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# GOVERNMENT OF KENYA



## MINISTRY OF WATER & SANITATION AND IRRIGATION

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**Kenya Water, Sanitation and Hygiene Program (K-  
WASH P179012)**

**Labor Management Procedures (IPF component)  
(Kenya)**

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## Acronyms and Abbreviations

CMP	Contract Management Plans
CoC	Code of Conduct
CRPD	Convention on the Rights of Persons with Disabilities
CO	Chief Officer
CoC	Code of Conduct
CoK	Constitution of Kenya
CPC	County Project Coordinator
PIU	County Project Coordinating Unit
CSOs	Civil Society Organizations
PWDs	People with Disability.
DOSH	Department of Occupational Safety and Health
EACC	Ethics and Anti- Corruption Commission
EHSGs	Environmental, Health and Safety Guidelines
EMCA	Environmental Management and Coordination Act
ESIA	Environmental and Social Impact Assessment
ERPP	Environmental Risk Preparedness Plan
ESS	Environmental and Social Standard
GIIP	Good International Industry Practice
GM	Grievance Mechanism
GoK	Government of Kenya
GRS	Grievances Redress System
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HR	Human Resource
ICRMW	Convention on the Protection of the Rights of all Migrant Workers
ICT	Information Communication and Technology
ID	Identification Card
ILO	International Labour Organization
IPC	Infection Prevention and Control
K-WASH	Kenya Water, Sanitation and Hygiene Program
LMP	Labour Management Procedures
M&E	Monitoring and Evaluation
MDA	Ministries, Departments and Agencies
MIS	Management Information System
MoWSI	Ministry of Water Sanitation and Irrigation
MoH	Ministry of Health
NEDI	North Eastern Development Initiative.
NPC	National Project Coordinator
PMU	Project Management Unit
NRM	National Resources Management
O&M	Operations and Maintenance
OHS	Occupational Health and Safety
PAD	Project Appraisal Document
PC	Project Coordinator
PCU	Project Coordination Unit
PIM	Project Implementation Manual
PPE	Personal Protective Equipment
PS	Principal Secretary

PSC	Public Service Commission
SEAH	Sexual Exploitation, Abuse and Harassment
SEP	Stakeholders Engagement Plan
SMP	Security Management Plan
SMS	Short Message Services
SOPs.	Standard Operating Procedures
SPs	Service Providers
STDs	Sexually Transmitted Diseases
TA	Technical Assistance
ToT	Training of Trainers
VMGs	Vulnerable and Marginalized Groups
WB	World Bank.
WHO	World Health Organization.
WIBA	Work Injury Benefits Act

# I Introduction

## o 1.1 Objective of the LMP

The ESS2 recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and inclusive economic growth. Borrowers can promote sound worker-management-relationships and enhance the development benefits of a project by treating workers in the project fairly and providing safe and healthy working conditions. This Labor-Management Procedure has been prepared as guided by Environmental and Social Standard 2 (ESS 2) on Labor and Working Conditions of the Environmental and Social Framework (ESF). The IPF TA component will provide implementation support to these counties through the technical assistance and capacity building initiatives as well as to support the monitoring and inter-governmental coordination activities. ESS 2 groups project workers into various categories namely direct workers; contracted workers; community workers; and primary supply workers. The IPF is proposed to have only direct and contracted workers. The labor category of direct workers is mainly those that belong to the Ministry of Water, sanitation and irrigation (MoWSI), staff from other relevant government ministries, departments, and agencies and all the county staff from the 19 counties **Murang'a, Kirinyaga, Tharaka Nithi, West Pokot, Baringo, Samburu, Migori, Nandi, Narok, Bomet, Kericho, Vihiga, Makueni, Kitui County Kwale, Tana River, Turkana, Garissa and Mandera** with 33 WSPs. Contracted workers will be consultants and their workers.

## **Purpose and Specific Objectives of LMP**

This Labor Management Plan has been compiled to address the specific impacts that are anticipated to occur because of the MOWSI TA activities as identified. This plan sets out a formal system by which mitigation measures will be implemented in a manner that proactively responds to risks and impacts of in-migration and management of labour during design and implementation of the TA.

### **Specific Objectives**

- To promote safety and health at work.
- To promote the fair treatment, non-discrimination, and equal opportunity of project workers.
- To protect project workers, including vulnerable workers such as women, persons with disabilities, children (of working age, in accordance with this ESS) and migrant workers, contracted workers, community workers, and primary supply workers, as appropriate.
- To prevent the use of all forms of forced labor and child labor.
- To support the principles of freedom of association and collective bargaining of project workers in a manner consistent with national law.
- To provide project workers with accessible means to raise workplace concerns.

These LMP will ensure that the consultancies, studies (including feasibility studies, if applicable), capacity building, training, and any other technical assistance activities under the Project: (I) are

carried out in accordance with terms of reference acceptable to the Association that are consistent with the ESSs; and thereafter ensure that the outputs of such activities comply with the terms of reference; and (2) that working conditions for working conditions will also be in accordance with the WB ESHGs for all workers providing services under TA activities.

## **1.2 Project Description**

**The Program Development Objective** is to increase access to improved water and sanitation services, eliminate open defecation and improve the operational and financial performance of water services providers in selected counties.

### **Investment Project Financing (IPF) Component.**

IPF component will primarily be for providing technical assistance and capacity building activities for the implementing agencies and supporting intergovernmental coordination. The MoWSI and the national and county implementing agencies will receive technical assistance for the implementation, monitoring, and reporting of Program activities. The MoWSI will facilitate technical assistance towards the capacity building of all counties for the preparation of key policy and strategy documents, such as the County Water Supply and Sanitation Strategy which is a strategy-level document that will provide an overarching framework to guide WSS sector investments and service delivery decisions over a five-year period to ensure universal access and the sector's financial sustainability. In addition, technical assistance will be provided for addressing the gaps and deficiencies uncovered by the technical, financial, and environmental and social (E&S) assessments. Support for sector monitoring and reporting will include the employment of a Credible verification agency (CVA) and the alignment of national water sector data collection and reporting mechanisms with global practices, such as those for reporting on the Sustainable Development Goals (SDGs). Recognizing the role of the national and county governments, the project will also support the operationalization of intergovernmental coordination mechanisms envisioned by sector policy and legislation

## **1.3 World Bank Requirements for Labour Management Procedures**

According to Environmental and Social Standard 2 (ESS2) direct workers in the KWASH program will be government civil servants (mainly those that belong to the MoWSI at the National and the County levels) and staff from other relevant government Ministries, Departments, Water service Providers (WSP) and Agencies (MDAs) deployed to provide requisite technical support to the project. While the civil servants are governed by the Employment Act of 2007 and a set of public service regulations and HR manuals, the consultants will be governed by a set of mutually agreed contracts guided by prepared TOR. The LMP will provide guidance on management of all workers who will be engaged to provide TA activities in the implementation of K-WASH.

## 2 Overview of Labour Use In K-WASH

MoWSI can promote sound worker-management relationships and enhance the development benefits of projects by providing safe and healthy working conditions. Labour is an active factor of production which makes it distinctly different from other factors of production. Besides, labour is not only a ‘means of production’ but also an ‘end of production’.

### 2.1 Labour Requirements for K-WASH.

Implementation of TA activities will likely involve the hiring of some local staff by the Consulting firm undertaking the TA activities, to enable them tap into the local knowledge of the country and the project areas. The consulting firm will be required to adhere to the country’s and international good practice labor laws. In this regard, the consulting firm will ensure that terms and conditions of employment including but not limited to: remuneration, working hours, working environment, annual, sick and maternity leave, and working conditions, separation terms, dispute resolution mechanism, membership in workers’ unions, etc. are clearly articulated in the signed employment contract in line with the labor laws of Kenya.

**Table 1: Labor Requirements for IPF Component Project Activities**

Project Component	Activities
IPF Component	Training, TA, technology uptake and identified gaps in the SESA activities.
	Project coordination activities by staff in the PCU, WSP, PIU. Training, TA.
	<b>Primary supply workers:</b> are workers employed or engaged by a primary supplier, providing goods and materials to the project, over whom a primary supplier exercises control for the work, working conditions, and treatment of the person. Primary supply workers may include Skilled, Semi-Skilled and Unskilled/Casual workers. Procurement through Primary supply workers will be undertaken for acquisition of various materials that may be required during the TA activities.

### 2.2 Categories of Workers for K-WASH

**The project will engage the following types of workers as:**

- i. Direct workers
- ii. Contracted workers Consultancy and contractual workers

**Direct Workers:** Those who are directly contracted, employed, and are paid directly by the MoWSI, WSTF, WASREB, WSPs both at national and county level for as part of project implementation unit mainly to carry out, Management, ESS issues, consultancy, design and supervision, monitoring and evaluation, or community engagement in relation to the project. The PMU (MoWSI) could be supported by national and/or international consultants, who will be hired on needs-basis as per the program activities to support the achievement of the overall goal of the

program. They will be trained on OHS guidelines, labour rights and expected code of conduct.

**Contracted Workers:** Are workers employed or engaged by a third party to perform work or provide services related to the core functions of the project, where the third-party exercises control over the work, working conditions, and treatment of the project worker. There will be workers engaged by consulting firms for various activities in the KWASH program. Unskilled labors from the Community within the project sites and may also be engaged in the project to support the consulting firms or services and activities. Below is a breakdown of the expected group of workers:

**Table 2: Project workers' description**

Category	Description	Number	Timeframe/pr oject phase
Direct workers	Comprise of staff working in the MoWSI, Project Management Unit (PMU), WASREB, WSTF, Water Service Providers (WSPs) and County Project Coordinating Unit (PIU) as skilled fulltime time personnel,	(to be determined)	Coordination and management
	Various staff will be involved in the project including directors of various departments both National and County Governments and all cadres in the and support staff as skilled part time basis /need basis	About 25 Policy and technical personnel.	Implementation
	These will include Technical Assistants (TA), Consultants who will be hired on need-basis as per TOR developed as professional highly skilled consultants on need basis.	Numbers unknown (to be determined)	Implementation
Contracted workers	These will include workers who will be contracted by consulting firms sourced by KWASH to undertake the consultancies under TOR developed and may involve recruitment of the temporary workers both skilled and unskilled. Independent verification agent (IVA) consulting firm	Numbers are unknown to be determined when the main consultants are on board is conceptualized.	Implementation

<sup>1</sup> Includes full time, part time, temporary, seasonal, and migrant workers (migrant workers are not envisioned here)

### 3.0 Assessment of Potential Labour Risks

The TA activities will include:

- a. Support in development of policies such as the County Water Supply and Sanitation Strategy (CWSSS)
- b. Support in sector monitoring and reporting and will include the employment of a CVA and the alignment of national water sector data collection and reporting mechanisms with global practices, such as those for reporting on the SDGs.
- c. Support the operationalization of intergovernmental coordination mechanisms envisioned by sector policy and legislation.
- d. Support MoWSI to develop a Fecal Sludge Management Strategy (FSMS), which will be piloted in two Counties within the Program area for at least six months.
- e. Support for the MoWSI to address and close out gaps and deficiencies uncovered by the technical, financial, and environmental and social systems assessments (ESSA).

#### a) Occupation health and safety (OHS)

The K-WASH has Potential risks during consultancy for design and siting of boreholes and other water related projects. The program will employ direct workers (staff of relevant Ministries, departments and agencies) and contracted workers (consultants) will be involved in implementing TA activities. The workforce pool will consist of staff from MoWSI, WSP, county governments, technical consultants involved in various specialist studies and undertaking capacity development initiatives and suppliers providing goods and services to the consultants. Given the nature of work involved, health and safety risk to these workers is expected to be minimal. These risks could be from transport related incidents such as road accidents, fieldwork OHS risks such as falls, trips and knocks. Issues of OSH may be served by county DOSH officer as provided for in [https://www.labour.go.ke/sites/default/files/law/Final%20official%20email%20county%20officers%20\(2\).pdf](https://www.labour.go.ke/sites/default/files/law/Final%20official%20email%20county%20officers%20(2).pdf)

However, direct risks and impacts related to child labor (engaging children in the provision of goods and services) to project team and the non-employment of locals for works that they can do (such as interpreters) may be anticipated.

#### b) Sexual Abuse, Exploitation, and Harassment:

Five of the 19 counties (Mandera, Samburu, West Pokot, Turkana and Narok) have VMGs (IP) pastoralist counties, some are Muslim dominated with most community members practicing polygamy, a risk factor for GBV Education and literacy. Minimal risk of SEA/SH is anticipated during TA implementation. This is because much of the work involving the implementation of TA activities will be desktop with intermittent field visits to collect data and undertake stakeholder engagement and consultation. In addition, the potential for labor influx-related impacts is minimal given the limited travels likely to happen and the number of workforces involved. The consultants will be required to abide by the national laws and regulations as they pertain to sexual violence, as well as the World Bank provisions on SEA-SH, and institute the measures to mitigate the risk

of SEA/SH. Further, MoWSI, WSP, county governments will ensure that requirements for SEA/SH mitigation measures reflect in the bidding documents and contracts for TA engagement, such as codes of conduct to be signed by all TA workers. In addition, a SEA/SH Prevention and Response Action Plan will also be prepared to ensure SEA/SH issues are clearly mitigated and in a timely manner.

**c) Labor disputes over terms and conditions of employment.**

For teams carrying out data collection, field assistants, interpreters (etc.), The terms and conditions of employment will, as appropriate, clearly spell out labor related requirements including the issues of minimum wage; overtime; leave entitlement, contracts; disciplinary measures and termination of contracts among others. The likely cause for labor disputes includes demand for limited employment opportunities; labor wages/rates and delays of payment; disagreement over working conditions (particularly overtime payments and adequate rest breaks); and health and safety concerns in the work environment. Further, there is a risk that employers may retaliate against workers for demanding legitimate working conditions, or raising concerns regarding unsafe or unhealthy work situations, or any grievances raised, and such situations could lead to labor unrest and work stoppage.

**d) Discrimination and Exclusion of Vulnerable Groups**

TA activities may exclude or discriminate against VMGs and other vulnerable groups such as poor women, poor female-headed households, poor single parents, the elderly, and persons with disabilities (PWDs), in a number of ways, e.g., through lack of culturally appropriate consultations with VMGs; inadequate or lack of sensitization about available opportunities such as employment; or lack of information on how they should be included in the consultation process and employment process.

**Table 3: Potential Labour Risks and Mitigation Measures**

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
<p><b>Operational Health and Safety (OHS)</b> in development of policies such as the County Water Supply and Sanitation Strategy (CWSSS), sector monitoring and reporting and will include the employment of a CVA and the alignment of national water sector data collection and reporting mechanisms with global practices, such as those for reporting on the SDGs. The operationalization of intergovernmental coordination mechanisms envisioned by sector policy and legislation, by MoWSI to develop a Fecal Sludge Management Strategy (FSMS), which will be piloted in two Counties within the Program area for at least six months.</p>	<p>All consultants (Skilled, Semi-Skilled and Casual workers)</p>	<p>Medium</p>	<ul style="list-style-type: none"> <li>• Reference WBG Environmental, Health, and Safety (EHS) Guidelines is an OHS Management Plans to be developed by consultants according to LMP requirements and in line with WBH EHS Guidelines and other relevant. GIIP reference document with general and industry-specific examples of Good International Industry Practice (GIIP) (Environmental, Health, and Safety (EHS) Guidelines,</li> <li>• All teams working on the TA activities will be required have a training on how to comply with ESS 2, WBG EHS and OHS and the International Guidelines on Safety.</li> <li>• Incident reporting as recommended by Directorate of Occupational Safety and Health Services (DOSHS) within period of 48hrs</li> <li>• Code of Conducts (CoC) to be signed by all TA consultants</li> <li>• Where the Mitigation measures prescribed by the SMP are applicable in the area, consultants security while at work remains a major risk that requires explicit incorporation of management measures, as prescribed in the requirements of the SMP at each county and site-specific sites identified.</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
Health, and Safety (EHS) risk:	All consultants	Medium	<ul style="list-style-type: none"> <li>• Reference to Environmental, Health, and Safety (EHS) Guidelines is with general and industry-specific examples of Good International Industry Practice (GIIP)</li> <li>• Involve consultants, who often have the best understanding of the conditions that create hazards and insights into how they can be controlled.</li> <li>• Hazards needing controls will be listed in order of priority and eliminate the hazard by removing the specific TA activity from the work process.</li> <li>• Minimizing the hazard through design of safe work systems and administrative or institutional control measures e.g. job rotation, training safe work procedures, lock-out and tag-out, workplace monitoring, limiting exposure or work duration, etc.</li> <li>• Develop plans with measures to protect consultants involved in TA activities during emergencies.</li> <li>• Evaluate the effectiveness of existing controls to determine whether they continue to provide protection, or whether different controls may be more effective. Review new technologies for their potential to be more protective, more reliable, or less costly</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
<b>Discrimination and Exclusion of Vulnerable Groups</b>	All workers working with the TA consultants	medium	<ul style="list-style-type: none"> <li>• At statutory level, the Kenyan Employment Act 2007 is equally expansive, prohibiting discrimination in employment on grounds of 'race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. This will apply to all TA activities under K-WASH</li> <li>• Where TA activities impact on vulnerable groups meeting ESS7 inclusion of all vulnerable people who have the relevant skills to provide labour. Sensitization will be conducted in culturally appropriate manner and in language understandable by the local communities will be used.</li> <li>• Sensitize women, youth and PWD of available opportunities and ensure that project work environment is made safe for their access;</li> <li>• Ensure easy access to the grievance redress mechanism which is tailor made to suit the local needs e.g. culturally appropriate;</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
<p><b>Labor disputes over terms and conditions of employment.</b></p>	<p>Program consultants</p>	<p>High</p>	<ul style="list-style-type: none"> <li>• Having collective agreements with workers as provided in the labour and relations act No 14 of 2007</li> <li>• Provide appropriate GM for the resolution of grievances</li> <li>• The use of alternative dispute resolution methods such as arbitration and mediation (out of court settlement) using trusted local opinion leaders and local administration especially in vulnerable group areas meeting ESS7.</li> <li>• Work with community leaders to avoid conflict related to community differences. Tested community leaders play a role in the fair identification of both contracted workers (local)..</li> <li>• Ensure GRM is accessible to all Workers and that there no impunities for reporting (whistle blower)</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
Likely incidents of child labour in directing consultants doing TA activities	K-WASH TA consultants in the field	Low	<ul style="list-style-type: none"> <li>• All vacancy advertisements should clearly prescribe that child labour is not permitted and persons to be employed must meet the minimum age as prescribed in Employment act 2007 which is 18 years and above</li> <li>• Sensitize beneficiaries on negative impacts of child labour;</li> <li>• Certification of laborers' age and removal of under-age (using National Identification Card, Birth Certificate or affidavit of birth in employment of workers);</li> <li>• Ensure on compliance with the employment act 2007</li> <li>• Ensure that contractors have and implement a Child Labour protection Policy to deter employment and abuse of children in the project In the project design, HoAGWP implementation structures will include membership from Children and Labour Departments mandated to address child labour risks, both at national and county levels.</li> <li>• Raise awareness/sensitization of child labour issues, e.g. hazardous work and risks to all project beneficiaries.</li> <li>• In liaison with county relevant officers, support community organizations to formulate children's policies at local level enforced by county officers.</li> <li>• Train and build capacity of communities where most WRUA are located on the supportive legal framework against child labour.</li> <li>• Use existing government structures to address child labour issues: Area Advisory Council in Children (AAC), children services and labour departments, the Ministry of Internal Security (Area Chiefs), Ward Administrators and the National Council Against Child labour. The project will work in collaboration with these structures to ensure that there is no child labour in any project activities.</li> <li>• Involve Children Services Department at the project level from the outset to ensure child labour, risks and mitigation measures are</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
			<p>identified and the mitigation measures mainstreamed.</p> <ul style="list-style-type: none"> <li>• The policy of the Government is to eliminate child labour through awareness creation, training of communities and ToTs. Therefore, it will be prudent for the project at mobilization stage and throughout the implementation phases to identify strategies that will avoid/minimize engagement of child labour.</li> <li>• Structures to address child labour exist in various mandated government ministries, departments and agencies and are multi-sectoral in nature and should be fully engaged by the project to mitigate child labour.</li> <li>• Sensitize and train beneficiary communities to be aware of the drivers (including socio-cultural practices, high income incentives, poverty levels and high cost of living) of child labour and suitable measures to avoid/minimize the same.</li> </ul>
Risks of gender-based violence risks including Sexual Exploitation and Abuse (SEAH) workplace	All TA workers	High	<ul style="list-style-type: none"> <li>• Apply requirements of the SEAH Prevention and Response Action Plan to mitigate GBV and SEA risks;</li> <li>• Define SEAH requirements and expectations included in the contractual obligations as well as reinforce CoCs that address SEAH in the project locations to cultivate an environment free from SEAH as well as regular dissemination of the CoC to the workers; as guided in the GBV/SEAH action plan</li> <li>• No sexual or other favours can be requested in exchange for services during TA activities;</li> <li>• Project staff are prohibited from engaging in SEAH and this information should be clearly spelt out during training and other forms of communication to the TA staff;</li> <li>• Any case or suspicion of SEAH should be reported to [hotline number, GM or citizen engagement/feedback mechanism];</li> <li>• Information on protection of whistle-blowers; and</li> <li>• The range of services available for survivors including healthcare,</li> </ul>

Potential Risk as identified in ESS2	Consultant Likely to be affected	Magnitude of the Potential Risk	Mitigation measures
			protection and psychosocial care.
Security related risks	All TA Consultants and workers	medium	<ul style="list-style-type: none"> <li>Adhere to mitigation measures that accompany the security rating of area of concern as stipulated in the security management plans prepared under ministry of interior government.</li> </ul>

## 4. Overview of Labor Regulatory Framework

**The Constitution of Kenya 2010** provides relevant clauses including Article 2 which recognizes ratified treaties as part of the laws of Kenya. Article 41 (on labour Relations) addresses the entitlements and guarantees afforded to workers, employers, and the unions, and exercisable by them within Kenya's employment regime. These entitlements are anchored on key human rights and freedoms including the right to human dignity in Article 28; freedom from all forms of slavery, servitude and forced labour in Article 30; and the right of everyone to have their privacy respected as provided for in Article 31. Article 27 on non-discrimination provides for equality and prohibits discrimination on various grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, or birth.

**The Employment Act, 2007** Article 4 (1) states that 'No person shall use or assist any other person in recruiting, trafficking or using forced labour'. Article 18. (1) holds that it shall be the duty of the Minister, labour officers and the Industrial Court– (a) to promote equality of opportunity in employment in order to eliminate discrimination in employment; Article 6. (1) states that an employee is 'sexually harassed if the employer of that employee or a representative of that employer or a co-worker— (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express; it also guides if one needs to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate employment of children, and to provide for matters connected with the foregoing. Again, making it safe for the workers for the law covers them against discrimination, sexual exploitation or forced labour (*EMPLOYMENT ACT CHAPTER 226, 2012; PART II-GENERAL PRINCIPLES 4-Prohibition against Forced labour. 18-Discrimination in Employment. 6-Sexual Harassment, n.d.*).

**The labour relation Act of 2007:** The Act consolidates 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 labor 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. The Act provides for a collective agreement is defined in the Labour Relations. Act as "A collective bargaining process precedes this.

The process of collective bargaining is not specifically provided for in law, but there are prerequisite conditions, which must be fulfilled before parties may proceed with bargaining process. Such conditions are contained in the Labour Relations Act, No. 14 of 2007. In section 184 of the Labour Relations Act, there is a requirement that the trade union must have legal recognition in law that is duly registered by having a constitutional jurisdiction.

The law has different approaches to defining the categories of employees, such as: by nature, and length of the employee-engagements. The categories include casual employees (who are not engaged for a longer period than 24 hours at a time), part-time, full-time employees, piece work (where the focus is the amount of work performed irrespective of the time occupied in its performance) and employees with probationary contracts (which address the formalities and length of the probationary period). The Act also addresses the issues of the employees' nationality and origin as is the case with migrant workers (referring to those migrating to Kenya specifically for purpose of the employment) and provides the requirements to be met by

migrant workers before they are employed. In addition, the Act provides for the minimum terms and conditions of employment of an employee and grounds upon which a contract may be nullified. This is intended to discourage any arrangements that seek to undermine the statutory standards.

**The Industrial Court of Kenya:** The industrial court is not mentioned in the Constitution 2010 but was established in 1964 under the Trade Dispute Act (Cap. 234). The Industrial Court has found its current shape in 1971, when the Trade Dispute Act was amended in the light of the experience gained from 6 years of practical application. The purpose of the Court is the settlement of trade disputes. Vide the provisions of section 14, Trade Dispute Act (Cap. 234), the President of the Republic may establish the court, and determine the number of judges (not less than two). Eight members are appointed by the Minister after consultation with the Central Organization of Trade Unions (COTU) and the Federation of Kenyan Employers (FKE). Whenever it appears to be expedient, each judge appoints two assessors, one to represent employees, from a panel of assessors appointed by the Minister, to assist in the determination of any trade dispute before the Court. The jurisdiction of the Court is exercised by the judge and the two other members. Only in the case that they are not able to agree, the matter will be decided by the judge “with the full powers of an umpire” (section 14 (8) Trade Dispute Act (Cap. 234)). This is also a fallback avenue if something is not adding up between a worker and the K-WASHG implementation agencies.

**The Work Injury Benefits Act (WIBA):** This act of Parliament (2007) provides for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes. It also addresses workplace safety and health and has since been amended several times. It provides compensation to employees for work-related injuries and diseases contracted in the course of their employment. The Act provides for the compensation of ‘injured’ employees as well as their dependents, who are adversely affected by work injuries. Part III (on Right to Compensation) addresses the entitlement and guarantee afforded in respect of compensation. This provision could be expanded to cover infection with COVID-19 contracted while at work.

**Occupational Health and Safety (OHS) Act:** The Occupational Safety and Health Act<sup>2</sup> is Kenya’s codifying law governing workplace safety and health. The law provides for “the safety, health and welfare of workers and all persons lawfully present at workplaces and establishes the National Council for Occupational Safety and Health”. This law is broadly concerned with potential hazards to persons in the workplace. These concerns would likely remain the same, if there’s only one individual likely to be affected; and thus, the standards set under the Act are largely focused upon the environmental risks to persons at the workplace. Part VI (on Health-General Provisions), Part VII (on Machinery Safety), Part VIII (on Safety-General Provisions), Part IX (on Chemical Safety), Part XI (on Health, Safety and Welfare – Special Provisions) and Part XII (on Special Applications) provide for different occupational safety and health scenarios (in detail), with the intent of allowing for the management of the intended and unintended safety and health consequences that may be wrought by potential hazards. These safety and health consequences are more localized to individual workers, by virtue of their presence in the premise, than upon the wider society. This is an Act of Parliament to provide for the safety, health and welfare of workers and all persons lawfully present at workplaces, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes. The Act has the following functions among others:

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<sup>2</sup> OSH Act No 118 of 2007

- Secures safety and health for people legally in all workplaces by minimization of exposure of workers to hazards (gases, fumes and vapours, energies, dangerous machinery/equipment, temperatures, and biological agents) at their workplaces.
- Prevents employment of children in workplaces where their safety and health is at risk.
- Encourages entrepreneurs to set achievable safety targets for their enterprises.
- Promotes reporting of work-place accidents, dangerous occurrences and ill health with a view to finding out their causes and preventing of similar occurrences in future.
- Promotes creation of a safety culture at workplaces through education and training in occupational safety and health.

**The environmental Management Coordination Act (EMCA) 2006:** The EMCA legal notice number 68 provides regulations concerning drinking water, water for agricultural purposes and other water uses. While legal notice number 69 through the legal notice number 121 gives the regulations on the management of all types of waste to avoid any negative impacts to people including workplaces. Additionally, EMCA 2009 gives regulation on noise and vibration control to safeguard the population and workers from injuries due to excessive noise and vibrations.

### World Bank Group EHS Guidelines

The Environmental Health and Safety (EHS) Guidelines are technical reference documents with general and industry-specific examples of Good International Industry Practice (GIIP). The EHS Guidelines contain the performance levels and measures that are normally acceptable to the WB Group, and that are generally considered to be achievable in new facilities at reasonable costs by existing technology. The EHS General Guidelines remain relevant to this project and were utilised in the development of the ESMF. General guidelines that are available at [www.ifc.org/ehsguidelines](http://www.ifc.org/ehsguidelines).

The Worst Forms of Child Labor (ILO Convention 182); Equal Remuneration (ILO Convention 100); maintains that “Article I Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency; Discrimination (Employment and Occupation) (ILO Convention 111) that states in one article that “Article I I. For the purpose of this Convention the term discrimination includes--

(i) Any distinction, exclusion or preference made based on race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(ii) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative.

A summary of the gaps and procedures to develop and implement the LMP policies is provided the table below: (i) identification of the hazards; (ii) identify the people who might be harmed and how; (iii) Evaluate the risk and decide on precautions; (iv) Record the significant findings and implement them; and (v) Review and update if necessary.

**Table 4: Comparison of the Kenya Labor law with key elements of the ESS2**

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
obligation of employers to all forms of workers i.e., supply chain workers	No requirement to be responsible for	WB requires implementing agency to take responsibility of other workers on their site	Kenyan law is silent on role of implementing agency on welfare of primary	<b>MoWSI</b> to align Consultancy ToRs with the World Bank's requirements

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
	3 <sup>rd</sup> party workers.		supplier workers, community workers etc.	
OHS responsibility in shared workspaces under different employers	Not specific on who is responsible for Health and safety in shared spaces	Where project workers are employed or engaged by more than one party and are working together in one location, the parties who employ or engage the workers will collaborate in applying the OSH requirements, without prejudice to the responsibility of each party for the health and safety of its own workers.	Kenyan law does not explicitly require employers to be responsible for the safety of third-party workers in a shared site. However, it is assumed that whoever's works poses the the danger is responsible for the safety ot the workplace	Implement and comply with OHS measures in the LMP and ensure such applicable measures are include in all project contracts and ToRs  Ensure adequate Emergency Response Procedures are implemented in facilities used by Project workers
Settlement of final dues		All wages that have been earned, social security benefits, pension contributions and any other entitlements will be paid on or before termination of the working relationship,	Kenyan law does not provide for final settlement but does indicate timelines to be adhered to in the settlement of disputes	<b>MoWSI</b> to align Consultancy ToRs with the Kenyan laws and World Bank requirements as appropriate
Equal opportunity and non-discrimination	Kenyan law prohibits discrimination. An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice. An employer shall not discriminate an employee on grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status.	ESS-2 gives provisions for equal opportunity, fair treatment, and no discrimination with respect to any aspects of the employment relationship	Both are against discrimination in workplaces	<b>K-WASH</b> will apply the provision for equal opportunity and non-discrimination in the Constitution Kenya, 2010, and the Employment Act to ensure both men and women, people with disabilities and other vulnerable individuals are accorded equal opportunity to access employment benefits under the TA activities.  <b>K-WASH</b> will make all institutions aware of the Labor law requirement for compliance in their recruitment processes. Institutions shall show the evidence of induction of employees on the legal requirements for non-discrimination.
Timely payment	Payment of salaries, wages	Project workers should be paid on a regular basis as required	Both protect workers' wages	Salary wages and allowances will be paid in

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
	and allowances shall be made on a regular basis.	by national law and labor management procedures		accordance with the Employment Act.
Working hours and overtime	The working hours in Kenya are 52 hours per week for daytime employees. However, employees who work at night need to fulfill 60 hours per week. Regardless of the work, no daytime worker should work for more than 116 hours over a period of two weeks. Similarly, no night-time employee should work for more than 144 hours every two weeks. In the case of overtime work, employers must pay their employees 150 percent of their regular day's pay.	Working hours shall be agreed mutually or by collective bargaining.	Both give provisions according to working hours and overtime.	Working hours and overtime will be defined in accordance with the Kenyan law.  Attendance register shall be maintained to record time of arrival and departure from work.
Workers' rights	Kenyan Employment Act provides provisions for regular leaves and benefits. Employer must also provide reasons for termination.	ESS-2 requires full respect of workers' rights.	Both recognize the rights of workers	The <b>WASH program</b> will be implemented in accordance with Kenyan Laws. An effective grievance mechanism will be put in place to help workers raise their concerns.
Minimum age	18 years and above	Fourteen years and above	Disparity in age of engagement	Children under 18 years of age will not be permitted to work on <b>WASH program</b> . Evidence such as birth certificates or national ID cards will be required to certify workers' ages.

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
				The TA consultant will be required to adhere to the Kenyan law on minimum employment age, and violation of this law will be dealt with in accordance with the provisions of the labor laws of Kenya
Prevents use of all forms of forced labor	The Constitution and Employment Act prohibit all forms of forced or compulsory labour.	All workers associated with this project shall be required to work voluntarily without coercion or any form of threats. Forced labor in this context can be any form of indentured labor.	Both condemn forced labor	<b>WASH program</b> will not resort to forced labour. Periodic checks and screening for forced labor shall be carried out. Project Leads will ensure consent of employees to work as project workers.
Protection of workers	Provisions are given in the law relating to the protection of workers such as: Protection against discrimination; Protection of assignment of pregnant women.	ESS-2 requests borrowers to provide appropriate measures of protection and assistance for workers especially vulnerable workers.	Both give provisions to protect workers	Effective grievance mechanism would be put in place to manage complaints that may arise from workers in accordance with ESS2.
OSHS	The Employment Act does not provide full provision for OSH in workplaces.	There are adequate provisions for OHS procedures in ESS-2 which projects are expected to adhere to.	ESS2 includes more provision for workers on OHS	Beyond <b>WASH program</b> safeguard specialists, Kenya cluster shall have a safeguard focal person to manage OHS issues. Project workers will not be victimized for removing themselves from unsafe or unhealthy work environments. Project workers should have access and trained to effectively use appropriate PPE.
Employment of young persons	According to the labor code, children (between 13 and 16 years old)	ESS-2 gives provision to protect children between 14 years of age and 18 years against hazardous works	Both protect young workers against hazardous works.	As the minimum age to work on <b>WASH program</b> Consultancy services is 18, provisions

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
	shall be assigned only light work and not be assigned to hazardous tasks.			in the Employment Act will be applied. Enforced prohibitions on child labor, persons under 18 years will not be permitted to work on <b>WASH program</b> Consultancy services. Sensitize all partners and farmer groups on child labor prohibitions.  Institute age verification for new workers before engagement.
Women	Provisions are given in the Kenya law. They take into account equality of chance, non-discrimination, maternity leaves, etc.	ESS-2 provides measures to protect and assist vulnerable project workers, including women.	Both recognize the potential for discrimination and exclusion of women in employment opportunities and have put in place measures to ensure the inclusion of women in employment and other opportunities in workplaces.	<b>K-WASH</b> will put in place measures to ensure the inclusion of women to maximize employment benefits of the project. Such measures may include encouraging women to apply for job opportunities by make such requirements explicit in job advertisements, whether for skilled, semi-skilled or unskilled job opportunities <b>MoWSI</b> should comply with the national legislation on pregnant women and maternity, as well as the two thirds gender rule in employment and procurement opportunities.
Person with disabilities (PWDs)	Kenya Constitution and Employment Act safeguard against discrimination on the grounds of disability.	ESS-2 provides measures to protect and assist vulnerable project workers, including PWDs.	Both include provisions to fight against discrimination of PWDs in workplaces.	<b>MoWSI</b> would comply with the national legislation on discrimination against PWDs. <b>MoWSI</b> should therefore <b>target</b> PWDs in project learning activities.
A/SH	The Kenyan Employment Act forbids sexual harassment. However, under article 6. An	ESS 2 clearly forbids sexual harassment of any kind especially once the grievances have been reported.	Both forbid sexual harassment.	<b>MoWSI</b> will adopt the provisions of the Kenyan regulation. All project workers will sign the code of conduct

Key Elements	Kenya laws	ESS-2 Requirements	Identified gaps	Action required
	employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.			with key prohibitions on SEA/SH.  <b>K-WASH</b> will provide safe and confidential grievance channels easily accessible to all workers.  <b>K-WASH</b> will comply with the SEA/SH Prevention and Response Action Plan
Temporary and Casual Workers	Provisions of the Kenyan Employment Act take into account casual and temporary workers.	ESS-2 applies to project workers including fulltime, part-time, temporary, seasonal, and migrant workers.	Both take into account temporary and casual workers	The <b>WASH program</b> will apply provision in both the Labor Law and EES2.
Freedom of association and collective bargaining	The Kenyan law affords all persons the right to freedom of association, which includes freedom to form or join trade unions or other associations.	ESS-2 makes provision for borrowers to legally establish workers' organizations and legitimate workers' representatives.	Both give workers the right to freedom of association.	<b>WASH program</b> will elaborate, implement and disclose a Grievance Mechanism in accordance with provisions in ESS2. The TA Consultant will be required to induct its employees on the grievance procedure. <b>MoWSI</b> will be required to report grievances raised and progress on resolution.
Salary deductions	Labor Code generally precludes employers from deducting any amount from the remuneration of their employees except in some cases defined in the Employment Act.	ESS2 gives provisions for payment deductions in line with national law or the labor management procedures.	ESS-2 refers to national law for salary deduction	<b>WASH program</b> Consultancy Teams will follow provisions in the Employment Act to make salary deductions.

## 5. Implementation Matrix (key Actors)

This LMP will be operationalized through the leadership of MoWSI PMU with assistance from the Safeguard Focal Person from MoWSI. The PMU with assistance from the PIU, WSPs, the Environmental Expert, the Social Safeguard Specialist and, as applicable, other notational/county/community level implementing entities such as WASREB, WSTF, WRUA and project management committees, will provide additional oversight to ensure the application of this LMP to mitigate and respond to issues on occupational health and safety. Detailed level of oversight, responsibility and key roles are provided in the table below.

**Table 5: Responsibility for LMP Implementation**

10	Activity	Responsibility for LMP implementation		
		PMU, PIU and WSPs,	PIU, WSPs/WSTF	WRUA
1	Consultants Management Plan	Procurement unit of PCU / Fiduciary Dept Procurement Unit prepare a guide on CMP and a procurement plan to guide the counties and communities on adequate provision of PPEs	Procurement unit County PCU/ WSPS county procurement unit -develop a procurement plan to ensure sufficient procurement of PPEs	WRUA as community structure to ensure ecosystem Investments on procurement requirements to ensure purchase, equitable distribution and utilization of the PPEs
2	Consultancies listed in the Annual Workplan and Budget	County PCU AND WSPS M&E Expert to guide on budgeting to ensure adequate funding of security teams' welfare and items and PPEs	PCU MoWSI, WSPs, M&E O – domesticate the Annual workplan and budget to county conditions ensuring E&S activities are listed and PPEs have adequate budget	WRUA committee in charge of procurement/ finance to planning and ensure that the security is taken for items and PPEs are budgeted for and procured on time for full utilization during project implementation.
3	ToR development	Respective component/ Procurement Officers to include the requirement for compliance to Code of Conduct	Respective COUNTY AND WSPS and COUNTY AND WSPSS / Procurement Officer to include the requirement for compliance to Code of Conduct.  To follow up on compliance of the same.	-
4	Support teams involved in managing one or more of those consultancies.	Experts or consultants appointed by the PCU – train on ESHS, labor laws and child labor. Contracting and E&S clauses to be included in bids	PCU MoWSI, WSPs, appointed experts to ensure capacity building on child labor, labour laws and EHS and OHS	-
6	Provide induction and regular training to contracted workers on ESHS issues;	PCU. To ensure that training curriculum addresses the EHS, OHS, child labour and SEAH	COUNTY AND WSPS- To ensure that training activities on EHS, OHS, child labor and SEAH are regularly carried out.	Contracted workers from the communities to participate in EHS, OHS, child labour and SEAH trainings

7	Maintain records of recruitment and employment of consultants' workers (including Consultancy );	PCU to provide the guidelines to the Consultancy and Counties	County. To regularly follow up on the records keeping by the Consultancy.	To work with the Consultancy to ensure record development and keeping.
8	Monitor Consultancy to ensure their activities are in accordance with the LMP and drawn OHS Plans	PCU Environmental Expert; PCU Senior Social Development Specialist, short term SEAH expert, M&E Specialist; to develop M&E schedules to follow up and ensure compliance	PIU Environmental expert, Senior Social Development Specialist, County M&E assistant, county works committees to follow up and ensure compliance	The project management committee to ensure that the contractor adheres to the EHS.OHS and labor requirements.
12	Implement the GM for contracted consultancy workers including ensuring that grievances received from the contracted workers are resolved promptly, and report the status of grievances and resolutions regularly to the PCU and World Bank;	PCU - National Grievances Management Committee. -Train county GMs committees, and other national stakeholders	Capacity build county technical team; county GM committees	County and WSPSs and WRUA committees to document all the grievances, ensure timely resolution and where necessary promptly escalate to the PIU any grievances that they are unable to resolve.
17	Undertake the overall implementation of this LMP	PCU Social Development expert to oversee implementation of LMP	PCU MoWSI, WSPs, Senior Social Development Specialist to guide consultants to implement the LMP (if applicable). County Labour Officers to be involved at this point	-County and WSPS and WRUA at communities to be sensitized to understand labour requirements and rights.
18	Supervise Consultancy' adherence to the LMP	The environmental and social experts of the implementing entities including the PMU, PIU, WSPS etc. to mitigate and respond to labor risks and impacts, including occupational health and safety	PMU, MoWSI, WSPs, E&S experts to guide the TA consultants in the to implementation of the LMP including County Labour /Children Officers to be involved at this point	County and WSPSs will be sensitized and trained on the provisions of the labour laws of Kenya and their application and requirements under the project. This will enable them to ensure that the TA Consultancy complies with the requirements of the LMP and to promptly report any noncompliance for mitigation

## **6. Policies and Procedures**

All the consultant firms that will be engaged by MoWSI in the implementation of TA activities will be committed to managing project activities in a manner that safeguards the welfare, health, and safety of their employees and sub-consultants. In accepting this responsibility, the consultants are committed to follow various policies and procedures to avoid and mitigate the potential labor related risks outlined in this report with more consideration but not limited to:

- Discrimination and Exclusion of VMGs and Vulnerable/Disadvantaged Groups,
- Labor Disputes over Terms and Conditions of Employment,
- Forced labor,
- Child labor,
- Occupational Health and Safety,
- Sexual exploitation abuse (SEA) and Sexual Harassment (SH).

## **7. Age at Employment**

Verification of the age of employees shall be undertaken prior to the engagement of labour and documented. The National Identification Card (ID) or Passport will be used as indicative age verification means. For Vulnerable and Marginalized Groups/Indigenous Peoples (VMGs/IPs) who may not have ID cards and/or passports, a verification by a recognized local leader will suffice to engage him/her. Consultants and their contracted staff must be above 18 years besides the qualifications prescribed in the TOR (i) Above 18 years (ii) have a national identity card (iii) undergo medical checkup with the Ministry of Health (iv) have a Certificate of Good Conduct

## **8. Terms and Conditions of Employment**

The Employment Act, 2007, is the Kenyan national legislation that spells out all terms and conditions of employment for all categories of workers and is in conformity with the requirements of ESS2 regarding wages, deductions and benefits. Part II of the Act spells out the General Principles of employment while Part III sets out the Employment Relationship between the employer and the employee, including the “employment particulars” such as age, place and hours of work, contract period, remuneration details, and disciplinary rules, among others. Section 8 of Part III states that that the provisions of the act apply to both “oral and written” contracts while in section 9(1) it provides that any contract of work that is expected to be done within an aggregate of three months or more, shall be in writing. It further spells out the employer’s obligations to ensure that the terms and conditions of a written employment contract are explained to an illiterate employee in a language that is clearly understandable to the employee.

Part IV of the Employment Act deals with the “Protection of Wages” and spells out details regarding payment, disposal and recovery of wages, allowances and other benefits, etc., repayment of remuneration wrongfully withheld or deducted, terms and conditions for deduction of wages including statutory deductions. etc., as well as what happens in the case of death of an employee.

The TA consultant will be required to familiarize themselves with, and to adhere to the labor laws of Kenya.

## **9. Grievance Mechanism for labour related issues**

### **General Principles**

A grievance mechanism (GM) will be established and equipped to receive, register, and facilitate the resolution of all TA activities related grievances. SEA/SH complaints will be handled and redressed in a safe, confidential, and survivor-centered manner. To ensure its effectiveness, workers will be sensitized on the existence of the GM as part of their induction upon joining the TA consulting firm, how to access it, the process of submitting grievances, responsibilities for handling grievances including the feedback process, and timeframes for resolving grievances. In addition, the consultant will be required to provide a copy of the GM document to its workers. Finally, the TA workers will be sensitized on their right to access and submit complaints to the World Bank’s Grievance Redress Service (GRS) and the Inspection Panel. For information on how to submit complaints to the WB’s GRS please visit <http://www.worldbank.org/en/projects-operations/products-and-services/grievance-redress-service>. For information on how to submit complaints to the World Bank Inspection Panel, please visit [www.inspectionpanel.org](http://www.inspectionpanel.org).

The objective of labor grievance handling systems and procedure is to establish for the workers a mechanism for raising diverse complaints related to the KWASH IPF TA activities during implementation and having such complaints resolved as amicably as possible through acceptable and binding corrective actions. Typical workplace grievances include demand for employment opportunities; labour wage rates; delays of payment; disagreement over working conditions; SEA/SH and health and safety concerns in the work environment.

Handling of grievances will be objective, prompt, transparent, fair and responsive to the needs and concerns of the aggrieved workers. The mechanism shall also allow for anonymous complaints to be raised and addressed. Individuals who submit their complaints or grievances may request that their name be kept confidential, and this will be respected.

Grievances from workers (direct workers, contract workers, consultants) during the implementation of the project may include:

- Complaints pertaining to wage rates, salary, other remuneration or benefits as per Company's HR policy
- Gender discrimination, SEA/SH
- Workplace sexual harassment
- Issues related to workers' organization
- Labour accommodation.
- Health and safety issues;
- Extended working hours.

**Direct workers:** These will mainly be government employees at the MoWSI, WASREB, WSTF and County and WSPs. The staff will utilize the current grievance system set up by public service to address workers' grievances (Public Service Commission, 2016) annexed as annex 4 in this LMP. Each unit engaging direct workers (national, County and WSPs, county) will hold periodic team meetings to discuss any general workplace concerns. The grievances raised by workers will be recorded and requisite actions taken. The summary of grievances will be reported to the World Bank as part of regular project reporting.

Complaints will be sent to the GM focal point at the workplace by email, text, phone, letter or in person. The complaints will be registered in the form, collated onto a register (Annex 18) and reported using the format provided in Annex 6 (lodgment form). The email address and phone number will be made available to all workers during recruitment inductions. The project complaints handling email at the PCU level is and the telephone contacts once operational, the free hotline number will be disseminated widely to stakeholders including county level and should be displayed on the all MoWSI, WASREB and WSTF website.

The summary of grievance cases will be reported to the World Bank on a quarterly basis in line with the ESCP provisions. However, major incidents and accidents related to the TA activities, including SEA/SH cases, forced or child labor, and deaths, will be reported to the WB no later than 48 hours. Where the aggrieved direct workers wish to escalate their issues or raise their concerns anonymously and/or to a person other than their immediate supervisor/hiring unit, the workers may raise the issues with the World Bank task team. Where consultants/Consultancy have an existing grievance system, their direct workers will be expected to use such mechanism.

The overall coordination and implementation of the K-WASH IPF components will be led by the National Project coordinator (NPC) responsible for K-WASH at the MoWSI the primary responsibility for efficient and effective implementation and achievement of the stated K-WASH IPF component objectives. The PCU will provide leadership in priority actions for capacity building activities parameters for the review and monitoring of social risks in the K-WASH - projects across the five counties, stakeholders, identification and management of challenges and risks. The project has set aside funds to ensure that the planned LMP activities are implemented and monitored effectively.

A sample of Code of Conduct for Contractors and Workers is included as Annex A. This will be modified by the MoWSI to suite the TA activities requirements.

### **10. Management of TA consultancies**

Recruitments and evaluations of consultants will be done at the PMU and apart from the procurement laws are required to consider social and environmental standards in line with the national instruments alongside the world bank requirements.

Each consultant engaged by the K-WASH project to provide services must sign the CoC. The consultants drawn by the Government will include provisions, measures, and procedures to be put in place by the consultants to manage and monitor relevant OHS issues. Develop and implement procedures for managing consultants which include but not limited to:

- a) Minimum environmental and social requirements consistent with the provisions of the ESSs for inclusion in the procurement and contracting process including bidding documents for all TA assignments.
- b) Monitor consultants' commitment and compliance with ESSs including commitment to the ESHS codes of conducts.
- c) Providing grievance mechanisms for consultants and sub consultants, affected communities and other stakeholders.
- d) Ensuring that consultants provide details on their oversight on environmental, social, health and safety (ESHS) performance monthly to the PIU.
- e) A requirement for consultants to develop a grievance mechanism to handle the concerns of their employees.
- f) A requirement for consultant to have a Labor Management Plan that conforms to the requirements of the Project LMP and ESS2

- **10.1 Technical Assistance.**

Ensure that all the consultancies, studies, capacity building, training, and any other technical assistance activities under the Project are carried out in accordance with terms of reference (ToRs) acceptable to the Association, and consistent with the applicable ESSs which will form part of the operational manual for the project. Thereafter ensure that the outputs of such activities comply with the terms of reference (ToRs). In this regard, ensure that the process includes adequate capacity of ESHS staff who will be involved in reviewing of all TA products. This will ensure adequate consideration of measures needed to manage ESHS risks in future projects/activities are consistent with ESF and ESS requirements.

- **10.2 TA for associated facilities**

MoWSI and all agencies under the project will ensure that the activities of an associated facility, any associated facility if different from the financed supported by a different financier, that the activities in the associated facility are carried out in accordance with the applicable requirements of this ESCP and the ESSs, including, inter alia, specifying key actions and/ or instruments are required, e.g., the ESIA, ESMP, LMP, management of contractors, RAP, SEP, etc.].

- **10.3 Activities Subject to Retroactive Financing**

As provided for in ESS1 para. 17, a TA may comprise or include review or updating of existing plans, policies or programs. Some of these plans, policies or programs may be subject to retroactive financing under the TA. These activities should be identified during project preparation, and due diligence must be conducted to identify any required actions to ensure that such activities meet the requirements of the ESSs. In some cases, an E&S audit may be needed, which normally would be completed during project preparation. In others, amendment to existing work contracts, or a corrective action plan may be needed. Accordingly, this action should reflect the due diligence requirements applicable to the retroactive financing and their timeframe.

## Annexes

### Annex A: Sample Code of Conduct for Contractors and Workers Form

**Note to the Bidder:**

The minimum content of the Code of Conduct form as set out by the Employer shall not be substantially modified. However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Bidder shall initial and submit the Code of Conduct form as part of its bid.

The Code of Conduct should **properly formulate** the following risks.

- Sexual Exploitation and Abuse (SEA) of community members by project personnel.
- Sexual Harassment (SH) amongst project personnel.
- Child Exploitation and Abuse (CEA), which wholesomely refers to sexual relations with minors and the non-sexual exploitation of minors, e.g., through child labor.

#### **CODE OF CONDUCT FOR CONTRACTOR'S AND SUBCONTRACTOR'S PERSONNEL**

We are the Contractor, [enter name of Contractor]. We have signed a contract with [enter name of Employer] for [enter description of the Facilities]. The Plant for the Facilities will be installed at [enter the Site]. Our contract requires us to implement measures to address environmental and social risks, related to the Installation Services i.e. services ancillary to the supply of the Plant for the Facilities, such as inland transportation, site preparation works/ associated civil works, installation, testing, recommissioning, commissioning, operations and maintenance etc. as the case may require.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Installation Services.

All personnel that we utilize in the execution of the Contract, including staff, labor and other employees of us and of each Subcontractor, and any other personnel assisting us in the execution of the Contract, are referred to as Contractor's personnel.

This Code of Conduct identifies the behavior that we require from the Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located).

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

#### **REQUIRED CONDUCT**

Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located) shall:

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's and Subcontractor's personnel and any other person;

3. maintain a safe working environment including by:
  - a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - b. wearing required personal protective equipment;
  - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
  - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in any form of sexual harassment including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel or community members;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of Contractor's, Employer's Personnel or community members;

not engage in in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;

not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;

not engage in any form of non-sexual activity with minors e.g., through child labor

complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, and Sexual Exploitation and Abuse, and Sexual Harassment (SH);

report violations of this Code of Conduct; and

8. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

## **RAISING CONCERNS**

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [*enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters*] in writing at this address [ ] or by telephone at [ ] or in person at [ ]; or
2. Call [ ] to reach the Contractor's hotline (*if any*) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

There will be no retaliation against any person who raises a concern in good faith about any behavior prohibited by this Code of Conduct. Such retaliation would be a violation of this Code of Conduct.

### **CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT**

Any violation of this Code of Conduct by the Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact [enter name of Contractor's contact person(s) with relevant experience] requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature:

\_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

## **ATTACHMENT I TO THE CODE OF CONDUCT FORM**

### **BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS CONSTITUTING SEXUAL HARASSMENT (SH)**

The following non-exhaustive list is intended to illustrate types of prohibited behaviors.

**Examples of sexual exploitation and abuse** include, but are not limited to:

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favor.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

**Examples of sexual harassment in a work context**

- A Contractor's Personnel comment on the appearance of another Installation Services Personnel (either positive or negative) and sexual desirability.
- When a Contractor's Personnel complains about comments made by another Contractor's Personnel on his/her appearance, the other Contractor's Personnel comment that he/she is "asking for it" because of how he/she dresses.
- Unwelcome touching of a Contractor's Personnel or Employer's Personnel by another Contractor's Personnel.
- A Contractor's Personnel tells another Contractor's Personnel that he/she will get him/her a salary raise, or promotion if he/she sends him/her naked photographs of himself/herself.



### Annex C: Sample GM Log/Registry

<i>Complaint Log (Serial) No</i>	<i>Date received</i>	<i>Received by: (e.g., GM Focal Point)</i>	<i>Submission channel</i>	<i>Name of complainant (Indicate if Anonymous)</i>	<i>Contact of complainant (if known)</i>	<i>Nature and description of complaint</i>	<i>Date acknowledged</i>	<i>Reason/Route cause</i>	<i>Action Taken</i>	<i>Outcome</i>	<i>Current Status (Resolved/pending)</i>	<i>Date of feedback to complainant</i>	<i>Date closed</i>