strengthened monitoring. • Inability to ensure public and worker safety can result in physical injuries, including loss of life to the workers and public at and near construction sites. • Lack of enforcement of contracts resulting in non-compliance, accidents, and fatalities at the construction sites. • Poor enforcement with a penalty for erring contractors. • Non-reporting of project-related accidents and fatalities, and inaction on implementing agencies and contractor. <p>LEVEL OF RISK – SIGNIFICANT</p>

<p>Core Principle # 4: Program E&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>OP 9.00: Land acquisition and loss of access to natural resources are managed in a way that avoids or minimizes displacement, and affected people are assisted in improving, or at least restoring, their livelihoods and living standards.</p>
<p>BP 9.00: As relevant, the program to be supported:</p> <ul style="list-style-type: none"> • Avoids or minimizes land acquisition and related adverse impacts; • 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;

- 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;
- 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
- Restores or replaces public infrastructure and community services that may be adversely affected

(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).

Applicability – PARTIALLY APPLICABLE

- There is the potential development of some physical infrastructure for some sub-projects (eg water pans, water dams, construction of buildings, etc) that might require land acquisition and involuntary resettlement, resulting in minimal relocation and loss of livelihoods.
- Investments financed by the program will exclude high risks projects (projects that have significant negative environmental and social impacts that are sensitive, diverse, or unprecedented).
- Willing buyer-willing seller will be the preferred means of land acquisition in all cases. The government's right to acquire land compulsorily will only be used where it is unavoidable.
- Where the compulsory acquisition is to be employed, the evidence must be obtained (as detailed in the POM) that attempts were made to acquire land via the marketplace. Moreover, a compelling reason why alternative land, available in the market, could not be found must be documented. Instances where compulsory acquisition may be unavoidable include but are not limited to, road rehabilitation, construction of new roads, water and sewerage systems.
- Where households are physically displaced, the counties will provide options to the PAPs guidance provided in the POM.
- Economic displacement can and will involve the physical relocation of PAPs.
- Small parcels of private residential land that do not excessively affect land use may still be subject to compulsory acquisition as they are considered economic displacement.
- Voluntary land donation and use permit processes will be used for land under customary rights, according to land tenure and, ownership and transfer of rights arrangement.

STRENGTHS

- Compulsory land acquisition processes are well defined in the Kenyan Law. This process has put in place measures to protect

WEAKNESSES

- Weak capacities to ensure compliance to required national standards within the implementing agency and Counties

<p>the affected persons, defines a affected persons consultation process and avenues for grievance redress.</p> <ul style="list-style-type: none"> • The NLC has officers in counties that can be consulted and utilized for land acquisition process. • National government agencies and some counties practice resettlement planning and livelihood restoration that meet international good practice. • A Centre of Land Acquisition and Resettlement has been established at the University of Nairobi to offer training to national and county governments to offer training on international good practices on land acquisition and resettlement. • The Country has well-defined eviction processes that protect evictees from force eviction process. 	<ul style="list-style-type: none"> • There is no clear definition on the rights of those occupying public land and their entitlement, especially on livelihood restoration. • The Law does not stipulate that resettlement should be avoided wherever possible; on the contrary, as long as a project is for the public interest, involuntary resettlement is considered to be inevitable • Lack of human capacity at NLC to handle multiple land acquisition for different projects at the same time • Lack of policy and legislation guidance on resettlement and livelihood restoration at NLC • Weak coordination among the various implementers (NLC and relevant ministries) and inadequate attention to livelihood restoration concerns, particularly within the County level. • Lack of budgetary allocation for land acquisition and resettlement processes.
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • Strengthening of country and County systems to manage and implement the land acquisition process and associated risks to acceptable standards • Strengthening capacities to enforce Land acquisition implementation measures 	<p>RISKS</p> <ul style="list-style-type: none"> • Systematic implementation of land acquisition procedures as required by the WB policies due to weaknesses of the local policies • Potential involuntary resettlement without compensation to informal settlers occupying public land illegally • Delay of land acquisition due to lack of capacity at the NLC • Lack of financial resources within the Counties for land acquisition for the program <p>LEVEL OF RISK – MODERATE</p>

<p>Core Principle # 5: Program E&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>OP 9.00: Due consideration is given to cultural appropriateness of, and equitable access to, program benefits giving special attention to 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>BP 9.00:</p> <ul style="list-style-type: none"> • 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. • 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. • 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. 	
<p>Applicability –APPLICABLE</p> <p>The program will be implemented in all the counties in Kenya where Indigenous/Marginalized Groups and Vulnerable Groups including women, children, the elderly and PWD exists in the Program areas</p>	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • The National laws have developed legislations under the CoK, 2010 has recognized marginalized groups. • The County and County systems have clearly articulated the minimum requirements for equitable access and benefits for the disabled, women and the youth in its programs 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> • There is no specific legislation governing Indigenous Peoples in Kenya. The provisions in the CoK, 2010, however, specifically include minority, traditional, indigenous, and pastoral communities among the groups of communities that are defined as <i>marginalized communities</i>.

<ul style="list-style-type: none"> • The government systems have also embedded in the constitution the citizen engagement through Consultation and Public Participation (CPP) requirements on all County programs as part of the devolution process. 	<ul style="list-style-type: none"> • Weak capacities to ensure compliance to required national standards on equitable access within the implementing agency and Counties • Poor commitment to reduce inequity at the national and County levels • No annual monitoring system to measure the progress of equitable access and CPP programs. • Weak systems to curb corruption in the County and country systems involved inequitable programs • Weak capacity to disseminate information to promote social accountability and grievance redress mechanisms at national and County levels • Lack of awareness among the VMGs, leadership, and professionals on the needs of VMGs • Lack of clear guidance and procedures to manage the inclusion of VMGs. • Lack of gender mainstream strategies to facilitate inclusion of gender equity in Programs
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • There is a commitment at the national and County levels to reduce inequity poverty to vulnerable groups (disabled, women, and youth) which is accompanied by adequate funding through other programs • Improved staff management and training on the applicability of these principles to the program • Development of robust stakeholder management strategies within the systems as part of the current CPP programs to strengthen and systematize projects consultation processes and grievance redress mechanisms • The opportunity of the program implementers to empower and benefit VMGs in an inclusive manner. 	<p>RISKS</p> <ul style="list-style-type: none"> • Poor consultations with the VMGs on the program • Weak procurement processes and procedures for equitable access to program benefits by the VMGs • Barriers that hinder progress towards achieving the objective of increased equity brought about by corruption, cultural, ethnic and gender disparities <p>LEVEL OF RISK – SUBSTANTIAL</p>

<ul style="list-style-type: none"> The Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in Kenya. These guidelines present the key principles and elements of FPIC. These principles can be used as a guide for a participatory process in the fourteen counties where the Bank and Government of Kenya have identified as VMGs. 	
<p>Core Principle # 6: Program E&S systems avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.</p>	
<p>OP 9.00: Avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.</p>	
<p>BP 9.00: Considers conflict risks, including distributional equity and cultural sensitivities.</p>	
<p>Applicability –APPLICABLE</p> <ul style="list-style-type: none"> The program is designed to yield significant social benefits to all citizens and to improve distributional equity within select urban areas. ESSA findings indicate that there have been some conflicts between Counties in the past, mainly on issues sharing of resources (especially pertaining to water abstraction on rivers between Counties), but not on projects in urban areas. The projects might also be located where community conflicts have been reported in the past, due to sharing of resources, especially in Arid and Semi-Arid Regions of Kenya, where climate change impacts are strongly felt. On the other hand, the principle is applicable due to social conflicts that may arise due to labour influx in the project areas such as gender-based violence, increased risk of illicit behaviour and crime, increased burden and competition on public resources, increased risk of communicable diseases, among others. The program will not undertake projects that will cause or exacerbate social conflict in fragile states, post-conflict areas or areas subject to territorial disputes, or cause social conflict or impact distributional equity or associated cultural sensitivities 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> The National laws have developed legislations under the CoK, 2010 has recognized marginalized groups. 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> There is little attention given on preventative measures to address social conflicts across the country, including public debate or policy discourse on crime and violence prevention

<ul style="list-style-type: none"> • The country and County systems have clearly articulated the minimum requirements for equitable access and benefits for the disabled, women and the youth in its programs • The government systems have embedded in the constitution the citizen engagement through Consultation and Public Participation (CPP) requirements on all County programs as part of the devolution process • The ombudsman and the national security systems at the county level provide an avenue for resolving disputes. 	<ul style="list-style-type: none"> • Weak grievance mechanisms to manage social conflicts at the National and County levels • Lack of reliable data to identify causes of social conflicts, e.g crime and violence in urban areas • Weak capacities to ensure compliance at the implementing agency and the law enforcement • Weak systems to disseminate information and mechanisms to reduce social conflicts at National and County levels
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • There is a commitment at the national and County levels to encourage utilization of local labour to empower the local communities during program implementation • Training on the applicability of these principles to the program • Development of robust stakeholder management strategies within the systems as part of the current Public Participation programs to strengthen and systematize projects consultation processes and grievance redress mechanisms • Integrate contractual obligations in the legal agreements and contracts for contractors to take responsibilities of the social risks, with appropriate mechanisms for addressing compliance • Incorporate Crime Prevention through Environmental Design (CPTED) training to be used as an approach in the prioritization of proposed investments/interventions. • Presence of Government officers from the National Security agencies that encourage dialogue in dispute resolution as well an avenue for social conflict resolution. 	<p>RISKS</p> <ul style="list-style-type: none"> • Lack of identification of social risks brought about by social conflict, including the prevalence of gender-based violence • The hiring of contractors with weak E&S capacity to manage social risks • Unavailability of local labour in some counties leading to a high ratio of labor influx vis-à-vis host population • Pre-existence and recurrence of social conflicts or tensions in project locations • Political interference that exacerbates social conflicts <p>LEVEL OF RISK – MODERATE</p>

8 CHAPTER EIGHT: INPUTS TO THE PROGRAM ACTION AND IMPLEMENTATION PLANS

349. Based on the above assessment and findings, this section outlines key findings and recommended actions for improving the social and environmental management systems required for mitigating/minimizing those risks and gaps/challenges, where appropriate during the planning and implementation stages. These options for improvement of the environmental and social management system (ESMS) were discussed during the ESSA validation workshop with the stakeholders who included the Counties participating in the Program.

8.1 Key Findings on the Environmental and Social Systems Assessment

350. The key findings of ESSA on social and environmental systems are as follows.

- (i) The national government has well developed and robust legislation, regulations, and systems to manage environmental, health, and safety risks. The assessment identified the weakness in supervision/monitoring and enforcement at both the national and County levels which should be strengthened to address the potential environmental challenges that might be encountered during the implementation of the FLLCA. However, there is no equivalent legislation or systems to manage distinctly social risks, at the national or county levels. Kenya does not have a developed and defined Social Risk Management System. Social risk management functions are fragmented across various ministries and institutions without any coordination mechanisms in place. The World Bank has undertaken Kenya's Social Risk Management legal and institutional review that is currently under internal review.
- (ii) County governments have not developed nor domesticated national legislations and institutionalized systems for the management of environmental or social risks for investment projects. Through the Kenya Devolution Support Program (KDSP) and Kenya Urban Support Program (KUSP) financed by the World Bank as PforRs, Counties have been sensitized and are now aware of the importance and need to have these systems in place. The two PforR programs have developed program-specific systems to support their program operations in the management of environmental and social impacts. This presents an opportunity to build on the existing program-specific environmental and social systems at the County level and adopt good lessons learned.
- (iii) The Program's implementing unit at the National Treasury's and County Climate Finance Units do not have an Environment and Social specialists with experience in PforR. The implementing units (at National and County levels) will need to be established and trained on PforR to strengthen the management of potential environmental and social risks along with a framework for monitoring.
- (iv) The capacity (human and financial resources) within the Counties and supporting institutions (NEMA, National Construction Authority (NCA), Department of Occupational Health and Safety (DOSHS), etc.) responsible for managing environmental, health, and safety risks need strengthening and training.

- (v) The Counties have no environmental, health, and safety management systems in place for the management of the Environment Health and Safety (EHS) risks and impacts. Also, there is no specific department or unit that is charged with the role of supervision and ensuring compliance and enforcement within the Counties.
- (vi) National officers at the county level such as Social Development, Labour and Gender Officers, and county officers, are not currently managing social risks. Counties and institutions (County departments) have uneven levels of readiness to manage social risks. The program will develop an Environmental and Social Risk Management Manual that outlines this involvement.
- (vii) On public consultation and participation, the Constitution of Kenya and the devolution process has put in place robust requirements for citizen participation in the project and budget development process. The Climate Change Act (2016) required robust citizen engagement in the prioritization process for climate change projects through the ward and county climate change committees. However, public consultation and participation are poorly funded and not adequately carried out. Furthermore, there is a weak formal and documentation of citizen feedback and grievance redress mechanisms that allow for a transparent, timely, and efficient redress process in county-level projects.
- (viii) The Constitution of Kenya (2010), has legislations under the Land Act (2012), to manage social risks related to land acquisition. However, the County governments have not sufficiently mainstreamed the land acquisition procedures into the planning and development process. To address the potential of land acquisition challenges under the FLLCA, there is a need to strengthen the county-level NLC representatives responsible for the land acquisition process. The specific areas of strengthening are presented in the Program Action Plan.
- (ix) The CoK, 2010, Article 260 provides a platform to identify the vulnerable and marginalized groups of people and communities in Kenya, however, most counties' interpretation of this is viewed in the context of poverty and social welfare of these groups; for example reserving business and employment opportunities to Persons with Disabilities (PWD), the Youth and Women. There is a lack of appreciation or resources dedicated to ensuring that marginalized communities who lack political representation and economic power can participate effectively or access social and economic benefits from the projects carried out by the National and County governments.
- (x) The Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in 2016, in partnership with VMGs. These guidelines are not widely known by National and County Governments thus not applied.
- (xi) There are formal and documented systems in the management of social conflicts at the national and County systems during the implementation of projects, especially to manage conflicts between Counties and labour influx issues. These systems include the

ombudsman, national security systems, and local communities conflict management, among others.

- (xii) There is weak annual environment and social performance verification audit procedures for minimum conditions related to environmental and social safeguards under the Kenya Urban Support Program and the Kenya Devolution Support Program.

8.2 Program Action Plan Summary

351. Though the potential environmental and social risks and impacts of investments and activities under this Program are expected to have minor impacts, the Program provides an opportunity not only to strengthen the weaknesses in the procedures mentioned above to identify and mitigate these potential effects but also to strengthen the Country and County systems in three areas: (i) strengthening of environmental and social management systems, (ii) ensuring implementation and monitoring of environmental and social management; and (iii) building capacity for environmental and social management. To fill the gaps identified in the ESSA, the Program will support specific measures to enhance Kenya's environmental and social management system performance. These measures will be implemented through two main areas namely, the support of the establishment of a Social Risk Management unit at the Ministry of Labour and Social Protection, support the County Environment Committees established through the National Environmental Management Authority and the Program will collaborate with the Directorate of Occupational, Safety and Health Services to enhance Counties capacity to manage OHS risks.

352. These measures have been consolidated into the ESSA Action Plan that guides the overall formulation of the Program. Implementation by Counties of environmental and social procedures contained in the Program's Operational Manual and Environmental and Social Risk Management Manual will be performance criteria in the Program Assessment System that will be implemented for the Program.

353. The implementation of some of these measures will be enhanced by their integration into the overall Program Action Plan and legally incorporated into the financing agreement of the Program. These action plans for the Program are grouped into three areas.

- iv. actions to strengthen the environmental and social management systems.
- v. actions to strengthen the implementation and monitoring of the environmental and social management of sub-projects; and
- vi. actions to build the capacity of relevant County staff involved in the Program to enhance environmental and social management performance.

8.2.1 *Strengthening of the Environmental and Social Management System*

354. The recommended actions under this theme are:

- (i) Support the Ministry of Labour and Social Protection (MLSP) to develop a Social Risk Management mechanism to review and clear social impact assessment prior to the approval of development projects and programs both at the national and county level, beyond this

- particular program.
- (ii) Establish Social Risk Management (SRM) committees at the local level and enhance the capacity of these committees and county MLSP officers at various levels on SRM.
 - (iii) Collaborate with NEMA to provide targeted capacity building to Senior Management of the Counties, County Environmental Committees, and implementing departments on national environmental requirements.
 - (iv) Strengthen the Environment and Social Impact Assessment process under the program by including the Ministries and Departments involved in Social Development in the development and review of ESIA's under the program.
 - (v) Collaborate with DOSHS to provide targeted capacity building to Senior Management of the Counties, County Environmental Committees, and implementing departments on national OSH requirements.
 - (vi) Collaborate with DOSHS to prepare a simplified checklist for building and construction works that Counties can easily follow and adopt.
 - (vii) Develop Program Operation Manual (POM) incorporating environmental and social management procedures before launching of the Program.
 - (viii) Develop a standalone Environment and Social Risk Management Manual.
 - (ix) Develop guidelines to manage social conflicts related to labour influx to be incorporated into the Environment and Social Risk Management Manual.
 - (x) Establish coordination mechanisms with other institutions/entities/departments including the directorates of Occupation, Health, and Safety, labour, gender, social development etc.
 - (xi) Establishment of a Grievance Redress Mechanism for the program that is accessible to the project beneficiaries. The environment and social risk management manual will provide a full description of the GRM process.
 - (xii) Use lessons learned and coordination of efforts of the actions under the KUSP and KDSP project's Environmental and Social Management System (ESMS).
 - (xiii) Hiring safeguard specialists (Environment specialists and Social risk management specialists) at the Program Management Team at National Treasury and County levels.
 - (xiv) Ensure that all the bidding documents for specific investment include the environment and social clauses and the related costs.
 - (xv) Establish community and stakeholder engagement process for the program that integrates the County Integrated Development Plan process.
 - (xvi) Implementation by Counties of land acquisition and involuntary resettlement procedures and voluntary land donation procedures documented in the Environmental and Social Manual.
 - (xvii) Prior approval of the environmental and social screening and review forms by PIU.

8.2.2 *Strengthening of implementation and monitoring of the environmental and social management system*

355. The recommended actions under this theme are:

- (i) Incorporation of environmental and social management implementation and monitoring procedures documented in the Program Operation Manual and Environmental and Social Risk Management Manual by implementing units for:
 - Supervision or monitoring of the ESMPs

- ES Reporting
 - GRM monitoring
 - Monitoring Contractor performance in terms of E&S issues
- (ii) Application by Counties of environmental and social procedures documented in the Environmental and Social Risk Management Manual.
 - (iii) Public disclosure of the ESIA and ESMP and other documents.
 - (iv) Program supervision teams to include environmental and social specialists.
 - (v) Monitoring of complaints and issues related to land acquisition and involuntary resettlement.
 - (vi) Implementation by Counties of mitigation and compensation measures.
 - (vii) Reporting of environmental and social incidents and accidents by Counties.
 - (viii) Develop procedures for assessing the performance of the program on environment and social management that relies on environment and social performance protocol, this will be outlined on the environment and social risk management manual.
 - (ix) Incorporating ESMP and OSH contractor clauses in the bidding and contract documents.

8.2.3 *Strengthening of environmental and social management capacities*

356. The recommended actions under this theme are:

- (v) Integration of environmental and social management into the Program’s general capacity building plan, including land acquisition, user agreements, and voluntary land donations, stakeholder engagement/consultation, and use of the principles of Free Prior and Informed Consent (FPIC) (Ministry of Environment and Forestry supported the development of National Guidelines for Free, Prior, and Informed Consent in 2016) to guide the participatory process in the fourteen (14) VMGs counties and support the Program capacity building plan. These guidelines present the key principles and element of Free, Prior and Informed Consent, considering that this is a locally-led operation in defining local actions to be supported under the project, a robust meaningful consultation process with local communities is required in developing local action plans that candidly represent community needs and priorities.
 - (i) Training in environmental and social management for technical staff and counties official.
 - (ii) Training in incorporating environmental and social risks in the bidding documents and the cost for the County Finance, Chief Officers, and Procurement officers.
 - (iii) Capacity building of counties on systems of managing social conflict that include the ombudsman, national government agencies, and local communities.

8.2.4 *COVID-19 Pandemic Management*

The government of Kenya has issued directives, policies and laws that touch on public health, fiscal policies, social status (behavioral) and the administration of justice that have been passed, cited and used by the Government since the 13th of March 2020 when the 1st case of the COVID -19 was reported in Kenya. The Program will therefore adhere to the Laws and Regulations that have been issued by the Government of Kenya to ensure the risks associated with COVID-19 pandemic are mitigated during the Program Implementation.

Table 10 :Environmental and Social Action Plan

Issue/Risk Description	Action/Completion	Timeframe	Responsible Party	Instrument
Weak and poorly coordinated environmental and social management systems at national and county levels	FLLCA Environment and Social Risk Management Manual and POM to include: ❖ full description of <u>environmental and social management processes and procedures</u> for <u>proposed</u> investment projects (screening, appraisal, assessments, mitigation measures, monitoring and supervision etc.)	Before program commencement	NT	POM (dated covenant) Environment and Social Risk Management Manual
	Program guidance notes, guidelines and technical standards on climate change investment activities to include environmental and social management issues	Continuous	NT	POM that includes an Environment and Social Risk Management Manual /Climate Change Sectoral Guidelines
	<u>coordination and review mechanisms</u> for environmental and social management systems to be led by CEC in charge of Environment and Climate docket	Continuous	County governments	Progress reports
Inadequate <u>implementation</u> of environmental and social management system	Include in DLIs and Key Result areas, Minimum Conditions (MC)/Performance Standards (PS) system ❖ Preparation - Incentives for inclusion of program’s ESMS processes/procedures in investment project preparations (minimum	Continuous	NT	Minimum Conditions (MCs)/Performance Standards and Annual Performance Annual (APA) process DLI and key result areas.

Issue/Risk Description	Action/Completion	Timeframe	Responsible Party	Instrument
	conditions and key result areas on investment project preparation) ❖ Performance - Incentives for application of ESMS processes/procedures in implementation of investments. (Performance standard on complete investment projects).			
	County and NT reporting requirements to include reporting on ESMS performance	By negotiations (POM)	NT	POM that includes an Environment and Social Risk Management Manual
Non-compliance of Contractors to Program E & S requirements	NT and Counties to develop induction and training program for all their contractors on ESMS	Before commencement of projects	WB, NT, NEMA, DOSHS, Counties	
Insufficient staffing, knowledge and skills for managing environmental and social issues	Qualified and experienced staff assigned to coordinate environmental and social management in Climate Fund Unit at NT	By effectiveness (recruitment or secondment)	NT/CFU	POM (program management and ESMS sections and ToRs) that includes an Environment and Social Risk Management Manual.
	Qualified and experienced staff assigned to environmental and social management in Counties in the Climate Change Fund Units	By negotiations (POM) By effectiveness (recruitment or secondment)	NT (for POM) County governments	POM (ESMS section and ToRs) Covenant

Issue/Risk Description	Action/Completion	Timeframe	Responsible Party	Instrument
	<p>Role and responsibilities of safeguards specialists defined POM and the Environmental and Social Manual</p>			
	<p>NT with support of the relevant institutions prepare training manuals on environment and social for National and County level officers</p> <p>Training in environmental and social management systems for technical staff at the national and county levels</p>	<p>Year 1</p> <p>Continuous</p>	<p>WB, NT, CoG KSG, NLC, State Department of Social Development, DOSHS, and NEMA</p>	<p>Technical Assistance component</p>
<p>Lack of project specific grievance redress mechanisms</p>	<p>Establishment of a Grievance Redress Mechanism (will be part of the overall GRM for the program)</p>	<p>Year 1</p>	<p>NT and Counties</p>	<p>POM that includes an Environment and Social Risk Management Manual</p>
<p>Poor Program coordination</p>	<ul style="list-style-type: none"> ❖ Develop safeguards reporting structures for the program in the environmental and social management manual ❖ Use lessons learned and Coordination of efforts of the actions under the KUSP and KDSP ESMS action plan and strategies 	<p>Continuous</p>	<p>NT and World Bank</p>	<p>ESMS</p>

ANNEXES

Annex 1 : Questionnaire Used For Consultation

Core Principle	Key questions	Specific questions
<p>Core Principle 1 Program E&S management systems are designed to (a) promote E&S sustainability in the Program design; (b) avoid, minimize, or mitigate impacts; and (c) promote informed decision-making relating to a Program’s E&S effects.</p>	<p>(i) Operate within an adequate legal and regulatory framework to guide E&S impact assessments, mitigation, management and monitoring at the PforR Program level.</p>	<ol style="list-style-type: none"> 1. What relevant E&S laws, regulations, procedures, decrees, or other mandatory legal instruments are applicable to the Program activities and associated impacts and risks? (It is important to note that an ESSA should not be limited to the legal and policy framework for a single leading agency such as the Ministry of Environment. Many sectoral laws and policies outside of environmental agencies may also be highly relevant). 2. Does/do the Program implementing agency/agencies have the legal and/or regulatory authority to commit resources and implement actions necessary for effective E&S assessment and management of impacts and risks? 3. If not, are critical changes to the legal or regulatory framework needed before the operation can proceed? 4. If a new Program is being proposed, has legal and regulatory authority been clearly established? 5. Do systems include mechanisms, where appropriate, to ensure objective, disinterested or independent assessments of E&S impacts?
	<p>(ii) Incorporate recognized elements of good practice in E&S assessment and management including: Early screening of potential impacts.</p>	<ol style="list-style-type: none"> 1. Do applicable procedures require E&S screening or assessment of activities associated with the proposed PforR operation that presents risks? 2. Does screening lead to E&S assessments that are proportional in depth and scope to the identified adverse impacts and risks (e.g. does it apply risk categories to determine the depth and breadth of assessments)? 3. Are screening procedures comprehensive? Do they include specific consideration of the full range of E&S risks, including among others biodiversity impacts, land-use change, changes to air or water quality, management of hazardous materials and social risks such as land acquisition? 4. Do screening procedures include the opportunity for stakeholder involvement in the identification of priority E&S risks and impacts?

Core Principle	Key questions	Specific questions
		<ol style="list-style-type: none"> 5. Do these requirements clearly apply to the Program(s) proposed for support by the ProrR operation? Has screening for, and estimation of, E&S effects been part of the PforR operation? 6. Does this screening process consider opportunities to enhance the range and reach of Program benefits? 7. Is E&S screening conducted in an integrated manner, so that both E&S risks and impacts are identified early on? 8. Is the scope of Program screening broad enough to cover all potential significant E&S issues?
	<p>(iii) Consideration of strategic, technical, and site alternatives (including the “no action” alternative)</p>	<ol style="list-style-type: none"> 1. Do the applicable systems require the consideration of alternatives or other forms or options assessments to avoid or minimize potential impacts and risks? for example are strategic, technical, and site-selection alternatives considered, including a “do nothing” options? 2. Which if any, other forms of strategic planning, such as sectoral master planning (e.g. urban, natural resources, coastal zones), are used to identify E&S risks and impacts 3. Does Program design (ie identification of activities or expenditure) consider the relative environmental costs and benefits of feasible alternatives?
	<p>(iv) Explicit assessment of potential induced, cumulative and transboundary impacts.</p>	<ol style="list-style-type: none"> 1. Do Program procedures require the consideration of induced, cumulative, or transboundary impacts as part of the screening, options assessments, and/or Environmental and Social Impact Assessment? 2. Do the procedures allow for, or promote, the use of tools such as strategic E&S impact assessments to help identify and evaluate such impacts? 3. Do the systems require such issues to be managed if they are relevant to the Program? 4. Are Program activities set within strategic management plans that provide an operational framework for understanding and managing such impacts?

Core Principle	Key questions	Specific questions
		<ol style="list-style-type: none"> 5. Do the procedures include measures for evaluating critical global environmental issues such as transboundary pollution, biodiversity loss, international waterways, and climate change? 6. Does the assessment provide adequate opportunity to engage stakeholders on induced, cumulative and transboundary impacts? 7. Do the systems require considering the implications to and from climate change associated with Program activities including estimating GHG emissions from Program activities? 8. Do Program systems require assessing the risks from natural disasters or human-induced emergencies?
	<p>(v) Identification of measures to mitigate adverse E&S risks and impacts that cannot be otherwise avoided or minimized.</p>	<ol style="list-style-type: none"> 1. Do the applicable systems effectively promote the application of mitigation hierarchy (e.g. avoid, minimize, mitigate, compensate/offset)? 2. Do E&S management plans provide sufficient operational detail to guide effective implementation? 3. Are mitigation/management measures called for under the system relevant and realistic (e.g. not requiring disposal or hazardous wastes in a licensed facility if there aren't any in the country)? 4. Do management plans require time-bound actions? Do they have clear targets and clear assignment of responsibilities for implementation and for monitoring/oversight? 5. Do applicable systems include clear and appropriate repercussions and remedies in case E&S mitigation measures are not applied?
	<p>(vi) Clear articulation of institutional responsibility and resources to support the implementation of plans.</p>	<ol style="list-style-type: none"> 1. Are institutional/organization responsibilities supported by adequate human and financial resources to implement environmental and/or social management procedures or plans? 2. Are Program entities responsible for E&S aspects adequately staffed-in terms of skills, qualification, and the number of personnel – to ensure effective administration, planning, design, implementation, and monitoring functions?

Core Principle	Key questions	Specific questions
		<ol style="list-style-type: none"> 3. If the Program does not have sufficient in-house, what reliable alternative arrangements (e.g. coordination with other agencies, use of qualified consulting services) are available to promote effectiveness? If none, what needs have been identified for supplementary support and/or capacity strengthening? 4. If the Program depends on interagency collaboration for delivery of services or for managing E&S effects, or if the multi-jurisdictional reach or scope of the Program creates divided responsibilities for implementation, what structural arrangements are in place to ensure effective and timely coordination? 5. Is there a coordinating body that is empowered to resolve coordination issues or delays in required actions? 6. Are the Program entities effective at applying their E&S frameworks in practice? 7. Are “adaptive management” processes in place to respond to unanticipated E&S management issues that may arise? 8. Do Program entities have access to contingency funds for unexpected impacts or budget shortfalls? 9. Our processes and procedures related to E&S protection routinely, effectively, and equitably implemented?
	<p>(vii) Responsiveness and accountability through stakeholder consultation, timely dissemination of the PforR information, and responsive GRM.</p>	<ol style="list-style-type: none"> 1. What mechanisms do program entities use to ensure that stakeholders are identified and that their views, concerns, and suggestions are systematically considered? 2. Does the borrower consult with stakeholders on various aspects of Program design and operation? 3. Is information relating to E&S effects made available to the people or communities that are potentially affected? Do Program implementation arrangements include measures for responsive communications or relevant E&S concerns? 4. Do Program implementing entities promote the credibility and accountability of E&S management systems? For example, do they use external monitoring of implementation or other forms of oversight? 5. Does the system include mechanisms for independent oversight and monitoring where appropriate?

Core Principle	Key questions	Specific questions
		<ol style="list-style-type: none"> 6. Does the Program have accessible GRMs with established procedures for submission of grievances? Do the established GRMs accept and process grievances relating to E&S management issues? 7. Are there established routines and standards for responding to grievances received? Are records available? Does the management of the implementing agency act on identified issues consistently and objectively? 8. Do consultation processes promote communication and informed decision-making? Do those who may be affected have prior access to information about the topics for consultations? 9. Are consultations conducted early enough that stakeholder feedback can be considered in the design of new or change of Program activities? Are consultations conducted in a manner that encourages an open exchange of views? 10. Do consultations include a representative cross-section of groups affected by the Program (including women, Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, ethnic minorities the poor, or other groups that might be under-represented)? 11. Does the sampling capture jurisdictional or geographical diversity?
<p>Core Principle 2 Program E&S management systems are designed to avoid, minimize or mitigate adverse impacts on natural habitats and physical cultural</p>	<p>(i) 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"> 1. Has Program screening identified potential impacts on modified, natural, or critical natural habitats? 2. Will the Program activities affect environmentally sensitive habitat areas with local importance, such as streams, wetlands, ponds, and vegetated riparian areas? 3. If such impacts involve the significant conversion or degradation of critical natural habitats, have the activities been excluded from the Program? 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? 5. Are Program activities planned and carried out in the context of land use or other management plans that identify sensitive habitat areas?

Core Principle	Key questions	Specific questions
<p>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"> 6. Is screening at a sufficient level of detail and granularity to identify the location and geographical extent of natural and critical habitats? 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? 8. Do management plans require appropriate conservation and mitigation measures to be in place, including those required to maintain ecological services?
	<p>(ii) Support and promote the protection, conservation, maintenance, and rehabilitation of natural habitats.</p>	<ol style="list-style-type: none"> 1. 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? 2. Do management systems include measures to avoid, restrict, or otherwise forbid the introduction of exotic or invasive species that may threaten ecosystems or value? 3. Are monitoring measures in place to determine the extent to which habitats are affected by the Program? 4. If Program activities affect protected areas are such activities consistent with approved and up-to-date protected area management plans? 5. 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? 6. 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?
	<p>(iii) Avoid significant conversion or degradation of critical natural habitats (modified habitats, natural)</p>	<ol style="list-style-type: none"> 1. 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? 2. When available data are insufficient to determine the extent or severity of biodiversity impacts, are new biodiversity surveys or inventories, conducted by

Core Principle	Key questions	Specific questions
		<p>qualified individuals or organizations, required as part of the Environmental Impact Assessment process?</p> <p>3. 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>
	(iv) 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>1. 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>2. Do plans require appropriate conservation offset measure to be in place, including measures to maintain ecological services?</p>
	(v) Take into account potential adverse effects on physical cultural property and provide adequate measures to avoid, minimize or mitigate such effects.	<p>1. Does the screening review involve careful attention to avoiding impacts on resources of archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance?</p> <p>2. Is the mitigation hierarchy principle applied in the management of potential adverse impacts on the physical cultural property?</p> <p>3. Are management measures in place to avoid, minimize or mitigate such effects?</p> <p>4. Do procedures require the use of authoritative source materials or field-based surveys to identify existing physical cultural resources before works commence?</p> <p>5. 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>
Core Principle 3 Program E&S management systems are designed to protect public	(i) 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	<p>1. What measures are in place to address worker safety in all county projects? How are monitoring, tracking and reporting activities done?</p> <p>2. What role do you have in contract management (design and execution)?</p> <p>3. How critical is the management of hazardous waste in this county? What requirements are in place for contractors to follow?</p> <p>4. What is the response mechanism in case of accidents?</p>

Core Principle	Key questions	Specific questions
<p>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 located in areas prone to natural hazards.</p>	<p>activities that may be dependent on existing infrastructure, incorporate safety measures inspections or remedial works as appropriate.</p>	<p>5. What mechanisms are in place to deal with labour conflicts? What GRM structures are in place? Do you have a complaints and response system that goes below the county?</p>
	<p>(ii) Promote measures to address child and forced labor.</p>	<p>1. What provisions are in place to limit child and forced labour in the projects implemented in the county? 2. How is the enforcement done? 3. What is your current experience with child and forced labour?</p>
	<p>(iii) Promote the use of the recognized good practice in the production, management, storage, transport, and disposal of hazardous materials generated under the PforR.</p>	<p>1. What emergency preparedness measures are included in the contractors' responsibilities? 2. What procedures are in place to implement these provisions? How are these procedures evaluated? 3. What additional provisions are in place to rapidly respond to emergencies?</p>
	<p>(iv) Promote the use of integrated pest management practices to manage or reduce the adverse impacts of pests or disease vectors.</p>	<p>1. What systems are in place for pest management? 2. How is pest management organized in this county? 3. How effective are these measures? 4. Have you had any experiences with pest management? How was the issue addressed? What lessons were learnt?</p>
	<p>(v) Provide training for workers involved in the production, procurement, storage, transport, use, and disposal of hazardous chemicals in accordance with the relevant international guidelines and conventions.</p>	<p>1. What procedures are in place to induct and train workers on all aspects of handling hazardous chemicals? Who is your key partner in this? 2. How does the borrower assess the climate change risks associated with Program activities such as the estimation of GHG emissions or the inclusion of appropriate mitigation and/or adaptation measures under the PforR operations?</p>
	<p>(vi) Include adequate measures to avoid, minimize, or mitigate community, individual, and</p>	<p>1. As relevant, what measures does the Program include to ensure that people or the environment would not be put at increased risk from natural hazards such as</p>

Core Principle	Key questions	Specific questions
	<p>worker risks when the PforR Program activities are located in areas prone to natural hazards such as floods, hurricanes, earthquakes, or other severe weather or affected by climate events.</p>	<p>flooding, earthquakes, earthquakes, landslides, severe weather or climatic events, or other disasters?</p>
<p>Core Principle 4 Program E&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>(i) Avoid or minimize land acquisition and related adverse impacts</p>	<ol style="list-style-type: none"> 1. How do you ensure the program you are implementing does not result in compulsory acquisition of land; displacement of people or their economic activity? Or that it would not restrict them from accessing resources that may be located on the project site? 2. Do you have requirements for identification and mitigation of impacts under the program? 3. How do you ensure individual and communities are not forcibly removed from land that you need for the program?
	<p>(ii) 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"> 1. How do you identify or recognize that an area intended for the project is a communal property or is customarily claimed or is used by squatters or belongs to Indigenous groups and what do you do about impacts on such groups? 2. How does your program deal with the identification and mitigation impacts on informal users or occupiers of land?
	<p>(iii) 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>	<ol style="list-style-type: none"> 1. What are your compensation arrangements for land and other assets under this program? E.g. do you consider replacement cost? If not, can the program provide supplemental payments to meet this requirement? 2. Are transitional expenses allowed under the borrower’s systems? If not, are there mechanisms to mobilize additional resources to support this requirement?

Core Principle	Key questions	Specific questions
	(iv) Restore or replace public infrastructure and community services that may be adversely affected by the program	1. In case of physical relocation, what provisions do you have to restore or replace public infrastructure lost or damaged because of program activities? If not, what will you do to address such concerns?
	(v) Stakeholder engagement and information disclosure. Include	1. What are the requirements for the participation of the program affected people? 2. What kind of information do you give program affected people to enable them make informed decisions? 3. What happens in the event complaints/grievances or disputes arise under the program? What measures are in place to ensure that these complaints/grievances are redressed?
Core Principle 5 Program E&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	(i) 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 broad community support for the PforR Program activities.	1. How do you reach out to citizens for CIDP development and implementation? Which method to you use (taking proactive measures)? 2. As relevant, does screening identify different property regimes, including common property resources, customary or traditional rights to land or resource use, and the rights of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities? 3. Does the screening tool include customary rights, community land?
	(ii) Ensure that IPs/Sub-Saharan African Historically Underserved Traditional Local Communities can participate in devising opportunities to benefit from the exploitation of customary resources and indigenous knowledge, the latter (indigenous knowledge) to include the consent of IPs/Sub-Saharan African Historically	1. Does the sampling capture jurisdictions or geographic diversity? 2. Do Program entities regularly review and consider consultation results to obtain or broaden community support? 3. How does the Program address activities involving: adverse impact on natural resources to which Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, have traditional ownership or customary use rights; resettlement from or restriction to such communities' access to such lands; or the commercial exploitation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, cultural heritage?

Core Principle	Key questions	Specific questions
Historically Underserved Traditional Local Communities, and to the needs or concerns of vulnerable groups.	Underserved Traditional Local Communities.	
	(iii) 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.	<ol style="list-style-type: none"> 1. What considerations are given to distributional equity, affordability, and cultural or gender constraints to access or participation? How do you consider women, the elderly? 2. Does the incentive structure within Program agencies promote outreach measures to encourage equitable and affordable access to Program benefits? What is the approach of the county towards incentives? 3. Does it consider how to alleviate cultural, financial, or physical barriers that hamper the participation of socially marginalized or disadvantaged groups? What are the barriers? Do you do anything to reduce these barriers?
Core Principle 6 Program E&S systems avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.	(i) Consider conflict risks, including distributional equity and cultural sensitivities.	<ol style="list-style-type: none"> 1. Is the Program being implemented in areas of recognized fragility or in post-conflict zones? If so, what special risks does this context present to the achievement of E&S objectives and outcomes? 2. Could the Program contribute in any way to underlying tensions or civil strife by reinforcing inequities or grievances? 3. How would support for the Program prejudice/exacerbate, in any way, one party’s claims inland or territorial disputes? 4. Do the screening and design or Program activities consider the risks of creating or exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial or jurisdictional dispute? 5. Are Program agencies open to discussion with the Bank and consultation with stakeholders on potentially sensitive issues?
Other questions on experience with Kenya	(i) Does the county benefit from the Kenya Urban Support Program (KUSP)?	<ol style="list-style-type: none"> 1. Has the county received KUSP funding?

Core Principle	Key questions	Specific questions
Urban Support Program (KUSP) and Kenya Devolution Support Program (KDSP)	(ii) If Yes what structures are in place to management social and environmental risks and impacts under the KUSP Program?	1. How is the program implementation organized?
	(iii) What human resources are available under KUSP to support the management of social and environmental risks and impacts?	1. Do you have an Environment Officer assigned to this project? 2. Do you have a separate social officer assigned to this project?
	(iv) Capacity building initiatives under the KUSP for management of social and environmental risks and impacts.	1. Have the environment and social officers been trained on environment and social risks?
	(v) Lessons learnt in the management of social and environmental risks under Kenya Urban Support Program.	1. What has been your experience in addressing environment and social risks? Both positive and negative
	(vi) What have been/are the key challenges facing the management of E&S issues in the County/Entity?	1. What key challenges have you faced in addressing environmental and social risks in development projects?
	(vii) Does the county benefit from the Kenya Devolution Support Program (KDSP)?	1. Has the county received KDSP funding? Level II – Round 1 or 2 or both?
	(viii) If Yes what structures are in place to management social and environmental risks and impacts under the KDSP Program?	1. How is the program implementation organized?
	(ix) What human resources are available under KDSP to support the management of social and	1. Do you have an Environment Officer assigned to this project? 2. Do you have a separate social officer assigned to this project?

Core Principle	Key questions	Specific questions
	environmental risks and impacts?	
	(x) Capacity building initiatives under the KDSP for management of social and environmental risks and impacts.	1. Have the environment and social officers been trained on environment and social risks?
	(xi) Lessons learnt in the management of social and environmental risks under KDSP.	1. What has been your experience in addressing environment and social risks? Both positive and negative
	(xii) What have been/are the key challenges facing the management of E&S issues in the County/Entity?	1. What key challenges have you faced in addressing environmental and social risks in development projects?
	(xiii) What citizen engagement and participation mechanisms are in place at the County/Entity and how effective are they?	1. Does the county have a citizen engagement and public participation (CEPP) office? What is your view about the way CEPP is undertaken in this county?
	(xiv) What feedback and grievance redress mechanisms are in place at the County/Entity and how effective are they?	1. Does the county have a GRM system in place? Where is the office located (under which decision-maker/department)?
	(xv) How does the County/Entity handle grievances/issues relating to projects from the members of the public? Who handles the grievances?	1. What structures are in place to address the complaints and grievances from all parts of the county?

Annex 2 – List of Counties and Key Informants Interviewed

Region	Counties
Rift Valley Region	Baringo
	Trans Nzoia
	Turkana
	West Pokot
	Nandi
	Laikipia
	Samburu
	Uasin Gishu
	Narok
	Bomet
	Elgeyo Marakwet
	Kajiado
	Kericho
	Nakuru
Western Region	Migori
	Kisumu
	Nyamira
	Homa Bay
	Siaya
	Vihiga
	Busia
	Kisii
	Kakamega
	Bungoma
Eastern Region	Embu
	Tharaka Nithi
	Makueni
	Machakos
	Meru
	Kirinyaga
	Kitui
Coastal Region	Tana River
	Mombasa
	Kwale
	Kilifi
	Taita Taveta
	Lamu
	Mombasa
North Eastern Region	Garissa
	Marsabit

	Wajir
	Mandera
	Isiolo
Central Region	Nyeri
	Kiambu
	Muranga
	Nyandarua
	Nairobi

The Bank team held meetings with County Executives Committee (CEC) Members in-charge of Environment, Climate Change, Social Development, Gender, Children, Indigenous People, Land, Urban Development, and other representatives of national government agencies at the County levels which included the National Land Commission (NLC), National Environment Management Authority (NEMA), Children Department, Department of Occupation Safety and Health (DOSH). The Governor of Vihiga County was also met during the visits. Consultations were also conducted to the key stakeholders that will be involved in the program: National Treasury, Ministry of Environment and Natural Resources, National Land Commission, Ministry of Labour and Social Protection. Other consultations were with the Government and World Bank Teams that are supporting the Kenya Devolution Support Program (KDSP) and the Kenya Urban Support Program (KUSP).

Annex 3: Kenya Climate Change Fund

1. The proposed P-for-R program will support the local action and coordination aspects of Kenya’s program for addressing climate change, which is rooted in the following key policy and legal frameworks. These include:
 - The **National Adaptation Plan** (NAP, 2015-2030) establishes the country’s adaptation objectives and identifies priority actions in 19 planning sectors for the national and county governments (including devolution).
 - The **Climate Change Act** (2016) provides an overarching framework and calls for a climate change mainstreaming approach that includes the integration of climate change considerations into development planning, budgeting and implementation in all sectors and at all levels of government. The Act requires county governments to integrate and mainstream climate change actions, interventions, and duties, including mainstreaming the NCCAP into County Integrated Development Plans. The Act also establishes the National Climate Change Fund (National and County) as the mechanisms for funding priority climate change actions and interventions. The Fund is intended to be the key mechanism by which international and domestic resources will be managed and channeled towards the country’s climate change priorities.
 - Kenya’s **Nationally Determined Contribution** (NDC) establishes adaptation as Kenya’s priority response to climate change and sets a goal of mainstreaming adaptation actions in the five-year development plans of Kenya Vision 2030, the country’s long-term development strategy.
 - **National Climate Change Action Plan** (NCCAP) sets out priority actions for each five years. The current NCCAP (2018-2022) describes the short, medium and long-term actions for counties to take to support adaptation:

National Climate Change Action Plan

Short-term actions	<ul style="list-style-type: none"> • Conduct participatory county level climate risk and vulnerability assessments • Increase awareness of climate change impacts to communities in counties • Build the capacity of county governments on climate change adaptation
Medium-term actions	<ul style="list-style-type: none"> • Develop county adaptation plans • Develop county climate financing mechanisms for adaptation. • Develop appropriate climate adaptation financing tracking systems
Long-term actions	<ul style="list-style-type: none"> • Implement county adaptation plans • Upscale successful adaptation actions

2. The programs to achieve the NCCAP are laid out in the Kenya’s Third Medium-Term Plan (MTP III) 2018-2022, which is the second MTP to be prepared under the devolved system of governance. The MTP III is aligned with the Constitution, Kenya’s Vision 2030, and includes a focus on delivering the “Big Four” initiative. It provides a financing framework to deliver the Government’s Programs and Projects.
3. Given that Kenya has robust legal and policy frameworks and institutions, and a number of ongoing programs in place to address climate change, the PforR instrument has been deemed more appropriate than an Investment Project Financing (IPF) or Development Project Financing (DPF). Kenya continues to demonstrate a strong commitment to integrating climate change into national development planning and investment programs and is seeking support to strengthen the institutions, coordination mechanisms, and to build capacity at the local level where the impacts of climate change are being felt. Moreover, GoK is experienced in implementing PforRs in support of the devolution program, and the Bank has seen positive results with these programs, including the Kenya Devolution Support Program (KDSP) and the Kenya Urban Support Program (KUSP).
4. In 2016 the Government of Kenya put in place the Climate Change Act, (2016) and the public finance management (Climate Change Fund) Regulations (2016) under the Public Finance Management Act (2012), in recognition of the fact that all the forty-seven (47) counties in Kenya are highly exposed to the potential impacts of climate change. The climate change impacts have grave implications for poverty reduction efforts, water availability, food security, and health among other challenges. Extreme events are already having serious impacts on poor communities and the Country’s development. Over the past ten (10) years, droughts have brought suffering and losses amounting to over US\$12 billion. Kenya is chronically water-scarce with one for the most degraded areas in the region; about 70% of the population lives in small share (about 12%) of Kenya’s total land area that has agricultural potential.
5. The Country’s Climate Change Directorate (CCD), is the coordinating agency for climate change plans and actions and serves as the national center for coordinating actors, capacity building, and collating, verifying, refining and disseminating knowledge and information on climate change.
6. Within the National Treasury (NT), Kenya has established a Climate Finance Unit to mobilize and manage climate change financing. Functions of the NT are core to the climate financing requirements and management at both international, national and sub-national levels. The NT is responsible for funds and instruments with ties to climate change adaptation, such as the National Drought Contingency Fund, Arid, and Semi-Arid Lands Drought Contingency Fund, Africa Risk Capacity, Kenya Livestock Insurance Program, and the Kenya Crop Insurance Program.
7. NT is the National Designated Authority for the Green Climate Fund, and the 2016 Climate Change Act created a national level Climate Change Fund, which is vested in the Treasury. The creation of the NT’s Climate Finance Unit is key to ensuring transparency and accountability of climate funds drawn from various sources by providing systems for mobilizing, allocating and tracking climate funds. Despite these key strategic strengths of the

NT, establishing strong ties with other technical and policy arms of the state as well as with non-state actors could help develop a more coordinated and integrated climate finance management system. Other key players at the national level include the National Drought Management Authority (NDMA), which sits within the Ministry of Devolution and Planning. With drought being a key risk in Kenya, the NDMA coordinates and supervises drought management efforts throughout the country and is increasingly taking an active role in the implementation of adaptation actions, particularly in the ASALs.

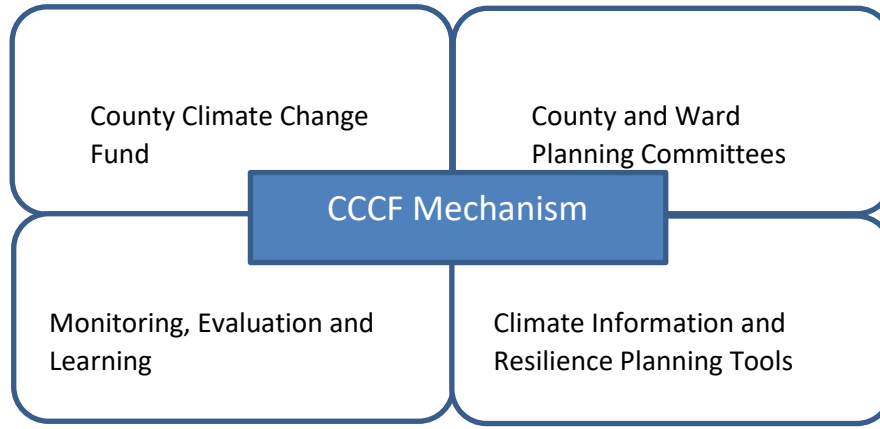
8. While responsibility for overall development policy formulation and planning sits at the national level, both the National Climate Change Action Plan (NCCAP) and Climate Change Act place substantial responsibility on county governments to implement climate action on the ground. Kenya’s Nationally Determined Contribution (NDC) emphasizes a focus on adaptation to climate change, and lists devolution and mainstreaming climate change into County Integrated Development Plans (CIDPs) as a priority climate action. The NCCAP calls for systematic local actions coordinated between the national and county governments, as identified in the CIDPs.

a) County Climate Change Fund (CCCF) Mechanism

9. The CCCF mechanism is designed to enable county governments to access climate finance from accredited National Implementing Entities (NIE) of the Green Climate Fund (GCF) or other funding sources (e.g. Kenya’s National Climate Fund, budgetary allocation, private sector) to fund investments in public goods prioritized by local communities that build climate resilience. The mechanism, in enabling county governments to institutionalize a decision-making process that puts communities in control of their adaptation priorities, also contributes to the objectives of the Constitution (2010), the County Governments Act (2012) and Climate Change Act (2016) that obliges county governments to ensure citizen-led approaches to the planning and prioritization and climate proofing of public funding for development

b) Components of the County Climate Change Fund

10. The mechanism consists of four interrelated components – see Figure 1 below.



Four Components of the CCCF Mechanism

- a. **County Climate Change Fund.** The CCCF is a public fund under the discretionary management of the county government, with the necessary fiduciary mechanisms to ensure accountability and transparency (refer to CCCF financial management procedures manual). The fiduciary mechanisms are consistent with public finance policy and law and complement the counties' existing finance systems. As public funds, the CCCFs can be capitalized from various sources, such as county development budgets, national climate funds or in-country bilateral and multilateral development partners. It is anticipated that the counties will be able to draw down resources from these global climate funds. Wajir and Makueni counties have passed legislation formalizing the CCCFs and committing themselves to capitalize them with a minimum of 2% and 1% of their development budget. Draft CCCF legislation is before the Members of the Assembly in the other three counties.
- b. **County and Ward-level Climate Change Planning Committees.** Representative Ward Climate Change Planning Committees (WCCPCs) are responsible for the identification and prioritization of investments in local public goods that strengthen the adaptive capacities of communities. WCCPCs conduct participatory assessments of a community's resilience to climate hazards and future climate change. These assessments are used by WCCPCs through a community consultation process to prioritize investments in public goods whose costs fall within their budget envelope and which meet the funding criteria that promote climate-resilient growth and adaptive livelihoods. Each WCCPC is allocated a set budget in advance of their planning that represents an equal share of the overall budget allocation earmarked for ward-or inter ward level investments. Committee members consider options and weigh up the costs and benefits of different investments against the CCCF funding criteria and arrive at a consensual decision. The prioritized investments are submitted for review to the County Climate Change Planning Committee (CCCPC) composed of representatives from the ward committees, local government, and other stakeholders. The CCCPC does not have the authority to reject WCCPC prioritized proposals if the first five

proposal criteria are met. They are expected to provide additional technical support to the WCCPCs, and work together to ensure the proposals meet the last two criteria. Once approved, WCCPCs led the procurement process and the chair of the CCCPC sign contracts with service providers guided by the Public Finance Management Act 2012.

- c. Climate information and resilience planning tools. Climate information provided by the Kenya Meteorological Department (KMD) is integrated into the participatory resilience assessments or resource mapping carried out by WCCPCs to ensure that prioritized investments take into account current and future climate variability and hazards. County Directors of Meteorology (CDMs) play a key role in institutionalizing Climate Information Services (CIS) at the county level. They are standing members of key decision-making fora such as the CCCPCs responsible for ensuring WCCPCs proposals specifically addressing climate change and uncertainty. They are also responsible for the development of county CIS plans and facilitating the two-way communication of weather and climate information between the Meteorological Department and county and community actors. Resilience Assessments (RA) and participatory digital Resource Mapping (RM). These participatory tools enable more informed discussion between communities and county government planners on the factors that strengthen or weaken local livelihood systems in the face of climate variability and change, differentiated by the production system, gender, and age. The tools complement the CIDP process by empowering local people to explain to those external to their community, such as government planners or Non-Governmental Organization (NGO) staff, the logic of their adaptation strategies in the face of climate variability and change. It provides an opportunity for county governments and communities to discuss how local livelihoods function and interact the factors that constrain their resilience to the impacts of climate change, and practical ways to build adaptive capacity and long-term resilience.
- d. Tracking Adaptation and Measuring Development (TAMD). TAMD is a ‘twin-track’ framework that evaluates the extent and quality of Climate Risk Management (CRM) processes and actions on the one hand (Track 1), and the associated development and adaptation outcomes (and their longer-term impacts) ‘on the ground’ on the other hand (Track 2). The TAMD framework was tested in Isiolo and Kitui counties where the focus was on two fronts – first, helping WCCPCs develop theories of change and relevant Monitoring and Evaluation (M&E) indicators for public goods investments; second, strengthening the existing M&E systems at county government to better support climate risk management.

c) County Climate Change Fund (CCCF) Design Features

11. The funding criteria will be;

- i. must benefit many people.
- ii. must support the economy, livelihoods or important services on which many people depend.
- iii. must be relevant to building resilience to climate change.
- iv. must encourage harmony, and build relations, understanding, and trust.
- v. must have been developed after consultation with all potential stakeholders.

- vi. must be viable, achievable and sustainable.
- vii. must be cost-effective and give value for money

12. The CCCF mechanism introduces several features designed to strengthen the capacity of county government, communities and their institutions, particularly for the management of natural resources, to plan and prepare for climate-induced hazards and opportunities. A key premise of the CCCF mechanism is that county government support for community-identified and driven adaptation, often building on existing livelihood strategies for managing climate variability and extreme events, is more sustainable, benefits more people and leads to transformative adaptation to address future climate change. This central premise needs to be assessed.

Key Design Features and Premises Underpinning CCCF Mechanism

CCCF Component	Design Features	Premise
The Fund	90% of funds allocated for investments of which 70% prioritized by WCCPCs and 20% by CCCPCs.	70%-20% split randomly. Learning to establish the optimal distribution of funds between wards and county-level investments. But the premise is adaptation needs to be tailored to the local context. Elected, representative WCCPCs are better placed than county-level actors to identify community prioritized investments that build climate-resilient development, are more sustainable, benefit more people and lead to transformative adaptation to address future climate change.
	10% of the fund allocated for operational costs of WCCPCs and CCCPCs to administer the fund.	10% allocation random. Learning to establish the nature of management costs to be legitimately covered and the minimum operational budget for the management of CCCF and full project cycle.
	Funds are divided equally among wards, rather than according to population density or vulnerability, and ward committees expected to consult each other to identify cross-ward investments as a “landscape-level”.	<p>In ASAL environments, characterized by climate and natural resource variability communities typically access local public goods such as water or forest resources as well as social services (e.g. health) across different ecological and administrative boundaries. For example, the resilience of pastoralists in Garissa dependent on access to pastures, water, etc. in Isiolo at certain times of the year.</p> <p>Cross-ward consultation designed to overcome limitations of using administrative units of wards as planning frameworks and promote landscape/level/ecosystem-based approaches to planning.</p>

	WCCPCs and CCCPCs informed of their budgets in advance of planning.	Planning against known guaranteed budgets encourages a more effective, participatory, transparent and accountable planning process that delivers high priority investments that benefit the vulnerable with good value for money.
Planning Process	WCCPCs composed of elected community members through public vetting against criteria of integrity, commitment, leadership, knowledge rather than academic qualifications.	Public vetting reduces the risk of political manipulation and exclusion of vulnerable, builds consensus on those selected to serve on and public commitment by those selected to be accountable. Criteria of integrity, leadership and local knowledge of greater importance than an academic qualification when WCCPCs can access technical assistance from county-level actors, and receive training on the project cycle and financial management, climate change and committee governance. In Isiolo inclusion of customary leaders (dedha) builds the legitimacy of local institutions and provides a “bridge” between customary and statutory institutions.
	WCCPCs provided with the operational fund to cover costs of the managing project cycle (consultation, proposal design, tendering M&E)	Enables WCCPCs to function independently and ensure better quality consultation and accountability, identification of more effective investments that meet local priorities and funding criteria, better value for money in design and implementation of invests, more effective M&E. also build capacities (skills, confidence) of WCCPCs, to participate more effectively in wider local governance and planning processes creation of effective local institutions for success of devolution, maintenance of peace.
	WCCPCs manage the tendering process with support from CCCPCs	Reduces the risk of political and economic abuse of power and builds capacity of WCCPCs to ensure that account for the good use of their budget allocation of CCCF; builds accountability and transparency.
	Design of resilience planning tools (resource mapping, resilience assessments) to align community planning with county government planning.	Enables communities to articulate their knowledge or critical resources and resilient livelihood strategies in manner that county planners can understand, appreciate and support; builds dialogue, understanding and respect between government actors and citizens central to success of

		devolution agenda; identifies practical and cost-effective ways in which county planning can strengthen local adaptive strategies and build longer-term resilience to climate change.
	Design of county CIS Plans	Enables the institutionalization of CIS in all development planning and budgeting at the county level, identification of investments that better prepare counties and communities to respond to and recover from Climate-induced hazards.
	CCCPCs not authorized to veto, but strengthen as necessary, WCCPCs investment priorities IF in line with funding criteria.	WCCPCs remain in control of their adaptation priorities in the planning process in line with provisions of the Constitution and the County Government Act, Reduces risks of political interference and builds greater accountability of WCCPCs to the local community.
	Mainstreaming of TAMD framework in CIDP	Build capacity of CIDP M&E systems to assess outputs, outcomes, and impacts of climate adaptation and climate-resilient development.

Kenya Accountable Devolution Program Pilot Climate Change Projects

13. The World Bank is currently providing support to strengthening national and county level institutions through two main programs: the Kenya Accountable Devolution Program (KADP) and the Kenya Devolution Support Program (KDSP). KADP is a Bank-managed multi-donor trust fund that has mobilized financial, technical and partnership support for initiatives to develop stronger institutions, enhance service delivery and increase citizen engagement in governance. Through KADP, the Bank has supported activities on devolved climate finance and participatory climate risk management through county governments.
14. KADP started in 2012 to support the devolution process in Kenya. In 2015, climate change was incorporated into KADP a cross-cutting issue. The activity on Devolution and Locally-Led Climate and Disaster Risk Management was initiated in 2017 under KADP II to strengthen county capacity to address climate and disaster risk management with a focus on integrating climate into local development planning and facilitating partnerships between communities and local/county governments to collaborate on strengthening resilience in a socially inclusive and sustainable manner.
15. The initiative targeted 4 counties (Kwale, Makueni, Narok, and Siaya) and worked with a broad set of government and non-governmental partners at national and local levels, including the National Treasury, the Climate Change Directorate, the Council of Governors, Kenya Red Cross, Ada Consortium (IIED), Kenya School of Government, Maarifa Center, etc. While the

project had a short implementation timeframe (less than one year), important milestones were achieved in the 4 pilot counties, including:

- Buy-in from county leadership and establishment of technical teams
- Capacity building and draft Integrated Climate Risk Management (ICRM) action plans developed in the target counties to help identify gaps and key actions to be taken
- Introduction of the County Climate Change Fund mechanism
- Engagement with National Treasury and gap analysis completed to support the Council of Governors for accreditation to Green Climate Fund
- Linkage of county technical officers with KMD partners and development of Climate Information Services (CIS) plans for Kwale, Narok, and Makueni.
- Launch of mobile-based early warning system for recurrent flash floods in Narok County with Kenya Red Cross Society, KMD, the Communication Authority, and telecommunication companies.

16. The activities undertaken under KADP II were shared with a larger set of counties and have generated a large demand for similar types of support. Bank support under KADP II was key to convening a broad set of actors and to promoting productive dialogue across government agencies to collaborate on advancing the climate change adaptation agenda. This proposed program will build on the learning and momentum gained under KADP II. The Bank is uniquely placed to support technical, financial, and governance aspects of the climate change agenda in Kenya. The program will build on existing structures, data and institutions. Under KADP II, a substantial amount of information and data was collected, and productive dialogue/coordination among relevant stakeholders was initiated. The program will, therefore, build upon the momentum gained under KADP II.

County Investment Projects Financed under KADP II

County	Ward	Investment	Cost
Isiolo 2013- 2016	Chari Ward	drilling and equipping Kobe Dadach Guracha borehole	Kshs. 7,839,760
	Cherab Ward	Rehabilitation of Strategic boreholes - Halango, Duma, Yamicha, & Urura	Kshs. 5,019,000
		Blocking inlet of Yamicha water pan to control influx and improve management of rangeland	Kshs. 830,100
		Blocking Urura water pan inlet to control influx and improve rangeland management	Kshs. 1,056,506
	Garbatulla Ward	Rehabilitation of HarBuyo Water pan to improve management of water and pasture	Kshs. 1,800,000
		Construction of the Garba tulla Community Radio Station	Kshs. 2,120,000
		Rehabilitation of Belgesh water pan to improve management of water and pasture	Kshs. 2,136,000
		Rehabilitation of Belgesh II water pan	Kshs. 2,459,719

County	Ward	Investment	Cost
	Kinna Ward	Renovation and equipping of Kinna Livestock Disease Laboratory for timely diagnosis and treatment of livestock	Kshs. 6,041,122
		Rehabilitation of Bibi water pan to improve management of water and pasture	Kshs. 3,119,012 by Isiolo County Climate Change Fund Kshs 9,000 by community every month for management (watchman and small repairs).
		Construction of livestock safe handling facility in Kula Mawe, Yaqbarsadhi, Barambate and Boji to increase livestock populations	Kshs. 4,039,055
	Oldonyiro Ward	Construction of Lengiteng sand dam	Kshs. 900,000
		Construction of Ntumodet sand dam	Kshs. 1,000,000
		Rehabilitation of Nantudu water pan	Kshs. 1,400,000
		Construction of Siangawun rock catchment	Kshs. 1,560,000
		Construction of Nempejeto rock catchment	Kshs 1,600,000
		Rehabilitation of 6 Sand Dams in Lagaaman, Nooloroi, Lbaaibor, Rumat, Noontomia, and Mlima-Chui	Kshs 1,685,568
		Construction of Lemeshemi Lagga, Raap Seasonal River, Looseketef and EL-baaorok sand dams	Kshs 2,796,050
		Rehabilitation of Mokori rock catchment rock	Kshs 1,894,072
		Drilling of Bambot borehole to improve access to water for livestock during droughts	Kshs . 5,657,000
	Sericho Ward	Rehabilitation of Fororsa Water Pan	Kshs . 2,452,250
		Rehabilitation of Manyangab Water Pan	Kshs. 1,418,690
		Rehabilitation of Komor Bulla Water pan	Kshs. 2,589,156
		Excavation and rehabilitation of Hawaye I and II shallow wells	Kshs. 2,302,950
		Rehabilitation of Qote Kora Water Pan	Kshs. 2,302,950
		Capacity building to strengthen management of natural resources in 5 wards	Kshs. 8,469,600

County	Ward	Investment	Cost
		Kinna, Garba Tulla, Sericho, Chari and Cherab	
		Capacity building to strengthen the management of natural resources in 5 wards	Kshs. 1,625,200
		Oldonyiro, Cherab, Kinna, Garba Tulla and Sericho	
Kitui County 2014-2017	Kauwi Ward	Rehabilitation of Mikuyuni earth dam to increase access to water for domestic, livestock and small scale irrigation	Kshs. 7,839,760
	Migwani Ward	Construction of Kamuyuni Rock Catchment	Kshs. 3,616,607.65
	Kiomo Kyethani Ward	Construction of Iiani kwa Ndungu Pipeline Distribution	Kshs. 14,891,241.65 (10m - county government contribution)
	Ngomeni Ward	Construction of Mutethya Nzaini Earth Dam	Kshs. 4,035,060.00
	Tharaka Ward	Construction of Makithuri Earth Dam	Kshs. 4,035,060.00
	Matitu Kaliku Ward	Rehabilitation of Kaayo Earth Dam	Kshs. 4,937,049.00
	Voo Kyamatu Ward	Construction of Kaumbu Sand Dam	Kshs. 3,702,168.75
		Construction of Kyandevu Sand Dam	KSh 450,996.32
	Mutha Ward	Construction of Kalikuvu Earth Dam	KSh. 3,639,415.50
	Ikutha Ward	Construction of Itukisya Earth Dam	Ksh. 3,742,173.00
		Construction of Ngomano Sand Dam	KSh. 858,083.59
Kwa Vonza Ward	Construction of kwa Mboo earth dam	KSh. 4,490,346.00	
Makueni 2013-2017	Kiima Kiu/Kalonzoni Ward	Construction of two pipeline distribution lines - Kaseve to Mangetheni and from Kaseve to Kwa Elijah	Kshs. 2,485,617.56
		Construction of kwa Atumia Earth	Kshs. 2,990,860.00
		Construction of a Kwa Lai Sand Dam	Kshs. 2,151,526.00
	Kithungo/Kitungu Ward	Construction of a Kya aka sand dam	Kshs. 1,058,580.00
		Construction of Ngutioni sand dam	Kshs. 934,032.00
	Mbitini Ward	Construction of Masue Rock Catchment	Kshs. 5,429,287.50
	Mtito Andei Ward	Construction of Ngai Ndethya Mega Sand Dam	Kshs. 4,104,334.75
	Nguu/Masumba Ward	Construction of Kwa Mutuku Earth dam	Kshs. 2,515,018.00
Construction of kwa Kiili sand dam		Kshs. 4,423,900.50	
Wajir County 2013-2016	Adimasijida Ward	Installation of solar energy equipment at Livestock Marketing Department (LMD) Borehole	Kshs. 3,699,750.00
	Arbajahan Ward	Rehabilitation of Adan Awale water pan	Kshs. 3,699,750.00

County	Ward	Investment	Cost
	Banaen Ward	Rehabilitation of Buruka Water pan	Kshs. 3,783,920.00
	Elben Ward	Fencing and reticulation of Elben water pan	Kshs. 3,900,036.00
	Eldas Ward	Rehabilitation of Dadantalai water pan through desilting and repair of the broken ridge	Ksh. 3,748,970.68
	Gurar Ward	Rehabilitation of Bamba water pan by desilting and repairing of the broken embankment	Ksh. 3,700,115.80
	Khoro Harar Ward	Rehabilitation of Jehjeh water pan in Wajir bor	Kshs. 3,786,066.00
	Korondille Ward	Installation of solar energy equipment Yatta borehole	Kshs. 4,215,046.00
	Logboqol Ward	Rehabilitation of Lagboqol water pan by desilting, fencing and establishing of a reticulation system	Kshs. 3,745,640.00
	Lakole Ward	Rehabilitation of Lakole water pan	Kshs. 3,781,839.82
	Wargadud	Fencing and reticulation of Wargadud water pan to regulate access	Kshs. 3,800,000.00
	Sarman Ward	Perimeter fencing of Basanicha water pan	Ksh. 3,799,987.60
	All wards	Building community resilience through strengthening natural resource governance	Ksh. 1,730,000
	All wards	Community engagement on strengthening natural resource governance using the radio sessions, interactive talk shows, and live coverage of events	Ksh 1,200,000

Annex 4 - Environmental Impact Assessment Stages In KENYA

1. EMCA makes provision for EIA in sections 58 and 59 thereof. Section 58 of the EMCA has been amended and directs that proponent of any project specified in the second schedule shall undertake a full EIA study prepared by a registered and licensed EIA and audit expert and submit the EIA study report to NEMA prior to being issued with any licence at his own cost. A proponent must not implement a project likely to have a negative environmental impact or for which an EIA is required under the Act or Regulations unless an EIA has been concluded and approved by NEMA. At the end of the environmental impact assessment process, undergoes through the below stages, an environmental impact assessment study report is produced.

Screening

2. Screening determines which projects or developments require a full or partial impact assessment. Screening will be undertaken for all project regardless of the category of risk.

Terms of reference

3. An EIA study must be conducted in accordance with terms of reference developed during the scoping exercise by the proponent and approved by NEMA. *Scoping* is identification of the potential impacts that are relevant to assess and to derive terms of reference for the impact assessment. The terms of reference include matters required to be considered in the making of an EIA including;
 - Ecological considerations that is the impact of project on biological diversity, sustainable use and ecosystem maintenance.
 - Social considerations including economic impacts, social cohesion or disruption, effect on human health, immigration or emigration, communication and effects on culture and objects of culture value.
 - Landscape
 - Land uses
 - Water: impacts of the proposal on water sources and drainage patterns/drainage systems.

Environmental Impact Assessment Study

4. An EIA study is to be conducted in accordance with the general environmental impact assessment guidelines and sector EIA guidelines set out in the Third Schedule to the Regulations.
5. An environmental impact assessment study must take into account environmental, social, cultural, economic, and legal considerations, and shall:
 - Identify the anticipated environmental impacts of the project and the scale of the impacts;
 - Identify and analyze alternatives to the proposed project;
 - Propose mitigation measures to be taken during and after the implementation of the project; and

- Develop an environmental management plan with mechanisms for monitoring and evaluating the compliance and environmental performance which shall include the cost of mitigation measures and the time frame of implementing the measures.

The Environmental Impact Assessment Study Report

6. After an EIA study has been conducted, the proponent submits to the NEMA the EIA Study Report incorporating but not limited to the following information:
 - The proposed location of the project;
 - A concise description of the national environmental legislative and regulatory framework, baseline information, and any other relevant information related to the project; the objectives of the project;
 - The technology, procedures and processes to be used, in the implementation of the project;
 - The materials to be used in the construction and implementation of the project;
 - The products, by-products and waste to be generated by the project;
 - A description of the potentially affected environment;
 - The environmental effects of the project including the social and cultural effects and the direct, indirect, cumulative, irreversible, short-term and long-term effects anticipated;
 - Alternative technologies and processes available and reasons for preferring the chosen technology and processes;
 - Analysis of alternatives including project site, design and technologies and reasons for preferring the proposed site, design and technologies.
 - An environmental management plan proposing the measures for eliminating, minimizing or mitigating adverse impacts on the environment; including the cost, time frame and responsibility to implement the measures;
 - Provision of an action plan for the prevention and management of foreseeable accidents and hazardous activities in the course of carrying out activities or major industrial and other development projects;
7. The environmental impact assessment study report must also be accompanied by a non-technical summary outlining the key findings, conclusions and recommendations of the study and must be signed by the proponent and environmental impact assessment experts involved in its preparation.

Public participation

8. Public participation is at the centre of EIA. During the process of conducting an environmental impact assessment study the proponent must in consultation with NEMA seek the views of persons who may be affected by the project. After the approval of the EIA Report by NEMA, the proponent must:
 - Publicize the project and its anticipated effects and benefits by:
 - Posting posters in strategic public places in the vicinity of the site of the

- proposed project informing the affected parties and communities of the proposed project;
- Publishing a notice on the proposed project for two successive weeks in a newspaper that has a nation-wide circulation; and
 - Making an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks;
 - Hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments;
 - Ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and
 - Ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.

Comments from Lead Agencies

9. After NEMA has received the Report, the agency submits a copy thereof to any relevant lead agencies for their comments. Lead agencies review the report to ensure that it complies with the terms of reference under Regulation 11 and that it is comprehensive. They thereafter send their comments to NEMA on the report within 30 days or such extended time as the Authority may specify. If no comments are received from the Lead Agencies the Authority may proceed with the determination of the application for the implementation of the project.

Submission of comments and public hearing

10. Regulation 21 obligates NEMA to invite the public to make oral or written comments on the report. The invitation for public comments shall state;
 - The nature of the project;
 - The location of the project;
 - The anticipated impacts of the project and the proposed mitigation measures to respond to the impacts;
 - The times and place where the full report can be inspected; and
 - The period within which the Authority shall receive comments.
11. Upon receipt of both oral and written comments the Authority may hold a public hearing. On conclusion of the hearing, the presiding officer shall compile a report of the views presented at the public hearing and submit a report to the Director General of NEMA within 14 days from the date of the public hearing. The Authority may then approve the Environmental Impact Assessment Study Report and issue an EIA License under Regulation 24.

Statutory Content of Project Reports

12. Regulation 7(1) of Legal Notice 101 stipulates content of Project Reports to include the following:-

- The nature of the project;
- The location of the project including the physical area that may be affected by the project’s activities;
- The activities that shall be undertaken during the project construction, operation, and decommissioning phases;
- The design of the project;
- The materials to be used, products, by-products, including waste to be generated by the project and the methods of disposal;
- The potential environmental impacts of the project and the mitigation measures to be taken during and after implementation;
- An action plan for the prevention and management of possible accidents during the project cycle;
- A plan to ensure the health and safety of the workers and neighbouring communities;
- The economic and socio-cultural impacts to the local community and the nation in general;
- The project budget;
- Any other information that the Authority may require.

13. Project Reports are normally prepared as a means of informing NEMA of the proposed development such that after review of the report, NEMA advises on the need or otherwise for EIA. The EIA regulations allow for approval of proposed projects at the Project Report Stage and have been effectively used by NEMA to grant Environmental Licenses to small projects without requiring EIA.

The NEMA Process for Approving Investment Project Reports

Steps	Action	Actor	Time requirement
One	Submission of Project Report to NEMA. NEMA receives Project Report, issues a receipt and acknowledgment.	County Governments	Immediately upon submission of acceptable project report
Two	NEMA mails Project Report to Lead Agencies	NEMA	7 days assuming all requirements are fulfilled
Three	Lead agencies review Project Report and issue comments	Lead Agencies	21 days (minimum) after receipt of Project Report from NEMA.
Four	Review of Project Report by NEMA	NEMA	30 days after receipt of Project Report
Five	Communication of findings from NEMA review	NEMA	45 days after receipt of Project Report

14. Typical outcomes of review of Project Reports from NEMA are likely to be as shown in **Error! Reference source not found.** below. These are as follows:

Possible Outcomes of NEMA Review of Project Reports

Outcome	Recommendation	Important precautions
Project found to have no significant Environmental Impacts or Project report discloses sufficient mitigation measures	An Environmental License will be issued by NEMA	Project report must disclose adequate mitigation measures and show proof of comprehensive consultations within the area of influence.
Significant adverse environmental impacts found or Project Report fails to disclose adequate mitigation measures.	A full cycle EIA will be required by NEMA	As above
A proponent is dissatisfied with the outcome of the NEMA review.	An Appeal is provided for	

15. Project *investment is approved*. Where NEMA and lead agencies ascertain that a project report has disclosed adequate mitigation for identified impacts, NEMA approves the project upon which, conditions attached to grant of an Environmental License are issued. Once these are fulfilled, an Environmental License is also issued subject to conditions, which will be specific to the investment in question.
16. It is important to note that an approval by NEMA does not necessarily guarantee that social risks have been considered or mitigated. For this reason, specialized social risk analysis and mitigation will take place in parallel.

Annex 12 : Free Prior and Informed Consent – National Guidelines under the Ministry of Environment and Forestry

1. a. What is Free? : Free implies the absence of any manipulation, coercion or intimidation from any other groups, bodies, and entities in the decision-making process of indigenous peoples and local communities. Any external influence that hinders self-determination in the process of decision-making and the outcome of their decision is a clear violation of this principle. Consent cannot be valid if it is taken from the authority or the group that is not recognized by the indigenous communities or not accountable to them. Further, the independence of their decision-making process and the outcome must be verifiable with the members of the indigenous communities. The verification could be through community based open validation sessions and evidence of written agreements and full disclosure of community representative involved, with a certified copy of such an agreement accessible at the community level.
- 2.
3. b. What is Prior? : The informed consent must be sought first as a precondition before implementing any activity and project. It is an advanced authorization from affected before the commencement of any activities or projects. It shall respect the time requirements of IPLCs consultation and consensus processes defined by them. The prior consent requires a comprehensive procedure to ensure that IPs/VMGs have sufficient time to understand, analyze and discuss the information they receive collectively. The element of prior also denotes respecting the duration of time for IPs/VMGs to undertake their decision-making process according to their pace and circumstances.
4. c. What is Informed? : This is a core element of the FPIC decision-making process, namely to reach or achieve a well-informed decision. It is thereby important not only to have access to information but also to clearly understand the information provided to them. Where necessary, the information should be translated to the local language and put in a form and manner that is understood by the indigenous communities to facilitate better understanding. Further, IPLCs and other vulnerable and marginalized groups, must have a level of satisfaction on the level of information provided to them. This includes information to clarify or answer their questions as well as information that shall provide them with a comprehensive understanding especially on the implications of the activity, project or matter for their collective decision.
5. Information disclosure for the FPIC process should include full and legally accurate exposure of data pertaining to any activity or proposed developments or projects. These shall include studies on environment and social impacts, project design, implementation plans, budget and sources of funds, and terms of contracts or agreements. The project proponent is responsible for the full disclosure of the information to indigenous communities, including providing the information in forms understood to them. In this context, there shall be considerations on the level of literacy and language understood by IPs/VMGs. Consideration of access to legal aid or services, especially to help unpack and communicate information of legal nature is critical for informed decision-making.
6. IPs/VMGs shall also have the freedom to secure additional information from other sources, besides the project proponent. They remain with full rights to seek for additional means to

verify the accuracy of information provided to them. It is often the case that indigenous communities are provided with information that highlights only the positive aspects of the projects, while potential adverse impacts are not fully disclosed or provided. The decision of the indigenous communities will be based on the accuracy of information provided by the project. IPs/VMGs have the right to change and/or review their decision, and sanction should be given to project proponents, based on due process. Information to be provided by project proponents relates to:

- Nature, size and scope of the proposed project or activity.
- General and specific objectives, implementation plans, budget, outcomes and impacts of the project and/or activity, and source of funding in some cases.
- Duration, locality and scale of the project.
- Assessment of possible economic, social, cultural, and environmental impacts, including potential risks and benefit-sharing arrangement
- Roles and responsibilities of the project proponent and that of the community in question
- Involvement of personnel in the execution of the proposed project (IPs/VMGs, private sector staff, research institutions, government employees and others).

7. d. What is Consent? :It is a collective decision-making process of indigenous peoples that entails several steps. This may include series of consultation as needed and it should allow enough time for indigenous communities to undertake their own internal deliberations prior to making their collective decision. The consultations shall allow community members, including women, minority groups, Persons with Disability (PWD) and youth, to express their views, raise their concerns, seek additional information, if needed, and seek clarifications on their questions and/or concerns.
8. It should be transparent, inclusive and well-informed with meaningful and accountable participation of indigenous communities and other vulnerable and marginalized groups' representatives, in the consultation processes and the collective decision-making process. The consultation processes shall be properly documented. Project Proponents shall provide for any additional information, if requested, and respond to the clarifications and conditions set by indigenous communities. In addition, consultations require an effective system of communication to enhance understanding of project related information among IPs/VMGs.
9. Community members should be granted the opportunity to discuss collectively on the implications of the project/activity from their own perspectives, interest, welfare, and aspirations, and to arrive at a decision. Further, community deliberations shall ensure the active participation of women, minority groups, Persons With Disability and youth - and to take into account their views, specific concerns and rights. Where necessary, the capacity of the IPs/VMGsmarginalized communities/indigenous people should be enhanced for their decision-making process, which includes the option of withholding consent.
10. Indigenous communities/VMGs should have the freedom to define their own mechanisms and processes of decision-making and the right to set their terms and condition to either say YES or NO. Indigenous communities must have the right to withdraw consent, if conditions are not met. Any agreement reached should be written in a form fully understood by community

members and the proponent must respect the NO CONSENT decision, should this be the outcome of the FPIC process. Strong division with opposing views within indigenous communities means the absence of consent.

11. On the other hand, consent does not mean unanimity. Based on the traditional systems of indigenous peoples' decision-making, consensus is always the desired outcome of a collective decision-making process in upholding the common good and the collective interest and welfare of the community. Even if there are views or positions that run counter to those of the majority, as long as those with opposing views agree to abide or respect the position of the majority, then this is considered as a consensus and a consent decision. Thus, the outcome still upholds the collective voice, views and interests of the community as one social and collective entity.

Key Steps To Conducting Free, Prior And Informed Consent (FPIC)

12. Community level FPIC processes involve a cross-section of members of the concerned indigenous and local communities, including youth, poor families, elders, persons with disability and women. In practice, about 5 distinct yet interdependent steps and/dimensions of participation have emerged i.e. information sharing, consultation, joint decision-making, consent and empowerment. All these dimensions of full and effective participation of IPs/VMGs, require thorough information dissemination and awareness-raising in a manner and form understood by IPs/VMGs.

STEP I: Information Disclosure and Dissemination

13. Information dissemination is a precondition for the full and effective participation and FPIC of IPs/VMGs, in the investment project. This is an inactive form of participation. At this stage the initial sharing of information is necessary to inform the community through their leaders and representatives of the plan to consult them to formally request their FPIC in relation to a proposed policy, program or project. Initial consultation meetings with community leaders shall only focus on coordination in terms of sharing information, defining the objectives and the content/issues for the consultation, providing clarity on how feedback from communities will be assessed and treated in the consultations, and preliminary arrangements to the process of the consultation. After this initial or preliminary meeting by outside parties, the concerned community leaders must organize a meeting with other community leaders and representatives to discuss and agree on the details of the process of the consultations.
14. At this initial step of information dissemination, Project proponents should provide basic information about the project/program and request for a process of FPIC to ensue. This information shall include the project rationale, studies on social and environmental impacts (NEMA approved), project design, implementation plan, budget and sources of funds. IPs/VMGs, are encouraged to seek for additional information related to the project including through independent consultation, technical advice, in order to fully understand potential project impacts and verify information provided
15. *Form and language of information shared:* Information disclosure approach adopted should take into account the level of literacy, language and form understood by IPs/VMGs, at the

project level. Where necessary, consider the use of local resource persons/facilitators conversant with the local social cultural dynamics. This includes addressing and providing information to respond to concerns related to the intervention.

16. *Avenues and channels for information dissemination*: Project proponents should explore and adopt effective *avenues* and channels that respond to context specific needs including participation of both men and women.
17. *Consider cultural appropriateness of the information shared*: The aim is to ensure cultural *appropriateness*, and to help affected communities gain a genuine understanding of the impacts of the project and the proposed mitigation measures and benefits. This may include translating project information into the appropriate indigenous languages, taking oral traditions into account, and developing audio-visual materials where appropriate.
18. *Inclusion of indigenous and local community facilitators in the facilitation of the FPIC process*: It is crucial that *facilitators* be conversant in the areas of technical concepts of the project, FPIC, IPs/VMGs, rights, and their livelihood systems, and insightful enough to deliver consistent and objective information to the communities. The identification and where necessary the recruitment of local facilitators and enhancing their capacity to deal with complex issues associated with the project are essential for effective awareness-raising and meaningful engagement.

STEP II: Consultation, Participation and Representation

e) Consultation

19. This is a two-way information flow with an exchange of opinions, views and feedback. Consultation serves as a mechanism for continuous exchange and interaction between IPs/VMGs, and other entities relating to Climate change projects for a more accountable, transparent and inclusive decision-making process. It also serves as a forum to discuss and reach common understanding on climate change processes and mechanisms. At the same time, it addresses the issues and concerns of IPs/VMGs, as well as defines terms of engagements and or agreements in certain cases.
20. What steps need to be taken to ensure the process is free, prior, and informed? ***Who should participate in the consultation***: Community leaders and representatives in consultation with project proponents shall determine the time, location, and requirements as appropriate, taking into account the availability of community members including youth, women, the elderly and persons with disability, and considering other activities and priorities of the community e.g. local market days, political representatives, intergenerational equity, social stratifications, ANC and post natal clinic days, traditional ceremonies, indigenous bio-cultural seasonal calendar.
21. Consultations could be done several times and/or in different locations to be sure to reach all the people concerned, in accordance with the customary practices IPs/VMGs. Project Proponents and representatives of IPLCs should jointly agrees on the requisite number of

consultation, and strategic sites to conduct consultations so as to facilitate effective representation and participation of a cross-section of local stakeholders. Gender roles in the community should be particularly considered to ensure that meetings are held while both men and women are available. Efforts should be made to reach out to women, youth and elderly in the community and their views should be considered in the decision making.

22. During the consultations, all available information about the proposed project should be presented to the community including basic information about the project, the project proponent, the purpose, the timeframe for implementation, all potential positive and negative impacts, among others. Indicative list of nature of Information that Project proponent(s) should provide:
 - Nature, size and scope of the proposed project or activity.
 - General and specific objectives, implementation plans, budget, outcomes and impacts of the project and/or activity, and also source of funding in some cases.
 - Duration, locality and scale of the project.
 - Assessment of possible economic, social, cultural, and environmental impacts, including potential risks and fair and equitable benefit sharing mechanisms.
 - Full and clear disclosure of the information based on levels of IPs’ understanding.
 - Roles and responsibilities of the different key actors in the proposed project (IPLCs, private sector staff, research institutions, national and county government, civil society organizations and others
 - Legal status of project proponent
23. The consultation should take place to accommodate perspectives and concerns raised by both the project proponents and indigenous peoples’ representatives or communities involved in the consultation process. All the parties involved in consultation process with IPs/VMGs, s and local communities must engage in a transparent and inclusive manner. The *venue* for consultations must be culturally sensitive and should take into account the accessibility and comfortability of IPs/VMGs, especially women and persons with disability.
24. Provision for *sufficient time* in notifying and arranging consultations must also be ensured and respected in consideration of the activities of IPs/VMGs, and their own requirements for them to be prepared. This will ensure greater and more effective participation of IPs/VMGs, during the consultation. A common understanding between the two parties of what sufficient meetings notification time entails must be sought and agreed on at the beginning of the consultation process.

Organs/Structures of Decision Making at the Community Level and Key Requirements:

25. Consultations at the *community level* shall be arranged through their existing traditional governance structures and institutions (council of elders, age set leadership structures), if any, or through recognized community leaders and/or selected representatives and/recognized Indigenous Peoples and Local Communities Organizations (IPCOs and their recognized umbrella networks of IPs/VMGs,. The final agenda, participants and processes of the consultation must also be designed in participatory manner between project proponent and IPLCs’ representatives/leaders at the initial stages of engagement.

Key requirements for effective consultations with indigenous people and local communities includes:

- Community members based on their schedule, priorities and other considerations, will decide time and venue of the consultation.
- Inclusive participation of women, youth and the elderly in the consultation.
- Respect for the local indigenous cultures, values and sensitivity to the cultural issues, values while doing consultations.
- Open and transparent process that allows indigenous participants to freely express their ideas, views, opinions, suggestions and recommendations.
- Use of simple languages/forms in presentations and discussions based on the level of understanding and literacy of community members.
- If necessary, use of local language understood by community members, and opportunity for them to articulate their views and concerns.

26. *Documentation of the Consultation Process:* Accurate documentation and recording of consultations processes and outcomes are very important to ensure that the process and content of the consultations are properly reflected. At the onset there should be an agreement on who will do the official documentation, and copies of the documents need to be given to the communities for validation and approval.

27. Where possible, IPs/VMGs, representatives should also be assigned the task of documenting the whole process and outcome of the consultation process in their local languages and sharing information to the community members. The documentation should be done in variety of forms, especially those considered friendly and familiar to indigenous communities e.g. audio/video recording and photo documentation. The official documentation, if done by an outside party, shall be consistent with the documentation made by members/leaders of the community. This is to avoid any misunderstanding or confusion on the result/outcome of the consultation. Thereafter summaries of meetings including key steps to be undertaken as follow-up or for further engagements should be verified and attested to by all parties participating in the consultation session before it is finalized and transmitted or shared to others.

28. *Conducting the Consultations:* Consultations shall be conducted in an open, comprehensive and transparent way. It should be conducted in the language understood by IPs/VMGs,. This will not only facilitate their understanding but will also allow them to freely and comfortably express their thoughts, ideas, views and concerns. Consultation should be free from any form of intimidation or harassment and no form of condition shall be imposed on IPs/VMGs,. The objectives and agenda shall be clear to everyone.

29. IPs/VMGs, are given adequate time to understand and ask questions and clarifications, to share their opinions and views, and to receive responses. There should also be adequate time to deliberate on the issues and concerns of IPs/VMGs, and to come up with common understanding on these concerns and how they will be addressed by identifying key steps of further engagements, if required. At the end of the consultations, there should be a summary on what has been discussed and

f) Participation and Representation

30. Careful identification of IPs/VMGs, representatives is an essential part of preparation for the consultation process. When selecting and/or nominating representatives, target IPs/VMGs, communities and project proponents should consider the following:
- Who are the elected persons of the territorial jurisdictions impacted by the project or measure?
 - To what extent do these authorities adequately represent IPs/VMGs?
 - Who are the traditional leaders of the IPs/VMGs in the project area?
 - Given that indigenous communities are not necessarily homogenous; are there groups, such as women, youth, the elderly and persons with disabilities, who are not represented by either of the above? And are parallel communications needed for these groups?
31. As mentioned previously, consultation should be conducted with representatives selected through a self- selection process.
32. The concept of self-selection of indigenous peoples' representative/s means that indigenous peoples - through their organizations, institutions and/or community members - select their own representative/s based on their own agreed mechanism or process, criteria and other considerations, as well as in defining the roles, tasks and responsibilities of their selected representative/s. The selection process shall be conducted without any interference by other groups/ parties to ensure the independence of the self-selection.

Some guiding Principles on the Self-selection Process for Representatives

33. *Adequate Information:* adequate, simple and clear information shall be provided to those involved in the selection process. The information shared to them shall include purpose/objectives, procedures of the selection process, the criteria/ qualifications needed, the profile of candidates or nominees, the tasks and duties of the representatives, among others.
34. *Equal opportunity and inclusiveness:* consultation on the self-selection process of representatives shall be conducted as broadly and inclusively as much as possible, taking into consideration the different ethnic groups, geographical location, participation of men, women, youth, and the elderly.
35. *Transparency:* The self-selection process must be transparent and open. This means the process is open and accessible to all related persons - not secretive; and the result should be made public immediately with the concurrence of those that have participated in the process.
36. *Independence and ownership:* The selection process must be conducted independently without the intervention of other parties, or manipulation by anyone. It should also be conducted based on the agreement of IPLCs. Likewise, the criteria, qualifications, tasks, and mandate of the selected representatives shall be collectively defined and agreed upon, taking into account any specific considerations and factors deemed important and critical in the selection process.

37. The carrying out, schedule and venue of the selection process shall take into account the availability of chosen delegates. The venue shall also take into consideration the access and its suitability or appropriateness based on the participants expectations and suitability.

Ensuring Accountability and Transparency of VMGs/IP Representatives at All Levels

38. Accountability means being/making oneself answerable for one's actions and taking full *responsibility* for its consequences and implications. The respective constituency-stakeholder representative should therefore be trustworthy in the sense that they uphold the interest and welfare of their constituents above personal interest and benefit. Transparency refers to taking action in an open manner that can be easily checked and verified by others. This is against secretive actions or decisions intended for personal benefit. Transparency also includes the immediate disclosure of information on any action or decision taken or on activities that one has participated in as part of these tasks or duties. Below are the key conditions that are important to ensure the accountability and transparency of IPs/VMGs representatives.
- Representatives shall consult with and take the views and suggestions from indigenous organizations/ communities to guide his/her actions or decisions as the representatives.
 - Representatives shall share his/her activities and information to his/her constituents in a timely manner.
 - Representatives shall take full responsibility for the consequences and implications on his/her actions relating to his/her tasks and duties.
 - Representatives shall defend the interests, rights and welfare of IPs/VMGs, at all times.
 - Representatives shall present all related income and expenses to his/her constituents.

STEP III: Indigenous Peoples and local communities' Collective/Joint decision-making:

39. Community members should be granted sufficient time and opportunity to independently process and compare the information from alternative sources and then discuss and deliberate on their understanding, views and concerns collectively to facilitate prudent and informed collective decision-making leading to FPIC.
40. The decision-making process should be based on jointly pre-agreed timelines. The project proponents should avoid unilaterally predetermined deadlines which may hasten the consultation process, ultimately affecting IPs/VMGs, and parties with limited access to information and experience in decision-making.
41. Further, community decision making should be conducted in a manner defined by the community and should ensure the active participation of women, youth, the elderly and persons with disability, in order to take into account their views, specific concerns and rights. For indigenous communities or groups with strong or functioning systems of self-governance, they can use their traditional system of decision-making (consensus decision-making) such as the Council of elders.
42. Local decision-making processes of the communities, including the time needed for sufficient internal deliberations to foster common understanding either to say "yes" or "no," should be

respected. The engagement of external actors should be avoided, except to clarify issues of uncertainty, if requested by the communities.

43. Indigenous communities may include terms and conditions for consent as part of their collective decision. These terms and conditions must be clear, measurable or quantifiable and provide measures on how they will be implemented or achieved including the allocation of resources as needed. This is to prevent misinterpretation or confusion on how the terms will be implemented. These conditions may relate to security of land tenure rights, preservation of cultural rights, access to cultural and sacred sites, participation of monitoring processes, modalities for benefit distribution etc.
44. The collective decision-making process of the indigenous communities must be properly documented and recorded by the community themselves, and to be validated by them before it is submitted to any party or made public. It is therefore important that members of the community be assigned to do the documentation and recording of the decision-making process - and not only the outcomes. The community should ensure the proper safekeeping of the record of their collective decisions. If this record is in the local language, trusted translators of the community should be tasked with translating it accurately to the national language and English and subject to validation in terms of accuracy.

STEP IV: Giving or withholding consent:

45. Giving or withholding consent is a freely given decision by the indigenous communities based on clear, understandable information given to them, which will determine the further actions to be taken in the indigenous communities' land/territories.
46. The consent-seeking process should be *transparent, inclusive and well-informed* with meaningful and accountable participation of the indigenous leaders in the consultation processes and the collective decision-making process.
47. Where necessary, the capacity of the IPLCs should be enhanced to facilitate informed decision-making, which includes the option of withholding consent. Indigenous communities must have the right to withdraw consent, if conditions are not met. Any agreement reached should be written in a form fully understood by community members and the project proponent. Project proponents must respect a no consent decision where made.
48. Strong division with opposing views within indigenous communities means the absence of consent. On the other hand, consent does not mean unanimity. Based on the traditional systems of IPs/VMGs, decision-making, consensus is always the desired outcome of a collective decision-making process in upholding the common good and the collective interest and welfare of the community.
49. Even if there are views or positions that run counter to those of the majority, as long as those with opposing views agree to abide or respect the position of the majority, then this is considered as a consensus on either "consent" or "no consent" decision. Thus, the outcome still upholds the collective voice, views and interests of the community as one social and collective entity. Giving consent or withholding consent, should therefore be understood to be

a collective and independent decision of affected communities after undergoing their own process of decision-making.

50. Experience elsewhere indicates that consent can be manipulated and subverted by project proponents through various means, such as: allocation of insufficient resources to the process, providing incomplete information of the project, creating weak decision-making organs (e.g. non-representative or weak capacities to engage), undertaking the FPIC process too rapidly, and fraud in the procurement of signatures indicating consent.
51. The information shared to communities in the FPIC process should be substantive and factual enough to also address potential risks and implications associated with sensitive issues such as land tenure, livelihood systems, and identity of indigenous peoples, benefit sharing among other key concerns. The process of free prior informed Consent, especially ultimate decision to grant or withhold consent should be clearly documented and validated by all the concerned parties.

Checklist for Appraising Whether an Activity Will Require FPIC

- Will the activity involve the relocation/resettlement/removal of an indigenous population from their lands?
- Will the activity involve the taking, confiscation, removal or damage of cultural, intellectual, religious and/or spiritual property from IPLCs / forest-dependent community?
- Will the activity adopt or implement any legislative or administrative measures that will affect the rights, lands, territories and/or resources of IPs/VMGs, (e.g. in connection with the development, utilization or exploitation of mineral, water or other resources)?
- Will the activity involve logging on the lands/territories of IPs/VMGs?
- Will the activity involve the development of Agro-Industrial plantations on the lands/territories of / forest-dependent community?
- Will the activity involve any decisions that will affect the status of IPs/VMGs, rights to their lands/territories or resources?
- Will the activity involve the accessing of traditional knowledge, innovations and practices of indigenous and local communities?
- Will the activity involve making commercial use of natural and/or cultural resources on lands subject to traditional ownership and/or under customary use by IPs/VMGs?
- Will the activity involve decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/resources of IPs/VMGs?
- Will the activity have an impact on the continuance of the relationship of the IPs/VMGs, with their land or their culture

STEP V: Informing project proponents of the result of the decision-making process

52. The final decision of the community, whether consent or no consent, including the accompanying terms and conditions should be made known to the proponent by the appropriate or designated community representatives. The decision may be written and/or formally or officially relayed to the proponent through an appropriate means of communication. The proponent must respect the decision of the community, including a no consent decision.

STEP VI: Entering Agreement with Indigenous Peoples/Vulnerable and Marginalized Groups

53. If a decision is reached by the community to give consent, this will likely result in the signing of an agreement/MoU between the indigenous community and the project proponent regarding the proposed project or activity. It is essential that agreements reached are mutual and recognized by all parties. In the event that consent is withheld, further steps for future engagement can be explored, if this is agreed to by the local communities.

Indicative Content of an FPIC Agreement

- Signatory parties.
- Mutually agreed substantive evidence of consent.
- Agreement details (e.g. Costs, benefits, requirements, rules and restrictions), ensuring all expectations are voiced and vetted, and the resulting agreements are committed and agreed to by all.
- Project duration.
- Arrangements for making agreements binding.
- Feedback, grievance and redress mechanism.
- Monitoring and evaluation plan.
- Terms for withdrawal of consent.
- Agreed next point for consent to be sought.
- Independent verification provisions.
- Sanctions for violation of the agreement
- Roles and responsibilities of parties involved.

54. Once consent has been reached, it is important to ensure that agreements made through the consultation process are respected in their practical implementation. If agreements are not respected, sanctions and/or mechanisms of redress need to be activated. Modes of monitoring and verifying agreements should be jointly defined before an agreement is finalized, and the monitoring and verification procedures should be described in the agreement.

55. The signing of an agreement, be it in the form of a Memorandum of Agreement or an Impact Benefit Agreement, between the Climate Change project proponent and the community, signifies the commitment of both parties to abide by the obligations they negotiated and agreed upon in the process of FPIC. Agreements should be formal legal contracts anchored in relevant national legislation.

STEP VII: Feedback Grievance Redress Mechanism (FGRM)

56. Project level Feedback and Grievance Redress Mechanisms should be jointly developed by IPs/VMGs, and project proponents at project onset as part of the consultation and FPIC process. The FGRM procedures should be available for use at pre-agreement stages and should be part of the final agreement reached.

57. All agreements should specify the grievance procedures and mechanisms of redress for any violation committed by either the communities or the project proponent. IPLCs and project proponents should jointly designate a recognized authority to monitor FGRM in order to enhance confidence of project actors in the FGRM system.
58. Grievance mechanisms may take various forms. These may include community based alternate dispute resolution mechanisms (ADRM) e.g. traditional justice systems, mediating institutions and national judicial procedures. Elements of a robust FGRM:
- It should incorporate and demonstrate high levels of fairness, impartiality, transparency, accountability, integrity, accessibility and gender and intergenerational equity standards including full and effective participation in all FGRM processes by all participating parties
 - Demonstrate practicality in enforcement abilities to act on complaints brought before it.
 - Demonstrate potential to facilitate clear documentation and complete capturing of issues and concerns raised by all parties.
 - The FGRM should provide clear procedures for receiving, registering, investigating, responding and closing out grievances.
 - The FGRM should provide clear and popularized guidelines on the process of raising concerns, turn-around times for complaints registered, processes of decision making, communicating the decision and appealing the decision.
 - The established FGRM should incorporate clear structures for implementation, monitoring and enforcement.
59. Potential FGRM structures at community/project level.
- a) Community focal point on FGRM-Project proponent should consider a well-resourced member of the community for continuous review and feedback addressing day to day concerns at the project level. The person should undertake periodic interviews with community members and manage issues harvested from collection boxes for written and anonymous feedback
 - b) Establishment of a *community grievance committee*-Full and effective representation of the community with participation of minority groups, women, youth persons with disability and elders
 - c) Existing *customary approaches and institutions*: Where available and vibrant, project proponents should provide space to make use of these pre-existing mechanisms. Where IPLCs choose to resolve conflicts based on their traditional/customary justice systems, project proponents should incorporate and respect such outcomes. Respect for IPs/VMGs judicial institutions and customary law should be an integral part of ensuring adequate grievance mechanisms.
 - d) *Multi-stakeholder FGRM committee*-Composite committee bringing together selected representatives of IPLCs, county and national government and authorities with powers to make binding decisions.
 - e) Establishment of *independent advisory panels*-Provision should be made to establish independent advisory panels to advise contracting parties on issues not resolved amongst themselves or where independent technical interpretations of concepts and processes are required.
 - f) *Formal judicial system*-This should be the option of last resort when other options have not yielded a desired resolution, as it is often expensive, lengthy and burdensome to communities. However it remains the right of citizens as provided in the constitution.

STEP VII: Participation in Monitoring and Evaluation

60. The participation of IPLCs in the monitoring, reporting and evaluation of a project within their territories should be guaranteed and provided in the terms and conditions of the agreement arrived at between the indigenous community and the external entity implementing the project.
- Monitoring and evaluation committees - joint committee of self-selected representatives of IPs/VMGs, with requisite M&E competence and relevant government agencies and project proponents
 - Develop community sensitive indicators for use in the monitoring process-These could be related to security of land tenure, access to cultural and sacred sites and biodiversity and sensitive ecological zones.
 - Design participatory approaches to monitoring of climate change project related activities including during the design, data collection, monitoring and, undertaking and validating impact assessment
 - Establish monitoring and evaluation related information sharing and feedback sessions with clear provisions for timelines within the project lifespan-These platforms will provide avenues for sharing monitoring and evaluation reports.
 - IPs/VMGs, should also be given an opportunity to review and submit comments on impact assessments, to ascertain that the final assessments reflect the actual conditions in the affected communities before final adoption of the impact assessment report.