



**WATER AND SANITATION AND HYGIENE PROGRAM
(P179012)**

ENVIRONMENTAL AND SOCIAL SYSTEM ASSESSMENT - ESSA

September 2023

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List of Acronyms

APA	Annual Performance Assessments
ASALs	Arid and Semi-Arid Lands
CAJ	Commission of Administration and Justice
CAT	Capacity Assessment Tool
CDE	County Director of Environment
CDW	County Director Water
CECM	County Executive Committee Member
CGs	County Governments
CIDP	County Integrated Development Plans
CoG	Council of Governors
CoK	Constitution of Kenya
CO	Chief Officers
COVID-19	Corona Virus Disease
CPCU	County Program Coordination Unit
CPF	Country Partnership Framework
CVA	Credible Verification Agent
DA	Designated Account
DLI	Disbursement Linked Indicator
DLR	Disbursement Linked Result
DMA	District-Metered-Areas
DOSHS	Directorate of Occupational Safety and Health Services
E&S	Environment and Social
EIA/EA	Environmental Impact Assessment/Environmental Audit
EMCA	Environmental Management and Coordination Act
ESF	Environment and Social Framework
EHS	Environmental Health and Safety
ESHS	Environment Social Health and Safety
ESHSM	Environment Social Health and Safety Management
ESIA	Environment and Social Impact Assessment
ESMP	Environment and Social Management Plans
ESSA	Environment and Social System Assessment
FGDs	Focus Group Discussions
FLLoCA	Financing Locally Led Climate Action Program
FY	Financial Year
GBV	Gender Based Violence
GDP	Gross Domestic Product
GPOBA	Global Partnership on Output Based Aid
GoK	Government of Kenya
KEWASNET	Kenya Water and Sanitation Civil Society Network
K- GREEN	Kenya Green and Resilient Expansion of Energy Program
K-PEELP	Kenya Primary Education Equity in Learning Program
KWSCR-1	Kenya Water Security and Climate Resilience Project 1
GRM	Grievance Redress Mechanism
HDI	Human Development Index
HCF	Health Care Facilities
HIV/AIDs	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome

IA	Implementing Agency (ies)
IGRA	Intergovernmental Relations Act
IP	Indigenous People
IPF	Investment Project Financing
IVA	Independent Verification Agency
KDSP	Kenya Devolution Support Program
KEBS	Kenya Bureau of Standards
KeNHA	Kenya National Highways Authority
KenUP	Kenya Urban Program
KeRRA	Kenya Rural Roads Authority
KEWASNET	Kenya Water and Sanitation Civil Society Network
KEWI	Kenya Water Institute
KFS	Kenya Forest Service
KISIP	Kenya Informal Settlements Improvement Project
KURA	Kenya Urban Roads Authority
KUSP	Kenya Urban Support Program
KUSP2	Second Kenya Urban Support Program
KVDA	Kerio Valley Development Authority
K-WASH	Kenya Water Sanitation and Hygiene Program
KWS	Kenya Wildlife Service
LAR	Land Acquisition and Resettlement
M&E	Monitoring and Evaluation
MC	Minimum Condition
MDAs	Ministries, Departments and Agencies
NACOSH	National Advisory Committee on Occupational Safety and Health
NAWASIP	National Water and Sanitation Investment Program
NCA	National Construction Authority
NCCRS	National Climate Change Response Strategy
NCPWD	National Council for Persons with Disability
NECC	National Environmental Complaints Committee
NEMA	National Environmental Management Authority
NEP	National Environment Policy
NET	National Environment Tribunal
NET	National Environment Tribunal
NGAO	National Government Administration Officers
NGEC	National Gender Equality Commission
NIA	National Irrigation Authority
NLC	National Land Commission
NMK	National Museums of Kenya
NPCT	National Program Implementation Team
NT	National Treasury
NWHA	National Water Harvesting and Storage Authority
MAC	Minimum Access Conditions
M&E	Monitoring and Evaluation
MLSP & SCAs	Ministry of Labor, Social Protection and Senior Citizens Affairs
MoWSI	Ministry of Water, Sanitation and Irrigation
MoLPP	Ministry of Land and Physical Planning
NRW	Non-Revenue Water

NWHA	National Water Harvesting and Storage Authority
OCCR	Operation Cost Coverage Ration
OD	Open Defecation
OHS	Occupational Health and Safety
OSHA	Occupational Health and Safety Act
O&M	Operation and Maintenance
PAP	Program Action Plan
PCR	Physical Cultural Resources
PDO	Program Development Objective
PforR	Program-for-Results
PIU	Program implementing Unit
PLUPA	Physical and Land Use Planning Act
PLWD	Persons Living with Disability
PMU	Program Management Unit
POM	Program Operation Manual
PIP	Project Implementation Plan
PIAP	Performance Improvement Actions Plan (s)
PS	Performance Standard
PTC	Program Technical Committee
PWD	Persons With Disability
QER	Quality Enhancement Review
RA	Result Area (s)
RAP	Resettlement Action Plan
SDASALs	State Department of Arid and Semi-Arid Lands
SDD	State Department of Devolution
SDG	Sustainable Development Goals
SDSP	State Department of Social Protection
SEA/SH	Sexual Exploitation and Abuse
SH	Sexual Harassment
SEP	Stakeholder Engagement Plan
SoE	Statement of Expenditure
SOP	Standard Operating Procedure
SRM	Social Risk Management
STD	Sexually Transmitted Disease
STDs	Sexually Transmitted Diseases
TA	Technical Assistance
ToT	Training of Trainers
TWDA	Tana Water Works Development Authority
UNICEF	United Nations International Children Emergency Fund
USAID	United States Agency for International Development
VMG	Vulnerable and Marginalized Group (s)
WAG	Water Action Group
WASH	Water Sanitation and Hygiene
WASREB	Water Services Regulatory Board
WB	World Bank
WIBA	Work Injury Benefits Act
WRA	Water Resource Authority
WRUA	Water Resource Users Association

WSP	Water Services Provider(s)
WSS	Water and Sanitation Services
WSTF	Water Sector Trust Fund
WT	Water Tribunal
WWDA	Water Works Development Agencies

Executive Summary

Introduction

Water scarcity in Kenya is increasingly constraining the country's development, with variable, low, and declining freshwater resources against a fast-rising demand. Kenya's renewable freshwater per capita availability has halved in the past 30 years. Decades of underinvestment in water infrastructure and watershed protection means Kenya's water withdrawal is less than 15 percent of its renewable resources, and its dam storage capacity is only about 103m³ per capita, well below the African average of 876m³ per capita. Furthermore, the rising population, economic growth, and urbanization, combined with climate change impacts, place increasing pressure on and cause conflict over poorly developed water resources. Similarly, access to potable water and sanitation services (WSS) in Kenya lags other public services within the country and suffers from significant rural-urban disparities. Twice as many Kenyans have access to electricity, and 20 percent more have access to mobile phones than to basic sanitation¹. While 91 percent of the urban population have access to improved water services (and 58 percent to piped water), only 63 percent of the rural population have access (and only 19 percent to piped water). The inequalities are similar for sanitation services where 93 percent of urban households have access to improved sanitation services compared to 75 percent in rural areas. Disparities also exist across counties. Nairobi County has near universal access to improved WSS, while in 10 counties, less than 50 percent of households have access to improved water. Additionally, almost 83 percent of all Open Defecation (OD) occurs in 15 counties, mainly in the northern and north-eastern regions².

Access to water, sanitation, and hygiene (WASH) services in public schools and health facilities in Kenya remains inadequate, undermining human capital developmental outcomes. The situation in the 32,038 formal public schools in Kenya is dire: about 15,000 children are in schools without any WASH facilities available to them, 0.3 million without available water and another 0.3 million without access to a sanitation facility³. There are about 130,000 children living with disabilities in formal public schools, requiring special consideration for access to WASH facilities. Poor access to WASH, and specifically to menstrual hygiene management (MHM) services, has been identified as one of the significant barriers preventing girls from attending and completing school. A sampling of healthcare facilities (HCFs) indicated a similar situation: over half of those sampled had no access to clean water or adequate hand hygiene stations, and at least one toilet was shared by 20 patients⁴.

Access to WSS services in the two refugee-hosting counties of Turkana and Garissa lags the national average. Access to improved water is at 57 percent in Garissa and 52 percent in Turkana County, while access to improved sanitation is 17 percent in Garissa and seven percent in Turkana. The two counties have high levels of OD, with Garissa at 36.2 percent and Turkana at 68.1 percent⁵. In addition, while water access rates are higher in the camps than for the host communities, there are problems of service quality, with low volumes per capita and high leakages and long lines in the water kiosks⁶. Access to sanitation services is low and sustainability of WSS services poses a significant public health risk to the highly congested camps.

Chronic inefficiencies in the operation of Water Service Providers (WSPs), coupled with gaps in the governance of rural water service provision necessitate substantial subsidies for operation and maintenance, at the expense of service expansion. In line with the Water Act 2016, WSS service provision is devolved to the Counties who are the owners of WSPs⁷. On average, Kenyan water utilities lose about US\$90 million annually due to low operational

¹ Kenya Population and Housing Census (2019) <https://www.knbs.or.ke/publications/>

² Kenya Population and Housing Census (2019) <https://www.knbs.or.ke/publications/>

³ Ministry of Education (2020). Wash in Schools Situation analysis. Unpublished draft.

⁴ Ministry of Health (2020)..

⁵ KNBS, 2019 Census

⁶ The average water volume per capita in Kakuma camp is 12.75 litres per capita per day, decreasing to only 6 litres per day in Kalobeyei. Compared to refugees, the host communities have even lower access levels.

⁷ There are about 87 public and three privately-owned WSPs that are licensed and regulated by WASREB.

efficiencies⁸. Non-Revenue Water (NRW) has stagnated at a national average of 45 percent over the past decade, while energy costs have remained high, reaching as high as 50 percent of total operating costs for some WSPs. This has had a negative impact on the financial stability and capacity of WSPs to expand their services. Further, COVID-19 imposed significant financial constraints on WSPs⁹. Also, service gaps and inefficiencies are larger in rural areas. Most rural water supply systems fall outside the jurisdiction of licensed WSPs. Such schemes are operated by unregulated community groups, with tariffs that do not reflect actual costs and revenues that are not well monitored. The result is unreliable service provision and frequent non-functionality of these schemes. A more sustainable operations and financing model for rural WSPs that improves their efficiency, and enables them to increase operating cost coverage, and thus expand services to more rural households, is required.

To address the WSS sector challenges, the Government of Kenya (GoK) has approved the National Water and Sanitation Investment Program (NAWASIP) to be implemented at cost of Ksh. 995 billion (US\$8.5 billion) from 2023-2030. NAWASIP's overall objective is to accelerate the achievement of universal access to safe water supply and improved sanitation services in Kenya's 47 counties by 2030 in an affordable, equitable, and sustainable manner. In addition to increasing access to physical infrastructure, the program includes a targeted program of investments on enhancing the sector's policy and institutional efficiency including improving the performance of WSPs.

Program Description

The proposed Kenya Water, Sanitation and Hygiene (K-WASH) Program will support part of the NAWASIP over a six-year period (2024-2030). To maximise the program's transformative effects, its geographic reach will be restricted to 19 of Kenya's 47 counties. The Program will contribute to results under Components 3, 4 and 5 of NAWASIP, focusing on increasing access to WSS in rural areas, improving sector efficiency and reforms, and programme coordination, capacity development, and M&E respectively. Since the Program's primary goal is to reduce the gap in WSS coverage between rural and urban areas, priority is given to selected 19 predominantly rural counties using six criteria assigned varying weights as described in the PAD.

K-WASH is a hybrid PforR with an Investment Project Financing (IPF) component. The total Program cost is US\$430 million, with a government's contribution of US\$200 million and IDA financing of 230 million, of which US\$40 million is from the Window for Host Communities and Refugees (WHR). The IPF component consists of US\$20 million in IDA funding, of which US\$10 million is from the WHR window, to provide technical assistance, capacity development, and programme delivery support to key implementing agencies.

Program Development Objective (PDO)

The PDO is to increase sustainable access to improved water and sanitation services, eliminate open defecation and improve the financial performance of water services providers in selected counties, including refugee hosting counties.

The Program will finance results across five Results Areas (RAs) as follows:

- a) **Results Area 1:** Increasing sustainable access to improved water services for households in climate vulnerable rural areas.
- b) **Results Area 2:** Increased sustainable access to improved sanitation services and elimination of open defecation in climate vulnerable rural areas.
- c) **Results Area 3:** Improved operational and financial performance of Water Services Providers in participating counties.

⁸ WASREB (2022), A Performance Report of Kenya's Water Services Sector – 2020/21

⁹ For instance, revenues declined by 40 percent between February and April 2020

- d) Results Area 4:** Improving sector reforms, coordination, and M&E Capacity for integrated water management.
- e) Result area 5:** Improving integrated WASH services delivery for refugees and host communities.

Detailed description of each Result Area is in the main body of the report.

Institutional Arrangements

The primary implementing agencies under the Program are as follows:

- (i) The Ministry of Water, Sanitation and Irrigation will have overall accountability for Program delivery.** A dedicated Program Management Unit (PMU) headed by a Program Coordinator will be set up by MoWSI for the overall management of the proposed Program and undertake activities leading to the national levels results in DLI 9. MoWSI will also engage the CVA to undertake results verification under the Program.
- (ii) The County Governments, through their Water and Public Health departments, will be the main implementing agencies for activities under RA1, RA2 and RA5.** The County Governments will undertake the eligible program of expenditures leading to the results in DLIs 1, 2, 3, 4, 5 and 10. Each participating County Government will establish a dedicated Program Implementation Unit (PIU) to lead implementation of all county-level activities.
- (iii) The Water Service Providers (WSPs) will be the main implementing agencies for RA3** within their areas of licensed service coverage. The WSPs will undertake the eligible program of expenditures leading to the results envisioned in DLIs 6,7 and 8.
- (iv) The Water Sector Trust Fund (WSTF)** will provide technical assistance to the WSPs in the preparation of bankable projects for commercial financing and facilitate the disbursement of funds directly to WSPs for the results achieved under Result Area 3.

Participating Entities. Other key entities participating in the Program in collaboration with the implementing agencies include: **Ministry of Health (Public Health Department)** to coordinate with the counties the sanitation activities including the BCC campaign, WASH in HCFs and technical and capacity building support to counties; **Ministry of Education** to coordinate with the counties the WASH in Schools activities; **Water Services Regulatory Board (WASREB)** to provide technical support to counties and WSPs to ensure regulatory compliance and implementation of O&M service delivery models and WSP PIAPs; **Water Works Development Agencies (WWDAs)** may from time to time based on need extend technical assistance and capacity building to county governments and WSPs and the **Council of Governors** and **State Department of Devolution**, both of which will work with the MoWSI in coordination with County Governments.

ESSA Scope and Methodology

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

In this regard, the WB team conducted a consultative ESSA with national and county level stakeholders, to evaluate the adequacy of the Borrower's system for management of ESHS risks and impacts associated with the Program intervention. Essentially the ESSA entailed:

- a. Reviewing the nature and significance of the Program's ESHS effects, including indirect, induced and cumulative impacts;

- b. Assessing the adequacy of the Borrower's systems and capacity for effective management of the ESHS risks, including determining if the system is applied as written;
- c. Determining the effectiveness of the country and sector Grievance Redress Mechanism (GRM) to receive, record, resolve, and follow up on complaints or grievances received;
- d. Formulating measures to enhance the effectiveness of the ESHS management systems and the outcomes for inclusion in the overall Program Action Plan (PAP).

In conducting the ESSA, the Bank applied a number of approaches including:

- a. **Screening** of the Program to identify if there are any activities that, under the exclusionary principle of the Policy, need to be excluded because of their likely high risk. The screening was also to identify potential ESHS effects of the Program which may not meet the Policy's criteria for exclusion but potentially pose unacceptable adverse risks that are "judged to likely have significant adverse impacts that are sensitive, diverse, or unprecedented on the environment and/or affected people" and thus, not eligible for PforR financing.
- b. **Comprehensive desk review of relevant country policies, legal and regulatory framework, and program documents:** This entailed the review of:
 - The applicable national, county, and institutional ESHS systems including identification of gaps if any.
 - Program documents, such as Program Concept Note, Aide Memoires; Environment and Social (E&S) instruments, strategies and plans prepared by MoWSI, as it applies to ongoing and completed projects such as the Kenya Water and Sanitation Improvement Project; Coastal Region Water Security, Climate Resilience Project, and the Groundwater for Resilience Project.
 - Recent ESSA reports done for other PforR operations such as the Second Kenya Urban Support Program (KUSP2), and the Kenya Green and Resilient Expansion of Energy Program (GREEN). The assessment also considered lessons learnt from the implementation of other PforR Programs such as the Kenya Urban Support Program (KUSP), Kenya Devolution Support Program (KDSP), Financing Locally Led-Climate Action Program (FLLOCA), and Kenya Primary Education Equity in Learning Program (KPEELP).
- c. **System, Institutional and Capacity Assessment** was done systematically between from April 5-24, 2023, as part of the Program Pre-Appraisal mission. The steps comprised of a county orientation workshop, a national workshop, assessment visits to four sample counties (22% of the participating counties), and four county regional workshops involving all the 19 Counties. For the regional workshops, counties were clustered according to their geographical spread and ease of accessing the workshop venue. The aim of the workshops was to establish both the written and applied system for management of ESHS effects. The ESSA process also interrogated the key Program Implementing Agencies (IAs) for their capacity and experience in managing ESHS effects. To set the tone for the assessments at each workshop, the ESSA team first presented the key aspects of the ESSA exercise to ensure stakeholders had a good grasp of the objectives of the exercise and their roles in it. The ESSA team found the approach to be effective in so far as it made it possible to reach all 19 Counties in a short span of time, while presenting opportunities for cross-fertilization among the counties and for the counties to learn from each other on their E&S statuses. The following are the activities that were carried out for the ESSA:
 - **County Orientation workshop in preparation for the ESSA exercise.** The objective of the workshop was to sensitize the county stakeholders from the 19 participating counties on the Program aims and objectives as well as the various assessments that the Bank planned to undertake to ensure the country system was capable of managing the E&S, technical, fiduciary and procurement risks of the Program. For E&S, the aim was to: (i) sensitize stakeholders on the potential E&S risks identified by the Bank team during the screening exercise, to get their views

on the same and to identify additional risks and impacts, and the related mitigation measures; (ii) inform stakeholders about the E&S implications of the PforR and IPF components; and, (iii) sensitize them on the need for ESSA, the ESSA process, and, mobilize them for effective participation during the ESSA Exercise. The county orientation workshop was conducted on April 5, 2023.

- **National level stakeholder consultations** was carried out on 11th April 2023, with key stakeholders at the National level comprising relevant Ministries, Departments and Agencies (MDAs) from the MoWSI, National Water Harvesting and Storage Authority (NWHSA), Kenya Water Institute (KEWI), Water and Sanitation Trust Fund (WSTF); Athi Water, Water Resources Authority (WRA), Tana Water Works Development Authority (TWWDA); National Irrigation Authority (NIA), National Land Commission (NLC), Judiciary (Land and Environment Court), Kenya Wildlife Service, and Kerio Valley Development Authority (KVDA), among others.
- **County field visits and assessments** were carried out on 12th, 13th, 17th, and 19th April 2023 to 4 sample counties (22% of the total participating counties) comprising Kirinyaga, Kitui, Kericho, and Baringo. Key stakeholders that were consulted at the county level include respective Governors, County Executive Committee Members (CECM) responsible for Water and Public Health – equivalents of the Cabinet Secretary at the national level -, Chief Officers (COs) of the Water docket, County Director Water (CDW), County Director Environment (CDE), Director Budget & Planning, County Public Health Officers, Sub County Water Officers, County Environment and Social Officers, County Engineers, County Gender and Youth Officers, Directorate of Occupational Safety Health and Services (DOSHS), National Environment Management Authority (NEMA), and National Lands Commission (NLC). Besides the consultations, site visits were made to some of the water supply systems under implementation by the WSP at county level to appreciate some of the ESHS risks related to the interventions. Institutional analysis was also done to identify the roles, responsibilities, structure, and the working relations of the relevant institutions responsible for implementing the PforR operation, including assessing their capacity for ESHS risk management.
- **Regional workshops** were held on 14th, 18th, 20th and 24th April, 2023 in Kitui, Kericho, Kabarnet (Baringo) and Kirinyaga respectively. The workshops brought together all the 19 participating counties that were organised in four clusters. Cluster one comprised Kericho, Migori, Vihiga, Nandi, Bomet and Narok counties; cluster two comprised Baringo, Turkana, West Pokot and Samburu counties; cluster three consisted of Muranga, Tharaka Nithi and Kirinyaga counties, while cluster 4 consisted of Kitui, Mandera, Tana River, Kwale and Makueni counties. The regional workshops brought on board stakeholders consisting of officers for the respective County WSPs, WSTF, WASREB and Officers from various county departments such as Water, Finance, Disaster Response, Trade, Land Housing and Urban Development, Public Health, Environment, Gender, Youth and Social Development. The workshops also brought together national government institutions that are based at the county level, including the NEMA, DOSHS, KWS, NLC, Department of Labour, Social Protection and Senior Citizens Affairs, and KFS.

The assessments focused on the potential **environmental and social effects of the Program** and mainly evaluated: (i) the adequacy of the applicable system in management of ESHS risks and impacts associated with Program activities; (ii) how and whether the system was applied as written; (iii) the extent of compliance monitoring and reporting, including provision for feedback to improve Program performance. The assessment also considered the environmental, health and safety, and social sustainability issues, including the potential for temporary displacement and relocation and impacts on Vulnerable and marginalized Groups (VMGs), and examined measures in place for effective citizen and stakeholder consultations and engagements. In addition, the assessment sought to establish the existence and effectiveness of Grievance Redress Mechanism (GRM) for receiving, recording, resolving, and following up on complaints or grievances received.

ESSA Validation and Disclosure

Following the incorporation of the RSA comments, the ESSA was shared with the program implementing agencies (through MoWSI) and with task team for review and comments. Their respective inputs were incorporated prior to finalization of the ESSA for submission to the PM for approval and disclosure.

Program Environmental and Social Effects

The scope of subprojects to be undertaken under the program will be from small to medium scale infrastructures, such as expansion of rural water supply infrastructure/O&M support for rural water supply, including the development of boreholes and surface water intake sources, water treatment facilities, transmission mains, storage tanks, distribution network, and last mile connections to households (under Results Area 1), and construction of sanitation facilities such as WASH facilities for schools, Health care centres, and, extension of main and trunk sewer and construction of Faecal Sludge Management (FSM) facilities and sewerage treatment plants, etc. for rural market centres and small towns (under Results Area 2). Because of the significant geographic dispersion of the participating counties, different scales of proposed investments, the potential cumulative environmental and social impacts associated with many sub-projects in the Program, the capacity of the NPCT, County PIT, WSPs, and gaps identified in the institutions responsible for managing environmental, social and health and safety risks in the country, the overall risk of the program is rated as **Substantial**. Nevertheless, in line with World Bank PforR Policy, activities that present high environmental or social risks will not be financed under the Program.

Environmental Benefits: include but are not limited to: (i) reduced incidences of spread of water borne and other communicable diseases and infections among community members as a result of improved access to WASH services; ii) reduced health costs on the side of households due to reduced disease incidences resulting from improved access to potable water and sanitation services; iii) increased public investment flows for water supply and sanitation services and intergovernmental water sector coordination framework as well as strengthened national and county governments capacity to monitor and fully implement NAWASIP; vi) enhanced technical capacities in the counties and national government agencies to implement and manage public investments and ESHS effects; and vii) promotion of climate smart and resilient WASH infrastructure; and v) enhanced operational efficiency and financial performance of county owned WSPs leading to sustainable water supply and improved sanitation services for rural communities in 19 target counties.

Environmental, health and safety risks include: a) construction related impacts such as air and noise pollution; clearing of vegetation; degradation of critical natural habitats and physical cultural resources; generation and unsafe disposal of construction waste and waste water effluent; and soil and water pollution from hazardous materials; b) over abstraction of water depleting water resources; c) poor infrastructure development due to limited engagement of technical experts (NCA) and relevant institutions with mandate on ES risk management such as NEMA, DOSHS; d) increased demand for water during construction activities especially in the ASALs that experience water scarcity; e) occupational health and safety incidents through injuries/accidents to workers at construction sites; f) community health and safety risks/accidents from the construction activities; g) spread of communicable diseases such as Covid-19 and sexually transmitted diseases such as HIV/AIDS; h) insecurity/small-scale theft risks of construction materials in Markets, Public Schools and Sanitation facilities; and i) inadequate operation and maintenance of the WASH infrastructure impeding sustainable access to WSS services.

Social Benefits: the program will deliver social benefits to the targeted counties comprising: i) enhanced service delivery and access to sustainable water supply and improved sanitation services through enhanced WASH infrastructure in target counties; ii) reduced absenteeism of learners from schools, especially girls, due to the need to support families in search of water; iii) time saving especially for women and girls who are primarily tasked with collecting water and thus can engage in other productive activities; iv) greater security for women and girls reducing their vulnerability to Sexual Exploitation and Abuse (SEA) risks resulting from the need to travel for long distances or even at night to collect water or to access sanitation facility, and, v) increased access to Program benefits for Vulnerable and Marginalized Groups (VMGs)/Sub Sharan Africa Historically Underserved Traditional Local Communities (SSAHUTLCs) and other vulnerable individuals and groups such as the elderly people with

disabilities (PWDs) and single parents, and promoting gender equality and cultural appropriateness in access to water and sanitation services.

Social Risks: The Program interventions are associated with a number of social risks comprising: i) potential land and/or wayleave acquisition for construction of water and sanitation improvement infrastructure, resulting in temporary physical and/or economic displacement of project affected persons. This is likely to be complex in five of the participating Arid and Semi-Arid (ASAL) counties of West Pokot, Turkana, Samburu, Garissa and Mandera, which are overwhelmingly VMG (IP) counties, with unregistered community land tenure; ii) Garissa and Turkana are refugee hosting counties which are targeted to benefit from the Window for Host Communities and Refugees (WHR). Potentially, the implementation of WHR may result in conflict between the host and refugee communities, in particular, if the host communities should feel that they deserve the lion's-share of the WHR financed subprojects; iii) Conflict over the location of the water facilities especially in the pastoralist ASAL counties of Turkana, Garissa, Mandera, West Pokot and Samburu which increasingly experience water scarcity, often resulting into inter-community and inter-clan conflicts related to competition for water (and pasture) from competing uses; iv), potential threats to cultural heritage sites along the Great Rift Valley; v) labour influx risks which may upset community dynamics and lead to an increase in Gender-Based Violence (GBV), especially SEA and Sexual Harassment (SH), crime, and insecurity; vi) exclusion of VMGs and other vulnerable groups and individuals such as women, youth, PWDs, elderly and community members from minorities clans, from beneficiary targeting, constitution of community governance structures and access to program benefits such as smart subsidies for household sanitation; vii) use of forced and child labour especially in the construction of WASH infrastructures; viii) inadequate mechanisms for stakeholder identification, engagement and information disclosure; ix) elite capture and/or political interference in beneficiary targeting as well as selection of market centres, public schools and public health facilities for construction of sanitation facilities; and, x) execution of sub projects for the achievement of the DLIs could result in social conflict and grievances resulting in the overall delay or stalling of the Program.

ESSA Findings

The ESSA established that,

- The national government has well developed and robust legislation, regulations, and systems to manage environmental, health, and safety risks, consistent with the PforR six Core Principles on ESHS management;
- There is no equivalent legislation or systems to manage distinctly social risks, at the county, national or regional levels. By law, Kenya does not yet have a developed and defined Social Risk Management System (that is equivalent to NEMA). Instead, social risk management functions are fragmented across various ministries and institutions without any coordination mechanisms in place;
- The counties have benefited significantly in terms of capacity from implementation of other PforR programs such as FLLoCA, KDSP and KUSP and SEQIP. The capacity building done through these programs has raised awareness on the need to manage E&S risks across the counties. However, there is still low-level commitment towards environmental and social risks management, as exemplified by inadequate resourcing (budgets and staff) of E&S risk management at the county levels, and overall low levels of compliance;
- The counties have established environment, climate change and natural resource management departments whose objective is to drive the county's environmental management agenda. The department functions are however not well structured and coordinated with those of other departments, and in practice, they do not have oversight roles over other departments on environmental issues;
- The WSPs do not have Environment and Social specialists within the organizations to manage E&S risks;
- Limited domestication of national level ES frameworks impeding application for risk mitigation at both the WSPs and County level;
- There is weak and ineffective grievance management system impeding timely resolution of complaints and grievances;
- Limited consideration for cultural appropriateness and inclusion of VMGs and other vulnerable groups and individuals in participation and accessing benefits accruing from county projects;

- Limited and/or inadequate stakeholder engagement potentially leading to increased complaints and grievances (especially on E&S risks), and,
- Limited monitoring and reporting on ES risk management, potentially impeding identification, and implementation of corrective measures.

Environmental and Social mitigation measures

To mitigate the potential environmental and social risks of the Program, the **principles of exclusion** in PforR programs has been adopted. In this regard, potentially high-risk investments which are sensitive, or which have likely significant, adverse, or unprecedented impacts on the environment or people, are excluded from financing under the K-WASH Program. The Program is designed to exclude investments that are likely to have significant adverse ESHS risks and impacts or are categorised as high-risk sub-projects under the World Bank ESF and EMCA legal notice 31 and 32 of 2019. These include interventions such as construction of large dams, land acquisition and/or resettlement with significant adverse impacts on more than 200 people (which would require the preparation of a RAP. In addition, all subprojects will be required to undergo screening, preparation of relevant environmental, health and social safeguard instruments, and monitoring of the implementation of the instruments in subproject activities as per the requirements of the country systems. Further, any associated facility to subprojects financed under the program (supported independently by a different financier), shall comply with the applicable requirements of the country systems, the financing agreement of the program, and in accordance with the applicable requirements of the Environmental and Social Commitment Plan (ESCP) of the program.

In VMG counties, the project is designed purely for the benefit of VMGs – apart from Garissa and Turkana, which, in addition, will benefit from the WHR - and circumstances requiring the FPIC of the VMGs as outlined in ESS7 are not anticipated under this project. Moreover, under ESS5, subprojects requiring compulsory land acquisition, or resulting in resettlement or displacement of more than 200 persons, even if temporarily, are excluded under this program. Also, under the Bank financed energy project, KOSAP, the government has adopted in-kind compensation strategies in VMG counties such as those included in this program, where the in-kind compensation subprojects are decided upon in consultation with VMGs and the respective county governments. It is expected that the same approach of free prior and informed consultations with VMGs will be applied to this project to ensure decisions on the location of, and access to project benefits, have considered the views of the VMGs. Nevertheless, subprojects with potential adverse impacts on VMGs or that require the taking of their land which is under traditional ownership, or is under customary use or occupation, will be excluded from this program. Potential conflicts between refugees and host communities will be mitigated through targeted stakeholder engagement which includes sensitization on the objectives of WHR fund, information disclosure and establishment of an effective and accessible GRM.

ESSA Recommendations

Although the environmental and social risks and impacts of activities under the K-WASH are ranked from low to moderate, the Program provides an opportunity not only to fill the gaps identified, but also to strengthen the country and county systems in three areas: (i) strengthening of environmental and social management systems, including ensuring sustainable availability of qualified E&S staff and dedicated budget lines; (ii) ensuring implementation and monitoring of good environmental, health, safety and social management; and, (iii) building capacity for environmental and social management.

K-WASH will incorporate measures to address environmental and social risks and impacts, and to bridge the gaps identified by the ESSA, early in the Program design. The proposed mitigation measures include: (i) exclusion of high risks subprojects that have significant negative environmental and social impacts that are sensitive, diverse, or unprecedented; (ii) development of an Environmental, Social, Health and Safety Management (ESHSM) Manual to guide the screening and management of E&S risks and impacts of K-WASH activities. The Manual which will be incorporated in the main Program Operational Manual (POM), will have guidelines and Standard Operating Procedures (SOPs) in line with the existing country's environmental and social management systems and legislation; (iii) integrating implementing institutions and agencies with mandate for environmental and social risk

management such as NEMA, DOSHS, and SRM department at Ministry of Labour, Social Protection and Senior Citizens Affairs (MLSP & SCAs) early into the program planning process, including participating in a rigorous screening of environmental and social risks for the sub-projects; (iv) ensuring that environmental and social risk management strategies are incorporated at an early stage in the planning process, including the allocation of adequate resources for safeguards implementation; (iv) establishing a substantive County ESHS risk management unit/division/department that is well resourced with qualified and adequate number of staff and the requisite budgetary allocation; and, (v) implementation of the E&S measures outlined in the Program Action Plan (PAP) to enhance management of ESHS risks at both the MoWSI and respective County Government levels.

Strengthening the environmental, health and social risks management systems. To strengthen EHS risk management, implementing agencies including the WSPs will be required to develop Environmental, Health and Social Management Systems (EHSMS) to identify and manage inherent risks in their operations. The systems will provide for the screening, preparation of environmental, health and social safeguard instruments, and monitoring of the implementation of the instruments in subproject activities. In addition, to address ESHS implementation challenges for the counties and WSPs, and in order to enhance their understanding of the country systems on ESHS risks management and their application, the National Program Coordination Unit (NPCU), in partnership with NEMA, MLSP & SCAs, and DOSHS, will conduct training on: (i) environmental and social risks management and reporting; (ii) occupational health and safety risk management; (iii) labour and working conditions requirements; (iv) grievance redress and reporting, and, (v) training of contractors on ESHS. Other topics such as economic and physical displacement, and land acquisition will also be included. These trainings shall be done before project effectiveness, with regular needs-based refresher trainings during program implementation.

Enhancing capacity of Environmental and Social Staff at the NPCU and WSPs/County level. The NPCU is currently supported by one social specialist two environmental specialists (who are all staff of the WSTF).. To strengthen the coordination as well as environmental and social risk management, the Program shall be required to have and retain qualified substantive ESHS staff, comprising at least one social, one environmental, and one OHS experts at the NPCU level throughout the Program's life. Such experts should be conversant with infrastructure project E&S risks and impacts, country/county risk management system, and good international best practices for managing project ESHS risks and impacts. At county/WSP level, the county administration shall be required to appoint and maintain a qualified environmental specialist and a qualified social specialist during the implementation of the Program. World Bank funded projects including KDSP, KUSP and FLLOCA facilitated capacity building of counties on E&S risk management by training environment and social focal persons on screening and managing E&S risks, enhancement of citizen engagement, grievance redress mechanisms (GRM), and on participatory mechanisms. The Program will encourage the counties to utilize these existing systems, including the use of these trained specialists, to reduce the learning curve, and to apply the lessons learned from these programs to implement the K-WASH program. When necessary, the WSPs/counties will engage experts to offer consultancy services to support the WSPs on the various ESHS risk management aspects, including preparation of ESIA/ESMPs and carrying out regular environmental, social and health and safety audits, and Resettlement Action Plans (RAPs), if needed.

Strengthening the implementation and monitoring of environmental and social risks management. To ensure proper management of E&S risks, the program will develop procedures for assessing the performance of the Program on environment and social management that will rely on environment and social performance protocol, that will be outlined in the ESHSM Manual, and the POM. Building on lessons learned from other PforRs in Kenya, the Annual Performance Assessment (APA) Terms of Reference (ToRs) shall also include environment and social performance assessment procedures to ensure a robust verification process. In addition, the Program Action Plan (PAP) recommends: (i) Incorporating ESMP and OSH contractor/supplier clauses in the bidding and contract documents for civil works, including signing of code of conduct. The ESMP will specify the both the social and environmental requirements that the contractors/suppliers will need to abide by; (ii) WSPs/Counties to develop GRM structures based on guidelines provided in the ESHSM manual to facilitate improvement on grievance management; (iii) Program to partner with relevant lead agencies in the ESHS risks management, that will include DOSHS, NEMA, NCA, MLSP & SCAs, and NLC, to deliver capacity building to WSPs and contractors.

Program Action Plan

The implementation of some of the above measures will be enhanced by their integration into the overall Program Action Plan and legally incorporated into the financing agreement of the Program. The key E&S actions to be included in the overall Program Action Plan (PAP) are grouped into three areas.

- i. actions to strengthen the ESHS management systems.
- ii. actions to strengthen the implementation and monitoring of the ESHS management of sub-projects; and,
- iii. actions to build the capacity of relevant institutions for staff involved in the Program to enhance ESHS management performance.

The ESSA recommends the following E&S Actions to enhance management of ESHS risks in the K-WASH program for inclusion in the overall PAP:

Table 1: Program Action Plan (PAP)

Deploy at least one qualified and experienced environmental and social safeguards experts on a fulltime basis	MoWSI NPCU, Participating Counties	Prior to effectiveness	The NPCU and each Participating County, has at least 1 qualified and experienced Environmental and 1 qualified and experienced social expert and confirmed annually through APA.
Create a dedicated and adequately resourced Countywide ESHS risk management unit and operationalize it.	Participating Counties & WSPs	Within six months of effectiveness	An ESHS Unit with adequate staff, budget line, clear responsibilities, and reporting lines in every county and WSP. The Unit to provide support to other county departments implementing infrastructure projects.
Develop Environmental, Social, Health and Safety Risks Management (ESHSRM) Manuals and GRM Structures and train the E&S staff and their supervisors on their application.	Participating Counties & WSPs	Within year one of effectiveness	ESHSRM manuals with clearly articulated ESHS risk management principles, procedures, processes, and timelines, and aligned to the national and international ESHS management requirements, including on GRM structures. Annual training delivered on ESHS in collaboration with lead agencies and confirmed through APAs.
Include a robust E&S risks management verification protocol in the Annual Performance Assessment (APA)	MoWSI/NPC T	Before APA After APA	<ul style="list-style-type: none"> APA verification indicators are included in the ToRS for APA A chapter on E&S performance is included in the main APA reports
Include the ESHS clauses in the bidding and contract documents for civil works, including signing code of conduct by contractor employees.	MoWSI NPCT County PIT	Prior to advertising for submission of bids	<ol style="list-style-type: none"> a. Bidding and Contract document templates with ESHS aspects b. Percentage expenditure on ESHS aspects in line with the allocated budget. c. Supervision and monitoring reports and confirmed through APA.

1 PROGRAM DESCRIPTION

1.1 Background

1. Water scarcity in Kenya is increasingly constraining the country's development, with variable, low, and declining freshwater resources against a fast-rising demand. Kenya's renewable freshwater per capita availability has halved in the past 30 years. Decades of underinvestment in water infrastructure and watershed protection means Kenya's water withdrawal is less than 15 percent of its renewable resources, and its dam storage capacity is only about 103m³ per capita, well below the African average of 876m³ per capita. Furthermore, the rising population, economic growth, and urbanization, combined with climate change impacts, place increasing pressure on and cause conflict over poorly developed water resources. Similarly, access to potable water and sanitation services (WSS) in Kenya lags other public services within the country and suffers from significant rural-urban disparities. Twice as many Kenyans have access to electricity, and 20 percent more have access to mobile phones than to basic sanitation. While 91 percent of the urban population have access to improved water services (and 58 percent to piped water), only 63 percent of the rural population have access (and only 19 percent to piped water). The inequalities are similar for sanitation services where 93 percent of urban households have access to improved sanitation services compared to 75 percent in rural areas. Disparities also exist across counties. Nairobi County has near universal access to improved WSS, while in 10 counties, less than 50 percent of households have access to improved water. Additionally, almost 83 percent of all Open Defecation (OD) occurs in 15 counties, mainly in the northern and north-eastern regions.

2. Access to water, sanitation, and hygiene (WASH) services in public schools and health facilities in Kenya remains inadequate, undermining human capital developmental outcomes. The situation in the 32,038 formal public schools in Kenya is dire: about 15,000 children are in schools without any WASH facilities available to them, 0.3 million without available water and another 0.3 million without access to a sanitation facility. There are about 130,000 children living with disabilities in formal public schools, requiring special consideration for access to WASH facilities. Poor access to WASH, and specifically to menstrual hygiene management (MHM) services, has been identified as one of the significant barriers preventing girls from attending and completing school. A sampling of healthcare facilities (HCFs) indicated a similar situation: over half of those sampled had no access to clean water or adequate hand hygiene stations, and at least one toilet was shared by 20 patients.

3. Access to WSS services in the two refugee-hosting counties of Turkana and Garissa lags the national average. Access to improved water is at 57 percent in Garissa and 52 percent in Turkana County, while access to improved sanitation is 17 percent in Garissa and seven percent in Turkana. The two counties have high levels of OD, with Garissa at 36.2 percent and Turkana at 68.1 percent. In addition, while water access rates are higher in the camps than for the host communities, there are problems of service quality, with low volumes per capita and high leakages and long lines in the water kiosks. Access to sanitation services is low and sustainability of WSS services poses a significant public health risk to the highly congested camps.

4. Chronic inefficiencies in the operation of Water Service Providers (WSPs), coupled with gaps in the governance of rural water service provision necessitate substantial subsidies for operation and maintenance, at the expense of service expansion. In line with the Water Act 2016, WSS service provision is devolved to the Counties who are the owners of WSPs. On average, Kenyan water utilities lose about US\$90 million annually due to low operational efficiencies. Non-Revenue Water (NRW) has stagnated at a national average of 45 percent over the past decade, while energy costs have remained high, reaching as high as 50 percent of total operating costs for some WSPs. This has had a negative impact on the financial stability and capacity of WSPs to expand their services. Further, COVID-19 imposed significant financial constraints on WSPs. Also, service gaps and inefficiencies are larger in rural areas. Most rural water supply systems fall outside the jurisdiction of licensed WSPs. Such schemes are operated by unregulated community groups, with tariffs that do not reflect actual costs and revenues that are not well monitored. The result is unreliable service provision and frequent non-functionality of these schemes. A more sustainable operations and financing model for rural WSPs that improves their efficiency, and enables them to increase operating cost coverage, and thus expand services to more rural households, is required.

5. To address the WSS sector challenges, the Government of Kenya (GoK) has approved the National Water and Sanitation Investment Program (NAWASIP) to be implemented at cost of Ksh. 995 billion (US\$8.5 billion) from 2023-2030. NAWASIP's overall objective is to accelerate the achievement of universal access to safe water supply and improved sanitation services in Kenya's 47 counties by 2030 in an affordable, equitable, and sustainable manner. In addition to increasing access to physical infrastructure, the program includes a targeted program of investments on enhancing the sector's policy and institutional efficiency including improving the performance of WSPs. Implementation of NAWASIP is organized into five components.

1.2 PforR Program Scope

6. **The proposed Kenya Water, Sanitation and Hygiene Program will support part of the NAWASIP over a six-year period (2024-2030).** To maximise the program's transformative effects, its geographic reach will be restricted to 19 of Kenya's 47 counties. The Program will contribute to results under Components 3, 4 and 5 of NAWASIP focusing on increasing access to WSS in rural areas, improving sector efficiency and reforms, and programme coordination, capacity development, and M&E respectively. Since the Program's primary goal is to reduce the gap in WSS coverage between rural and urban areas, priority is given to selected 19 predominantly rural counties using six criteria assigned varying weights as described in footnote 20 of the PAD:

7. **The K-WASH Program is a hybrid PforR with an Investment Project Financing (IPF) component.** The total Program cost is US\$430 million, with a government's contribution of US\$200 million and IDA financing of 230 million, of which US\$40 million is from the Window for Host Communities and Refugees (WHR). The IPF component consists of US\$20 million in IDA funding, of which US\$10 million is from the WHR window, to provide technical assistance, capacity development, and programme delivery support to key implementing agencies.

8. The Program will finance results across five Results Areas (RAs) as follows:

- a) **Results Area 1: Increasing sustainable access to improved water services for households in climate vulnerable rural areas:** This Results Area will first incentivize all the 19 participating counties to undertake specific Policy, Institutional, and Regulatory (PIR) reforms, primarily approval of a long-term County Water and Sanitation Strategy and Investment Plan (CWSS&IP)¹⁰ and investment roadmap. It will then finance the expansion of access to improved water services for populations living in rural areas of the 17 participating non-refugee hosting counties through the construction of new water supply schemes and the rehabilitation and expansion of existing schemes. The sustainability of these schemes will be ensured through sustainable and accountable professional models for operation and maintenance (O&M) services¹¹. The water schemes constructed through the Program will be designed to meet set quality standards, consider multiple water uses (WASH+: for livestock, farmer-led irrigation, and other productive uses to support livelihoods) to the extent required, and be climate resilient.
- b) **Results Area 2: Increased sustainable access to improved sanitation services and elimination of open defecation in climate vulnerable rural areas:** This Result Area will finance increased access to improved sanitation and hygiene facilities for rural households, public primary schools, and healthcare facilities in the 17 participating non-refugee hosting counties. This will be accomplished through community-led approaches to total sanitation, sanitation marketing, and addressing community-specific behavioural barriers to a sustained social norm of not practising open defecation,

¹⁰ The preparation of the CWSS&IP will be linked with the statutory County Integrated Development Plan (CIDP) and harmonized with other county level WSS or water resources management strategies/plans including climate change mitigation and adaptation strategies.

¹¹ As part of the PIR reforms embedded in the CWSS&IP, the county will be incentivized to adopt a predictable model for the provision of professionalized O&M service delivery.

as well as the provision of adequate WASH facilities for households and in public schools and healthcare facilities.

- c) **Results Area 3: Improved operational and financial performance of Water Services Providers in participating counties:** This Result Area will provide incentives for county governments and county-owned Water Service Providers (WSPs) in the 19 participating counties to achieve: full regulatory compliance, good corporate governance and autonomous operation of WSPs, progressive improvement in operational efficiency and financial performance, and as a result of these improvements in the WSP's enabling environment and creditworthiness, leverage public funds to secure private capital for WSS services expansion. Through a blended financing model with commercial banks, the Result Area will also provide matching funds to WSPs for bankable projects that contribute to an increase in their operational cost coverage ratio (OCCR).
- d) **Results Area 4: Improving sector reforms, coordination, and M&E Capacity for integrated water management:** This Result Area aims to improve the institutional, policy, and regulatory framework to increase public and private investment for WSS services in Kenya by incentivizing the implementation of a Performance-based intergovernmental financing mechanism; operationalizing the intergovernmental water sector coordination framework to improve collaboration between national and county governments; and implementing an annual water sector performance reporting system that is aligned with the SDGs. This is intended to improve the capacity of national and county governments to jointly monitor and fully implement the NAWASIP. These improvements will also directly improve the creditworthiness and financial viability of the WSP's and the regulatory environment to enhance private sector financing in the water and sanitation sector.
- e) **Result area 5: Improving intergrated WASH services delivery for refugees and host communities:** This Results Area will incentivize, through WHR funding, an integrated access to WASH services for households, public primary schools, and health care facilities to incentivize the transition of refugee camps into integrated host community and refugee settlements. Priority will also be given to incentivizing the adoption of an integrated refugees-host community water utility services model in refugee-hosting municipalities.

1.3 Program Development Objective

9. The PDO is to increase sustainable access to improved water and sanitation services, eliminate open defecation and improve the financial performance of water services providers in selected counties, including refugee hosting counties. The PDO Level Results Indicators by Outcome are as follows:

- a) Outcome 1: Increased sustainable access to improved water services for rural households in Program areas:
 - (i) People provided with access to improved water sources (Corporate Results Indicator, Number)
- b) Outcome 2: Increased sustainable access to improved sanitation services and elimination of open defecation in Program areas:
 - (i) People provided with access to improved sanitation services (Corporate Results Indicator, Number)
 - (ii) Proportion of communities that eliminate open defecation (Percentage)
- c) Outcome 3: Improved operational and financial performance of Water Services Providers in participating counties:
 - (i) WSPs that achieve 100% of their Operating Cost Coverage Ratio (OCCR) target (Number) as per approved Performance Improvement Action Plans

10. Table 2 below outlines the RAs and Disbursement Linked Indicators (DLIs) for the WASH Program.

Table 2: Result Areas and Disbursement Linked Indicators

Disbursement Linked Indicator	Allocation (US\$ Million)	Description of DLI	Comments on related activities
Increasing sustainable access to improved water services for households in climate vulnerable rural areas (US\$58 million)			
DLI 1: Number of counties that have an approved 5-year County Water and Sanitation Strategy and Investment Plan (CWSS&IP), and implementation roadmap	10	5-year County Water and sanitation Strategy and Investment Plan (CWSS&IP) and implementation roadmap are formally adopted and approved for implementation by the County Executive Committee and launched by the County Governor. The minimum structure and contents of the CWSS&IP will be defined in the Program Operations Manual (POM)	Strategy will carefully assess the county's water resources to ensure proposed developments of water supply schemes are resilient to projected climate variability and change. The investment plan and implementation roadmap will guide both public and private investments.
DLI 2: Households provided with access to improved water sources	28	Number of households provided with access to improved water services out of water supply schemes with pre-approved designs developed under the Program: the connections should come from a system that has an audited technical design; the household served is in a rural area; the water scheme comply with water quality standards; access is through either a metered connection, shared yard tap or water kiosk at a maximum of 500m from HH; and there are minimum service quality standards in place in terms of pressure and continuity. Connections from rehabilitated schemes are eligible as long as the connections are new under the Program.	Climate resilient designs and construction of intakes (surface water sources), treatment facilities, tanks, etc and last mile connections and WASH+ services
DLI 3: Number of sustainably functioning water schemes	20	Number of water schemes that are deemed sustainable, meaning; (1) at least 90% of HH services (metered or kiosk) are functioning as per definition of functionality defined in the POM; (2) have a tariff system, (3) achieve gradual O&M cost recovery as defined in the POM; (4) is operated by an approved service provider as per WASREB regulations for rural areas as defined in the POM, (5) leadership positions within the service provider should not be more than two-thirds of the same gender.	Key features of resilient rural water supply in place to ensure sustainability, from design stage incorporating climate resilience criteria at the source for droughts and in construction for floods, to management and operation arrangements of the schemes. Sustainability referring to metering, clear and transparent tariffs, O&M cost recovery and a regulatory environment implemented with integrity are all foundational for private sector investment.
Results Area 2: Increased sustainable access to improved sanitation services and elimination of open defecation in climate vulnerable rural areas (US\$83.2 million)			

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DLI 4: Households provided with access to improved sanitation services	30	Number of households provided with access to an improved sanitation facility, meaning a facility at HH level that hygienically separate human waste from human contact. Options of improved sanitation services will be as defined in the POM	Design and construction and criteria to ensure flood resilient latrines, public sanitation facilities, septage services
DLI 5: Number of villages achieving and sustaining community-wide sanitation (CWS) status	53.2	This DLI includes three Disbursement Linked Results (DLRs) to account for: (i) number of villages that achieve Open Defecation status as per MoH ODF verification protocols, (ii) number of villages certified as achieving CWS status. The following requirement of CWS certification must be fully met: (a) village has been verified as achieving ODF status; (b) at least 70 percent of households in the village have access to an improved sanitation facility; (c) all public schools within the village have improved school WASH facilities meeting minimum standards, and (d) all public healthcare facilities within the village have access to improved WASH facilities that meet minimum standards. (iii) number of villages that sustain CWS status. Additional disbursements will be made if the status is sustained with time.	This includes new facilities built comply with flood resilient design criteria. Community-Led Total Sanitation (CLTS), Demand creation and Behaviour change communication activities.
Results Area 3: Improved operational and financial performance of Water Services Providers in participating counties (US\$43.8 million)			
DLI 6: Number of WSPs compliant with the legal and regulatory requirements for good governance and have an approved Performance Improvement Action Plan.	8.8	This DLI will be considered achieved when all the following five conditions are fully met (1) have a valid WASREB license; (2) have a WASREB approved justified tariff; (3) have a fully constituted Board of Directors as per the corporate governance guidelines, with at least 30% share of women in the Board; (4) have a Performance Contract (PC) between the WSP and the County Government with clear KPIs and conditions for ring-fencing the autonomy of WSP operations from negative external interference; and (5) have a Board of Directors approved Performance Improved Action Plan (PIAP) to improve the WSP's financial performance during the Program period.	It is expected that formalized utilities complying with these features are more easily prepared to comply with and implement Performance Improvement Action Plans. They are also essential to attract private sector financing. Clear and transparent governance arrangements and regulatory regimes are arguably some of the more difficult building blocks to attain financial viability.
DLI 7: Number of WSPs progressively achieving their Operating Cost Coverage Ratio (OCCR) targets as per their approved Performance Improvement Action (PIAPs)	30	The OCCR is selected as a good measure for the successful implementation of the PIAPs. The total amount allocated to this DLI will be equally divided into the 33 WSPs. Yearly disbursements will be made against proportionate achievement of the OCCR target stated in the PIAP. To be eligible for disbursement under DLI 7, the WSPs must also show sustained full compliance with the legal and regulatory requirements for good governance defined in DLI 6	Reduction in physical losses through establishment of metered areas, instalment of micro-meters, replacement of pipes and inefficient pumps, will lead to a significant reduction in energy and associated costs. A positive OCCR is a precursor to attract private capital to the water sector.

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DLI 8: Amount of funding leveraged by WSPs from private capital/commercial funding sources	5	Disbursement will be triggered by the WSP securing a commercial loan deal to finance a package of bankable projects included in PIAP, contributing to improvements in the OCCR. This DLI will provide 50% of total bankable project cost, or 100% of the commercial loan secured. For example, for a bankable project cost of US\$100, commercial loan should be US\$50 and the DLI contributing will be US\$50.	Bankable project supported by this DLI will fund interventions mentioned above in the WSPs PIAPs to become more cost efficient. This figure represents Private Capital Mobilisation.
Results Area 4: Improving sector reforms, coordination, and M&E Capacity for integrated water management (US\$5 million)			
DLI 9: Water sector intergovernmental Planning, Coordination and Monitoring reforms implemented	5	This DLI will include three DLRs for: (i) the Approval and implementation of a Water Sector Performance-based Financing Mechanism to facilitate intergovernmental fiscal transfers for water services between the Ministry of Water, Counties and WSPs; and (ii) the implementation of the Water Sector Inter-Governmental Coordination Framework including annual joint M&E reporting by both levels of government	Necessary conditions to make devolution in water sector work. Sector Policy and strategy support reforms (consulting, non-consulting) Intergovernmental fiscal transfers are a key element of revenue used to facilitate blended finance in the water sector.
Result area 5: Improving integrated WASH services delivery for refugees and host communities (US\$40 million)			
DLI 10: Number of refugee and host community households in refugee-hosting Counties provided with improved access to WASH services.	32	Disbursements to refugee hosting counties will be triggered when the following individual DLRs have been achieved; (a) number of households in the refugee camps, and in the Host communities (50 percent each) provided with access to improved water sources under the Program, (b) number of households in the refugee camps, and in the Host communities, (50 percent each), provided with access to an improved sanitation facility, (c) number of villages in the refugee camps, and in the Host communities, (50 percent each) certified as achieving CWS status	<p>Prior to tendering out the construction works, the counties will undertake and secure a joint approval from DRS and UNHCR of the proposed hydraulic re-modelling of refugee camps water supply system, and designs of water supply schemes for refugees and host communities. This is to align the designs with the Shirika Plan and UNHCR design standards.</p> <p>Climate resilient designs will be also adopted for the interventions in the refugee camps and hosting communities, in terms of securing the source across dry years factoring in increasing climate variability due to climate change and including flood proofing designs and construction.</p>
DLI 11: Number of sustainably functioning water services in refugee-hosting Counties	8	Disbursements to refugee hosting counties will be triggered when the following individual DLRs have been achieved; (a) Number of sustainably functioning water schemes under management of a new WSP established to manage water services in the host community.	The county will prepare a transition strategy to integrated water utility services. This DLI will primarily incentivize creation of a the new WSP to manage water services in the new refugee-hosting municipalities. While UNHCR will continue to provide WASH services for refugees, it will sign an MoU with the counties detailing when and under what conditions the new WSP will take over all WASH services once it proves sufficient capacity to do so.

11. Verification of DLIs will be carried out by the Credible Verification Agent (CVA) hired by MoWSI. The results reported by the MoWSI (Results Report), as achieved under the Program, will be verified through a paper audit, physical inspection, and phone calls that test the accuracy and quality of results claimed. In accordance with good audit practice, physical verification will take place against a sampling framework. The CVA will prepare a Results Verification Report which will be shared with the MoWSI and the World Bank. The Results Verification Report will be used to determine the amount of the eligible disbursement to be made based on the results achieved.

IPF Component (US\$10m IDA; US\$10 million WHR IDA)

12. The IPF will provide technical assistance (TA) and capacity building activities for the implementing agencies, and support for sector monitoring and reporting. The MoWSI will be supported to revise the WSS Infrastructure Design Manual, strengthen the capacity of participating counties, and enhance design and construction quality supervision. This will include specific assistance to the counties of Turkana and Garissa, the DRS, and the UNHCR for the remodelling and planning of WASH infrastructure for the refugee camps, as well as the transition to an integrated water utility services model. Capacity building activities will also include training counties on climate-resilient design and construction of water supply and sanitation infrastructure, standardizing WASH facilities for schools and health care facilities, launching a behaviour change communication campaign and address the gender gaps in women's employment in technical and managerial positions as well as on WSP boards. WASREB and WSTF will receive support to enhance their mandates in assisting WSPs to achieve regulatory and good governance compliance, developing high-quality PIAPs and bankable projects for commercial financing, as well as facilitating the leveraging of private financing. The support for PIAPs will have a direct and positive impact on the operations and financial health of the service providers, and ultimately their creditworthiness. The IPF will also support sector monitoring and reporting by funding a baseline survey, the development of a national water sector M&E system, and the hiring of a CVA to verify Program results.

1.4 Institutional and Implementation Arrangements

13. Program Implementing Agencies¹². The primary implementing agencies under the Program are:

- (i) **The Ministry of Water, Sanitation and Irrigation will have overall accountability for Program delivery.** A dedicated Program Management Unit (PMU) headed by a Program Coordinator will be set up by MoWSI for the overall management of the proposed Program and undertake activities leading to the national levels results in DLI 9. MoWSI will also engage the CVA to undertake results verification under the Program.
- (ii) **The County Governments, through their Water and Public Health departments, will be the main implementing agencies for activities under RA1, RA2 and RA5.** The County Governments will undertake the eligible program of expenditures leading to the results in DLIs 1, 2, 3, 4, 5 and 10. Each participating County Government will establish a dedicated Program Implementation Unit (PIU) to lead implementation of all county-level activities.
- (iii) **The Water Service Providers (WSPs) will be the main implementing agencies for RA3** within their areas of licensed service coverage. The WSPs will undertake the eligible program of expenditures leading to the results envisioned in DLIs 6,7 and 8.
- (iv) **The Water Sector Trust Fund (WSTF)** will provide technical assistance to the WSPs in the preparation of bankable projects for commercial financing and facilitate the disbursement of funds directly to WSPs for the results achieved under Result Area 3.

¹² Further details on the implementation arrangements, the role of each entity and oversight mandates will be defined in the Program Operational Manual (POM)

14. **Participating Entities.** Other key entities participating in the Program in collaboration with the implementing agencies include: **Ministry of Health (Public Health Department)** to coordinate with the counties the sanitation activities including the BCC campaign, WASH in HCFs and technical and capacity building support to counties; **Ministry of Education** to coordinate with the counties the WASH in Schools activities; **Water Services Regulatory Board (WASREB)** to provide technical support to counties and WSPs to ensure regulatory compliance and implementation of O&M service delivery models and WSP PIAPs; **Water Works Development Agencies (WWDAs)** may from time to time based on need extend technical assistance and capacity building to county governments and WSPs and the **Council of Governors** and **State Department of Devolution**, both of which will work with the MoWSI in coordination with County Governments.

Further details on the implementation arrangements, the role of each entity and oversight mandates will be defined in the Program Operational Manual (POM)

1.5 Disbursement Arrangements

15. **Disbursements will be triggered by the achievement of the DLI-related results for the Program and verified by the CVA.** The CVA will compile a Results Verification Report (RVR) and share it with the MoWSI PMU and the World Bank. MoWSI will submit a Withdrawal Application (WA) to the World Bank upon notification of the formal approval of the verification report. The following is how IDA funds will be distributed: For Results Areas 1, 2, and 5, funds will be disbursed directly from the National Treasury (NT) to the County Revenue Fund (CRF) upon MoWSI's request to NT, accompanied by an RVR. For Results Area 3, the Water Services Trust Fund (WSTF), which manages the WSPs' performance enhancement window, will receive funds from NT, through the MoWSI, then disburse to WSPs. For Results Area 4, the NT will disburse funds to MoWSI based on the RVR.

1.6 Capacity Building

16. **Through the IPF component, MoWSI PMU will coordinate technical assistance and a program of capacity building activities for the implementing agencies.** In addition to the TA and capacity building activities already discussed under the IPF component, through the IPF component, technical assistance will be provided to address gaps identified by the technical, financial, and E&S assessments, as well as to support the achievement actions in the PAP.

1.7 Environmental and Social Systems Assessment Scope and Methodology

1.7.1 Purpose and Objectives

17. The K-WASH Program's Environmental and Social Systems Assessment (ESSA) has been prepared by the WB for the PforR component of the Program. In accordance with the World Bank PforR policy requirements, the Borrower will apply national systems for management of Environmental, Social, Health and Safety (ESHS) risks associated with the PforR interventions, provided these are consistent with the World Bank's PforR policy requirements, including the six PforR Core Principles. The broad scope of the ESSA was to assess the extent to which the borrower systems promote environmental and social sustainability; avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources; protect public and worker safety; manage land acquisition; consider issues related to VMGs/SSAHUTLCs and other vulnerable groups; and avoid social conflict. In this context, the World Bank is required to conduct a comprehensive ESSA to determine the capacity of the Borrower's systems to plan and implement effective measures for the management of ESHS risks associated with the Program. This ESSA has therefore provided a comprehensive review of relevant government systems and procedures – as written and as applied in practice – that address ESHS risks associated with the Program and describes the extent to which the applicable government environmental and social policies, legislations, Program procedures and institutional systems are consistent with the six core PforR principles.

18. The specific objectives of the ESSA was to: (i) identify the Program’s potential ESHS effects; (ii) review the existing Policy, legal, regulatory and institutional frameworks that are relevant to the management ESHS effects of the Program’s interventions; (iii) assess the capacity of implementing institutions for managing potential adverse ESHS risks and impacts associated with the Program; iv) assess the Program’s system performance with respect to the Six core PforR principles and identify gaps in Program performance; and, (v) recommend specific actions to address gaps in the Program’s ESHS systems that will be embedded into the PAP to strengthen the Program’s performance.

1.8 The ESSA Approach

19. The WASH Program’s ESSA has been prepared to establish the extent to which the Borrower’s system is consistent with the six Core Principles of the World Bank’s PforR policy. The Six Core PforR principles include:

- **Environment and Social Management:** To promote E&S sustainability in the Program design; avoid, minimize, or mitigate adverse impacts; and promote informed decision-making relating to the Program’s E&S effects.
- **Natural Habitats and Physical and Cultural Resources:** To avoid, minimize, or mitigate adverse impacts and promote informed decision-making relating to a Program’s E&S effects in relation to physical and cultural resources.
- **Protection of Public and Worker Safety:** To protect public and worker safety against the potential risks associated with construction and/or operations of facilities or other operational practices under the Program; exposure to toxic chemicals, hazardous wastes, and other dangerous materials under the Program; and reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards.
- **Land Acquisition and Loss of Access to Natural Resources:** To manage land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement, and assists the affected people in improving, or at the minimum restoring, their livelihoods and living standards.
- **Indigenous Peoples and Vulnerable Groups:** To give due consideration to the cultural appropriateness of, and equitable access to, Program benefits, giving special attention to the rights and interests of the Indigenous Peoples¹³ and to the needs or concerns of vulnerable groups.
- **Social Conflict:** To avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial dispute.

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

1.9 The ESSA Methodology

20. The ESSA process entailed the review of the borrower system at both the national and county level and assessment of the capacity of the implementing institutions in the effective management of the Program’s ESHS effects. In this regard, the World Bank team applied various approaches as outlined below:

- a. **Screening** of the Program activities was undertaken during the concept stage to identify potential ESHS effects of the program and to confirm that no activities that meet the defined exclusion criteria are included in the PforR. The screening was also to identify potential ESHS effects of the Program, which may not meet the Policy’s criteria for exclusion but potentially pose unacceptable adverse risks that are “judged to likely have significant adverse impacts that are sensitive, diverse, or unprecedented on the environment and/or affected people and thus not eligible for PforR financing.
- b. **Comprehensive desk review of relevant country policies, legal and regulatory framework, and program documents** that address ESHS aspects relevant to the WASH Program: This entailed the review of:

¹³ In Kenya, IPs/SSAHUTLCs are referred to as Vulnerable and Marginalized Groups (VMGs)

- The applicable national, county, and institutional ESHS system including identification of gaps if any, as presented in Section 5.
 - Program documents, such as Program Concept Note, Aide Memoires; Environment and Social (E&S) instruments, strategies and plans prepared by MoWSI, as they apply to ongoing and completed projects such as the Kenya Water and Sanitation Improvement Project; Coastal Region Water Security, Climate Resilience Project, and the Groundwater for Resilience Project.
 - Recent ESSA reports done for other PforR operations such as the Second Kenya Urban Support Program (KUSP2), and the Kenya Green and Resilient Expansion of Energy Program (GREEN). The assessment also considered lessons learnt from the implementation of other PforR Programs such as the, Kenya Urban Support Program (KUSP), Kenya Devolution Support Program (KDSP), Financing Locally Led-Climate Action Program (FLLOCA), and K- Kenya Primary Education Equity in Learning Program (KPEELP).
- c. **System, Institutional and Capacity Assessment** was done systematically between from April 5-24, 2023 as part of the Program Pre-Appraisal mission. The steps comprised of a county orientation workshop, a national workshop, assessment visits to four sample counties (22% of the participating counties), and four county regional workshops involving all the 19 Counties. For the regional workshops, counties were clustered according to their geographical spread and ease of accessing the workshop venue. The aim of consultations with stakeholders at both national, regional, and county levels was to establish the extent to which system as written and as applied for management of ESHS effects are consistent with the six core PforR principles. During the field visits, several stakeholders at the county level were engaged through Focus Group Discussions for purposes of understanding the country, sector and institutional systems as written and as applied for ESHS risk management. The consultations were also to assess the capacity of the IAs to effectively implement the Program in terms of financial resourcing, competence and adequacy of staff for effective management of ESHS risks, as well as to get their views and *perceptions* on what they considered as capacity concerns. The consultation process was guided by the ESSA questionnaire and the Capacity Assessment Tools developed by the World Bank Team as guided by the PforR policy. To set the tone for the assessments at each workshop, the ESSA team first presented the key aspects of the ESSA exercise, especially the PforR Core Principles, to ensure stakeholders had a good grasp of the objectives of the exercise and their roles in it. The ESSA regional workshop approach made it possible to reach all 19 Counties in a short span of time, while presenting opportunities for cross-fertilization among the counties. The following actions constituted the ESSA process:
- **County Orientation workshop in preparation for the ESSA exercise.** The objective of the workshop was to sensitize the county stakeholders from the 19 participating counties on the Program aims and objectives as well as the various assessments that the Bank planned to undertake to ensure the country system could manage the E&S, technical, fiduciary and procurement risks of the Program. For E&S, the aim was to: (i) sensitize stakeholders on the potential E&S risks identified by the Bank team during the screening exercise, to get their views on the same and to identify additional risks and impacts, and the related mitigation measures; (ii) inform stakeholders about the E&S implications of the PforR and IPF components; and, (iii) sensitize them on the need for ESSA, the ESSA process, and, *to* for effective participation during the ESSA Exercise. The county orientation workshop was conducted on April 5, 2023
 - **National level stakeholder consultation** was carried out on 11th April 2023 with key stakeholders at the National level comprising relevant Ministries, Departments and Agencies (MDAs) including the MoWSI, National Water Harvesting and Storage Authority (NWHSA), Kenya Water Institute (KEWI), Water Sector Trust Fund (WSTF); Athi Water, Water Resources Authority (WRA), Tana Water Works Development Authority (TWWDA); National Irrigation Authority (NIA), National Land Commission (NLC), Kenya Wildlife Service (KWS); Judiciary (the Land and Environment Court) and Kerio Valley Development Authority (KVDA), among others. The detailed list of stakeholders consulted at the national level is presented in Annex 1.

- **County field visits and assessment** were carried out on 12th, 13th, 17th, and 19th April 2023 to 4 sample counties (22% of the total participating counties) comprising Kirinyanga, Kitui, Kericho, and Baringo. Key stakeholders that were consulted at the county level include respective Governors (Kitui, Kericho and Baringo), County Executive Committee Member (CECM) Water and Public Health, Chief Officers (COs) Water, County Director Water (CDW), County Director Environment (CDE), Director Budget & Planning, County Public Health Officers, Sub County Water Officers, County Environment and Social Officers, County Engineers, County Gender and Youth Officers, Directorate of Occupational Safety Health and Services (DOSHS), National Environment Management Authority (NEMA), and National Lands Commission (NLC). Besides the consultations, site visits were made to some of the water supply systems under implementation by the WSPs at county level to appreciate some of the ESHS risks related to the interventions. Institutional analysis was also done to identify the roles, responsibilities, structure, and relations of the relevant institutions responsible for implementing the PforR funded activities, including assessing their capacity for ESHS risk management. Annex 1 provides the full list of the stakeholders consulted during the county visits.
- **Regional workshops** were held on 14th, 18th, 20th and 24th April 2023 in Kitui, Kericho, Kabarnet (Baringo) and Kirinyaga respectively. The workshops brought together all the 19 participating counties that were organised in four clusters. Cluster one comprised Kericho, Migori, Vihiga, Nandi, Bomet and Narok counties; cluster two comprised Baringo, Turkana, West Pokot and Samburu counties; cluster three consisted of Muranga, Tharaka Nithi and Kirinyaga counties, while cluster 4 consisted of Kitui, Mandera, Tana River, Kwale and Makueni counties. The regional workshops brought on board stakeholders, consisting of CECMs responsible for the water docket, officers for the respective County WSPs, WSTF, WASREB and Officers from various county departments such as Water, Finance, Disaster Response, Trade, Land Housing and Urban Development, Public Health, Environment, Gender, Youth and Social Development. The workshops also brought together national government institutions that are based at the county level including NEMA, DOSHS, KWS, NLC, Department of Labour and Social Services and KFS, among others. Annex 1 provides the full list of the stakeholders consulted during the regional workshops.

21. The ESSA focused on the potential **environmental and social effects of the Program** and mainly evaluated: (i) the adequacy of the system as written and as applied (including the availability and adequacy of E&S human and financial resources) in managing the ESHS risks and impacts associated with Program activities; (ii) the extent of compliance monitoring and reporting, including provisions for feedback to improve Program performance, and, (iii) identification of any gaps between the system as written and as applied, and consistency with the PforR Core Principles. The assessment also considered the environmental, health and safety, social, temporary displacement and relocation issues, and examined measures in place for effective citizen and stakeholder consultations and engagements. In addition, the assessment sought to establish the existence and effectiveness of Grievance Redress Mechanism (GRM) for receiving, recording, resolving, and following up on complaints or grievances received.

- d. **ESSA validation and disclosure.** In line with the World Bank Policy for PforR financing and the World Bank's Access to Information Policy, the Bank shared the draft ESSA findings with the task team and the various implementing agencies (through MoWSI), and their inputs were incorporated into this final ESSA report after the RSA review. The final ESSA report will be publicly disclosed in-country on the MoWSI website and on the World Bank's external website prior to Board approval.

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

2 ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY EFFECTS OF THE PROGRAM

2.1 Introduction

23. The K-WASH Program targets to contribute to increased access to safe water supply, improved sanitation services, and improved financial performance of water services providers in the 19 target counties. The Program also seeks to improve existing institutional, policy and regulatory instruments to increase public investment flows for Water Supply and Sanitation Services (WSS) and intergovernmental water sector coordination framework. The screening of the Program revealed that there are ESHS effects associated with the K-WASH interventions, and as part of the PforR policy requirements, it become necessary to flag such effects for purposes of ensuring that material measures are put in place for mitigating the adverse ESHS effects. This chapter describes the potential ESHS benefits, risks and impacts, and management measures applicable to the Program interventions.

2.2 Program Scope

24. The scope of subprojects to be undertaken under the program will range from small to medium scale infrastructures, such as support for expansion of rural water supply infrastructure/O&M including the development of boreholes and surface water intake sources, water treatment facilities, transmission mains, storage tanks, distribution network, and last mile connections to households (under Results Area 1), and construction of sanitation facilities such as WASH facilities for schools and Health care centres, including extension of main and trunk sewer, construction of Faecal Sludge Management (FSM) facilities and sewerage treatment plants, etc for rural market centres and small towns (under Results Area 2).

25. Based on the scope and scale of sub-projects to be financed under RSA 1 and 2, the environmental social, health and safety (ESHS) impacts are expected to be low to significant in scale, with the most adverse impacts being site-specific and limited during the construction phase of the subprojects. All investments will undergo an environmental and social impact screening and assessment process as per the national environmental and social management systems requirements. Consistent with the requirements of the Bank PforR Policy, the proposed Program operation will not finance activities that pose high ESHS risks.

2.3 Environment & Social Risk Rating

26. Because of the significant geographic dispersion of the participating counties, different scales of proposed investments, the potential cumulative environmental and social impacts associated with many sub-projects in the Program, the capacity of the NPCT, County PIT, WSPs, and gaps identified in the institutions responsible for managing environmental, social and health risks in the country, the overall risk of the program is rated as **Substantial**.

2.4 Exclusion Principle

27. The principle applies to Program activities that meet the exclusion criteria regardless of the borrower's capacity to manage such ESHS effects. In the PforR context, exclusion means that an excluded activity is not included in the identified investment menu. The exclusion principle also applies to any activity that requires completion of non-eligible activity to achieve its contribution to the PDO and/or DLI. In this regard, the K- WASH Program is designed to exclude investments that are likely to have significant adverse ESHS risks and impacts or are categorised as high-risk sub-projects under the World Bank ESF and EMCA legal notice 31 and 32 of 2019. The six core principles under the PforR will apply to all investments as a mechanism for avoiding, minimising, or mitigating adverse ESHS risks/impacts.

28. The Program shall exclude sub-projects that are likely to result in:

- Significant conversion or degradation of critical natural habitats or cultural heritage sites.

- Air, water, or soil contamination leading to significant adverse impacts on the health or safety of individuals, communities, or ecosystems.
- Workplace conditions that expose workers to significant health and personal safety risks.
- 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.
- Large-scale changes in land use or access to land and/or natural resources.
 - Adverse E&S impacts covering large geographical areas, including transboundary impacts, or global impacts such as greenhouse gas (GHG) emissions.
 - Significant cumulative, induced, or indirect impacts.
 - Activities that involving the use of forced or child labour.
 - Significant adverse social impacts, marginalization of, and/ or may give rise to significant conflict within or among community or social groups.
 - Activities with high risk of GBV and SEA-SH.
 - Activities that would (a) adversely affect lands or rights of VMGs/SSAHUTLCs or other vulnerable and marginalized groups; b) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (c) cause the relocation of VMGs from land and natural resources that are subject to traditional ownership or under customary use or occupation; or (d) have significant impacts on cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected communities.
 - Investment on land for which clear ownership document is not available.
 - Activities that may involve physical/economic displacement of more than 200 PAPs.

2.5 Potential Environmental, Health, and Safety Benefits

29. From the planned interventions across the four RAs, the PforR component of K-WASH will generate direct and indirect ESHS benefits to the target communities within the 19 counties and these include but not limited to:

- Enhanced access to sustainable water supply and improved sanitation services for rural communities in 19 Counties including vulnerable households in rural, marginalized and ASAL areas that is a pre-requisite for good human health and a basic right as per the constitution of Kenya; Improved drinking water supply connections, and improved sanitation facilities for households, schools and health facilities are likely to result in reduced water borne and communicable diseases and improved community health;
- Reduced incidences and spread of waterborne illnesses and other communicable diseases and infections among community members as a result of improved access to WASH services;
- General environmental improvement through elimination of odours as a result of improved sanitation facilities;
- Reduced contamination of soil and water sources from open field defecation caused by limited access to sanitation services
- Reduction in the traffic of suction trucks and the risk of unsafe disposal of effluents,
- Reduction of pressure of the extraction in aquifers, and the reduction of water losses and flooding;
- Planned efficiency improvements (asset renewal, loss reduction, energy efficiency) have multiple benefits including: release of resources, reduction of greenhouse gas (GHG) emissions and water reduction. extracted from natural systems.
- The program will implement climate smart and resilient WASH infrastructure which improve resilience of local populations, especially populations vulnerable to crisis events as a result of climate change, such as floods and droughts;
- The Program will increase effectiveness and efficiency of WSPs, strengthening transparency and accountability by improving access to information to the users (public) through the use of information technology, enhancing and improving service delivery Positive impact on the economic, environmental, and social sustainability of the water and sanitation services for rural communities in the 19 Counties, due to the increase in the operational (increase in revenues) and commercial efficiency (reduction of losses due to non-revenue water) of the water and sanitation services (WSS) and water security

- Enhanced technical capacities in the counties and national government agencies to implement and manage public investments and ESHS effects.

2.6 Potential Environmental, Health and Safety Risks and Impacts

30. Activities to be supported by the Program have an overall positive environmental and health and safety effect. The potential E&S risks and impacts include but not limited to:

- Target counties such as Baringo, Kitui and Narok have biodiversity of conservation status in fragile ecosystems and thus could have significant negative impacts as a result of vegetation clearance, civil works, over abstraction of water and disruption of biodiversity;
- Construction related impacts such as air and noise pollution; clearing of vegetation; degradation of critical natural habitats and physical cultural resources;
- Generation and unsafe disposal of construction waste and wastewater effluent; and soil and water pollution from hazardous materials;
- Over abstraction of water depleting water resources;
- Poor infrastructure development due to limited engagement of technical experts (NCA) and relevant institutions with mandate on ES risk management such as NEMA, DOSHS;
- Occupational health and safety incidents through injuries/accidents to workers at construction sites;
- Community health and safety risks/accidents from the construction activities;
- Spread of communicable diseases such as Covid-19 and sexually transmitted diseases such as HIV/AIDS;
- Insecurity/small-scale theft risks of construction materials in Markets, Public Schools and Sanitation facilities; and
- Inadequate operation and maintenance of the WASH infrastructure impeding sustainable access to WASH services.

2.7 Potential Social Benefits

31. The potential social benefits accruing from the K-WASH interventions include:

- Time saving especially for women and girls who are primarily tasked with collecting water as a chore and thus can do more productive activities. As a result, there will be more hours available for work which will in turn lead to enhanced income and welfare, and better quality of life for the target community and increased economic growth and wellbeing in the country.
- Greater security for women and girls due to improved access to water and sanitation facilities thus reducing the need to travel for long distances or even at night to access such services,
- Reduced incidences of SEA especially for women and girls as they seek to access water and sanitation services,
- Reduced health costs on the side of households due to reduced disease incidences from access to potable water and sanitation services,
- Increased confidence and comfort, especially for girls (and women) because of improved access to WASH services in schools and the community, leading to higher retention of girls (and boys) in institutions of learning.
- Reduced incidences of spread of water borne diseases and infections.
- Reduced risk of spread of communicable diseases among community members as a result of improved access to WASH services,
- Improved quality of service delivery in public/social institutions and business enterprises,
- Enhanced the operational efficiency and financial performance of county owned WSPs,
- Employment opportunities will be created through construction and maintenance of the WASH infrastructure leading to increased income and improved livelihoods. The interventions will also stimulate other indirect employment opportunities such as transportation of construction materials and sale of food to the construction workers.

- Water supply/community connections, including water kiosks and storage tanks, will improve people's lives through access to clean water and increased hygiene and sanitation
- The project will also create a market for building and construction materials which is also a direct benefit that would be experienced during implementation and construction phase of the K-WASH
- Increased access of Program benefits to the most deserving, promoting citizen and gender equality, and culturally appropriateness including women, youth, VMGs and IPs.

2.8 Benefits to WASH service providers

- Increased public investment flows for water supply and sanitation services and intergovernmental water sector coordination framework as well as strengthen national and county governments capacity to monitor and fully implement NAWASIP.
- Enhanced service delivery and access to water and sanitation services through improved WASH infrastructure in target counties.
- Strengthened social responsibility and participatory governance as citizens in the counties will be stimulated to engage in-order to enhance accountability from public officials.
- Enhanced technical capacities in the counties and national government agencies to implement and manage the public investments.

2.9 Potential Social Risks and Impacts

32. The potential social risks and impacts include but are not limited to:

- Anticipated land and wayleave acquisition to enable the construction of water and sanitation improvement infrastructure resulting in temporary physical and/or economic displacement of project affected persons. This is likely to be complex in five of the target ASAL counties (West Pokot, Turkana, Samburu, Garissa and Mandera) which are overwhelmingly pastoralist and have unregistered community land tenure;
- Garissa and Turkana are refugee hosting counties which are targeted to benefit from the Window for Host Communities and Refugees (WHR). Potentially, the implementation of WHR may result in conflict between the host and refugee communities, in particular, if the host communities should feel that they deserve the lion's-share of the WHR financed subprojects;
- Potential conflict over the location of the water facilities especially in the pastoralist ASAL counties of Turkana, Garissa, Mandera, West Pokot and Samburu which increasingly experience water scarcity, often resulting into inter-community and inter-clan conflicts related to competition for water (and pasture) from competing uses;
- Destruction of crops, and trees is likely to have adverse socio-economic impacts on Project Affected Persons (PAPs).
- Exclusion of VMGs, vulnerable households, minority clans, and people unable to pay for services, from access to employment opportunities and or smart subsidies for construction or enhancement of household sanitation facilities.
- Potential increase in the Sexual Exploitation and Abuse (SEA) of community members by project workers and Sexual Harassment (SH) amongst project workers in sub-project areas.
- Inadequate number of Environment and Social staff and budget allocation for effective ESHS risks management.
- Loss of livelihoods through temporary/permanent displacements/repositioning of vendors, hawkers etc. especially during construction of WASH infrastructures in the rural areas.
- Potential labour influx is likely to lead to an increase in crime, insecurity, and upsetting community dynamics.
- Lack of transparency and trust by communities due to poor consultations and stakeholder engagement with project beneficiaries, vulnerable groups, VMGs and other marginalized groups.

- Risk of exclusion of VMGs (IPs) and other vulnerable groups (women, PWDs, youth, elderly and community from minority tribes) in the selection of representatives to the community level governance structures.
- Construction of disability unfriendly sanitation infrastructure that impede access by PWDs.
- Inadequate mechanisms for stakeholder identification, engagement, monitoring and feedback, and lack of clear engagement guidelines presents the risk of poor targeting and exclusion of vulnerable groups from accessing Program benefits.
- Ineffective grievance redress and feedback mechanisms.
- Elite capture or political interference in selection of public schools, public health facilities, market centres, for construction of sanitation facilities and in beneficiary targeting leaving out the most deserving.
- Bias in awarding of K-WASH contracts due favoritism, nepotism or to politically well connected contractors.
- Use of forced or child labor especially in the construction of WASH infrastructure
- Execution of projects for the achievement of the DLIs could result in social conflicts and grievances within the communities potentially delaying project delivery.
- There is also the likelihood of inequities and gender discrimination in access to employment opportunities accruing from project interventions.

2.10 Environmental and Social mitigation measures

33. All subprojects under the program will be required to undertake To mitigate the potential environmental and social risks of the Program, the **principles of exclusion** in PforR programs has been adopted. In this regard, potentially high-risk investments which are sensitive, or which have likely significant, adverse, or unprecedented impacts on the environment or people, are excluded from financing under the K-WASH Program. Program is designed to exclude investments that are likely to have significant adverse ESHS risks and impacts or are categorised as high-risk sub-projects under the World Bank ESF and EMCA legal notice 31 and 32 of 2019. These include interventions such as construction of large dams, land acquisition and/or resettlement with significant adverse impacts on more than 200 people (which would require the preparation of a full RAP rather than an Abbreviated RAP). In addition, any associated facility to subprojects financed under the program (supported independently by a different financier), shall comply with the applicable requirements of the country systems, the financing agreement of the program, and in accordance with the applicable requirements of the Environmental and Social Commitment Plan (ESCP) of the program. The detail of the range of key ESHS risks associated with WASH PforR is presented in **Error! Reference source not found.** below.

Table 3: Key ESHS Risks Associated with Program Activities and Recommended Mitigations Measures

s/n	Risks/Impact	Management Measures	Risk Rating
<i>Environmental Health and Safety</i>			
1.	Inadequate identification and management of environmental risks (eg land, air, and water pollution, land degradation), identification of adequate mitigation measures and allocation of budget in subprojects main budget	<ul style="list-style-type: none"> ▪ Prepare ESIA/ESMPs as per EMCA, 1999 [2015] regulations, and adequate monitoring plan to be incorporated in the contract documents ▪ The main subprojects budget should include the ESMP budget and included in the BoQ as a standalone item for implementation of ESMP 	High

s/n	Risks/Impact	Management Measures	Risk Rating
2.	Impacts on natural habitats and Physical Cultural Resources due to poor siting, design and planning of infrastructures	<ul style="list-style-type: none"> Conduct feasibility and design studies which will identify proper siting, planning and execution of the subprojects to minimize impacts on natural habitats and PCR resources. Develop an E&S screening checklist for screening sub-projects to identify any potential impacts to natural habitats and physical cultural resources before undertaking environmental assessments. Sub-projects shall consider the standard chance find procedures outlined in the ESHSM manual for the management of physical cultural resources. 	Low
3.	Public and worker's health and safety risks	<ul style="list-style-type: none"> Develop SOP guidelines for mainstreaming OHS/CHS aspects in the ESHSM manual for adoption in Program implementation. The Program will partner with DOSHS to enhance the capacity of counties/WSPs on health and safety risks management based on national laws and regulations. This will be achieved through training of E&S staff at the counties and WSPs, and induction of contractors on OSHA, 2007. Develop a simplified OHS manual for contractors. 	Substantial
4.	Inadequate management of land, air, and water pollution	<ul style="list-style-type: none"> Prepare ESMPs as per EMCA, 1999 [2015] regulations Monitor implementation of the ESIA/ESMP as per the NEMA standards and regulations (and WHO where applicable) 	Low
Social Risks			
5.	Inadequate stakeholder engagement and disclosure of project information	<ul style="list-style-type: none"> Identify and map all key stakeholders for the program/subprojects and develop guidelines for their continuous engagement Ensure adequate and continuous stakeholder consultations based on the defined guidelines Ensure timely and prior disclosure and dissemination of relevant and easily accessible project information in a timeframe that enables meaningful consultations, in a culturally appropriate format, and if needed in relevant local languages Ensure adequate documentation of all stakeholder engagement process including discussions held and agreed actions 	Moderate
6.	Exclusion of VMGs, minority clans, women, youths, or people with disabilities from the consultation and decision-making processes from access to project benefits of sub-projects to be implemented.	<ul style="list-style-type: none"> Where applicable, ensure VMGs and other vulnerable groups have adequate access to project benefits and opportunities that are culturally appropriate through special/differentiated targeting (affirmative action). Ensure Free, Prior and Informed Consultations with VMGs to ensure they understand the full extent of sub-project risks and impacts that may affect them. As appropriate, ensure VMGs and other vulnerable groups are adequately and proportionately represented on sub-project governance/community management committees. Ensure timely and prior disclosure and dissemination of relevant and easily accessible project information, in appropriate languages to ensure all community segments can effectively participate in sub-project implementation Make it clear in bidding and contract documents that contractors are required to use local labour as much as possible and where available. All unskilled and semi-skilled labour should be sourced from the local community, and as necessary, the wider local area. 	Moderate

s/n	Risks/Impact	Management Measures	Risk Rating
7.	Permanent/temporary physical and economic displacement due to anticipated land and wayleave acquisition to enable the construction of water and sanitation improvement infrastructure	<ul style="list-style-type: none"> Create awareness on relevant national legislations governing land acquisition (the Constitution of Kenya, 2010, the Community Land Act, 2016 (as amended in 2019), the Lands Act, 2012, (as amended in 2019), the NLC Act, the six core PforR principles etc.) to affected communities and other key stakeholders and sensitize them on their rights and entitlements under the national laws and the PforR policy. Develop and implement guidelines for managing temporary (and permanent, if any) physical and economic displacements consistent with the provisions of the national laws, and the developed land acquisition guidelines. Ensure meaningful consultation with the PAPs to ensure they understand the extent of the risks and impacts. Document and disclose all community consultation for clearly providing signed minutes (with key relevant concerns raised and feedback given to communities, and verbatim minutes of the consultation process. If necessary, undertake informed consultations for the preparation of Resettlement Action Plans (RAPs), which should be prepared by a qualified expert Due process should be followed to establish the true owner of any land that may need to be acquired for the sub projects, be it private or communal land. Once established, the project should acquire the site by paying appropriate compensation in accordance with the provisions of the national laws, and the developed land acquisition guidelines. 	Substantial
8.	Influx of labour leading to increase in GBV risks (SEA/SH), child labour	<ul style="list-style-type: none"> WSPs to prepare and enforce a No Sexual Harassment and discrimination Policy in accordance with national laws; WSPs to engage services of social services department within the counties to educate all workers and nearby communities and stakeholders on preventing and responding to sexual harassment and GBV ahead of any subproject related works; Popularize /put in place confidential mechanisms and hotlines for reporting GBV and sexual offences cases; Establish partnerships with relevant national and county government agencies and NGOs to ensure survivors of GBV and sexual offences access survivor centred services such as medical care, psychosocial support, legal redress, safety, etc as and when necessary; Provision of gender disaggregated facilities - separate bathing, changing, sanitation facilities for men and women; Grievance redress mechanisms including non-retaliation should be set up for the workers; Liaise with the administration units (County and sub County governments, Police, DO, chiefs, etc.) to provide regular surveillance and patrols to protect workers and unacceptable behavioral interaction of local communities and workers 	Moderate
9.	Conflict between host communities and refugees in the two refugee hosting	<ul style="list-style-type: none"> Adequately sensitize the host and refugee communities on the purpose and benefits of WHR 	

s/n	Risks/Impact	Management Measures	Risk Rating
	counties of Garissa and Turkana	<ul style="list-style-type: none"> Undertake adequate consultations with host and refugee communities on project issues, especially on location of, and access to project benefits Establish a practical, functional and accessible GRM for host communities and the refugees 	
10.	Ineffective management of project related grievances	<ul style="list-style-type: none"> Strengthen existing GRMs at both county and national levels. The GRM should outline all the processes, procedures, and clearly spells out roles and responsibilities, as well as any requirements for capacity building for the GRM entities Disclose the Program GRM to project stakeholders to enhance its utilization. Sensitize all the staff responsible for program implementation on the Program GRM. Ensure transparent and timely management of grievances, at no cost to the complainant (unless they choose the legal redress process) and without retribution to the party that originates the complaint. Ensure that the GRM facilitates the resolution of project related disputes that may arise at any stage of the project, at the lowest level, including use of traditional methods. Ensure VMGs and vulnerable individuals and households are proportionately represented on the GRM committee Ensure adequate documentation and reporting of all project related grievances 	Substantial
<i>Safeguards Implementation, Monitoring and Reporting</i>			
11.	Inadequate Environment and Social Staffing and budget allocation for ESHS risks management.	<ul style="list-style-type: none"> Enhance human resource staffing and resourcing of ESS department at the counties/WSPs. Each participating county should have an environment and social specialist as a minimum condition to access the UDG. The Program will partner with NEMA to train and build capacity of the newly recruited and/or seconded E&S experts on EMCA 2015 and related regulations. The county governments should allocate adequate budget and resources (vehicles and equipment) as part of the subproject budgets for proper supervision of safeguards during subprojects implementation 	Substantial
12.	Poor enforcement of ESHS requirements	<ul style="list-style-type: none"> Review the contract documents to strengthen the existing ESHS clauses to ensure OHS, community health and safety, GBV/SEA-SH, labour management and GRM are adequately incorporated, including integrating the NEMA licence conditions. Include template for incident/accident reporting in contracts, on site. Include a clause on monthly reporting of sub-project incidents/accidents on site by the contractor. Counties should work together with the relevant MDA's (NEMA, DOSHS, social protection, labour, gender) to enforce compliance with ESHS laws and regulations. 	Substantial
13.	Gaps in Environmental Social Health and Safety monitoring and reporting	<ul style="list-style-type: none"> Develop an environmental social health and safety reporting template as part of the ESHSM manual. Prepare biannual and annual environmental and social implementation reports. Undertake annual environmental and social health and safety audits. 	Substantial

s/n	Risks/Impact	Management Measures	Risk Rating
		▪ Continuously monitor contractor safeguards non-compliance to ensure implementation of agreed actions.	

3 SUMMARY OF APPLICABLE COUNTRY POLICY, LEGAL, REGULATORY AND INSTITUTIONAL SYSTEMS FOR ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY MANAGEMENT

34. As outlined in the PforR policy, the borrower systems will be applied for the management of ESHS risks of the K-WASH interventions. It is therefore necessary to ensure that the Program is implemented within a robust system for effective management of ESHS risks. This chapter provides an overview of Kenya's policy, legal, regulatory, and institutional frameworks and their relevance for management of ESHS risks of the K-WASH Program. It also identifies gaps with WB ESF if any, in the adequacy and effectiveness of the system for the management of the ESHS risks. The chapter also incorporates the roles and responsibilities of institutions involved in the ESHS risk management. Table 3 below presents Kenya's policies, regulations, and legislative frameworks that are applicable for the management of ESHS effects of the WASH Program, while Table 4 presents the institutional framework with varying mandates for ESHS management risk management.

Table 4: Country Systems as Written and Relevance to the WASH Program

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
1.	Constitution of Kenya (CoK) 2010	<p>The Constitution of Kenya (CoK) 2010 is the supreme law of the Republic and binds all persons and State organs at all levels of government.</p> <p>The CoK has clear provisions on a number of issues that are aligned with the ESF and the related ESSs. For instance, there are provisions on environmental conservation, access to water and sanitation services, labour, inclusion of VMGs, access to information, matters on land etc as presented below.</p> <p>Article 42 provides 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 and other measures.</p> <p>Article 69 sets the requirement for sustainable exploitation, utilisation, management and conservation of the environment and natural resources and encourages public participation in the management, protection and conservation of the environment.</p> <p>Article 41 describes Labour relations and provides citizens the right to fair labour practices and clearly highlights the rights of every worker including the right to fair remuneration, to reasonable working conditions etc;. Article 30 prohibits forced labor</p>	<p>The CoK, 2010 is well aligned with the ESF provisions in so far as it upholds the requirements for E&S sustainability. Specifically, the CoK is in conformity with the ESSs including 1,2, 3, 4,5, 6 , 8 and 10, as well as the 6 Core PforR Principles</p> <p>In this respect, the implementation of the WASH Program's activities will enhance access to quality water supply, sanitation services while promoting environmental and social sustainability, including ensuring equitable sharing of accruing benefits by beneficiaries, including VMGs as foreseen by the CoK, 2010 and adherence to the right of every Citizen to a clean and healthy environment, enhancing citizen, stakeholder engagement with timely disclosure of project information.</p> <p>Program activities shall be carried out to ensure compliance with the Constitution requirements on all aspects related to E&S management, including environmental and social impact assessment and management, Citizen and public participation, access to program information, management of labor, inclusion of VMGs, compensation of affected persons for land, wayleave and other assets, undertaking E&S audits, and monitoring etc</p>	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>Article 43 provides the right to clean and safe water in adequate quantities and to reasonable standards of sanitation.</p> <p>including the right to a clean and healthy environment (article 42); the human right to clean and safe drinking water in adequate quantities, and the human right to reasonable standards of sanitation (article 43); as well as the human rights of consumers to goods and services of reasonable quality which is mainly integral to provision of water and sanitation services, information, protection, and redress (article 46).</p> <p>As relates to the environment, section 69 (2) states that every person must cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. Section 70 provides for enforcement of environmental rights.</p> <p>With regards to inclusion of VMGs, Article 21 (3) of the Constitution sets the requirement for all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities. Similarly, Article 260 of the Constitution also provides for the inclusion of marginalized communities and groups in the development agenda of the country. Further, under Section 56, the Constitution requires that the State shall put in place affirmative action programmes designed to</p>		

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>ensure minorities and marginalised groups access to water, health services and infrastructure.</p> <p>On matters land, the Constitution protects the sanctity of public, private, and communal property rights and states that no property can be compulsorily acquired by the government except in accordance with law or is for a public purpose or in the public interest and with full and prompt payment of just compensation. Further, it requires compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land. . However, this does not include those occupying land without the consent of the owner (squatters). The Constitution further stipulates the requirement for spouses to be included in land and property transactions to safeguard their interest as elaborated in the Land Act -Section 107.</p> <p>On citizen participation and access to information, Article 35 provides citizens the right to access information held by the state and requires the State to publish and publicise any important information affecting the nation.</p>		
2.	Kenya Vision 2030	<p>Kenya's Vision 2030 is the current national development blueprint covering the period 2008 to 2030. The blueprint aims at transforming Kenya into "a newly industrializing, middle-income country providing a high quality of life to all its citizens in a clean and secure environment." The Vision is anchored on three key pillars: Economic; Social; and Political Governance.</p> <p>The political governance pillar envisages public participation during project development, while social</p>	This policy is relevant and aligns well with the ESF E&S sustainability requirements. It conforms with the objective of the WASH Program which aims to increased access to safe water supply and improved sanitation services and improved financial performance of water services providers in selected counties.	<p>None</p> <p>-</p>

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>pillar envisages development through equitable social development.</p> <p>The Vision 2030 national development targets for the water, sanitation and irrigation sector include improving the availability and accessibility of water and sanitation to all; increasing both access to safe water and sanitation in both rural and urban areas beyond the present levels; promoting agricultural productivity the area under irrigation and drainage will increase from 140,000 to 300,000 hectares, and implementing specific strategies to raise the standards of the country's overall water resource management, storage and harvesting capability.</p> <p>On matters regarding inclusivity, the Vision seeks to increase participation of women in all economic social and political decision making processed, improving access to social services and business opportunities by all disadvantage groups and minimizing vulnerabilities through prohibition of retrogressive practices such as child labor.</p>	<p>Vision 2030 advocates for adherence to the rule of law applicable in Kenya, as well as public participation as envisaged under ESS1 and ESS10. In this regard, all activities to be implemented under the WASH Program will be required to comply with the established environmental laws foreseen in Vision 2030, which are aligned to the World Bank's requirements for effective management of E&S risks and impacts of infrastructure projects. The Vision 2030 sets national development target for the water sector to enable access to water and sanitation services to all.</p> <p>The activities of the proposed K-WASH program's are anchored under the NAWASIP which is aligned with provisions of Vision 2030.</p> <p>The program will enhance participation of women in the various governance structures for project management especially at local level and also ensure equitable access to project benefits by all vulnerable groups.</p> <p>In compliance, the program will put in material measures such as training of contractors who will be engaged to establish the WASH infrastructures on good labour management practices, ensuring non employment of children etc .</p>	
3.	National Climate Change Action	Recognising the impact of climate change on Kenya's socioeconomic sectors and the people's wellbeing, the NCCAP aims to further Kenya's development goals by	Program activities of construction and O&M of infrastructure will consider the impacts of climate	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
	Plan (NCCP) 2018-2022	providing mechanisms and measures to achieve low carbon climate resilient development in a manner that prioritises adaptation. The Action Plan seeks to, among other things, provide a framework for mainstreaming climate change into sector functions at the national and county level, and align climate change actions with the Government's development agenda, including the Big Four. The Action Plan outlines programs and strategies for adaptation and mitigation up to June 2023. These include improving access to good quality water; increasing annual per capita water availability through the development of water infrastructure (mega dams, small dams, water pans, untapped aquifers); climate proofing livelihoods system water harvesting and water storage infrastructure, and improving flood control, enhancing gender –responsive affordable water harvesting based livelihood resilience programmes. Some enabling actions also proposed include developing a water harvesting policy for institutions and households.	change on the infrastructure and take appropriate climate-proofing measures. The sourcing of water from alternative sources of water, as opposed to reliance on rainfall, is one way in which the Program will meet the requirements of the Action Plan.	
4.	National Adaptation Plan (2015-2030)	The NAP seeks to consolidate the country's vision on adaptation supported by macro-level adaptation actions that relate with the economic sectors and county level vulnerabilities to enhance long term resilience and adaptive capacity. It builds on the foundation laid by the National Climate Change Response Strategy (NCCRS) and the first NCCAP and is the basis for the adaptation component of Kenya's Nationally Determined Contribution (NDC). The NAP recognizes that impacts of climate change have led to increasing scarcity of water especially in the ASAL region, and Kenya requires adequate water management strategies that consider the sector's		

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>vulnerability to climate change. The water sector needs to identify current and future vulnerabilities and develop strategies and plans to manage water sources, basins, water supply and wastewater. Large-scale irrigation projects need to be planned appropriately as adaptation measures.</p> <p>The sub actions proposed in the sector include enhancing capacity of institutions and bodies responsible for water and sanitation on climate change impacts and the water sector, promoting awareness on climate change impacts and the water sector including promoting public awareness on water conservation (recycling, wastewater management) and efficient water use and implementation of the National Water Master Plan.</p>		
5.	Climate Change Act (2016)	<p>The Act provides for an enhanced response to climate change and provides mechanisms and measures to achieve low carbon climate-resilient development. The Act establishes the National Climate Change Council, chaired by His excellency the President responsible for overall coordination and advisory functions. The Act also establishes the Climate Change Fund which is a financing mechanism for priority climate change actions and interventions. In line with the Act, the GoK has developed a five-year National Climate Change Action Plan (NCCAP) 2018-2022, that helps Kenya adapt to climate change and reduce greenhouse gas emissions. NEMA is assigned the responsibility to monitor, investigate and report on compliance and the assigned climate change duties.</p>	<p>The WASH Program will align with this Act by enhancing climate change resilience and the sustainability of water sources through targeted upstream conservation activities and incorporating incentives for ensuring the robustness of the source. Program areas are exposed to high climatic risks. Opportunities for adaptation will depend upon technical designs assessed during Program preparation. Improved sanitation, regular emptying of septic tanks, and good wastewater management will reduce GHGs. The Program will include utilization of solar-powered water pumps and nature-based wastewater treatment solutions, which can improve adaptation further.</p>	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
6.	National Environment Policy (NEP), 2014	The Policy's main goal is to attain a better quality of life for present and future generations through sustainable management and use of the environment and natural resources. It lays out a framework for an integrated approach to planning and sustainable management of Kenya's environment and natural resources. It also seeks to strengthen the legal and institutional framework for governance, coordination and management of the environment and natural resources, as well as the use of environmental management tools such as Environmental Impact Assessments (EIAs) and Environmental Audits (EA). The key principles guiding the implementation of the policy include: every individual's right to a clean and healthy environment; right to development while considering sustainability, resource efficiency and economic, social and environmental needs; sustainable resource use to safeguard its quality and value; public participation to ensure that all stakeholders are involved in planning, implementation and decision making processes; precautionary principle to prevent environmental degradation in the face of uncertainty; and polluter pays principle to ensure that responsible entities bear the full costs of pollution. On infrastructural development and the environment, the Policy outlines the Government's commitment to ensure that the environmental aspects of infrastructural developments such as electricity transmission and distribution systems are adequately considered through SEA, EIA, Environmental Audits, and public participation.	This policy is well aligned with the ESF environmental sustainability requirements, relevant to the proposed WASH program in so far as it supports E&S sustainability and public participation. The WASH Program activities will undergo an environmental, social and safety screening and projects likely to have E&S impacts will undergo environmental and social assessments before commencement of works. The Program will also be subjected to periodic environmental, social and safety audits throughout its cycle.	The Policy is weak in its provisions and requirement for measures for the effective management of social risks associated with infrastructure projects. For example, it does not advocate for the inclusion of social aspects in the strategic environmental assessment (SEA), EIA and or environmental audits of infrastructural developments such as electricity transmission and distribution systems. The Policy does not address the regulation of environmental auditing process to manage the conflict of interest of registered experts auditing entities that they expect to pay them.
7.	Environmental Management and Coordination Act,	The EMCA of 1999, amended in 2015, is an act of Parliament that provides for the establishment of an appropriate regulatory and institutional framework for	The Program is expected to: <ul style="list-style-type: none"> • Ensure all activities are carried out in an environmentally friendly manner throughout 	No specialisation of EIA experts to handle specific

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
	1999 and the Amendment Act of 2015, Legal Notice No. 31 of April 2019 on the EMCA.	<p>management of the environment and matters connected therewith and incidental thereto. The Act focuses on key environmental aspects, for effective management including environmental planning, protection and conservation of the environment, environmental audit and monitoring, environmental quality standards, environmental restoration orders, environmental easements, inspection, analysis and record, inspection analysis and records and environmental offences.</p> <p>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 guides that any new program, activity, or operation should undergo Environmental Impact Assessment (EIA) and a report prepared for submission to the National Environment Management Authority (NEMA) for review, who in turn may issue licenses as appropriate with specific conditions of approval to be adhered to during project implementation. The Second Schedule of the Act provides for the categorisation of projects as either Low-Risk, Medium-Risk, or High Risk, and provides a longlist of projects pre-screened into each of these categories</p>	<p>the design, construction, and operation phases of projects.</p> <ul style="list-style-type: none"> • Comply with EIA requirements during implementation of infrastructure investments and subsequently undertake environmental and social audit(s) and monitoring to safeguard and enhance the environment and to ensure a clean and healthy environment for all. • The Program will screen potential subprojects using the criteria provided in the 2nd Schedule of the Act to determine the risk category, and the level of environmental and social assessment required • Projects screened to be in the High-risk category are excluded from the WASH Program 	<p>ESIAs to bring out pertinent issues of a Program.</p> <p>Does not provide guidance as to how NEMA will be staffed, and which resources would need outsourcing by the department.</p>
8.	Environmental Management and Coordination (Impact Assessment and Audit, 2003) and the Amendment Regulations, 2019	The Regulations provide guidelines for conducting EIA and audits. They offer guidance on fundamental aspects on which emphasis must be laid during the field study and outline the nature and structure of EIA and audit reports. The Environmental assessments and audits are to be conducted by a qualified environmental lead expert/ registered environmental inspector. The	The Program will adhere to this Act especially as the Program will involve the construction, distribution and operations of water supply and sanitation investments, and mainstream climate resilient standards. Infrastructure projects will require a full or partial Environmental Impact Assessments (EIA) before commencement,	Lack of clarity on low-risk projects. For instance, the potential to avoid all small low risk projects going through NEMA reviews. This overwhelms the reviews at NEMA.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		legislation further explains the legal consequences of partial or non-compliance to the provisions of the Act. The Regulations provide guidelines to the proponent undertaking a project specified in the Second Schedule of the EMCA. For a low-risk project, a Summary Project Report is to be prepared and submitted to NEMA. A Comprehensive Project Report is to be prepared for a Medium Risk Project, while a Full Environmental Impact Assessment Study culminating in a Study Report is to be prepared for High-Risk projects with significant adverse environmental impacts	depending on the nature and magnitude of impacts.	
9.	Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006	The Regulations make provision for conservation of biological diversity including conservation of threatened species, record keeping of biological diversity and access procedures to genetic resources. The Regulations promote the preservation of biodiversity, the sustainable utilization of available ecosystem resources, and, safeguarding of endangered/rare plant and animal species, where there is human activity area. The Regulations further provide that an EIA shall be carried out and a license issued for any activity that may have an adverse impact on any ecosystem	Program activities shall promote the conservation of biological diversity and cause no harm to ecosystems. An EIA license shall also be sought for any Program activity that could potentially impact on ecosystems.	None
10.	Environmental Management and Coordination (Waste Management) Regulations, 2006	These Regulations apply to all categories of wastes that include solid waste, industrial waste, hazardous waste, toxic substances and waste, biomedical waste, and radioactive substances. The Regulations vest responsibilities of waste management to the generator who shall use cleaner production methods to minimize the waste generated segregate and dispose the waste generated in an approved manner. Waste oils, mineral oils, wastes from use of wood-preserving chemicals and wastes containing polychlorinated biphenyls (PCBs) are	The proposed Program will abide by these regulations in management of wastes generated from construction and O&M activities. Procedures for handling hazardous wastes such as waste oils from decommissioned or refurbished transformers in the Program will be required NEMA licensed waste handlers will be engaged to manage waste generated from project sites.	The Act only mentions waste disposal should be carried out by a licensed waste disposal company but does not give guidelines on how the waste will be disposed for majority of the waste types.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		identified as hazardous materials, to be handled in accordance with set procedures. The Regulations also provide that the waste transporter shall be licensed.		
11.	Environmental Management and Coordination (Water Quality) Regulations, 2006	These Regulations provide for protection of sources of water for domestic use, and also outline effluent discharge standards. The regulations prohibit the discharge of any pollutants into the aquatic environment unless the discharge meets the standards specified in the Regulations. In accordance with Part II of the regulations, every person is expected to refrain from acts that could directly or indirectly cause immediate or subsequent water pollution, and no one should throw or cause to flow into water resources any materials that can contaminate the water. The regulations provide that anyone who discharges effluent into the environment or public sewer shall be required to apply for Effluent Discharge License.	Construction and O&M activities for infrastructure in the Program will be undertaken, and these shall ensure that there are no discharges to the environment that contravene the Regulations.	List of effluent chemical parameters is not exhaustive to capture other effluent constituents (parameters) that might be out of the ordinary i.e., cyanide.
12.	Environmental Management and Coordination (Noise and Excessive Vibrations Pollution) (Control) Regulations, 2009	Part II Section 3 of the Regulations prohibit making of any loud, unreasonable, unnecessary, or unusual noise which annoys, disturbs, injures, or endangers the comfort, health or safety of others and the environment. Part II section 6(1) provides that no person shall cause noise from any source which exceeds any sound level as set out in the First Schedule of the regulations. The regulations require a permit/licence to be obtained from NEMA for any activities that emit noise or excessive vibrations beyond the permissible levels.	Construction and O&M activities for infrastructure in the Program may generate noise and vibrations. These shall require monitoring to ensure that emissions are within permissible levels.	None
13.	Environmental Management and Coordination (Air Quality) Regulations, 2014	The Regulations provide for prevention, control, and abatement of air pollution to ensure clean and healthy ambient air to protect human health. The regulations apply to specific priority air pollutants, mobile and stationary sources as well as stipulated emission	Construction and O&M activities for infrastructure in the Program may cause air local air pollution. The Program will monitor and manage any air pollutants and their sources.	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		standards. Section 4 of the Regulations allows NEMA to consider the use of other internationally recognised emission standards in relation to air pollutant/source where there are no local emission standards, targets or guidelines set out in the Regulations.		
14.	Public Health Act, Chapter 242	<p>The Act provides for protection of public health through prevention and guarding against introduction of infectious diseases; the promotion of public health; the prevention, limitation, or suppression of infectious, communicable, or preventable diseases; and engaging local authorities. The Act advocates for a healthy environment, supports regulations on waste management, pollution, and human health and lays down rules related to public water supplies.</p> <p>Part IX section 115 states that no person shall cause nuisance or condition liable to be injurious or dangerous to human health. Section 116 requires Local Authorities to take all lawful, necessary, and reasonably practicable measures to maintain their jurisdiction clean and sanitary to prevent occurrence of nuisance or conditions injurious or dangerous to human health. Section 118 defines such nuisance as waste pipes, sewers, drains and refuse pits in a state or constructed as in the opinion of medical officer of health to be injurious to health.</p>	Construction and O&M activities for infrastructure in the program may require establishment of camps and facilities that would require to comply with the Act. Program activities will be undertaken in a manner that promotes public health, safety, and hygiene. In addition, all generated waste will be managed in a manner that they do not cause nuisance to the public.	None
15.	Occupational Safety and Health Act (OSHA), 2007	<p>The Act establishes the office of the Director of Occupational Safety and Health Services who shall among other things promote occupational safety and health in all workplaces and in the community to encourage a safety and health culture in workplaces.</p> <p>The Act provides for the safety, health and welfare of all workers and all persons lawfully present at</p>	The WASH Program activities shall adhere to the Act provisions as related to project sites and safeguarding the safety, health, and welfare of all workers. These include provision of personal protective clothing, clean water, registration of workplaces, and insurance cover, to protect all	The Directorate of Occupational Safety and Health Services (DOSHS) is department in the Ministry of Labour and Social Protection (MoLSP). DOSHS administers the Occupational Safety and

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		workplaces. The act promotes safety, health, and welfare of all workers at the workplace, preventing work related injuries and sickness, protecting third party individuals from being pre-disposed to higher risk of injury and sickness associated with activities of people at workplaces. The Act applies to all workplaces and workers associated with it; whether temporary or permanent. Section 97 of the Act prohibits employment of persons below age of 18 years at the workplace or perform work likely to harm the person's safety or health. The Act establishes codes of practices to be approved and issued by the Directorate of Occupational Safety and Health Services (DOSHS) for practical guidance of the various provisions of the Act. Inspection and enforcement systems exists with a bearing to occupational safety, health, and labour inspections. DOSHS have a core responsibility to carry out inspections related to the environment and safety of workplaces, general health, and basic welfare of workers to ensure compliance with the OSH Act.	workers from work related injuries and/or other health hazards. Contractors will be required to comply with requirements of this Act through obtaining relevant work site permits and licences, train workers on OHS, inspect equipment to ensure they are in good working conditions, provide appropriate PPE to workers among other measures. The contract will incorporate minimum OHS requirements in Bid Documents to be met by all the contractors. Regular supervision and inspection of infrastructure investments shall be carried out during construction and operation phases to ensure they are safe.	Health Act (OSHA) 2007, the Work Injury Benefit Act (WIBA) 2007 and the National Occupational Health and Safety Policy. As a directorate in the MoLSP, it is administratively and institutionally constrained to implement its mandate. DOSHS is severely understaffed. It has only 31% of its required technical staff on-board. This is especially the case at the decentralized levels of government. Some of the constraints faced by the Directorate include: (i) Lack of presence in 19 Counties: currently, DOSHS has only 29 county offices; (ii) Functions of the Directorate are not devolved and remain as a function of the State Department for Labour nationally; (iii) Inadequate staffing levels in counties where DOSHS is represented (the Directorate has 135 members of staff meant to serve more than 17.8 Million workers, in both the formal and informal sectors in Kenya; (iv) Lack of continuous

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				professional development of its technical staff; and (v) Inadequate institutional system and infrastructure including office space, laboratories, specialized surveillance equipment, vehicles, protective equipment and an information management system to collect and collate OHS data and statistics for policy and decision making. Article 41(2)(b) of the Constitution of Kenya, 2010 provides that every person has a right to reasonable working conditions which includes the right to work in a safe and healthy environment.
16.	National Occupational Safety and Health Policy, 2012	The National Occupational Safety and Health Policy addresses the current challenges, gaps and future development of safety and health systems and programmes in the country. It promotes basic principles of assessing occupational risks and/or hazards; combating hazards at source; and developing a national preventative safety and health culture that includes information, consultation, research and training. The Policy applies to all workplaces in all sectors of the economy and all forms of work guided by the existing laws on Occupational Safety and Health (OSH), Work Injury Benefits and other relevant regional and International Labour Standards without any	Program activities have inherent health and safety risks hazards to workers and will require proactive measures to eliminate and/or minimize the risks. The provisions of the policy shall be adhered to with respect to occupational health and safety guidelines for projects to prevent work related injuries, loss of life and any potential negative impact to a neighbouring community.	The 2012 National Occupational Safety and Health Policy needs to be updated to cover global emerging types of work hazards. These include: <ul style="list-style-type: none"> • Work relating newly formulated chemicals. • New work process. • Addressing mental health.

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		exemption. The main focus is prevention and control of work-related accidents and diseases, compensation and rehabilitation of workers injured in the course of work and those who contract occupational diseases. The principles that guide the Policy are existing national laws and policies, International Labour Organization (ILO) Conventions, codes of practice and guidelines in occupational safety and health, and World Health Organization (WHO) and ILO Action Plans.		
17.	The Factories and Other Places of Work (Noise Prevention and Control) Rules L.N.24, 2005	The rules are applicable to workplaces, premises, place, process, and operations. The rules give provisions for the permissible noise level, guidelines to develop and implement an effective noise control and hearing conservation programme, noise control measures, related information sharing and training of workers, maintenance of the noise measuring equipment, recommended provisions for installation and maintenance of machinery or plant, provision and maintenance of hearing protection to the affected workers, medical examinations and hearing tests for workers, selection and use of hearing protection.	Program activities including construction and O&M works are likely to generate noise. As a subsidiary legislation under the OSHA, 2007, the rules shall be referred to in the Program to ensure noise prevention and control measures are adhered to.	None
18.	The Factories and Other Places of Work (Hazardous substances) Rules, 2007	The rules are applicable to workplaces, premises, place, process, and operations. The rules provide guidance on exposure limits to hazardous substances, provision of personal protective equipment for air borne and other hazardous substances exposure and recommended working in hazardous conditions.	Program activities may include handling of hazardous substances such as transformer oils. As a subsidiary legislation under the OSHA, 2007, the rules shall be referred to in the Program to ensure hazardous substances exposure guidelines are adhered to.	None
19.	The Factories and Other Places of Work (Fire Risk Reduction) Rules, 2007	The rules promote adherence to fire safety measures at every workplace, process, and operations. The rules provide guidance with reference to the location of large installations for highly flammable substances, use of fire-resistant construction material, the storage,	Program activities including construction and O&M of distribution infrastructure will create risks of fire incidences. As a subsidiary legislation under the OSHA, 2007, the WASH Program shall observe	None

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		marking and labelling of highly flammable substances, waste disposal, installation, and handling of electrical equipment, evacuation procedures, fire safety, fire detection systems, firefighting appliances and fire safety audits.	adherence to the rules by facilitating the reduction of potential fire risks.	
20.	The Factories and Other Places of Work (Safety and Health Committees) Rules, 2007	These Rules shall apply to all factories and other workplaces, which regularly employ twenty or more employees. The occupier of every factory or other workplace to which these Rules apply shall establish a Safety and Health Committee in the manner provided in the Rules. A Safety and Health Committees shall consist of safety representatives from the management and the workers.	Program activities including construction and O&M of distribution infrastructure may require establishing of work teams with more than 20 workers. As a subsidiary legislation under the OSHA, 2007, the WASH Program shall observe adherence to the rules by facilitating the formation of Safety and Health Committees, as applicable.	None
21.	The Work Injury Benefits Act (2007)	<p>The Act was enacted to ensure that workers who sustain work related death, injuries and contract diseases are compensated. The Act applies to all employees including those employed by Government, other than the armed forces, in the same way, and to the same extent as if it was a private employer. An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act and entitled to the benefits provided under this Act.</p> <p>Part II Section 7 (1) of the Act provides that every employer shall obtain and maintain an insurance policy in respect of any liability that the employer may incur under the Act to any of his employees. Section 8 of the Act requires the registration of employers with the Director of Occupational Safety and Health Services, and the registration of workplaces</p> <p>Part III Section 10 of the Act provides for the compensation of employees involved in any</p>	Water Service Providers, contractors, sub-contractors and suppliers will require to obtain and maintain work injury benefit insurances for all their employees. Further, appliances and services must be availed and maintained for rendering first aid in the event of occurrence of accidents during implementation of program activities.	When workers get injured at work, the system of compensation is not up to international good practice. The current Worker Injury Benefits Act is employer-liability based workers insurance system, and thus covers only the formal sector which employs only around 20% of the country's workers. There is currently a high-level engagement and a draft bill to review WIBA and transform it into a social insurance-based workers injury system. This will ease the burden of compensation from individual employers to

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		occupational accident resulting in the employee injury, disablement, or death Part IV Section 21 and 22 require the notification of occupational accidents to DOSHS, and an inquiry to determine any claim or liability for injuries. Section 38 also provides for the compensation of an employee who contracts a disease in the course of employment Part VII Section 45 provides that employers shall avail and maintain appliances and services for rendering first aid to employees in case of any accident		the social contributing scheme.
22.	National Construction Authority Act, 2011	This is an Act of parliament for the establishment of powers and function of the National Construction Authority (NCA). The Authority is established in Part II Section 3 of the Act to, among other things, oversee the construction industry and coordinate its development, to accredit and register contractors and regulate their professional undertakings, and to develop and publish a code of conduct for the construction industry	Entities involved in the construction and O&M of national public water works will be registered with NCA.	None
23.	The County Government Act (No 17), 2012	The Act is established to give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution. Part V in Section 35 defines the roles of the executive committee in urban area or city planning. The roles include inter alia oversight in the planning, formulation and adoption of integrated development plans. Part VII in Section 87 outlines principles of citizen participation in counties including timely access to information, access to the process of formulating and implementing policies, laws and regulations, promotion of interest and rights of minorities, grievance redress and regional balance in decision making process. Part XI of the Act empowers County Governments to oversee planning of development projects by	County governments are mandated to provide water and sanitation services; and implement specific national government policies on natural resources and environmental conservation, including soil and water conservation. The reference to county governments is within the principles, meaning, and structure provided in Chapter 11 of the Constitution and to this Act. The mandate and functions of county governments in the water sector can be construed from the Bill of Rights, Chapter 11, and Part II of the Fourth Schedule and generally from the Constitution. The WASH Program will adhere to the Act provisions by obtaining all the required permits and licenses, facilitate consultations with key organs and the	None

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		coordinating and ensuring integrated planning including coordinating the public participation and environmental protection. The Act describes the functions and powers of county government in relation to water resources, including county integrated development planning and sectoral plans that impact on water resources. Counties are required to facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county.	public, and ensure environmental protection and sustainable management of water resources.	
24.	Intergovernmental Relations Act (No. 2 of 2012)	This Act has implications on the water sector relating to perceived disputes between the national government and county governments and amongst counties over managing/sharing of water resources.	Water sector reforms have accelerated in recent years, but implementation challenges hinder fully realizing the benefits of devolved services delivery.	None
25.	National Government Co-ordination Act (No.1 of 2013)	The Act establishes an administrative and institutional framework for co-ordination of national government functions at the national and county levels of governance; to give effect to Articles 131(1) (b) and 132 (3) (b) of the Constitution and for connected purposes	The Program will support the establishment of the Intergovernmental Water Sector Coordination (IGWSC) framework and a Joint Secretariat. The Framework will align the uptake and performance of mandates between county governments, and the national government and establish mechanisms to guide intergovernmental and institutional coordination for better delivery of respective functions.	
26.	Mwongozo Code of Governance for State Corporations	This Code of Governance is anchored on the Constitution of Kenya, 2010. Article 10 of the Constitution entrenches national values and principles of governance while Article 73 places emphasis on public trust, honour and dignity of public offices. Personal integrity, and values and principles of public service are reinforced in Article 232, which also provides for efficiency, effectiveness and economic use of resources. The Code takes into consideration Chapter Six of the Constitution on Leadership and Integrity as well as the Public Officers and Ethics Act, 2003.	The K-WASH Program will use the provisions of the Act to resolve intergovernmental disputes that may arise during between the two levels of government during Program implementation.	

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27.	National Museums of Kenya Chance Finds Procedures	The Chance Finds Procedures define requirements for the management of archaeological, paleontological, and other cultural deposits, finds and features, encountered during construction and development activities within Kenya. The objectives of the procedures is to provide protocols that will minimize disruption to construction scheduling while promoting the preservation of prehistoric and cultural heritage.	Vegetation clearing and civil works might uncover cultural sites which can only be removed by the appropriate governmental structures and consultation with the traditional authorities. The Program will apply the Chance Finds Procedures where finds and features are encountered during construction.	None
28.	Protection of Traditional Knowledge and Cultural Expressions Act, 2016;	The Act of parliament provides a guideline for the protection and promotion of traditional knowledge and cultural expressions. Section 3 requires every person dealing with matters relating to traditional knowledge or cultural expressions to be guided by the national values and principles of governance set out in Article 10 of the Constitution.	The Program is likely to be implemented in areas of cultural importance, and it will observe the requirements of this Act to protect and promote traditional knowledge and cultural expressions.	None
29.	Forest Conservation and Management Act, 2016	The Act gives effect to Article 69 of the Constitution regarding forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for the socioeconomic development of the country and for connected purposes. The Act makes provision for the conservation and management of public, community and private forests and areas of forest land that require special protection, defines the rights in forests and prescribes rules for the use of forest land. It also makes provision for community participation of forest lands by community forest association, the trade in forest products, the protection of indigenous forests and the protection of water resources. The Act establishes the Kenya Forest Service as a body corporate and the Forest Conservation, Management Trust Fund, Kenya Forestry College and defines Forestry functions of County Governments.	Program activities shall observe the Act provisions to facilitate the conservation and sustainable management of forest resources.	None

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30.	National Land Use Policy, 2017	The policy identifies the critical land areas for reform in Kenya, presents a set of proposals for administrative reforms and legislative action for desired land reforms. The policy addresses critical issues including land tenure and decentralization of administrative structures and public engagement in decision making.	The Policy aligns well with the ESF requirements for environmental and social sustainability and climate change adaptation. The WASH Program activities for enhancing access to water supply and sanitation services through supply and reticulation infrastructure will be carried out within the provisions of the physical planning and environmental management laws that operationalize the National Land Use Policy.	Water security is affected by challenges resulting from the land tenure system. These include land use practices that negatively impact water resource management and storage and worsen climate change vulnerabilities. The absence of strong land use controls remains a problem.
31.	Land Act, 2012 (revised 2019)	<p>The Act gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources which includes water resources and sets out the functions of the National Land Commission (NLC) over management of public land and the process of compulsory acquisition and the MoLPP for implementing settlement schemes. The Act prescribes the statutory processes for acquiring land and creation of public rights of ways.</p> <p>Land Tenure: The Act applies to all land declared as (a) public land under Article 62 of the Constitution; (b) private land under Article 64 of the Constitution; and (c) community land under Article 63 of the Constitution and any other written law relating to community land.</p> <p>Compensation: The Act provides for the payment of full, prompt and just compensation to all persons whose interests in the land have been determined.</p> <p>Right of Way (ROW): Section 143 and 146 provides for the creation of a public rights of way (ROW) or wayleave by the National Land Commission (NLC).</p>	<p>It is anticipated that there will be the acquisition of land, the creation of public rights of way under the Program, and the subsequent destruction of crops, trees, and other assets. However, all construction works are of small scale, no resettlement is anticipated, and no, or very little, land acquisition is foreseen, thus unlikely to have significant adverse impacts on project-affected persons.</p> <p>In this respect, the provisions of the Land Act will be applied, together with the requirements of the Water Act and the National Regulations on compensation for land acquired for public water works and other relevant land laws. Although still in draft form, the regulations conform to the Water Act and the Land Act.</p> <p>The Land Act is aligned with the ESS5 requirements on compensation for land, trees, crops, and other assets affected by the acquisition of land and the creation of public rights of way. The Land Act also provides for the settlement of the poor, landless, those displaced by disaster,</p>	<p>The act provides for full, prompt and just compensation, but does not define what each of these terminologies mean in practice. The Act compensates for affected livelihoods; however, it is silent on the restoration/enhancement of livelihoods.</p> <p>The Act does not recognize any persons occupying land without the consent of the owner (e.g. squatters/encroachers), and does not compensate them for any improvements made on the land they unlawfully occupy. This is contrary to the PforR Directive which require that economic and social impacts caused by land acquisition or loss of access to</p>

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		<p>Section 148(6) mandates NLC to make Regulations prescribing the criteria to be applied in the payment of compensation relating to acquisition of land for wayleave or communal right of way.</p> <p>In 2017, the National Land Commission made the regulations as demanded by the Act. Section 152(4) on rights of entry provides that <i>“If any person authorized under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damage”</i></p> <p>Occupants in Good Faith: The Constitution, the Land Act and the Land value Amendment Act require compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land. This compensation is assessed based on several factors, including the number of persons in actual occupation of the land for an uninterrupted period of six (6) years immediately before the publication of the notice of intention to acquire the land and other improvements done before the date of publication in the Gazette of the notice of intention to acquire the land. Further, where boundaries of the land are ascertainable, prompt payment in full of just compensation may be made to occupants in good faith, in the case of land lawfully held, managed, or used by individuals or families as ancestral land and land traditionally occupied by individuals, families, or entities pending adjudication. The Act further notes</p>	<p>conflicts, and development projects, or other reasons that may lead to movement and displacement through the MoLPP-implemented settlement schemes.</p> <p>The Land Act further recognizes and compensates occupants in good faith and establishes measures to determine their eligibility and assess compensation payable to them.</p>	<p>natural resources, including those affecting people lacking full legal rights to resources they use or occupy are identified and they are compensated for.</p> <p>Further, ESS 5 and other international best principles requires those without recognizable legal rights or claims to the land or assets they occupy or use at least receive compensation for any improvements made on the land before the declaration of the cut-off date.</p> <p>The Alternative Justice System (AJS) typologies envisioned in the Constitution are still under pilot by NLC and the AJS is not fully operational.</p>

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		<p>that The Act states that occupants in good faith do not include persons unlawfully occupying any land without the owner's consent.</p> <p>Unlawful occupiers of land: The Act defines a squatter as a person who occupies private, public, or communal land that legally belongs to another person without that person's consent. This implies that squatters are not considered occupants in good faith and are thus not entitled to any form of compensation under the national law when acquiring land compulsorily. The Act also notes that anyone occupying land without the owner's consent shall be evicted, and the Act establishes the legal process to be followed in evicting unlawful occupiers. For instance, the mandates for evicting unlawful occupiers and the procedures to be followed, including issuing eviction notices, and identifying people taking part in the eviction process.</p> <p>Settlement Schemes: The Act mandates the Ministry of Lands and Physical Planning (MoLPP) to settle squatters, the poor, landless, and those displaced by disaster, conflicts, and development projects, or other such reasons that may lead to movement and displacement. Settlement programs provide access to land for shelter and livelihoods to target beneficiaries. Encroachers/squatters are one of the beneficiaries of settlement programs implemented by the MoLPP. This means that they can receive land settlement. On its motion or as requested by the national or county government, MoLPP may initiate the settlement of</p>		

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		<p>encroachers/squatters who are not beneficiaries of any other settlement program.</p> <p>Dispute Resolution:</p> <p>The Act outlines procedures for consultations with affected population by NLC and grievance management procedures. The Act clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through the Land Acquisition Tribunal as established by the Land Value (Amendment) Act 2019 and Environmental and Land Court as established by the Constitution 2010. Lastly, NLC has a duty to encourage Alternative Dispute Resolution Mechanisms (ADRM) in resolving land disputes pursuant to Article 69 of the Constitution. Section 128 also provides for referral of any dispute arising out of any matter provided for under the Land Act may be referred to the Land and Environment Court for determination</p>		
32.	Land Value Amendment Act 2019	<p>The Act amended various sections of the Land Act, the Land Registration Act as well as the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Act aims at standardising the value of land in Kenya for the primary purpose of enhancing efficiency and expediting the compulsory land acquisition process.</p> <p>The Act:</p> <ul style="list-style-type: none"> • Provides for assessing land value index regarding the compulsory acquisition of land; • Highlights “just’ compensation” in relation to compulsorily acquired land or creation of 	Compensation for affected land/rights of way and other assets will be in accordance with this Act, especially in assessing compensation using the criteria prescribed under the Act, and diverse modes of compensation available to affected persons.	None

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		<p>wayleaves, easements and public rights, to mean a form of fair compensation that is assessed and determined through criteria set out under the Act;</p> <ul style="list-style-type: none"> • Outlines various forms of compensation for land that is acquired compulsorily. They include monetary payment, alternative land, government bonds, equity shares in a government-owned entity, grant or transfer of development rights, and any other lawful compensation; • Stipulates that compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land. 		
33.	Land Assessment of Just Compensation Rules, 2017	Outlines the rules of NLC to implement provisions of the Land Registration Act in respect of the amount of compensation to be awarded for land acquired under the Act. The Rules further set out factors to be considered when assessing compensation and provides that NLC shall determine an award based on the market value of the land to be acquired.	The assessment of compensation for land and other assets affected by the Program shall be based on the provisions of these Rules.	
34.	Community Land Act, 2016	The Act gives effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes. Community land maybe held as (a) communal land; (b) family or clan land; (c) reserve land; or (d) in any other category of land recognized under this Act or other written law. The Act provides guidance for the ownership and tenure system; the protection of	The Act will be applicable to the Program since program activities are being implemented in areas with unregistered community lands. The provisions of this Act shall be considered together with the provisions of the Land Act 2012 (as amended in 2019), and other relevant legislation, in the event that some of the proposed Program's activities requiring land will be implemented in the areas of Kenya in which this Act applies. All affected community land (registered or un-registered) will be compensated	The Community Land Act only permits transactions over registered community land by registered community members. In spite of the provisions of the Act, community land in the ASAL counties of Kenya remain unregistered, and communities are unwilling for their compensation monies to

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		community land rights; the role of county governments; the procedure for registration of communities, recognition, and adjudication of community land; registration of community land; functions and powers of the community land management committee; and use and development planning of community land. The Act also provides guidance on transaction over community land and how unregistered community land may be acquired, which is mainly through either compulsory acquisition or through conversion. The Act mandates county governments to hold community land in trust for the concerned communities, until such a time that the community has been registered. It however prohibits the county government from transacting on, or otherwise disposing of community land. The Act further provides for compensation of compulsorily acquired community land to be deposited in an interest-bearing account held by the county government until such a time that the community has been registered, after which the compensation amount, together with interest earned, is transferred to the community account.	in accordance with the provisions of the Community Land Act 2016.	be held by the counties in trust on their behalf, thus, making it difficult to acquire and compensate for land in those counties. Further, the Act does not include the responsibility to oversee Community Land Management Committees.
35.	The Land Laws (amendment) Act, 2016	An Act of Parliament to amend the laws relating to land to align them with the Constitution, to give effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes.	The Program will align to the amendments in the Act, as applicable.	None
36.	Land Registration Act, 2012	The Act gives provisions to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. The Act applies to: a) registration of interests in all public land as declared by Article 62 of the	The Program will traverse private land and community land (registered and unregistered). People whose land is traversed by the project will need to be verified, compensated, and an easement registered in their title deeds.	None

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		Constitution; (b) registration of interests in all private land as declared by Article 64 of the Constitution; and (c) registration and recording of community interests in land.		
37.	Valuers Act 2010	This Act provides for the registration of valuers and the regulation of the valuation profession and practice in Kenya. Section 21 of Cap 532 prohibits any person who is not a registered Valuer and whose name does not appear in the register to prepare and submit a valuation report.	The Program will engage registered valuation experts during RAP preparation.	None
38.	The National Land Commission Act, 2012	The Act makes provisions to the functions and powers of the National Land Commission, qualifications, and procedures for appointments to the Commission; to give effect to the objects and principles of devolved government in land management and administration, and for connected purposes. The Act provides: (a) for the management and administration of land in accordance with the principles of land policy set out in Article 60 of the Constitution and the national land policy; (b) for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67(3) of the Constitution; (c) a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 250(2) and (12)(a) of the Constitution; and (d) for a linkage between the Commission, county governments and other institutions dealing with land and land related resources.	The National Land Commission is a key agency as it undertakes public participation and sensitization, inspects land and collects related data, conducts field inspections for valuation purposes, conducts hearing inquiries, and is involved in land allocation. The Commission shall be engaged on land related matters in the Program, especially where allocation of public land is concerned, and compulsory land acquisition is envisaged (private land and community land).	None
39.	Public Roads and Roads of Access Act (Cap. 399)	Sections 8 and 9 of the Act provides for the dedication, conversion or alignment of public travel lines including construction of access roads adjacent lands from the nearest part of a public road. Section 10 and 11 allows	During the construction phase of the Program, access to the site areas will be required for the construction vehicles. Where existing roads do not exist, the Proponent shall seek permission from	None

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		for notices to be served on the adjacent landowners seeking permission to construct the respective roads.	the appropriate authorities to create such access during the construction phase.	
40.	Kenya Roads Act No. 2 of 2007	Part II provides for the establishment of the Roads Authorities.	Permits will be sought from the relevant roads authorities in cases where water supply and sanitation infrastructure cross the roads infrastructure.	None
41.	Occupiers Liability Act (Cap. 34)	Rules of Common Law regulates the duty which an occupier of premises owes to his visitors in respect of danger and risk due to the state of the premises or to things omitted or attributes an affliction on his/her health to a toxic material in the premises.	The Proponent shall endeavour to ensure that the management of health and safety issues is of high priority during the operational phase of the Program.	None
42.	The Energy Act, 2019	The Energy Act, 2019 has made several amendments to the repealed Energy Act, 2006. Its objective is to consolidate the laws relating to energy, to properly delineate the functions of the national and devolved levels of government in relation to energy, to provide for the exploitation of renewable energy sources, to regulate midstream and downstream petroleum and coal activity and for the supply and use of electricity and other forms of electricity.	The Program is likely to include the installation of solar water pumping systems. In this respect, the Program will comply with the Energy and Petroleum Regulatory Authority (EPRA) requirements. The Program will be implemented following the regulatory requirements of the Act, including the Solar Regulations 2012, which obligates the proponent to engage EPRA-licensed solar contractors and technicians.	
43.	National Energy Policy, 2018	The overall objective of this Energy Policy is to ensure affordable, competitive, efficient, sustainable and reliable supply of energy at the least cost in order to achieve the national and county development needs, while protecting and conserving the environment for inter-generational benefits.	The policy calls for the implementation of energy efficiency and conservation initiatives in all sectors. The Program will utilize sustainable and efficient energy technologies, and solar pumping systems, as applicable.	The monitoring framework of energy efficiency has not been defined in the country except for reports that are sent to EPRA after every 3 years from consumers who use more than 180,000KWh per year.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
44.	Environment and Land Court Act, 2011	The Act gives effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes. The principal objective of the Act is to enable the Court to facilitate the just, expeditious, proportionate, and accessible resolution of disputes.	The Environment and Land Court, in applicable cases, shall be engaged on disputes relating to the environment, use and occupation. In line with the provisions of the Land Act 2012, where a party is aggrieved by the determination of the Tribunal on the issue of compensation payable or as to the person entitled to receive compensation, the aggrieved party within thirty (30) days of the date of the notification of such decision, may appeal to the Environment and Land Court to render a decision which will be final and binding.	None
45.	National Policy for Prevention and Response to Gender Based Violence, 2014	The Policy acknowledges that GBV is a serious global health, human rights, and development issue, and although affecting women, girls, men and boys, women and girls have however been found to be disproportionately affected. Forms of recognised GBV issues include sexual violence, physical violence, emotional/psychological violence, harmful traditional practices, and socio-economic violence (through discrimination and/or denial of opportunities and services, social exclusion etc). The Policy expresses the government's commitment to the elimination of all forms of GBV and to the effective provision of quality and accessible services to all survivors. Aims of the Policy include: improving the enforcement of laws and policies towards GBV prevention and response; increasing access to quality and comprehensive support services across sectors; and improving sustainability of GBV prevention and response interventions. Actions proposed to realise the policy objectives include inter alia: gender mainstreaming into all legislation, policies, plans and programmes; Developing work place policies addressing GBV prevention and response in public and	This policy aligns well with the Bank's Directive and Guidance Note on GBV prevention with emphasis on SEA/SH. The Program will require to the client and their consultants to prepare SEA/SH prevention and response management plans for all activities that may involve the influx of labour into the project areas. The program will also support the establishment and/or enhancement of the client's internal GBV (especially SEA/SH) policies and strategies and support their entrenchment at all levels including within MoWSI, its contractors and its suppliers, in alignment with this National Policy.	National Policy for Prevention and Response to Gender Based Violence, 2014: The operationalization of this policy and its entrenchment into the country systems at all levels is still weak. There is need to streamline the implementation of this policy at all levels of government and non- governmental actors as it aligns well with international best practices on GBV issues.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		private set ups; Implementation of Standards and guidelines for GBV prevention at public and private service delivery centres; Establishment and strengthening health, legal, social infrastructure to ensure integration of GBV response; Establishing an elaborate communication strategy incorporating all actors including the public, service providers, government agencies and non-state actors so as to effectively respond to GBV		
46.	National Policy on Gender and Development, 2019	The Policy outlines the national agenda for gender equality and how Kenya intends to realize these ideals. It details the overarching principles, which will be adopted and integrated into the National and County Government sectoral policies, practices, and programmes and by all state and non-state actors. Aims of the policy include achieving equality of opportunity and outcomes with respect to access to and control of national and county resources and services, and equality of treatment that meets the specific and distinct needs of different categories of women and men. Special focus is however given on the empowerment of women who are currently the marginalized gender. Policy applies specifically and directly to all Government Ministries, Independent Bodies, Quasi-autonomous entities, and Departments and Agencies both at the national and county levels of government. The principles, strategies and approaches in the policy also apply to the private sector and civil society. The proposed policy actions include inter alia: developing and implementing national guidelines for mainstreaming gender, and standards for measuring compliance to gender mainstreaming in all sectors at all levels; Strengthening capacity of institutions with the	Compliance with the Policy aims and objectives of ensuring gender equality will be necessary in the WASH Program, where gender mainstreaming is a noted concern. MoWSI, and its contractors and suppliers will require to demonstrate commitment and adherence to the provisions of this policy instrument in their operational policies and in employment opportunities.	National Policy on Gender and Development, 2019: Despite the existence of this policy, and the 2/3s gender rule in procurement, employment and appointive positions, gender equality is still far from being achieved at all socio-political, economic, and developmental levels, with women still trailing men at all these levels.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		responsibility of implementing and monitoring gender-related interventions; Enacting legislation to enhance women participation in economic, social and political spaces in both public and private spheres; Strengthening the legal and administrative framework for labour administration to integrate women in non-traditional trades such as construction, mining, infrastructure development, among others; Implementing labour policies that support minimum wage guidelines, regulations on work hours, and protection for trade union and collective bargaining rights, particularly for women to close the differences in access to economic opportunities, earnings and productivity gaps; and enforcement of sexual and gender based violence (SGBV) related laws and policies		
47.	Labour Relations Act 2012	<p>The Act provides for the registration, regulation, management and democratization of trade unions and employer organizations or federations. It also seeks to promote sound labour relations through the protection and promotion of freedom of association; encouragement of effective collective bargaining; and promotion of orderly and expeditious dispute settlement.</p> <p>The Act in Part II Section 6 provides for freedom of employees to associate; Section 7 provides for protection of rights of employees; Part VIII Sections 62 - 72 provide the mechanisms for trade dispute resolution and empowers an appointed conciliator to resolve the dispute. Where the dispute cannot be resolved Part IX provides for escalation to an Industrial Court. Part X Section 76 provides for protection of the employees' rights to hold strikes and lock outs if the</p>	This Act is well aligned to the provisions of ESS2. The Program shall facilitate the provision of enabling environments for workers to exercise their rights such as joining unions and associations. The contractor shall be sensitized on the provisions of this Act and required to have contracts in place that provides for non-violation of workers labour rights	

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		dispute concerns terms and conditions of employment or the recognition of a trade union.		
48.	The Employment Act, 2007	<p>Section 3 of the Act defines the scope of application of the Act, which shall be to all employees employed by any employer under a contract.</p> <p>Part II Section 4 of the Act prohibits forced labour and provides that no person shall use or assist any other person in recruiting, trafficking or using forced labour; Section 5 provides that an employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice. It also prohibits direct or indirect discrimination and harassment of employees and potential employees on the basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status; recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment. Section 15 of the Act provides for informing employees of their rights by the display of information on employee's rights in a conspicuous and accessible place. Part IV Section 17 of the Act provides that an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly in cash, into an account, or by cheque. Part V of the outlines the rights and duties in employment and specifies in Section 27 that the hours of work will be regulated. Sections 28 - 34 provide entitlements to annual leave, maternity leave, sick leave, wholesome water, and medical attention for employees. Part VII provides for protection of children</p>	<p>The Act aligns well with the Bank's non-discrimination and inclusion agenda and is applicable to the WASH Program. It applies to MoWSI and its contractors and its suppliers since employer-employee relationships exist presently in both instances and will continue during implementation of Program activities. Water sector institutions and their contractors will need to provide conducive terms of employment for their workers/staff and will also need to ensure no child labour/forced labour in their workforce. The Program will advocate for equal pay for equal work. Child labour/forced labour will be prohibited in all activities of the project and the client/contractor will be required to prepare labour management plans (LMPs) and entrench such requirements in all its operations regardless of source of financing for client infrastructure projects.</p>	<p>Despite the provisions of this law, the inclusion of VMGs in employment opportunities in the country is still below par, gender equity in employment remains a challenge for most public (and private) sector institutions in Kenya, and child labour is considered a norm, particularly in rural, marginalized areas.</p>

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		and prohibits, in Section 53, employment of a child in any activity which constitutes worst form of child labour. Other provisions include prohibition against employment of a child who has not attained the age of thirteen years whether gainfully or otherwise in any undertaking; consideration for employment of a child of between thirteen years of age and sixteen years of age in light work which is not likely to be harmful to the child's health or development. The work shall also not prejudice the child's attendance at school, his participation in vocational orientation or training programmes approved by the Cabinet Secretary or his capacity to benefit from the instructions received		
49.	Labour Institutions Act, 2007	The Act in Part II Sections 5 – 7 establishes the National Labour Board whose functions include inter alia, advising on legislation affecting employment and labour, advising on codes of good practice, and setting of compensation benefits related to work injuries. Part V Section 30 – 35 of the Act establishes the offices of the Commissioner of Labour, Director of Employment, and Labour officers, whose main functions include monitoring and enforcing compliance with labour laws. Part VI Section 43 of the Act establishes the Wage Council whose functions include inter alia, investigating the remuneration and conditions of employment in any sector, and recommending on minimum wage remuneration and conditions of employment. The Act in Section 46 also provides for the publication of a Wage Order setting the minimum rates for remuneration among other work-related provisions, to be adhered to in employment of workers	Program activities will require engagement of contractors by MoWSI, and goods and services providers in the water supply and sanitation value chain. There is need for sensitization of all contractors and potential employees to be sensitized on the provisions of this Act to ensure compliance with its requirements, Employers will be required to adhere to published Wage Orders that dictate the minimum rates for remuneration, among other provisions	Contractors, sub-contractors and supervision consultants, employees, and the public are not adequately sensitized on the existence of these labour institutions. Consequently, they either suffer in silence when their labour rights are violated, or, in the case of Bank financed projects, they complain directly to the Bank instead of to the institutions that are legally established to support them.

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50.	Persons with Disability Act, 2003	<p>This Act provides, in Section 3 – 10, for the establishment of a National Council for Person's with Disability, and defines its composition, functions, and administration. Part III Section 12 of the Act establishes the rights and privileges of PWDs including the access to opportunities for suitable employment, equal treatment, compensation privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees. The PWD is however exempt from taxation on all income accruing from his employment. Section 13 provides for the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities. The Act in Section 21 provides that PWDs are entitled to a barrier- free and disability friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility. Public buildings and public services vehicles shall also be adapted to accommodate PWDs</p> <p>In addition to the Disability Act, 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 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</p>	This Act too, aligns well with the Bank's inclusion and non-discrimination agenda. The Program will facilitate inclusive mechanisms for PWDs such as access to adequate and quality water supply and sanitation services, PWD-friendly facilities, employment opportunities and public participation forums.	Affirmative actions to mainstream vulnerable groups such as PWDs in the management of water resources and access to adequate and quality water supply and sanitation services is yet to be fully realized.

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		from the person's disability. (2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.		
51.	National Gender and Equality Commission Act, 2011	The Act establishes the National Gender and Equality Commission mandated to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution; co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof; co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination; and, work with the National Commission on Human Rights, the Commission on Administrative Justice and other related institutions to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration in the protection and promotion of rights related to the principle of equality and freedom from discrimination, amongst other functions.	The provisions of the Act become relevant in areas such as during hiring of workforce on site in a fair and non-discriminative manner, formation of project governance structures to ensure gender representation, distribution of award of program contracts, issuance of smart subsidies for household sanitation services etc. It may also apply in grievance redress if an aggrieved person escalates a complaint to the Commission. The Program through the contractor is expected to consider and hire both males and females during the duration of the Program. The Program will adopt gender inclusive mechanisms in the management of water resources, and access to improved and sustainable water supply and sanitation services.	The Commission's activities are yet to be decentralized or devolved despite its equality oversight roles.
52.	Sexual Offences Act, 2009	The Act in Sections 3 – 21 identifies and prohibits sexual offences including rape, assault, indecent acts, defilement, harassment, including offences against minors. The Act in Section 26 also prohibits the deliberate transmission of HIV or any other life threatening sexually transmitted disease. Other prohibited acts include administering a substance with intent (Section 27), and distribution of a substance by juristic person (Section 28)	The Act is relevant to the Program especially because of the need to engage workers to undertake the interventions under RA1 and 2. The Program will establish measures that prohibit and act against sexual offences listed in the Act for staff, contractors and suppliers. The Program will put in place mechanisms which are necessary to achieve or promote the objects of this Act,	The enforcement of this Act has been challenging in the Country as a result of many factors such as corruption and sociocultural practices where parents prefer to negotiate for financial compensation instead of full application of

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			including for instance, a Sexual Exploitation and Abuse Prevention and Response Action Plan.	the law by mandated institutions
53.	Child Rights Act, 2012 [2010]	The Act makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care, and protection of children. It also makes provision for the administration of children's institutions, gives effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Section 15 states that a child shall be protected from sexual exploitation and use in prostitution, inducement, or coercion to engage in any sexual activity, and exposure to obscene materials.	The Program shall ensure measures are in place to observe the rights of children as well as avoid forced and child labour.	Despite the provisions of both Acts, child labour is a norm, especially in the ASALs, rural and marginalized areas.
54.	Children Act, 2022	The Act in Section 18 provides that No person shall subject a child, to child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child's education or is likely to be harmful to the child's health or physical, mental, moral or social development. Section 22 of the Act provides for protection of children from abuse, etc. (1) No person shall subject a child to— (a) psychological abuse; or (b) child abuse. (2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million shillings, or to both. (3) Without prejudice to the generality of subsection (1), any person who, through any electronic system, network, or other communication technology— (a) proposes or solicits to meet a child for the purpose of engaging in sexual activities contrary to the provisions of the Sexual Offences Act (No. 3 of 2006)	The Act is aligned to ESS2 that prohibits child labour in Bank financed projects. This Act is relevant to the Program due the potential risk of child labor and SEA-H as a results of workers engaged through the interventions under RA1 and 2. The Program activities will uphold the provisions of this Act and will comply with provisions of the Act during Program implementation by ensuring that measures are in place to prevent violation of children's rights particularly protection from child labour and any forms of child abuse including SEA-H, drugs and other prohibited substances. No child will be employed under the Program as per the Act.	

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		Section 24 of the Act also provides for protection from drugs and substance abuse. (1) No person shall subject a child to— (a) the use of hallucinogens, narcotics, alcohol, tobacco products, glue, psychotropic drugs or any other drugs that may be declared harmful by the Cabinet Secretary responsible for matters relating to health; or (b) involvement in the production, trafficking, sale, storage or distribution of the any of the drugs or substances referred to in paragraph (
55.	Access to Information Act (No. 31 of 2016)	The Act's purpose is to: (a) give effect to the right of access to information by citizens as provided under Article 35 of the Constitution; (b) provide a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles; (c) provide a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law; (d) promote routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access to information; (e) provide for the protection of persons who disclose information of public interest in good faith; and (f) provide a framework to facilitate public education on the right to access information under this Act. The Act mandates government agencies to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect official information to the extent consistent with the public interest.	This Act is aligned to the ESS 10 on information disclosure and will be upheld by the Program in relation to ensuring stakeholders have access to timely information on all project activities, including the effects of each Program activity. For VMGs the Program will ensure prior disclosure and dissemination of relevant and easily accessible project information in a timeframe that enables meaningful consultations, in a culturally appropriate format, and in relevant local languages	None

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56.	HIV/AIDS Prevention and Control Act, 2006	The Act gives provisions in Part 11, Section 7 that requires HIV/AIDS education in workplaces. The government is expected to ensure provision of basic information and instruction on HIV/AIDS prevention and control to employees of all Government Ministries, Departments and Agencies, and employees of private and informal sectors. The information on HIV/AIDS is expected to be treated with confidentiality at the workplace and positive attitudes shown towards infected employees.	The Act provisions and the MoWSI's Workplace HIV/AIDS Policy will be considered in the Program as HIV/AIDS shall be incorporated in MoWSI's awareness programs. In addition, contractors shall offer training on HIV/AIDS awareness, prevention and management to workers and the local community, as provided by law.	None
57.	Matrimonial Property Act, 2013	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.	Provisions of the Act shall be considered in the acquisition of land/creation of public rights of way and compensation of matrimonial property affected by the acquisition.	None
Water Sector Specific				
58.	The Water Act (No 43), 2016	The Water Act, 2016, governs the ownership, use, regulation, management and development of water resources, water and sewerage services, and for other connected purposes. This Act was enacted to realign the existing legal and institutional framework under the Water Act, 2002, with the Constitution of Kenya, 2010, to incorporate and bring these changes into effect. The Water Act 2016 in effect retained the structures of the Water Act 2002 but with delineation of responsibilities between the National Government and the Counties. The distribution of functions between the National Government and Counties is provided for in the Fourth Schedule of the Constitution of Kenya 2010. The function under the National Government includes water protection, securing sufficient residual water, hydraulic engineering and the safety of dams. Those	The Program will align with the Act and ensuing regulations when acquiring land and public rights of way/wayleave. Program activities, including construction and O&M activities for infrastructure, can potentially cause water pollution. Therefore, program activities will consider the best approaches to water resource management, including the protection of water resources and avoidance of pollution to nearby water sources such as rivers and streams, provision of adequate and quality water supply and sanitation services, and the equitable inclusion of minority, vulnerable and marginalized groups in the management of water resources, meaningful consumer engagement, provision of quality customer service and timely	None

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		<p>under the County Governments include soil and water conservation, water and sanitation services, and storm water management services in built up areas.</p> <p>The Act vests the ownership of water resources on the people of Kenya, to be held in trust by the National government. The Act also establishes the Water Resources Authority (WRA) to serve as the agent of the National government and regulate the management and use of water resources. The Act prohibits the wilful interference with a watercourse, and/or pollution of water resources from wastes, effluent, or other offensive matter, and provides for remedy and clean-up of any pollution by the offender. The Act promotes good practices especially in the water services sector on commercial viability, ring fencing of water services revenue, mechanisms for engaging consumers and resolving consumer complaints and good governance at utility level among others.</p> <p>Acquisition of land and creation of public rights of way The Act notes that subject to the Land Act, 2012, land required for national public water works may be acquired in any manner provided by law for the acquisition of land for public purposes, after reasonable notice is provided to the landholder concerned. Just compensation shall be payable by the government to the owner of the land on which any such works are constructed, and in assessing the amount of compensation payable, any benefit accruing to the land by the construction of the works and any adverse effect on the land caused by the works, as the case may be, shall be considered.</p>	resolution of complaints—the implementation of the Program to conform to sound integrated water resource management practices.	

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		<p>The ministry is required under the Act to make Regulations for the better carrying into effect of the provisions of the Act as they relate to land acquisition and creation of public rights of way/Easements.</p> <p>Easements: The Water Act 2016 defines an easement as the right to occupy so much of the land of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred by a permit. The Act prescribes the following concerning the acquisition, execution and registration of easements.</p> <p>Approvals: An easement shall be acquired along a route to be approved by the Authority or Regulatory Board after consultation with the owner.</p> <p>Reasonable Notice: The permit holder is required to give a reasonable notice to the occupier of the land over which the easement is held of his or her intention to enter the land. The notice given by the permit holder shall entail, among other details, the description of the proposed works and their use; a map clearly showing the nature and locality of any works, the area of the land required for the works and other facilities e.g., access roads; compensation offered and the period of time during which the permit holder wishes to enjoy the easement.</p> <p>Damages to land over which an easement is held: A permit holder who has acquired an easement is required to take and maintain adequate measures prevent damages such as flooding to land.</p> <p>Interference with existing structures: A permit holder who has acquired an easement for the construction of works on another landholder's land will ensure to</p>		

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		<p>construct and maintain conditions such bridges and other structures and devices to make communication safe and convenient or necessary to enable the landholder to enjoy the use of any work, structure or device interfered with.</p> <p>Execution and registration of Easement: The permit holder tenders the deed or instrument, together with the amount of any award of compensation made, to the landholder for execution. The Registrar of Titles then registers the deed or instrument against the title affected.</p>		
59.	National Water Master Plan (NWMP) 2030	<p>The Master Plan was launched on 26th March 2014 to assess and evaluate availability, reliability, quality, and vulnerability of country's water resources up to around 2050 taking into consideration climate change. It is a product of an intensive study of Kenya's water resources and meteorological conditions to facilitate planning for development and management of the same. The Plan aims to present a framework for water resources development and management which is consistent with the country's social and economic development activities. It is expected that the Plan is largely utilised for the water resources development and management hereafter.</p> <p>Sectoral Report 3/3-Volume VI on E&S considerations discusses the current situation of environmental management in Kenya, proposed environmental management plan for NWMP 2030, cost estimate for the proposed management plan, and the implementation programme for the management plan and the preliminary environmental review for the proposed development projects.</p>	The Master Plan recommends establishing and strengthening WRUAs and enhancing their capacity in conflict resolution and cooperative management of water resources sufficiently and effectively in catchment areas. The Master Plan considers the E&S implications of the plan/proposed development projects. It proposes preparing the Environmental Management Plan in line with the ESF requirements on E&S risk identification and mitigation. The scoping plan identifies key social issues such as involuntary resettlement, social infrastructure, and services, vulnerable groups including gender, local interests and conflicts, and cultural heritage. The Program will align with the provisions of the Master Plan on ESHS considerations when implementing the proposed investments.	The scoping results are not exhaustive on the social risks and impacts. For example, they omit stakeholder engagement, grievances management, information disclosure, disability, GBV-SEA, child exploitation and abuse, forced labour, etc.

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60.	Water Services Regulations 2021	<p>The regulations are developed as a guideline under Section 72 of the Water Act 2016, and apply to the national and county government entities, and any other person providing water services in Kenya. They provide the procedural and administrative framework with a view to ensuring that water services in Kenya are developed, conserved, managed and controlled in ways which take into account the following factors; meeting the basic human needs of the present and future generations, promoting equitable access to clean and safe water, promoting the efficient, sustainable and beneficial use of water in the public interest, facilitating social and economic development, providing for the growing demand for water use, reducing and preventing pollution and degradation of water supplied to consumers, and meeting local and international obligations. They govern the relationship between the WWDAs, WSPs and consumers of water services and shall constitute the model regulations for the provision of water services in Kenya to be adopted and/or adapted by the WWDAs.</p> <p>The regulations address the awareness by the public of the responsibilities and rights of all players in relation to the provision of water and sewerage services, responsiveness to consumer complaints (maintenance of customer service centre and complaints register, time for resolutions, filing complaints, consumer appeals), information disclosure to consumers (methods, schedule and costs involved), water conservation measures, etc.</p> <p>The regulations require WSPs to maintain at least one Customer service center to address and resolve applicant and consumer service requests and</p>	<p>Parts X, XI, XV, and XVI of the regulations on responsiveness to customer interests, concerns, requests, complaints and information disclosure, dispute resolution, and customer appeals are in line with the provisions of the ESF. The ESF requires that all Programs disclose information to affected persons and provide a mechanism to register their grievances or concerns and appeal when dissatisfied with the resolution.</p> <p>The Program will align with these regulations, particularly on grievances management and information disclosure, and support WASREB/WSPs to ensure aspects of anonymity and confidential management of sensitive complaints - GBV-SEA are considered in the WASREB's Consumer Engagement Guidelines and WSP-specific GRMs.</p>	<p>Regulations are weak on:</p> <ul style="list-style-type: none"> • Ensuring confidentiality and anonymity. • Aligning WSP GRMs to local context and structures in managing consumer complaints.

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		<p>complaints. The customer files a complaint verbally or in writing at the Customer Service Centre and is provided with a serial number and informed on the WSPs procedures for handling grievances. The complaint is captured in a register and forwarded to the appropriate department for resolution. WSPs are required to maintain and submit written records of complaints and requests to WWDAs.</p> <p>Further, the WWDA shall establish a maximum number of days within which a WSP must resolve each complaint or request. The regulations establish room for customer appeals and the time limits to respond to customer complaints such as billing, metering, and paid new connections, as well as undertaking a formal investigation and notifying the customer of the resolution reached. Lastly, the regulations address information to be disclosed to customers by the WSP and the schedule and methods for disclosure, including public forums. WWDAs are required to bear all costs of disseminating the information provided. However, where consumers request multiple copies of the same publication, the WWDAs may allow the consumer requesting the information to be charged the reasonable costs of copying, printing, and delivering it.</p>		
61.	Water Harvesting and Storage Regulations 2021	The regulations give effect to the mandate of the national government under the Constitution concerning policy and law making, and obligations including to enhance the protection and conservation of water catchments and ensure availability of ground and surface water for water supply through enhancement of harvesting and storage capacity. The regulations provide the required details and guidance for implementation of the provisions of the Water Act	The Program will align with the Water Harvesting and Storage Regulations, and Water Harvesting and Storage Strategy to increase water security through sustainable water harvesting and implementation of water storage infrastructures such as water tanks, as envisioned under the Program.	None

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		2016 which include implementation of national government, and county governments functions such as harvesting and storage; and water for emergency drought interventions.		
62.	Water Harvesting and Storage Strategy 2020-2025	The National Water Harvesting and Storage Strategy provides the strategic measures for achieving water security for Kenya towards the realisation of the national water policy priorities and vision 2030. The key interventions areas which were identified in the strategy include strategies to increase domestic water security, water security for socio-economic development, reduce water related risks for population and economy and drought related risks for population and economy.		None
63.	Water Resources Regulation 2021	The regulations give effect to the mandate of the national government under the Constitution concerning policy and law making, and obligations including to ensure the protection and conservation of water catchments; prevention of pollution, regulating water abstraction, criteria for prioritization and allocation of water resources. The regulations provide the required details and guidance for implementation of the provisions of the Water Act 2016 which include implementation of national government, and county governments functions on soil and water conservation.	The Program will align with the Water Resources Regulation and Water Resources Strategy to ensure the protection of water sources and sustainable utilization of water resources.	None
64.	Water Resources Strategy 2020-2025	The Water Resources Strategy provide the government's plans and programmes for the regulation, monitoring, protection, conservation, and management of water resources. The main thrust of the strategy is to guide the public and private sector and civil society's efforts in addressing emerging issues and challenges.		

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
65.	Hydrologist Act No 19 of 2017	The Act provide for the registration of hydrologists and for connected purposes.	All hydrologists providing services to the Program are required to be registered by the hydrologists registration board.	None
66.	Kenya Water Training Institute Act 2001	Kenya Water Training Institute (KEWI) Act establishes the Kenya Water Institute, to provide for its incorporation, powers and functions, and for connected purposes, to provide directly or in collaboration with other institutions of higher learning, services in human resource development, consultancy, re-search and development in the water sector on a commercial basis to the public sector, state corporations, local authorities, the private sector and all other persons, local or foreign, who may request for such services from the Institute; to provide training programmes, seminars, and workshops and produce publications aimed at maintaining standards in the water and sanitation sector; to provide a forum for effective collaboration between the public and private sectors and other interested parties for the development of the water and sanitation sectors; and to conduct examinations and award diplomas, certificates and other awards to successful candidates.	The Program will support expand the mandate of the KEWI to include trainings on ESHS management, thereby making it a responsive centre for capacity building for the water sector in its entirety.	None
67.	National Water and Sanitation Strategy (NWSS) 2020-2025	The NWSS (2020-2025) therefore outlines the Government's water policy priorities, identified operational strategies, pipeline plans and programmes. These are aim guide the progressive realisation of the rights of every person in Kenya to water and reasonable standards of sanitation. The National Water and Sanitation Strategy is meant to achieve the aspirations of the National Water Policy. The implementation of the strategy will contribute towards Kenya's economic and social development, bring about equity in access to	The strategy states that most ASAL counties have access to safe water at below 10% and access to improved sanitation is below 20%, while the rural water population coverage was at 56%, sewerage at 0.3%, and the non-sewer sanitation coverage at 75%. The Program will support the provisions of the strategy of ensuring the progressive realization of the right to water and sanitation for rural and marginalized areas. By factoring in gender,	None

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		<p>water and sanitation services and accelerate realisation of the right to clean and safe water in adequate quantities; and the right to reasonable standards of sanitation. This will lead to improvement of the livelihood and well-being of the people.</p> <p>The strategy covers both urban and rural area needs comprehensively. It also provides indication of the required financial resources required in order to progressively attain universal access to water supply and sanitation by 2025.</p> <p>The strategy also factors in the emerging cross-cutting issues. These include climate change and disaster management, research and capacity development, poverty and equity, gender, integration of youth and persons living with disability, good governance, water supply and sanitation (WSS) technical planning coordination, and communication.</p>	poverty, equity, disability, youth involvement, and governance, the strategy aligns with the Bank's provisions on enhancing the effective participation of vulnerable groups and their equal access to benefits and opportunities. In addition, the Program will establish mechanisms that ensure vulnerable groups access to clean and safe water and reasonable sanitation standards.	
68.	The National Water Services Strategy (NWSS) (2020 – 2025)	<p>The object of the Strategy is to provide the Government's plans and programs for the progressive realization of the right of every person in Kenya to water. The Water Strategy contain, among other things, details of,</p> <ul style="list-style-type: none"> • existing water services; • the number and location of persons who are not provided with a basic water supply and basic sewerage services; • standards for the progressive realization of the right to water; and • a resource mobilization strategy for the implementation of the plans. 	The Program in providing access to water and sanitation services is aligned with the NWSS in fulfilling the government's constitutional mandate to provide water supply and sanitation services to all.	None
69.	The Water Resources Management	The Rules implement provisions of the Water Act, 2002. They apply to all policies, plans, programmes, and activities to which the Act applies. Matters covered by	The Program will align with the Water Resources Management Rules on aspects of public notification and consultation, Water Resource	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
	Rules 2007 (Amended 2012)	these Rules include: public notification and consultation; the protection of the water resources monitoring network; Water Resource Users Associations; the register of water bodies; approvals, authorizations and permits; declaration of a watercourse or a wetland for the purposes of water resources management by the Water Resources Authority; allocation of water for irrigation; priority in rights to water for storage; the classification of dams; protection of dams; release and use of stored water; groundwater development authorization; and regulation of groundwater development.	Users Associations, relevant approvals, authorizations and permits, among others.	
70.	Water Tribunal Rules 2019	The Water Act 2016 established a Water Tribunal in section 119 and in Section 155 provides for the transfer of functions from the Water Appeal Board to the Water Tribunal and tasks the Water Tribunal under section 122 to make rules governing its procedures. Therefore, the Water Tribunal Rules clarify the procedure for the operations of the Water Tribunal. The Water Tribunal Rules provide an operational procedure for the Water Tribunal and in effect contribute towards the protection and realization of the constitutional rights to clean and safe water, consumer rights to quality goods and services, and access to justice (Articles 43, 46 and 48 of the Constitution respectively).	The Program will consider the provisions of the Rules in the preparation and implementation of site-specific GRMs.	None
71.	WASREB Strategic Plan 2018-2022	The WASREB strategic plan is aligned to the National development agenda as stipulated in the Vision 2030 and Medium Term Plan MTP II 2013-2017. The Plan focuses on five strategies, (a) enhancing consumer and other stakeholder's confidence in water services regulations; b) strengthening governance in water services provision; c) ensuring a financially sustainable and socially responsive water services sector; d)	The Strategic Plan is critical in enabling WASREB to create a stable regulatory environment that facilitates efficiency and effectiveness in providing sustainable water services. The plan aligns with the ESF provisions of stakeholder engagement, dispute resolution, access to benefits and opportunities (access to water services), and institutional collaboration/strengthening.	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		enhancing compliance and enforcement with regulations, and e) strengthening institutional capacity. The plan provides a growth and sustainability strategy to a) enable WASREB to creatively respond to the changing social and economic environment; b) enable WASREB to identify its core activities in light of environmental factors and internal capacity; c) provide clear objectives and direction to staff, and d) enable WASREB to re-examine and re-adjust capacity, structures and processes in response to changes in the environment.		
72.	WASREB's Corporate Governance Guideline for the Water Services Sector 2018	These Guidelines (the standard governance guideline for all stakeholders in the water services sector) are intended to improve how water service institutions especially WSPs are led and managed, enhance the understanding of apt governance, clarifying autonomy and oversight and the structures and systems that are needed to have economical and efficient provision of water services. Devolving from the Mwongozo Code of Governance, WASREB has developed the guideline specifically fine-tuned/targeted for the water services sector.	The Program will support updating the WASREB training handbook on corporate governance to include trainings on ESHS aspects under the Environment, Social, and Governance (ESG) module. The proposed ESHS trainings include identifying stakeholders and measures to improve their participation (including local communities) in the decision-making process, providing quality customer service, and dispute resolution mechanisms and procedures applicable in the water services sector, amongst others.	The Guidelines exclude ESHS aspects, which contribute positively to the performance, profitability and sustainability of institutions.
73.	WASREB'S Consumer Engagement Guidelines	WASREB'S Consumer Engagement Guidelines have the objective to guarantee the rights of consumers by enabling them to effectively engage in the services provided by WSPs and WWDAs. The Guideline shall be applied by WSPs and WWDAs to assist them in meeting their objectives in service delivery and improving their consumer orientation. This involves information provision to consumers, formalized consultation and participation of consumers in service provision as well as effective documentation and handling of consumer complaints. Neither WASREB	The guidelines, if well implemented, have the potential to strengthen the aspects of information disclosure, consumer engagement, and complaints handling under the Program and across the water sector operations. The guidelines will enhance the responsiveness of water sector institutions to consumer demands and awareness of the rights and obligations of consumers and water sector institutions, align water supply and sanitation to the needs of	None

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		<p>nor WWDAs provide services directly to consumers. Consequently, they lack direct access to consumer feedback and complaints on water supply and sanitation services. To fill this gap, this Guideline establishes a complementary and permanent feedback and dialogue mechanism in the form of grassroots groups of citizen volunteers, called Water Action Groups (WAGs).</p> <p>WAGs will operate under and in close cooperation with WASREB and will serve as an engagement partner for WSPs and WWDAs. They will articulate consumer interests and follow up on unresolved consumer complaints with them. Also, they will assist WASREB, WWDAs and WSPs in the engagement of consumers and civil society at large. The guidelines define a formal mechanism and procedure for the follow-up of unresolved and long-standing complaints through WAGs.</p> <p>Type of information to be disclosed to consumers include, the profile and contact details of WAGs, service standards, rights and obligations of consumers i.e., Service Charters and Complaints Procedures, planned, ongoing and realized investments (target community, implementation timelines, and tenders for major capital works.</p> <p>This information is disclosed via the website, mass media, customer service centres and bill and community outreach and public awareness activities and annual reports of WSPs. The information is made available to the public in a timely and user-friendly manner. WASREB will apply this Guideline when monitoring and reporting on the performance of WSPs and WWDAs. WSPs and WWDAs are required to comply</p>	consumers and increase the efficiency of service delivery.	

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		with this Guideline when planning for and executing their operations, when reporting to WASREB and to the public as well as when submitting tariff adjustment applications for consideration by WASREB. Compliance with this Guideline is a condition of the Licence for the provision of water services, granted to the WWDAs by WASREB, as well as the Service Provision Agreement (SPA), granted to the WSPs by WWDAs and approved by WASREB.		
74.	Compensation for Development of National Public Works Regulations 2021 (private or Community Land)	<p>These Regulations shall apply to and govern the powers and functions of the WWDAs in the execution of its respective mandate under the Act. They apply to water works constructed and maintained on private or community land as are considered necessary for the purposes of any national public water works by the WWDAs in their geographical area of jurisdiction. The regulations address the following.</p> <p>Development of national public water works.</p> <ul style="list-style-type: none"> The WWDAs shall endeavour to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of the activities on the land and surrounding environment in accordance with the relevant environment and land laws. <p>Procedure for development of works.</p> <p>The Water Works Development Agency will undertake the following preliminary activities prior to obtaining the necessary consent for proposal for development of water works from the owner of the land.</p> <ul style="list-style-type: none"> procure cadastral drawings showing - (i) how the infrastructure cuts out each land parcel; (ii) a list of parcel numbers indicating the plot 	The regulations align with the provisions of the ESF, Water Act 2016, and the Land Act 2012 (revised 2019) on the acquisition of land and public rights of way, particularly on consents for entry into the land; provision of just, full and prompt compensation, assessment of compensation payable and resolving land acquisition-related disputes.	<p>The regulations are still in draft form. They will need to be finalized and ascended to in parliament before they become operational.</p> <p>An EIA is envisioned as part of the procedures. However, RAP preparation, implementation and monitoring is not foreseen under the regulations.</p>

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>reference number total area of land parcels and acreage affected by the intended works for each parcel.</p> <ul style="list-style-type: none"> the name of the registered owner of the land or the legal representative thereof; official searches of affected land parcels; the environmental impact assessment report and appropriate approvals or certification for the project; ensure availability of funds to allow for prompt, full, just compensation as provided for under the Constitution, the Act, these Regulations and any other written law. <p>Consent to proposal for development of works</p> <ul style="list-style-type: none"> Seek the prior consent of the owner of land to enter and to carry out a survey of the land for the purposes developing national public water works. A landowner may consent in writing to the carrying out of construction or development of the intended water works, upon agreement being reached with the WWDA as to the amount of compensation payable. <p>Determining Compensation Payable.</p> <ul style="list-style-type: none"> The relevant WWDA shall consider and take into account the following- (a) the market value of the land and improvements thereon; (b) any benefit accruing to the land by the construction of the works; (c) any adverse effect or damage sustained or likely to be sustained on the land caused by the works; (d) expenses incurred by the owner, occupier or other person not the owner of land with an 		

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		<p>interest due to change of residence or business; and (e) expenses incurred by an owner, occupier or other person not the owner of land with an interest due to decrease or loss of business.</p> <p>Payment of compensation.</p> <ul style="list-style-type: none"> • WWDAs shall make good all damage resulting from such entry upon any land for the purposes of undertaking activities that relate to national public works, and shall pay full, just compensation to the owner, occupier or person other than the owner interested in the land. <p>Disputes Resolution.</p> <ul style="list-style-type: none"> • In the event of disagreement as to the amount of the compensation to be paid or as to the person entitled to receive compensation, any party aggrieved by any decision of the WWDA with regard to compensation may within thirty (30) days apply to the Water Tribunal, who shall award to the person entitled to receive compensation, such compensation as the Tribunal thinks reasonable. • A party aggrieved by any decision of the Water Tribunal with regard to compensation may within thirty (30) days after being notified of such decision appeal to the Environment and Land Court whose decision shall be final and binding. 		
75.	Draft Code of Practice for Pumping Test	Code of Practice describes the factors that must be considered and the measurements which must be made when designing and conducting a test pumping exercise. These include EMCA 1999, Amendment Act,	The Code of practice will be relevant in providing guidance on consideration to be taken by the contractors during the well testing process. This includes:	None

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		2015, Water Act 2016, Water Resources Management Rules 2007, OSH Act, 2007. The codes of practice provide that disposal of liquid or solid wastes must be done in a manner that will not pollute boreholes, aquifers or the surrounding area. Human wastes may be disposed of by means of a mobile toilet or dug pit latrine, provided this does not constitute a risk to water resources in the area and provided it is backfilled at the completion of works. Alternatively, wastewater may be discharged directly into a sewerage system or be collected and removed for offsite treatment and disposal. Disposal of waste waters to a soak-away, even if it is remote from the wellhead, ditches, or watercourses, must not be undertaken without the consent of the appropriate authority (which may be the landowner or a local authority). It also provides that Noise from machines should be managed if the site is located near permanent habitation where noise during the night may be unacceptable. Special arrangements may be required for damping engine noise by the use of sound deadening enclosures around internal combustion engines.	<ul style="list-style-type: none"> • Minimising effect to boreholes in the area; • Providing safety for the well testing staff; • Proper liquid and solid waste management. 	
76.	Draft Code of Practice for BH Construction	It requires that before boreholes are dug, they must be subjected to EIA and approved by NEMA as a condition. The code states that boreholes should be drilled and cased to avoid contaminating the aquifer with bacterial. It further states that a borehole with a poorly constructed wellhead or sanitary seal creates an opportunity for pollutants to make their way into an aquifer. Contamination of aquifers may lead to the	The code of practice will ensure boreholes for the water supply meet the set parameters to ensure water abstracted is of the best quality. The requirement that all boreholes must be subjected to EIA ensure that stakeholder input is considered during the planning phase of the Program.	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		abandonment of the resource or impose unnecessary costs on water users because of the need to treat water that would not ordinarily require treatment. It also states that a shallow aquifer may be mineralised or contaminated by bacteria; sealing it off with plain casing and grout will protect the deeper aquifer from contamination.		
77.	Draft Code of Practice for BH Siting	The code requires that the applicant ensures that appropriate consideration is given to any likely or possible effect a water supply borehole may have on the environment, and vice versa. It indicates that the applicant should get specialist to assess the impacts. It states that socio-cultural aspects are particularly important in rural water supply programmes and that community's wishes should be taken into consideration with regard to the location of the site; provided these wishes do not compromise the technical and cost considerations, then they should be considered. Issues such as the distance to the water source, disputes over ownership of land, and cost need to be satisfied.	This is critical to the project with regards to meeting the requirements of ESS 10 on stakeholder engagement and information disclosure of the boreholes sitting. The requirement of carrying out EIA for the borehole sites ensure that the impacts of the boreholes are avoided, mitigated or offset.	None
78.	Water Tribunal Rules 2019	The Water Act 2016 established a Water Tribunal in section 119 and in Section 155 provides for the transfer of functions from the Water Appeal Board to the Water Tribunal and tasks the Water Tribunal under section 122 to make rules governing its procedures. Therefore, the Water Tribunal Rules clarify the procedure for the operations of the Water Tribunal. The Water Tribunal Rules provide an operational procedure for the Water Tribunal and in effect contribute towards the protection and realization of the constitutional rights to clean and safe water, consumer rights to quality goods	The Rules govern the mandate of the Water Tribunal to provide a mechanism for faster and cheaper means of resolving water-related disputes which will have the net effect of providing a means to greater access to justice.	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		and services, and access to justice (Articles 43, 46 and 48 of the Constitution respectively).		
79.	MoWS-Workplace Policy on HIV/AIDs 2019	<p>Ministry developed this workplace Policy on HIV and AIDS as a response to the Government recommendations through the Public Sector Workplace Policy on HIV and AIDS, Revised 2017 which requires developing HIV and AIDS Policies in their workplaces. The Policy guides the development of workplace programmes to facilitate effective and planned response to the management and prevention of HIV and AIDS. This policy sets standards for managing HIV and AIDS and it applies to all employees in the Ministry and her stakeholders. Specifically, this policy aims at:</p> <ul style="list-style-type: none"> • Forging Strategic public private partnerships for the management of HIV and AIDS in the Ministry; • Mainstreaming HIV and AIDS in the Strategic Plan, Performance Contracts and annual work plans; • Providing guidelines to the management and employees on their rights and obligations regarding HIV and AIDS; • Mobilizing, facilitating and ensuring the allocation of resources and their efficient utilization for HIV and AIDS programmes. 	<p>The Program will engage workers in sub-project areas, a factor that presents the risk of HIV/AIDs transmission. This would then require the implementation of measures to prevent and control the spread of HIV/AIDs in Program locations.</p> <p>The Program will align with the MoWS-Workplace Policy on HIV/AIDs as well as the relevant national legislation and policies in the management and prevention of HIV/AIDs in the workplace and within Program communities.</p>	The policy omits other community and workplace health and safety issues such as GBV-SEA/SH.
80.	WASREB's Compliance and Enforcement Strategy	The strategy guides WASREB in enforcing compliance in the sector. WASREB is supposed to formulate and implement a compliance and enforcement strategy. As best practice internationally a regulatory body should: 1. Publish a compliance and enforcement strategy 2. Measure outcomes not just outputs 3. Justify its choice of enforcement actions year on year to stakeholders, Minister, and the public.	The strategy is key in ensuring that the Program complies to the national and sectoral legislations and policies.	None

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the WASH Program and Alignment with the ESF	Identified Gaps with WB ESF
		WASREB powers to ensure compliance and to enforce the law are drawn from the Water Act 2002. For instance, power to issue licence, determine service standards, monitor compliance with standards on infrastructure development and maintenance, monitor and enforce licenses, determine tariffs, monitor handling of consumer complaints, collect information for water services sector, disseminate information, promote demand management, prosecution in consultation with AG.		

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

35. The following institutions listed on Table 5, are tasked with managing environmental, social, health and safety risks and impacts of the Program for realization of benefits.

Table 5: Institutional Responsibilities for ESHS Management Under the K-WASH Program

	Institution	Responsibilities	Relevance to the program
1.	National Environment Management Authority (NEMA)	Established by Section 7 of EMCA, NEMA is mandated to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of government in the implementation of all policies relating to the environment.	NEMA will be responsible for providing guidance on the applicable E&S risk management instrument to be applied based on the screening results and approving EIAs of proposed infrastructural developments in the Program and Environmental Audits of existing infrastructure.
2.	County Environmental Committees (CECs)	Established by Section 29 of the EMCA, the CECs are responsible for the proper management of the environment within the counties for which they are appointed, and are also responsible for preparing County Environmental Action Plans	The CECs will consider the environmental risks and impact of Program activities on the environment at the county level and provide guidance and relevant approvals. The CECs will also be a key stakeholder for the K-WASH Program on matters environmental risk management
3.	National Environmental Complaints Committee (NECCs)	Established by Section 31 of the EMCA, the NECC is responsible for investigating complaints relating to environmental damage and degradation and undertaking public interest litigation on behalf of the citizens in environmental matters	<p>Given their mandate under the EMCA, the NECC support the program in receiving and investigating any complaints on environmental damage occasioned by the Program's construction and O&M activities.</p> <p>The NECC will also support in reporting findings on any incidences of environmental degradation occasioned by K_WASH activities including making recommendations on appropriate corrective measures</p>
4.	Kenya Wildlife Service (KWS)	Established by Section 6 of the Wildlife Conservation and Management Act, 2013 the functions of KWS include conservation and management of national parks, wildlife conservation areas, and sanctuaries under its jurisdiction, promoting or undertaking commercial and other activities for the purpose of achieving sustainable wildlife conservation, granting permits and monitoring the compliance of terms and conditions of licenses, among other functions.	KWS will approve any water supply activities in or traversing through gazetted conservation areas (National Parks and Reserves). Water abstraction from water sources shared with wildlife should consider ecological flow to be within acceptable levels. To determine this, KWS will be consulted on how best to mitigate impacts that might result to competing wildlife and water needs
5.	Kenya Forest Service (KFS)	Established by Section 7 of the Forest Conservation and Management Act, 2016, functions of KFS include conservation, protection and management of all public forests, and approval of any applications in relation to forest resources.	KFS will approve any water supply activities in or traversing through gazetted conservation areas (Public Forests). Water catchment areas that might be subject to vegetation clearance to allow for water

	Institution	Responsibilities	Relevance to the program
			infrastructure to be built i.e., water intake weir, water supply mains etc must be subjected to EIA and consultation must be held with KFS
6.	Directorate of Occupational Safety and Health Services (DOSHS)	Established by Section 23 of the OSHA, 2007, the Director is mandated to administer the provisions of the Act including approval of persons to carry out activities provided for by the Act such as workplace H&S audits; carry out inspections and issue improvement and prohibition notices; and approve the registration of workplaces. DOSHS is also mandated to administer the provisions of the WIBA, 2007	DOSHS will consider, register and supervise construction sites for distribution infrastructure as workplaces, receive mandated periodic and ad hoc reports from MoWSI, WWDAs and WSPs and its contractors, and inspect workplaces for compliance with the OSHA, 2007 and WIBA, 2007
7.	The National Construction Authority (NCA)	Established by Section 3 of the National Construction Authority Act, 2011, the Authority is mandated to certify contractors, skilled construction workers and construction site supervisors and regulate their professional undertakings	NCA will register contractors and works supervisors involved in rolling out Program activities of construction and maintenance of the water supply and sanitation infrastructure.
8.	Commission on Administrative Justice (CAJ)	Established by Section 3 of the Commission on Administrative Justice Act, 2011, the CAJ is mandated to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector; and recommend compensation or other appropriate remedies against persons or bodies to which this Act applies;	Through the Program, MoWSI will be encouraged to sensitize persons affected by Program operations to seek help for the CAJ. On its part, it is expected that CAJ will be involved to investigating any complaints raised against MoWSI being a public entity, and the Program host. CAJ is relevant for the successful implementation of the Program, especially in cases of corruption, poor governance or injustice in relation to inclusion, grievance redress or stakeholder engagement.
9.	State Department for Social Security and Protection	Anchored in the Ministry of Labour and Social Protection, the Department is mandated to build capacities and enhance protection of individuals, families and communities for improved livelihoods by developing policies on social development, policy and programmes for Persons with Disabilities (PWDs), policy and programs for older persons and other vulnerable groups including women and children	The department will be expected to offer guidance on safeguarding the interests of vulnerable groups interacting with Program activities
10.	Department of Labour	The Department is anchored in the Ministry of Labour, Social Protection and Senior Citizens Affairs and is responsible for sectoral oversight and management of matters concerning employment, labour relations and working conditions. The Department is responsible for implementation of the Employment Act, 2007, The Labour Institutions Act, 2007 and the Labour Relations Act, 2007	The Department will be expected to carry out inspections for compliance with the labour laws and preside over the resolution of labour disputes that may arise in Program implementation.

	Institution	Responsibilities	Relevance to the program
11.	State Department of Gender	The Department is anchored in the Ministry of Public Service and Gender and is responsible for sectoral oversight and management of all matters concerning gender. This includes implementation of the Gender Policy, special programs for women affirmative action, social empowerment of women, gender mainstreaming in ministries/departments/agencies, community mobilization, domestication of international treaties/conventions on gender, and policy and programmes on gender violence.	The Department will be expected to provide guidance as necessary on mainstreaming of gender in Program activities and prevention of Program-related GBV.
12.	State Department for Public Service and Youth	The Department is anchored in the Ministry of Public Service and Gender, and is responsible for mainstreaming youth in national development	The department will be expected to sensitize WSPs, WWDAs and their contractors on the need to employ local youth as appropriate as a way of reducing the influx of external labour into the project areas.
13.	National Gender and Equality Commission (NGEC)	National Gender and Equality Commission Act, 2011, NGEC an independent commission that answers to the presidency. For operational purposes, it is linked to the Ministry responsible for gender matters. Its mandate is to ensure the inclusion of minority, vulnerable and marginalized groups (women, youth, people with disabilities, the elderly and marginalized communities) into the mainstream development agenda of the country through affirmative actions, and by ensuring the development of conducive and supportive of policy, legislative and regulatory frameworks that are meant to enhance and fast track the inclusion of these groups in all spheres of socio-economic, political, cultural and governance structures of the country	The inclusion and gender equity are two agenda items that are of great importance to the World Bank, and this is one of the institutions that would support the MoWSI in ensuring these are mainstreamed in the Program
14.	National Land Commission (NLC)	Although an independent commission, NLC is operationally linked to the Ministry of Lands and Physical Planning. The Commission has the mandate for compulsory acquisition of land for the development of projects that are of public interest on behalf of both the county and national governments	NLC is relevant for the successful implementation of the Program, especially in cases where land may need to be acquired compulsorily for Program purposes.
15.	Water Sector Regulatory Board (WASREB)	WASREB was one of the institutions created in 2003 under the reforms of Water Act 2002. It was retained under the Water Act 2016 (Section 70 (1)). The primary mandate of WASREB is to protect the interests and rights of consumers in the provision of water services, while ensuring other stakeholders' interests are also safeguarded. The role of WASREB in relation to consumer engagement is of a coordinative and supervisory nature and generally relates to the protection of consumer interests.	WASREB is a critical in supervising and overseeing the operation of the mechanism relating to consumer engagement and the protection of consumer interests. WASREB will support the Program through preparing and enforcing regulations and guidelines concerning the management of E&S issues, such as consumer engagement, resolution of complaints, the overall protection of consumer interests, sector governance, water tariff setting, licensing

	Institution	Responsibilities	Relevance to the program
		WASREB also enhances/promotes better governance in the water services sector through the trainings delivered on governance and the on-going Water Sector Reforms to water utilities Management teams and Boards of Directors, as well as the preparation of a training handbook with modules of core content on water governance for County Executive Committee Members (CECMs); County Assemblies and other County stakeholders. WASREB is key in resolving complaints escalated from a person who is not satisfied with the handling of his or her complaint by the WSPs, and states what action is being taken, the decision of WASREB on the matter and any recommendation to the WSP for resolving the matter.	of WSPs, water sector professionals (engineers and contractors), among other
16.	Water Resources Authority (WRA)	Water Resources Authority (WRA) is a state corporation established under Section 11 of the Water Act, 2016. it is mandated through delegated Authority on behalf of the National government to safeguard the right to clean water by ensuring that there is proper regulation of the management and use of water resources, in order to ensure sufficient water for everyone- now and in the future. However, the Authority has been in existence for 12 years following its establishment under the Water Act, 2002 as Water Resources Management Authority (WRMA). WRA's approach in safeguarding the resource is entrenched in the Country's Big 4 development agenda, Vision 2030 strategic objective on water and sanitation and the SDG 6 all these agenda and objectives aim to increase water resources availability for multipurpose use but also improve the quality and sustainability of water resources.	The Program will align with the Water Resources Management Rules administered by the WRA to ensure proper management and use of water resources by e.g. preventing and controlling the discharge of effluent and pollution of water resources.
17.	National Environmental Tribunal (NET)	The National Environment Tribunal (NET) is established under the Environmental Management and Co-Ordination Act (EMCA). The jurisdiction of the Tribunal is set out under section 125 of the Act. The Tribunal hears and determines appeals concerning grant of a licence or permit or refusal to grant a licence or permit; imposition of any condition, limitation or restriction on a licence; revocation, suspension or variation of a licence; the amount of money required to be paid as fee under the Act or imposition against the person of an environmental restoration order or environmental improvement order by the Authority under the Act or its regulations (emphasis added). The Act requires appeals to be lodged with the Tribunal within sixty days of the occurrence of	Some disputes touching on the water sector may be determined by the National Environment Tribunal (NET), particularly concerning the disposal of effluent discharge. This is because applicable regulations include those promulgated under EMCA and administered by NEMA, in addition to the effluent discharge and pollution control provisions of the Water Resources Management Rules administered by WRA. As a result, there will be a need to reconcile the two approaches and ensure the jurisdictions and decisions of the NET and the Water Tribunal do not result in contradictory outcomes unsuitable for the water sector

	Institution	Responsibilities	Relevance to the program
		the event which a person is dissatisfied with. In addition, the jurisdiction of the Tribunal extends to appeals against decisions of the Director General of the National Environment Management Authority (NEMA), the Authority, committees of the Authority or its agents.	
18.	Water Action Groups (WAGs)	WAGs are prescribed in the Water Services Regulations 2021 as consumer groups who have entered into a recognition agreement with the WSPs. They derive their mandate directly from WASREB and operate within the existing regulatory framework, in alignment to sector legislation and policies. WAGs are recruited by WASREB, who also funds their operations. They are directly accountable to WASREB, to whom they will submit quarterly operational and financial reports. The Water Action Group Complaints Handling Procedure forms the backbone for WASREB's approach to consumer engagement, since serves to hold WSPs and WWDAs accountable towards consumers. In this respect, they operate under and in close cooperation with WASREB and serve as an engagement partner for WSPs and WDAs. The WAGs are responsible for fulfilling a facilitating function in terms of complaints resolution, bottom-up consumer feedback and top-down consumer information, thereby assisting service delivery improvement. Specifically, they provide information to consumers, act as a liaison between WSPs and consumers, follow up on resolution of consumer complaints by WSPs and submit unresolved complaints to WASREB as part of the WAG's operational reports, detailing the complaints and feedback on WSPs. WAGs achieve their mandate by pursuing a three-pronged agenda namely information sharing, participation/engagement, and provision of feedback (complaints handling). WAGs consumer complaint handling procedures constitute of four consecutive steps. (i) Consumer complaints to WSP, (ii) Consumer complaints to WAG for follow-up with WSP/WWDA, (iii) WAG forwards consumer complaint to WWDA, (iv) WAG forwards WSP/WWDA-related consumer complaint to WASREB	The timely disclosure of quality information to consumers is key to engaging them from an informed point of view. Consumers have a legitimate interest in the information, as it ensures transparency in the sector and empowers them to hold sector institutions accountable and engage in effective dialogue. WAGs provide a platform for the participation of water users, the inclusion of underserved citizens, and the promotion of good corporate governance. The WAGs will support the Program in sensitizing consumers on their rights and responsibilities; channelling bottom-up feedback to WSPs, WWDAs, and WASREB; facilitating consumers' participation in water supply and sanitation decisions services; providing information and consulting consumers and handling and following up on consumer complaints,
19.	Water Resources Users Association (WRUA)	WRUAs are associations of water resource users at the sub-basin level established under the Water Act 2016. They are community-based association for collaborative management of water resources and resolution of conflicts concerning the use of water resources.	WRUAs will support the Program in the management of the use of water resources and consumer complaints. In addition, the Program can help to align the reported overlap between WRUAs and WAGs.

	Institution	Responsibilities	Relevance to the program
		The basin area water resources management strategy facilitates the establishment and operation of WRUAs, while the basin water resources committees may contract WRUAs as agents to perform certain duties in water resource management.	
20.	Water Works Development Agencies (WWDAs)	<p>WWDAs were formed through the Water Act of 2016 to replace Water Service Boards (WSBs). They are mandated to develop and maintain sustainable water and sanitation infrastructure within the counties. They operate waterworks and provide water services as a WSP until the time when the responsibility for the operation and management of the waterworks is handed over to a county government.</p> <p>WWDAs are responsible for ensuring that their agents are responsive to consumer needs. There are, however, certain areas where WWDAs have direct engagement responsibilities towards the consumer. This mainly relates to the planning and implementation of water and sewerage investments.</p>	WWDAs will support the Program to deliver value for money and ensure that investments' timing and location align with consumer priorities. In addition, WWDAs will implement and enforce the consumer redress mechanism as provided for in the license, in line with the WASREB Consumer Engagement Guidelines. Finally, WWDAs will inform consumers, consult them, and enable their participation in water supply and sanitation services, particularly regarding investments, and resolve consumer complaints and attend to concerns forwarded by WRUs that fall under their responsibility.
21.	Water Service Providers (WSPs)	<p>The Water Act 2016 aligned national water management and water services provision with the requirements of the Constitution of Kenya 2010 particularly on the clauses devolving water and sanitation services to the county governments. Service provision is devolved to the Counties who are the owners of WSPs. WSPs are public institutions incorporated by County governments to operate, provide water services and hold the county or national water public assets on behalf of the public.</p> <p>A licensed WSP is required by law to implement the tariff approved and gazetted by WASREB for the prescribed period; establish a mechanism for handling complaints which meets guidelines stipulated by WASREB; provides easy access to information and where applicable contact details of the WRUs; maintain a customer service centre with qualified staff for the purpose of addressing and resolving consumer applications, consumer service requests and complaints; engage with consumer groups that are registered as community-based organizations or WRUs and involved in water issues at the county level and ensure that consumer participation does not only refer to customers that are actually served by a formal WSP but also to underserved citizens, mainly in low-income urban areas. Finally, WSPs are to implement the requirements of the WASREB Guidelines concerning reporting (accountability)</p>	WSPs will provide easy access to information on tariffs, water quality, service interruptions, minimum service levels, and consumer complaints procedures. In addition, they will implement community outreach and public awareness activities (where applicable, with support from the respective WRUAs) to build trust and raise the public understanding of the services provided. WSPs will also implement measures for consumer complaints handling, consumer compensation, and handling of consumer disputes as well as in executing these measures (response times to consumer requests and complaints, payment of compensations, etc.)

	Institution	Responsibilities	Relevance to the program
		<p>and information / sensitization activities as well as engagement of consumers/ citizens.</p> <p>WSPs provide service quality related information to consumers in the respective service area and engage in outreach and sensitization activities; directly and regularly consult consumers and communities in the service area on their concerns and needs; enable participation of consumer representatives within their Boards of Directors; implement redress mechanisms as provided for in their Service Provision Agreement (SPA); proactively collaborate with the WRU in their service area (includes adequately sensitizing staff on the mandate and operations of WRU), engage in close dialogue and recognize them as an engagement partner; follow up on feedback and resolve complaints forwarded by WRUs; notifies consumers of any planned or unplanned water supply interruptions, and obtains consent of the Authority if the proposed work will affect or is likely to affect any water resource or road authority or other state organ concerned, prior to construction of any such works.</p> <p>Lastly, the consumer complaints mechanism established by the WSP notifies customers of the right to complain and avails a complaint form or any other written method for raising complaints; and maintenance of a log of customer complaints.</p>	
22.	Water Tribunal	<p>The Water Tribunal is the successor of the Water Appeals Board. It has powers to hear and determine appeals from any person or institution directly affected by the decision or order of the Cabinet Secretary responsible for matters relating to water, the WRA and the WASREB. The tribunal also has powers to hear and determine any dispute concerning water resources or water services where there is a business contract unless the parties have otherwise agreed to an alternative dispute resolution mechanism.</p>	<p>The Water Tribunal will provide a mechanism for faster and cheaper means of resolving water-related disputes, which will have the net effect of providing a means to greater access to justice. The lower fees, as compared to the court system, prescribed for filing an appeal will ensure that justice is accessible even to those who cannot otherwise afford filing fees and other costs within the court system. Additionally, the Tribunal's procedure is simplified, and less technical, so many public members can follow proceedings easily without feeling alienated. Finally, the Tribunal provides strict timelines for hearing and determining appeals, discourages litigation, and encourages the use of alternative dispute resolution mechanisms.</p>

	Institution	Responsibilities	Relevance to the program
23.	The Water Sector Trust Fund (WSTF)	<p>WSTF is mandated to collaborate with County governments and WRUAs over water services provision in underserved and catchment management respectively. WSTF has the mandate to mobilize financial resources from private investors for onward lending to credit worthy utilities and to promote research on water services and water resources.</p> <p>To provide conditional and unconditional grants to counties, in addition to the Equalization Fund and to assist in financial the development and management of water services in marginalized areas or any area which is considered by the Board of Trustees to be underserved including,</p> <ul style="list-style-type: none"> ○ community level initiatives for the sustainable management of water resources; ○ development of water services in rural areas considered not to be commercially viable for provision of water services by licensees; development of water services in the under-served poor urban areas; and research activities in the area of water resources management and water services, sewerage and sanitation. 	Enables access to adequate and quality water supply and sanitation services for underserved and rural communities
24.	Civil Society Organizations	Civil society has been widely recognized as an essential ‘third’ sector, most importantly for its advocacy role as regards good governance tenets like transparency, responsiveness and accountability in service delivery and for its ability to bring to public attention environmental, social and community concerns. WASREB considers the role of CSOs (NGOs, CBOs) in consumer engagement to be of a mediating and supporting nature and complementary to the formal-institutional approach taken by the Water Action Groups. Civil Society Organisations. Interested CSOs are required to approach WASREB for partnerships formalized through Memorandum of Understanding on specific areas of collaboration.	Civil society groups (CSGs) will mobilize, create awareness, and sensitize communities at the grassroots level, articulate consumer interests in the engagement process on local and national levels, and encourage citizens to use available redress/recourse mechanisms. CSGs will promote social accountability of WSIs, conduct independent surveys on consumer views/perceptions, make findings known to the relevant stakeholders and assist in monitoring
25.	MoWSI	Responsible for legislation, policy and strategy formulation, sector coordination and guidance, and monitoring and evaluation	<p>To contribute to national development by promoting and supporting integrated water resource management to enhance water availability and accessibility to ALL.</p> <p>Responsible for the overall monitoring of the water sector, water supply and wastewater system and the formulation of national water strategies and policies,</p>

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

36. The assessment of how the ESHS systems function in practice is presented in **Table 8** of this report, which is structured as a SWOT analysis of MoWSI's capacity to manage the ESHS risks and impacts in line with the country's policies, legal and regulatory frameworks as written, and whether these are in line with the PforR Financing requirements. The functioning of the system in practice is further analysed in section seven (7) of this report, which assesses the country systems against the PforR's Core Principles.

Table 6: Analysis of the Borrower Environmental, Social, Health and Safety System in Relation to the PforR Core Principles

Core Principle 1: Promote E&S Sustainability, avoid, minimize, mitigate adverse impacts and promote informed decision making	
<p>Bank Policy for Program-for-Results Financing: Environmental and social management procedures and processes are designed to.</p> <ul style="list-style-type: none"> 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 effects. 	
<p>Bank Directive for Program-for-Results Financing: Program procedures will:</p> <ul style="list-style-type: none"> a) Operate within an adequate legal and regulatory framework to guide environmental and social impact assessments at the Program level. b) Incorporate recognized elements of environmental and social assessment good practice, including: <ul style="list-style-type: none"> • early screening of potential effects of all projects. • consideration of strategic, technical, and site alternatives (including the “no action” alternative). • explicit assessment of potentially induced cumulative, and trans-boundary impacts. • identification of measures to mitigate adverse environmental or social impacts that cannot be otherwise avoided or minimized. • clear articulation of institutional responsibilities and resources to support implementation of plans. • Responsiveness and accountability through stakeholder consultation, timely dissemination of Program information, and • responsive grievance redress measures. 	
<p>Applicability –APPLICABLE</p> <p>Core Principle 1 is considered relevant and fully applicable in terms of environmental, health and social (EHS) for the Program. Investments to be undertaken under the K-WASH program will range from small to medium scale infrastructure, such as expansion of rural water supply infrastructure/O&M support for rural water supply, including the development of boreholes and surface water intake sources, water treatment facilities, transmission mains, storage tanks, distribution network, and last mile connections to households (under RA 1), and construction of sanitation facilities such as WASH facilities for schools, Health care centres, such as extension of main and lateral sewers, construction of Faecal Sludge Management (FSM) facilities, sewerage treatment plants, etc for rural market centres and small towns (under RA 2). The implementation of these type of investments are likely to have a physical footprint with varying degree of EH&S risks and impacts during the lifecycle of the project investments (construction, operation, and maintenance, and during decommissioning phases). Although expected to be localized, manageable and in some cases temporal, these risks and impacts require mitigation. This therefore requires undertaking EH&S assessment and providing appropriate mitigation measures to adverse risks and impacts.</p>	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • The national environmental and social management system defined in the EMCA, 1999 (which the counties use) provides a comprehensive legal, policy and legislative framework for environmental screening, impact assessment, and management consistent with the core principles outlined in Program for Results Policy and Directive. However, it is weak in social screening and assessment. 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> • The implementation of the existing legal/regulatory provisions face challenges due to lack of adequate and qualified staff with the right skill set within the counties and WSPs. • The National EIA system mainly focuses on environmental aspects and does not comprehensively cover the social, health and safety issues such as on labour, occupational/community health and safety, land management, GBV, SEA-H among others

<ul style="list-style-type: none"> • EMCA provides clear guidelines on screening and categorization of the sub-projects according to the risks. Existing legislation also helps minimize or mitigate possible adverse impacts on the natural habitats, archaeological sites, and cultural resources. • Kenya has a Climate Change Act, 2016 and National Climate Change Policy Framework which guides on low carbon emission and climate resilient technologies, which will be applicable under the program. • NEMA is the responsible entity to ensure compliance with EIA regulations and is devolved to the County level. The County offices are staffed with environmental inspectors responsible for monitoring environmental compliance of projects in their jurisdiction. • Most counties have developed policies and legislation on public participation and social development. Public participation in county planning processes is provided for in the County Governments Act 2012, requiring provision of clear information on environmental and social impacts in the engagements. • Previous (KDSP and KUSP) and ongoing (FFLoCA) PforR programs under have helped to develop program-specific environment and social risk management systems/capacity. However, sustainability of this capacity and systems enhancement are limited to the life cycle of these programs. These two projects have sensitized counties on the importance of having such systems in place. • There is also a well-defined policy framework to enhance transparency on the development projects. • Most counties are aware on the need for Grievance redress system (through KDSP/KUSP), although in many cases not well structured and functional. • The counties have a number of environmental and public health officers, and coordination of the functions when needed is well structured, although they are spread out in different departments • The counties have most of the Environmental and social specialists trained under KDSP/KUSP/FFLoCA, who can play the role of E&S specialists for K-WASH • NEMA is the responsible entity to ensure compliance with EIA regulations and with offices at County levels staffed with environmental inspectors responsible for monitoring environmental compliance of projects in their jurisdiction. 	<ul style="list-style-type: none"> • There is no particular entity within the MoWSI that is responsible for the sector-wide management of ESHS risks. For effectiveness, the sector requires a stand-alone unit for steering the preparation, implementation, and monitoring of the ESHS risks in the sector. • The sector lacks a comprehensive framework for managing ESHS risks and impacts related to the development and maintenance of public water works across the diverse water sector institutions • The social risk management (SRM) systems at the national and county level are not well defined, developed, and coordinated. Relevant SRM laws are fragmented across different ministries and departments. In addition, most staff members defined as social specialists, especially at the county levels have poor understanding of the social aspects in investment projects. • The WSPs do not have Environmental and Social Management Systems (ESMS) in place to govern ESHS risk management. They do not have policies or procedures in place to guide them on ESHS risks management, such as to screen or undertake ESIs for many of their projects. Additionally, the WSPs do not have dedicated environmental and social specialists to perform statutory environmental and social management responsibilities related to water and sanitation service provision. However, WSPs engage consultants to support in E&S risk management for sub-projects that are donor-funded - especially if it is a requirement by the financiers. • There is poor coordination among the various E&S safeguards staff and departments across counties, and weak multi-sectoral coordination and collaboration with key MDAs such as NEMA, DOSHS, NCA, NLC useful in providing technical advice and monitoring of county investments, including lack of clear definition of roles and responsibilities of the county staff members. Inadequate financial resources for these MDAs also limits their ability to participate effectively in the planning and implementation of county investments • There is poor and inadequate attention to environmental and social management of risks and implementation of mitigation measures, particularly at the County levels, due to political pressure and interference for quick project implementation (execution versus compliance) • There is limited budget allocation and allocation of resources (e.g. transport, office equipment, communication services, enough human personnel, e.t.c) for E&S officers responsible for EH&S risk management (for DOSHS, Social, Gender, Children, Labour Officers (etc)) by the National government at the County levels). • There is overall limited involvement of the E&S officers for effective stakeholder engagement, during project design, preparation of ESIA/ESMP, Resettlement Action Plan (RAP), and budget allocation for implementation and monitoring of investments at WSP and county levels. • There is poor public participation and stakeholder engagement on ESHS awareness and information dissemination during CIDP process and overall participation in safeguards management and conservation at the counties
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<ul style="list-style-type: none"> • NEMA staff have previously benefitted from a number of in-house capacity strengthening initiatives including on social risks identification. To address capacity gaps especially on social risk management, NEMA engages other departments such as social protection to assist where applicable. • NEMA seeks the input of other Ministries Departments and Agencies during review of the submitted EIA reports which helps to address sector specific gaps. • In some counties such as Kirinyaga, NEMA has trained two CG staff as Environmental inspectors and involve them in ensuring compliance with E&S risk management requirements • A number of CGs such as Kericho, Tana River, Kwale, Baringo and Mandera among others have developed frameworks for management of E&S risks. These frameworks include County Climate Change Act, Forest Conservation and Management Act and Environment Management Act, Water policy and related regulations. These frameworks have been applied at the county level for management of E&S risks even within the water sector. 	<ul style="list-style-type: none"> • Stakeholder mapping at the county level is inadequate. This is coupled with the lack of a stakeholder engagement framework for the counties. As a result, there is poor participation and meaningful consultations of the marginalized communities/indigenous peoples by the counties/WSPs on projects programming. The untimely or lack of adequate stakeholder mapping and consultations with communities and relevant MDAs results in missed opportunities for technical guidance on E&S risk management and robust development interventions • Counties and WSPs lack sufficient inhouse technical capacity to prepare relevant E&S instruments, or to oversight outsourced E&S consultancy services, including development of fit-for-purpose ToRs for the services, and review of outputs (ESIAs, E&S Audit Reports) for adequacy. The gap is further magnified by insufficient backstopping by relevant MDAs involved in review of outputs before approval by the designated Authority, NEMA. • Environmental and social requirements emanating from the E&S instruments prepared are not consistently included in bidding and contract documents due to poor coordination between procurement and user departments at the county level. This makes enforcement of compliance with the E&S requirements difficult during project implementation. • The implementation, monitoring and reporting of ESMP is inconsistent due to the weak capacity of the county staff and limited budgetary allocation. This is as a result of poor or no budgetary allocation for the mitigation measures in the bidding/contract documents. • The existing GRM systems at the county levels are not formalized, and have notable gaps in structure, functionality, logging, documentation, and weak systems on operationalization across projects undertaken by the counties. No WSPs were found to have any GRM systems in place. • Some counties are yet to constitute their CEC's since the expiry of the contract of the previous committees which impeded execution of their role as defined under EMCA. • There is limited follow up on the side of NEMA and the CGs to ensure all the NEMA licensing conditions have been implemented. • There is a narrow understanding of stakeholder engagement amongst some of the CG staff where it's mainly understood to imply public participation especially during development of the County Integrated Development Plan (CIDP) and Annual Development Plan (ADP). In this regard, key stakeholders with mandate for ESHS risk management (such as DOSHS, SDSP, Labour, KFS, NEMA) are hardly engaged during implementation of county financed projects presenting a risk of increase in complaints and grievances. • Due to budgetary constraint on the side of the CGs, routine environmental and social audit may not be done to facilitate the addressing of any emerging challenges before escalation
<p>OPPORTUNITIES</p>	<p>RISKS</p> <ul style="list-style-type: none"> • Poor implementation or mainstreaming of existing ESHS risk management regulations in program guidelines

<ul style="list-style-type: none"> • The counties have experience on the requirements of proper EHSM systems under KDSP, KUSP, and FFLoCA and are familiar with the requirements of implementing WB funded PforR projects • Utilize the trained E&S specialists under other PforR programs as focal points to implement safeguards for K-WASH program, to reduce learning curve and promote peer learning from these other programs • To assist the WSPs in development of Environmental, Health and Social Management Systems (EHSMS) with appropriate guidelines, screening checklist, and requirements to manage E&S risks in all their investment projects, • Work with other ongoing PforR programs to develop effective public participation and stakeholder engagement framework on EH&S issues, for enhanced targeting, inclusion of marginalized and IP groups, meaningful consultation, and feedback mechanism for the county and WSPs. The public consultations should be comprehensive to include i) description of project design considerations; ii) disclosure of anticipated project EH&S risks, iii) impacts to project affected persons (PAP) and beneficiaries; iv) details to show the level of participation, and v) feedback mechanisms incorporated in project designs and implementation • Work with ongoing PforR programs to roll-out GRM guidelines at county/WSP levels to i) harmonize and strengthen the existing grievance redress mechanisms developed under KDSP/ KUSP/FFLoCA to make it more functional and operational; ii) incorporate a GBV referral pathway and referral system hotline to addressing GBV/SEAH issues; iii) Ensure the GRM is gender responsive and accessible to all persons, iv) have a comprehensive system for documenting grievances with feedback mechanisms in place; v) create awareness to the public on the GRM uptake channels and systems; vi) assign a GRM focal person, vii) have a functional and well represented GRM committee, and viii) Build capacity of the GRM focal persons on the mechanism, structure, logging and feedback. • Streamline the procurement processes and coordination between the Environment, Procurement and other user departments to ensure that E&S requirements are consistently and adequately incorporated in bidding and contract documents. Contractors are required to ensure they have qualified ESHS personnel, comply with site specific ESMPs prepared for the sub-projects and integrate the NEMA licence conditions, including labour welfare, health, and safety aspects in contract management. 	<ul style="list-style-type: none"> • Inadequate mapping of K-WASH program environmental and social risks due to insufficient technical capacity to conduct or oversight E&S risk management at county and WSPs level • Inadequate social risks identification and assessments at project level due to the lack of national social risk management guidelines/regulations, and a regulatory body to manage the processes • Limited financial allocation and human resource capacity for ESHS risk management at the counties and WSPs. • Inadequate ESHS risk management during sub-projects implementation due to limited financing of activities including supervision, monitoring and reporting on ESMP implementation. • Political interference in decision-making on budgets, investment priorities operationalization of ESHS risk management plans, and compliance. <p>LEVEL OF RISK - SIGNIFICANT</p>
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<ul style="list-style-type: none"> • The Program will partner with NEMA, DOSHS, and other relevant agencies to enhance the capacity of the counties/WSPs on the environmental, social, and health risks' management based on national laws and regulations such as training and capacity building of E&S officers on the EMCA, OHSA, and SRM regulations, and monitoring of investments and enforcements. • Allocate adequate budget and resources for ESHS management such as on stakeholder engagement, grievance management, environmental, social, health and safety assessments and monitoring during early project planning stages. 	
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Core Principle 2: Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program.	
<p>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>	
<p>As relevant, the Program to be supported:</p> <ul style="list-style-type: none"> ▪ 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. 	
<p>Applicability – APPLICABLE</p> <ul style="list-style-type: none"> • 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 habitats. • Some of the proposed sites under the program will be situated in water catchment areas such as forests (for water intakes), built-up areas, or deep in the rural areas, open communal lands, and other territories may adjoin natural habitats, wetlands, or places with unknown physical cultural resources. • Construction of some infrastructures such as laying water and sanitation pipes could pose some risk to natural habitats and physical cultural resources if not sited appropriately. • Activities funded under the program are not likely to generate significant adverse impact on natural habitats, physical and cultural resources since civil works will majorly be implemented in developed areas (around settlements, along access roads or across agricultural land). • 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 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • The existing system especially the Environmental Management and Coordination Act - EMCA, 1999, amendment (2015) and National Museums and Heritage Act, 2006 (2012), Forest Conservation and Management Act, 	<p>WEAKNESSES</p> <p>The weaknesses identified for Core Principle # 1 apply to Core Principle # 2. Others include:</p>

Core Principle 2: Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program.	
<p>2016, the Wildlife Management and Conservation Act, 2013 and the Water Resources Management Rules, 2006 provide for protection of natural habitats and physical cultural resources, including screening for archaeological, historical, and cultural sites to ensure environmental and social sustainability.</p> <ul style="list-style-type: none"> • National Museums of Kenya (NMK) under the Ministry of Sports, Culture and Heritage has developed a Chance Finds Management Plan that defines the requirement for the management of archeological, paleontological and other cultural deposits, finds and features encountered during development activities in Kenya. • There are existing institutions legally established that mainly guide on the protection of Natural habitats in watershed areas such as Kenya Forest Service (KFS), Water Resource Authority (WRA), Kenya wildlife Service (KWS), and NMK. • The national systems require EIA to incorporate the program design and implementation of appropriate measures to minimize or mitigate possible adverse impacts on the natural habitats, archaeological sites, and cultural resources, with monitoring involvement from strong institutions such as NEMA and National Museums of Kenya. • Some of the CGs, have developed requisite frameworks to guide conservation of natural habitats. A good example is Bomet that has draft county Forest Act, Water policy. Nandi County has enacted the wetland conservation and management Act, climate change Act. Some of the CGs such as Kericho have an approved Spatial plan that maps out all the natural habitats for conservation and protection 	<ul style="list-style-type: none"> • Physical cultural heritage resources are not well documented or exhaustively mapped out at national and county levels. • Identified PCRs are inadequately protected or totally unprotected in some areas; • Weak enforcement of civil contracts and laxity in monitoring damage to critical habitats, endangered species, and PCRs during construction. • Weak staff capacity to assess the potential impacts on natural habitats and physical cultural resources through intense assessment of critical habitats and endangered species, especially in water catchment areas. • Budgets necessary for the protection of the critical habitats and PCRs are inadequate or unavailable, which may result in high risk of destruction/degradation of the same. • Limited engagement of relevant institutions with mandate in management of natural habitats (KWS, KFS) and PCR (NMK) to provide necessary technical support in management of E&S risks relating to such resources. • Lack of appropriate frameworks within counties for management of PCRs
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> ▪ Due to critical nature of some subprojects under K-WASH (eg water intakes in forests), involve multisectoral agencies early in the project design (such as with KFS, KWS, NMK, NEMA) to better identify and develop mitigation measures to manage the natural habitats and physical cultural resources during project implementation. • 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 • Allocate sufficient budget and resources for the identification and management of natural habitats and PCRs. 	<p>RISKS</p> <ul style="list-style-type: none"> • Inability to adequately screen subprojects may lead to adverse impacts to the physical cultural resources and natural habitats. • Specific measures to manage impacts on PCRs and natural habitats are not included in the subproject cost. • During preparation and excavation works, known or unknown endangered species, critical habitats, PCRs, 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>

Core Principle 2: Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources (PCR) resulting from the Program.	
<ul style="list-style-type: none"> Improve the level of awareness on safeguarding endangered/threatened natural habitats, climate change and PCRs during stakeholder and public participation 	
Core Principle # 3: Public and Workers Safety	
<p>Program E&S management systems are designed to protect public and worker safety against the potential risks associated with</p> <ol style="list-style-type: none"> the construction and/or operation of facilities or other operational practices under the Program; exposure to toxic chemicals, hazardous wastes, and otherwise dangerous materials under the Program; and reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards. 	
<p>Program procedures:</p> <ul style="list-style-type: none"> Promotes community, individual, and worker health, safety, and security through the safe design, construction, operation, and maintenance of Program activities; or, in carrying out activities that may be dependent on existing infrastructure, incorporate safety measures, inspections, or remedial works as appropriate. Promote measures to address child and forced labour. Promote the use of recognized good practice in the production, management, storage, transport, and disposal of hazardous materials generated under the Program activities. 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. Include adequate measures to avoid, minimize, or mitigate community, individual, and worker risks when the Program activities are in areas prone to natural hazards such as floods, hurricanes, earthquakes, or other severe weather or climate events. 	
<p>Applicability –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. Principle 3 is applicable to the K-WASH due to physical infrastructure and civil works proposed under the Program which may include the connection of new households. These activities can expose the public and workers to risks such as dust, noise, and air pollution; solid and liquid waste generation; hazardous and noxious wastes from equipment and machinery used; and the spread of diseases such as HIV/AIDS, STDs, and COVID-19. The risk of GBV and SEA-SH amongst project workers and between workers and communities resulting from the influx of workers into sub-project areas. This core principle is fully applicable during construction, operation and maintenance, and decommissioning phase of urban infrastructure which could pose risks and have impacts on public and worker safety. Rehabilitation, construction, and operation of proposed infrastructures under the program will expose the general public, as well as construction workers to risks such as dust, air pollution, noise, soil and water pollution, improper handling and disposal of liquid and solid waste, and toxic or hazardous materials at sites during civil works, which could directly or indirectly result in occupational health and safety impacts. 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> The country has legal statutes and provisions to protect the workers such as the Occupational Health and Safety Act (OSHA) 2007 and the Workers Injury and Benefits Act (WIBA), 2007. 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> Whereas worker health and safety at the workplace is adequately catered for in the OSHA, 2007, risks to public health and safety in development of infrastructure are not as clearly mitigated in the Public Health Act.

Core Principle # 3: Public and Workers Safety	
<ul style="list-style-type: none"> • The Public Health Act, Cap 242 has provisions for the protection of public water supplies from pollution dangerous to health. The Act empowers local authorities to take measures to prevent pollution of any supply of water which the public has a right to use for drinking and domestic purposes. The Act also protects the public from nuisances that are offensive, injurious or dangerous to health • Kenya has several regulations under the EMCA, 1999, such as on waste management, water and air quality, noise and excessive vibration as summarized in table 5 that aims to protect the environment from all forms of pollution and environmental degradation across different sectors. • The National Climate Change Act, 2016 and the related National Climate Change Policy Framework provides guidance on use of climate resilient technologies. Some counties such as Kwale, Tan River, Kericho, Mandera have domesticated these frameworks and developed county specific Climate Change Action Plans (CCAP). • Employment Act No 11 of 2012 [2007] confers the rights of children and has penalties on unlawful employment of children • The Government standard contract conditions for contractors have ESHS clauses provided such as: a) the requirement to maintain an accident prevention officer on site; b) maintain logs of any accident/incident at the work sites and report on incidents occurred; c) create awareness to workers on HIV and other sexually transmitted diseases; d) labour laws (working hours, facilities for staff and labour, prohibition of forced, compulsory or child labour). However, there is an opportunity to strengthen the existing contract documents. • The country systems have guidelines/regulations, and promotion of workers safety through agencies such as DOSHS and NCA on aspects concerning the management of construction sites, including public and worker safety risks from construction/operation of infrastructure projects. • Some of the counties have developed frameworks for management of GBV/SEA-H risks. Such counties include Kwale, Makueni and Mandera 	<ul style="list-style-type: none"> • The National EIA system does not adequately cover aspects on public and worker's health and safety. This results to ESIA/ESMP prepared not to broadly incorporate the health and safety requirements and mitigation measures. Aspects of community/public health are not covered adequately as well. • Limited awareness, capacity, and enforcement of the relevant provisions at the county/WSP level for addressing community health and safety risks and impacts related to construction sites such as environmental pollution, labour influx risks (GBV- SEAH, spread of HIV/AIDs and communicable diseases). • Limited human and financial resources allocation to DOSHS staff at the county levels, resulting in poor supervision of infrastructure projects to ensure compliance with required national standards as per the OSH Act– some counties do not have DOSHS representatives • Limited capacity in technical personnel, safety equipment provision, and poor budget allocation by contractors to comply with national requirements and international good practices • Poor collaboration and coordination among the various implementing agencies, especially DOSHS and Public Health departments, in addressing occupational health and safety related issues, because they are rarely involved in providing health and safety oversight during construction, resulting in inadequate attention to OHS, and public safety concerns, particularly at the County level. • There is a general lack of awareness for workers on health and safety issues, particularly concerning exposure to workplace safety hazards aspects in hazard-prone areas, etc. • Weak workers grievance redress mechanism which fails to address workers complains and concerns on occupational safety and health. • Limited budget allocation for operation and maintenance of infrastructure at the county/city/municipality levels presenting potential community health and safety risks.
OPPORTUNITIES <ul style="list-style-type: none"> • Strengthening of Country and County systems to manage OHS risks through policies developed by WSPs in the ESMS, and the program's ESHS manual 	RISKS <ul style="list-style-type: none"> • Systematic implementation of OHS provisions requires enhanced awareness in the key sector organizations and strengthened monitoring. • Improper management and limited enforcement of public and worker safety can result in physical injuries, including loss of life to the workers and public at and near construction sites.

Core Principle # 3: Public and Workers Safety	
<ul style="list-style-type: none"> • ESIA reports for sub-projects should cover public and workers health and safety requirements. • Partner with DOSHS to improve ESHS awareness and implementation/enforcement capacity through training and orientations of the counties/WSPs and contractors workers • Identify and update the standard bidding and contracts documents to spell out specific ESHS measures, including Contractor ESMP, worker’s Code of Conduct, and budget allocation during project preparation, for proper implementation of ESHS. • Inclusion of appropriate requirements in civil works contracts and preparation of the required instruments of EHS management plans such as Waste Management Plan, Traffic Management Plan, Air, and Noise Pollution, among others. • Have in place a functional worker’s grievance redress mechanism to handle workers conflicts including incorporating health and safety aspects. • Create awareness and sensitise contractors on legal prohibitions on use of forced and child labour and its implications. 	<ul style="list-style-type: none"> • Occurrence of health and safety incidents can lead to local unrests and negative reception of program interventions, stalling their implementation • Non-compliance by contractors on EHS issues, and inaction by counties to enforce contract ESHS clauses • Non-reporting of non-compliance, project-related accidents, and fatalities by the counties and WSPs <p>LEVEL OF RISK – SIGNIFICANT</p>

Core Principle # 4: Land Acquisition and Loss of access to natural resources
<p>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>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

<p>Core Principle # 4: Land Acquisition and Loss of access to natural resources</p> <ul style="list-style-type: none"> 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). 	
<p>Applicability –APPLICABLE</p> <ul style="list-style-type: none"> The program's proposed investments menu will not support land acquisition and involuntary resettlement, resulting in relocation and loss of livelihoods. Program infrastructure investments will be limited to public land. For this reason, displacement or relocation is not anticipated under this Program. However, in case of temporary displacements or temporary relocations affecting less than 200 persons, a Resettlement Action Plans (RAPs) will be prepared to ensure full and prompt compensation as provided for in the Constitution of Kenya, 2010. Guidelines on preparation of RAPs will be outlined in the ESHSM manual. Subprojects resulting in displacement or relocation affecting more than 200 people are excluded under this program. In the event that land acquisition is unavoidable, a 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. 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. 	
<p>STRENGTHS</p> <ul style="list-style-type: none"> The policy, legal and regulatory framework for land acquisition, resettlement and compensation in Kenya are spread through several provisions. The CoK, 2010 provides guidance on ownership, acquisition, conversion, payment of compensation and devolving public land management to counties. The Land Laws of 2012 outline provisions on the land management framework in Kenya. The Land Registration Act (2012) guides on registration and ownership while the Land Act (2012), provides for sustainable administration and management of land and land based resources, compulsory acquisition and compensation of occupants. The Land Act, 2012 also outlines procedures for sensitizing the project affected population and for consultation on implications and grievance procedures. The Act guarantees the right to fair and just compensation in case of relocation. The National Land Commission Act (2012) establishes the National Land Commission (NLC). The NLC monitors and oversees land use planning including the management of public land on behalf of the national and county governments. The NLC has officers in counties that can be consulted and utilized for land acquisition process. 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> The legal frameworks, in particular the Land Act 2012, do not define the practical meaning of "full, prompt and just" compensation. Legal frameworks do not explicitly stipulate provisions for livelihoods restoration as compensation is focused on land/assets replacement and relocation. Legal frameworks do not provide for compensation of assets built or extended on public land and their entitlement. They are subjected to evictions and demolitions. Weak capacities to ensure compliance to required national standards within the implementing agency and Counties. Lack of human capacity and financial resources at NLC (e.g., for logistics for NLC staff) to undertake the Commission's mandate, or to handle multiple land acquisition for different projects at the same time sometimes delays project implementation 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 by the counties during the project planning.

Core Principle # 4: Land Acquisition and Loss of access to natural resources	
<ul style="list-style-type: none"> • The counties and WSPs have robust process of considering the technical design of projects, conducting project feasibility studies, and a review by the land department through a pre-land examination and land use approval process to avoid or minimize land acquisition • The Community Land Act (2016) provides for community land ownership, rights, management and administration. As much as county governments hold in trust all unregistered community land, they are prohibited by law to transact on them. Under the law, in-kind compensation for unregistered community land is acceptable. • NLC has mapped out public and community land in line with their mandate to identify and keep records on behalf of national and county governments 	<ul style="list-style-type: none"> ▪ Land in some counties is un-adjudicated, and public land such as road reserves are unmarked, leading to encroachment. Conflicts arise during wayleave acquisition due to unclear land boundaries or delayed compensation, or due to weak collaboration and coordination between key departments and entities at the national and county levels, such as NLC, NEMA, Directorate of land and WSPs. ▪ The Community Land Act only permits transactions over registered community land by registered community members. In ASAL counties Community land remain unregistered, and communities are unwilling for their compensation monies to be held by the counties in trust on their behalf, thus, making it difficult to acquire and compensate for land in those counties. Further, the Act does not include the responsibility to oversee Community Land Management Committees ▪ The Act compensates for affected livelihoods; however, it is silent on the restoration/enhancement of livelihoods. ▪ The Act does not recognize any persons occupying land without the consent of the owner (e.g. squatters/encroachers), and does not compensate them for any improvements made on the land they unlawfully occupy. This is contrary to the PforR Directive which require that economic and social impacts caused by land acquisition or loss of access to natural resources, including those affecting people lacking full legal rights to resources they use or occupy are identified and they are compensated for. ▪ The Alternative Justice System (AJS) typologies envisioned in the Constitution are still under pilot by NLC and the AJS is not fully operational
OPPORTUNITIES <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, to be included in the ESHS manual and ESMS to be developed for the WSPs. The guidelines will guide temporary displacements and relocation, to support affected persons and avoid adverse impacts on their socio-economic status, assets and/or activities. • Strengthening Counties and WSPs capacities to enforce Land acquisition implementation measures, including development of ARAPs guidelines that aligns with national regulations and PforR core principles. • Establishment of appropriate and transparent consultation mechanisms and documentation in the regions that operate under a communal land system. • NLC with the support of World Bank developed the land access guidelines. The guidelines have however not been widely disseminated to government MDAs, and this could be done for their consideration and adoption as SOPs 	RISKS <ul style="list-style-type: none"> • Poor systematic implementation of land acquisition procedures as required by the WB PforR principles due to weaknesses of the local policies • Potential involuntary resettlement without compensation to informal settlers occupying public land illegally • Delay of land acquisition and compensation due to lack of capacity at the NLC or due to delayed release of money for compensation • Lack of financial resources within the Counties for land acquisition and livelihood restoration for the PAPs • Potential for disputes and litigation where guidelines and procedures for land acquisition and compensation are not adhered to <p>LEVEL OF RISK – Moderate</p>

Core Principle # 4: Land Acquisition and Loss of access to natural resources	
Core Principle # 5: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities	
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>Program to be supported:</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. 	
Applicability –APPLICABLE	
The program will be implemented in 19 Counties in Kenya, of which five – Turkana, Mandera, West Pokot, Samburu and Garissa - are VMG (IP) counties. Of the five, Turkana and Garissa are refugee hosting communities which will benefit from additional grant financing under the Window for Host communities and Refugees (WHR). There is a likelihood for land and wayleave acquisition under the project, and few temporary displacement may be expected. However, subprojects requiring	
STRENGTHS <ul style="list-style-type: none"> • The constitution of Kenya (CoK), 2010: (a) provides that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities; (b) provides against elimination of gender discrimination in law, customs and practices related to land and property in land; (c) elaborates certain rights to ensure greater certainty as to the application of the rights and fundamental freedoms to of vulnerable groups including children, youth, minorities and marginalized groups, older members of society and persons with disabilities. 	WEAKNESSES <ul style="list-style-type: none"> • There is no clear mechanism, guidelines, and procedures for targeting and inclusion of vulnerable and marginalised groups at the counties and WSPs. The lack of targeted interventions, especially on meaningful public participation prevents IPs and vulnerable groups from engaging in the development process and accessing culturally appropriate project benefits and opportunities. • Weak capacities to ensure compliance to required national standards on equitable access within the implementing agency and Counties • Weak multisectoral engagements at the counties results in lack of synergy among social protection departments (NCPWD, department of labour, department of gender) and meaningful collaboration during the development of plans and design of public infrastructure. • Weak capacity to disseminate information to promote social accountability, equity and grievance redress mechanism at the counties and WSPs.

<ul style="list-style-type: none"> • The County Government Act, 2020, gives provisions on the promotion of interest and rights of minorities, gender equity and representative citizen engagement in county planning. • The National Gender and Equality Commission (NGEC), established under the National Gender and Equality Act, 2011, facilitates the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities, and marginalized communities. • 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. • County systems have articulated the minimum requirements for equitable access and benefits for vulnerable groups including the disabled, women, and youth. • Affirmative Action redresses disadvantages suffered by individuals or groups because of past discrimination and marginalization. • Socio-economic empowerment initiatives targeting vulnerable groups currently under implementation in the counties. This includes, the social safety nets programs targeting women, youth, OVCs, the elderly, and persons with disabilities. • The County Government Act 2012 reinforces gender equity and respect for minority rights in county-level planning and development facilitation, resource mobilization, and resource allocation. 	<ul style="list-style-type: none"> • There is no monitoring and evaluation system to measure progress of equitable access. • Poor commitment to reduce inequity at the national and County levels • Weak systems to curb corruption in the County and country systems involved in equitable 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 gender mainstream strategies to facilitate inclusion of gender equity in Programs • Inadequate consultation and engagements with VMG/IP groups during the design of investments resulting in failure to incorporate provisions for universal access to all persons. This includes provision of ramps, disability friendly sanitation facilities, childcare areas in markets • Inadequate resourcing of the process of engagement of VMGs/IPs which in some cases is viewed to be expensive given their remote location
<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 (Ips, disabled, women, and youth) which is accompanied by adequate funding through other programs • Work with other PforR programs to develop standards guidelines and procedures on social inclusion to target the vulnerable groups and create awareness to the relevant stakeholders. The guidelines should include aspects on poverty, gender mainstreaming, child labor and PWD's targeting, to facilitate access to Program benefits. • Improved staff management and training on the citizen engagement, 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 promote 	<p>RISKS</p> <ul style="list-style-type: none"> • Poor meaningful consultations with the IPs/VMGs on the program to access program benefits • Introduction of barriers that hinder progress towards achieving the objective of social inclusion and increased equity brought about by elite capture, political interests, corruption, cultural, ethnic and gender disparities • Inability to target the inclusion of the vulnerable groups in consultation and delivery of program benefits and services to these groups will adversely affect the population especially the elderly, women, persons with disabilities. • The WASH project seeks to be inclusive, but lack of clear and systematic strategies to ensure inclusion of VMGs, PWDs, women, youth etc at county level and WSP will ensure that existing gaps are maintained. • Prevalence of the perception of stakeholders who feel that IPs are no longer the 'IPs of the past' and should not be accorded any special attention.

<p>the program’s consultation processes, social inclusion, and grievance redress mechanisms</p> <ul style="list-style-type: none"> • Support citizen engagement by promoting community driven infrastructure planning and development; requiring that investments selected in counties are based on citizens needs assessments; taking into considerations IPs and VMGs special needs, and mandating active citizen participation in the design and implementation of infrastructure investments under the program • The opportunity of the program implementers to empower and benefit VMGs in an inclusive manner. • Strengthen requirements and address impacts on sexual exploitation and abuse-sexual harassment (SEA-SH); special measures should be taken to promote confidential reporting of SEA/SH related complaints and equitable access to Program benefits. • The Department of Social Protection is enhancing the single registry to include all vulnerable community members. All development partners will access the database and identify the vulnerable groups to support. The registry is housed at the national level, and there are plans to cascade it to the county level once completed. • County gender sector working groups chaired by the County Commissioner and CECM Gender, and gender stakeholder forums, including government departments, NGOs, and CBOs, are a platform of collaboration and consultative mechanisms for gender, GBV, child protection, etc. • There is an opportunity to domesticate some of the applicable social policies and legislations at national levels to the counties. • There is opportunity to ensure that the public participation and continuous engagement processes are adequate and meaningful (free, prior, informed Consent FPIC) 	<ul style="list-style-type: none"> • High poverty levels hinder vulnerable persons from accessing improved water and sanitation <p>LEVEL OF RISK – MODERATE</p>
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Core Principle # 6: Social Conflict
Program E&S systems avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes
As relevant, the program considers conflict risks, including distributional equity and cultural sensitivities.
<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 rural areas. • ESSA findings indicate that there have been some conflicts between Counties in the past, mainly on issues regarding accessing benefits and sharing of resources (especially pertaining to water abstraction on shared rivers and watersheds). • 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.

Core Principle # 6: Social Conflict <ul style="list-style-type: none"> The principle is applicable due to social conflicts that may arise due to: (i) labour influx in the project areas such as gender-based violence, increased risk of illicit behaviour and crime, increased burden and competition for public resources, increased risk of communicable diseases; (ii) non-employment of locals for unskilled and semi-skilled jobs; (iii) exclusion of women and people from minority clans from employment opportunities or other project benefits; (iv) political interference in project matters, e.g. the location of subprojects, and, (v) potential conflict between refugees and host communities in the two participating refugee counties of Garissa and Mandera due to the implementation of the WHR subprojects 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 	
STRENGTHS <ul style="list-style-type: none"> Chap. 4 of the CoK, 2010, gives provisions for the Bill of Rights as the framework for social, economic, and cultural policies. It considers the rights and fundamental freedoms to preserve the dignity of individuals and communities and promote social justice and the realisation of the potential of all human beings. The CoK, 2010, also provides for economic and social rights including, (a) access to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; (b) to accessible and adequate housing, and to reasonable standards of sanitation; (c) to be free from hunger, and to have adequate food of acceptable quality; (d) to clean and safe water in adequate quantities; (e) to social security; and (f) to education The country and county systems clearly articulate the minimum requirements for equitable access and benefits for the persons with disability, women, and youth in its Programs to promote social inclusion and recognises the vulnerable groups. 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. The CG Act of 2012 mandates public participation and engagement in project identification and implementation that essentially has potential to reduce grievances arising from exclusion. There are GRMs within counties with varied levels of functionality that were established through other WB financed Operations. These have been applied to varying degrees of effectiveness in management of complaints and grievances at county level. At national level and within the MoWSI there is a well-defined consumer complaints handling system for the water sector with a detailed framework involving the WSPs, WWDAs, WASREB, the Water Tribunal and Water Action Groups (WAGs). The system provides for point of entry in logging complaints and levels for escalation in cases where complainants are dissatisfied with earlier resolutions provided. 	WEAKNESSES <ul style="list-style-type: none"> There is poor consultations and coordination of multisectoral agencies to reduce social conflict brought about by competition of resources between communities Weak mechanisms to identify risks and preventative measures of social conflicts early in project design and subprojects implementation at National and County levels due to factors such as weak uptake channels, inadequate documentation, follow up and resolution of grievances and complaints 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 <ul style="list-style-type: none"> Political interference, elite capture, and weak procurement processes resulting in conflict between the local leaders and community on the available opportunities and proposed investments. The effectiveness of the newly developed “Marshall Plan” which aims to allow refugees and host communities to live side-by-side and benefit from inclusion in national health, education and social protection systems and from humanitarian programs aimed at facilitating self-reliance for both communities, is yet to be .

<p>Core Principle # 6: Social Conflict</p> <ul style="list-style-type: none"> • There is a Refugee Protection Framework (RPF) which is adequate for the purpose of IDA WHR, according to the UNHCR Refugee Protection Assessment for Kenya, dated January 26, 2023, which is augmented by strong political support for protection of refugees (at the Presidency level), according to the same report. • WASREB is also mandated to monitor the performance of WSPs in resolving consumer complaints and to ensure that WSPs report annually to the public on their performance regarding resolution of complaints • The sector also has in place the Water Tribunal mandated to resolve water related disputes providing an essential form of administrative justice and a mechanism through which the right to clean and safe water can be protected and realized. The Tribunal provides a mechanism for faster and cheaper means of resolving water related disputes which will have the net effect of providing a means to greater access to justice. • The Water Act 2016 sets the requirement for Institution of the Water Resource Users Associations (WRUAs) to promote community participation in water resources management. The WRUAs, which are community-based associations for collective management of water resources and resolution of conflicts concerning the use of water resources. 	
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • Development of robust stakeholder management strategies within the systems as part of the current Public Participation programs to strengthen projects consultation processes • Strengthen County and institutionalize WSPs grievance redress mechanisms. The GRM should be sensitive to all reported concerns including issues related to labour influx and have a referral pathway in case of GBV cases. • Integrate contractual obligations in the legal agreements and contracts for contractors to take responsibilities of the social risks, with appropriate mechanisms for addressing compliance • To address other cross cutting social issues arising during project implementation such as GBV/SEA-SH. There is need to create awareness and mainstream HIV/AIDs, and GBV-SEAH in Program activities. • Incorporate training of social risks related to conflict to county/WSPs E&S specialists as part of the wider capacity building for the program • There is 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 conflict related risks brought during program design due to limited stakeholder engagement and disclosure of Program information. • Hiring of contractors with weak E&S capacity to manage social related risks • Unavailability of local labour in some counties leading to labor influx may lead to social conflicts with host population, and other social risks such as GBV, SEA/SH, etc • Pre-existence and recurrence of social conflicts or tensions in project locations • Political interference may exacerbate social conflicts • Certain areas such as in Pokot and Baringo already have water resource disputes between pastoralists and agricultural communities so the implementation of new projects seeking to increasing access to water without proper consideration of existing conflict may worsen the existing conflicts. • Infringing into natural habitats depended upon by IPs for purposes of establishing project investments without adequate consultation with IPs may lead to conflicts.

Core Principle # 6: Social Conflict	
	<ul style="list-style-type: none"> • Inadequate stakeholder engagement and information disclosure leading to potential social conflicts • Conflicts may precipitate from inequitable access to water resources, or where private interests override public interests in access to the resources • (ii) the conflict between refugees and host communities in Garissa and Turkana counties, especially if refugee host communities should dispute the design to provide them and the refugees program benefits (to be financed through the WHR) on a 50/50 basis or if there is inadequate land within the refugee camps for program activities. <p>LEVEL OF RISK – MODERATE</p>

6 CAPACITY ASSESSMENT FOR MANAGING PROGRAM ENVIRONMENTAL SOCIAL HEALTH AND SAFETY EFFECTS

37. This chapter provides a summary of the implementing agencies, their mandates, and core functions, and assesses the overall technical, financial, and human resource capacity in management of ESHS effects associated with Program activities. Based on the assessment, recommendation to address the capacity gaps are made for support through Technical Assistance under the IPF component.

6.1 Environment and Health Management Systems

6.1.1 National Environment Management Authority (NEMA)

38. The mandate of NEMA is to coordinate, supervise and manage all matters relating to the environment and to be the principal instrument of government in the implementation of all environmental policies relating to the environment. There is NEMA representation in all the 47 counties, with assigned County Directors of Environment (CDE) officers. The environmental impact assessment is guided by section 58 of EMCA 1999 (2015), EIA/EA, 2003, legal notice 31 and 32 of 2019. The EIA is categorized according to the risks; either low risks (Summary Project Report), medium risk (Comprehensive Project Report) or as high risks (Full EIA study report). The authority has capacity gaps, with approximately 300 officers required to supervise over a thousand sub-projects.

39. NEMA is charged with enforcing EMCA's provisions as well other subsidiary legislation that has been passed, that are relevant to this program. The subsidiary legislations include noise, water quality, waste management, controlled substances, biodiversity, wetland, river and seashore, and environmental impact assessment (EIA) regulations. Most of the provisions contained in 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 of Kenya. Thus, NEMA's main task is to review 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.

40. The EMCA has gaps in addressing social issues as mandated by law and in practice. NEMA has no role for SRM, including the review of social aspects of the ESIA, ESMP or RAP. In addition, it has no internal capacity to review social risks, with poor coordination and collaboration with the department of social security and protection under the Ministry of Labour, Social Protection (MLSP) to support in this role. In most cases where there are sub-projects with land acquisition and resettlement issues, the matters are handled by the National Land Commission (NLC). The new proposed Social Risk Management (SRM) unit under department of social security and protection will be very instrumental in management of social issues and NEMA will collaborate with the department during the ESIA process.

41. To enhance environmental monitoring, compliance and enforcement, the authority has digitized/automated the licencing process, promote self-compliance audit/reporting by the agencies and has a functional environmental incident management and response system. NEMA has also established an environmental incident management unit (equivalent to the grievance redress department) that reports to the deputy Director in charge of enforcement under the Director, Compliance, Enforcement, and Field Operation. An incident management framework exists and guides the system in place. The environment incident reporting system has defined uptake channels such as email address and incident hot line contacts with an elaborate database on incidents reported.

42. The main challenges of NEMA at the national and county levels are;

- i. Understaffing at County levels – most of the counties are represented by 1 County Director of Environment (CDE) and supported by one Environmental Compliance Officer and a few interns
- ii. Lack of financial resources, technical equipment, and transportation allocation for effective monitoring and supervision;
- iii. Poor coordination with other multi-agencies in charge of managing construction activities, environmental, health and safety, and social risks management,
- iv. Political interference which results to non-compliance on E&S process and management, where NEMA county office is not able to intervene

Recommendations to enhance ESHS Management

- i. Integrate NEMA early into the program planning process, including participating in a rigorous screening of environmental and social risks for the sub-projects.
- ii. Collaborate with NEMA to carry out capacity building of the program's implementation agencies, and contractors' workers on ESHMP implementation;
- iii. Representation of NEMA as member of the CPIT/ project committee, to be involved in monthly site meetings;
- iv. To enhance grievance management and transparency of the program, CPIT to share the complaints register with the authority for updating on NEMA incident database for linkage to issued licences of the sub-project and concurrence on remedial action taken.

6.1.2 Directorate of Occupational Safety and Health Services (DOSHS)

43. The Directorate of Occupational Safety and Health Services (DOSHS), under the State Department of Labour and skills Development, provides health and safety services to ensure the safety, health, and welfare of all workers in all workplaces. Other services provided by DOSHS include but not limited to registration of workplaces, registration of plant, registration of approved health and safety experts and institutions, workplace inspection & audits, examination & testing of plants, and accident investigation. 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.

44. 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.

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

46. The department is represented in 29 counties across the country, with the majority of the counties in the North-Eastern and Western region not represented. The officers at these counties are fairly qualified and possess the requisite skills necessary in health and safety. However, the offices are understaffed, with the capacity assessment findings revealing that most officers are not able to cover their regions as required, especially those who have been assigned multiple of large counties, with limited human and financial resources provided to them. This has made it difficult for the staff to enforce and monitor the health and safety requirements as per the OSHA and WIBA requirements, especially for infrastructure projects.

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

- i. Lack of presence in 19 Counties: currently, DOSHS has 29 county offices (out of 47 counties)¹⁴;
- ii. Functions of the Directorate are not devolved and remain as a function of the State Department for Labour nationally;
- iii. Inadequate staffing levels in counties where DOSHS is represented;
- iv. Lack of continuous professional development of its technical staff; and
- v. Inadequate allocation of financial resources and provision of other resources such as vehicles, office space, specialized surveillance equipment, vehicles, protective equipment
Lack of information management system to collect and collate OHS data and statistics for policy and decision making.

Recommendations to enhance Occupational Health and Safety Management

- i. The ESHSM manual shall include guidelines on OHS to be adopted by all implementing agencies and contractors for the program's activities. The NPCT will consult the DOSHS on the developed guidelines for concurrence.
- ii. Integrate DOSHS early into the program planning process, including participating in the screening of health and safety risks for the sub-projects.
- iii. Collaborate with DOSHS to carry out capacity building of the program's implementation agencies, and contractors' workers on OHS
- iv. Representation of DOSHS as member of the CPIT/ project committee, to be involved in monthly site meetings.

6.1.3 National Construction Authority (NCA)

48. The National Construction Authority (NCA) is a parastatal established is to regulate 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 K-WASH and will also have supervision roles as part of their mandate to manage quality assurance in the construction industry. The authority also conducts construction research taking cognisance of emerging trends in the industry and capacity building to construction workers and site supervisors such as training on sustainable use of plastics in urban development.

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

50. The main challenge facing NCA is lack of capacity across all the counties. The regional staff is not able to monitor all projects for compliance especially for vast counties, and projects that are in remote and rural areas. In the proposed Program, NCA will play a critical role in a) ensuring contractors and skilled construction workers engaged by the Counties/WSPs are registered with NCA, and b)

¹⁴ Out of the 19 Counties participating in K-WASH, only 7 counties namely Muranga, Kirinyaga, Narok, Kericho, Vihiga, and Kwale have DOSHS representatives

ensure quality construction standards and contract management. It is recommended that all projects under the program have to be approved by NCA before commencement of civil works.

6.2 Social Management Systems

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

51. The State Department for Social Protection and Senior Citizens Affairs is mandated with formulation, review and implementation of social security, employment, programmes for Persons with Disabilities, national human resource planning and development, national labour productivity, child labour and regulation management, facilitating and tracking employment creation, co-ordination of national employment, internship and volunteers for public service, community development, protection and advocacy of needs of Persons with Disabilities, social assistance programmes, workplace inspection and workman's compensation.

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

53. A Social Risk Management (SRM) unit has recently been established at the Directorate of Social Development, with support from the ongoing Bank funded FLLOCCA Program. The aim of the Unit is to oversee the management of social risks of infrastructure projects in the country. While the Unit is yet to achieve the policy and legislative backing in order to give it the teeth that it needs to do its work, it has nevertheless developed a checklist to guide the screening of social risks in projects.

54. The challenges faced by the department include lack of specific policy and legal frameworks for the management of social risks of infrastructure projects in the country and lack of legislative backing for the SRM Unit. In the absence of these, other legislations are considered. These include the Kenya National Social Protection Policy 2011, EMCA 2015, Children Act 2012, and CoK 2010. The application of these legislation to SRM is somewhat cumbersome. To this end, the SRM Unit has drafted the Kenya Social Risk and Impact Management Policy, under the FLLOCCA Program. In addition, a SRM curriculum has been developed, published, and is under implementation by the KSG which has a MoU with the University of Nairobi (UoN) for accreditation of the curriculum and for conducting the training. In addition, a multi-sector SRM committee has been established at the national level with membership from the NEMA, labor department, UoN, children department, NCPWD among others.

Recommendations to enhance Social Risk Management

- i. The ESHSM manual shall include guidelines on Social Risks management to be adopted by all implementing agencies and contractors for the program's activities, including the role of the SRM Unit. The NPCT will consult with the Social Development and Child Services directorates on the developed the guidelines for concurrence.
- ii. Integrate the Social Development and Child Services directorates early into the program planning process, including participating in the screening of social risks for the sub-projects.
- iii. Collaborate with Social Development and Child Services directorates to carry out capacity building of the program's implementation agencies, and contractors' workers on social risks.

- iv. Collaborate with Social Development and Child Services staff at the subcounty offices to supervise and monitor issues related to contractors' workers, child labour, GBV/SEA/SH, among other social risks for compliance.

6.2.2 National Land Commission (NLC)

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

56. The NLC has presence at all 47 counties in the country with coordination at the national level utilizing an online land resource management system. The Commission has provided channels for aggrieved persons to lay complaints at their offices or via email with common grievances related to compulsory acquisition and evictions. Once complaints are received at the Commission, mostly through the chairman's or CEO's offices, they are referred appropriately to the respective technical department. NEMA involves the NLC as a lead agency in the review of ESIA's to enhance sustainable land management and protection of critical habitats.

57. The Commission has the mandate to issue eviction orders where there is encroachment on public land. Counties have a responsibility to monitor land usage and may issue specific orders for encroachment cases where public land has been reserved for development. Under the ongoing Bank funded Kenya Climate Smart Agriculture Project, the Commission has developed guidelines on access to different land types for public investments, which can be used by K-WASH program in implementation of investments where applicable. The NLC can give guidance on approaches for integrated land use planning, inclusive stakeholder management, resilience building and reduce environmental degradation.

58. One key challenge facing the NLC is lack of adequate resources for its activities, especially in relation to offering support to projects. To this end, the Commission looks to the project implementers to provide them with financial and logistical support if the project requires the Commission's support. This leads to delays in accessing the Commission's services in time-bound projects, as has been witnessed in the Bank financed energy project, KOSAP.

Recommendations for the involvement of NLC in Program Activities

59. Compulsory land acquisition and involuntary resettlement are not envisaged in the Program as these are excluded from the program's investment menu. Therefore, it is recommended that the project should allocated some budget to enable NLC to support the program by offering guidance on:
- i. How to deal with compensation of any encroachers on public land that may be needed for project purposes, e.g. roadside vendors, including issuance of notice to vacate the land after full compensation;
 - ii. Requirements for accessing different land types for public investments;

Approaches for integrated land use planning, inclusive stakeholder management, resilience building and reduce environmental degradation.

6.2.3 National Commission on Administrative Justice (CAJ)

60. The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman is an independent commission established by the Commission on Administrative Justice Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya. The Commission has oversight on access to information to ensure there is effective and efficient service delivery by ensuring that maladministration is redressed, and citizens are timely and proactively provided with information by government institutions in line with the access to Information Act. The CAJ investigates maladministration for the public and private sectors.

61. The CAJ has a footprint in 19 Counties across Kenya with 6 regional offices and at 12 Huduma Centres for accessibility and decentralization of services. Traditionally, the CAJ investigates reported complaints. However, its role has expanded to include capacity building to counties. There exists synergy between the Commission and other government entities enhancing complementarities in provision of public services and avoiding the duplication of structures and systems. Some of the entities the CAJ closely engages with includes the National Human Rights Commission, National Gender Equality Commission, and other state departments.

62. Under the KDSP CAJ supported the establishment of complaints handling guidelines which K-WASH can leverage to facilitate the establishment of county level GRMs structures for the participating County and WSPs..

63. The challenges faced by CAJ include inadequate staff capacity to enable it offer support at both national and county levels, given that it has presence in only 19 counties.

Recommendations for the involvement of CAJ (the Ombudsman) in Program Activities

64. The CAJ should be brought board early, to lead the project in:
- i. Offering oversight to ensure that stakeholders can access project information in line with the access to Information Act, to enable them to make informed decisions that would help in the effective and efficient delivery of project services.
 - ii. Providing technical guidance for the establishment of County and WSP GRMs for the participating counties.
 - iii. Establishment of functional County GRM systems will ease the Commission's burden as it receives significant numbers of complaints from citizens in the counties

6.2.4 The National Gender and Equality Commission (NGEC)

65. The mandate of the Commission is to promote and ensure gender equality, principles of equality and non-discrimination for all persons in Kenya as provided for in the Constitution of Kenya 2010 with a focus on the following Special Interest Groups (SIGs): women, persons with disability, children, youth, older members of society, minority, and marginalised groups. The Commission offers oversight and surveillance of all matters concerning promoting gender equality and equity and coordinating gender mainstreaming in national development. Most recently, the Commission has engaged with the Ministry of Transport through training committees on gender mainstreaming to promote gender equality and inclusion of special interest groups. The Commission considers policies at the international level, related to its mandate. It is currently developing a National inclusive framework for Indigenous Persons (IPs).

66. The NGEC has been in existence for the last 10 years with about 100 staff. It has a national office and 5 regional offices: Garissa (Tana River, Garissa and Wajir), upper Eastern (Isiolo), Coast region (Kilifi, Mombasa), Nakuru and Kisumu. Every region has 4 staff who play a key role in addressing issues on equality and inclusion. Challenges the commission is faced with include: limited adherence to legal provisions, limited gender main-streaming such as inclusion of women in urban transport, limited preparation and delayed submission of progress reports by public institutions on

implementation of the key requirements and limited budget allocation for monitoring and support to MDA's.

67. There is an inter-agency collaboration with other MDA's that facilitate the management of gender and social aspects including the gender department, children's department, labor department, KNCHR, CAJ, NCPWD. There is also collaboration with the climate change unit which taps the Commission's expertise on gender inclusion and participation.

68. The Commission has a functional grievance redress mechanism system and structure. The Complaints department is responsible for handling grievances and the legal department supports in review of findings and recommendations. Common grievances logged include: discrimination of PWD during employment, child labor and GBV/SEA-SH issues.

69. Challenges the commission is faced with include: limited adherence to legal provisions, limited gender main-streaming such as inclusion of women in project, limited preparation and delayed submission of progress reports by public institutions to the Commission on implementation of the key requirements, and limited budget allocation and staff capacity for monitoring and support to MDA's, including project implementing agencies.

Recommendations for the involvement of NGEK in Program Activities

70. The project should allocate some funds to enable it bring on board and collaborate with NGEK to enhance awareness on gender equality and inclusion into the program and to undertake the following roles:

- i. Offer oversight in ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya in line with the Constitution of Kenya, 2010, are promoted by the project, with a focus on the inclusion of women, persons with disability, children, youth, older members of society, minority groups and VMGs.
- ii. Offering support in handling grievances related to discrimination of PWD, women and youth from project employment opportunities, as well as grievances related to child labor and SEA-SH issues.
- iii. Offer training to the implementing agencies on gender mainstreaming in the water and sanitation infrastructure investments through; a) more targeted capacity building on the legal requirements to various stakeholders to promote programs that are inclusive and gender responsive; b) encourage Counties and WSPs to document gender mainstreaming initiatives; and c) encourage gender consideration in all program committees at the national and county levels.

6.3 Program Implementing Agencies

6.3.1 Ministry of Water, Sanitation and Irrigation

71. The MoWSI will be the lead agency responsible for implementation and coordination of the K-WASH Program. At national level, the MoWSI will be supported by WSTF and WASREB, while at the county level, the 19 participating county governments and their respective WSPs have been assigned specific roles for the delivery of the Program. In addition, the MoWSI will also work closely with the CoG at the National level to provide technical coordination, capacity building and backstopping for the 19 participating County governments for effective management of the program. The mandate of the MoWSI entails: i) development of sector legislation, policy, and strategies; ii) sector coordination, guidance, monitoring and evaluation and iii) overall sector investments planning and resource mobilisation.

72. In terms of management of environmental and social risks, the MoWSI will be relying on the support from WSTF to ensure compliance with E&S framework requirements, because the ministry does not have an E&S unit. The WSTF has seconded a social specialist as part of the PCU (although it is not clear at this stage if this officer will be the substantive social specialist for the entire duration of the Program) and is expected to have another officer seconded as Environmental specialist (there was no environment specialist on the client side during the preparation of this ESSA). In addition, MoWSI will also be using the services of other MDAs such as NEMA, DOSHS CAJ, NGEC, and others for supervision and monitoring of EHS risks. MoWSI will also play a key role in reporting to the WB on safeguards implementation through quarterly reports, which will incorporate grievances received for the program.

73. Although the MoWSI has demonstrated some ability in coordinating the preparation, implementation, and monitoring of critical E&S risk management frameworks and site-specific plans on the closed and ongoing WB-financed projects, MoWSI has however been unable to retain much of these experiences as most projects are supervised by short term consultants, project specific contracted E&S specialists, or seconded specialist from sister agencies like WSTF, NEMA, DOSHS, etc. The ministry is thus left with no institutional E&S memory, only for the cycle to start afresh when a new project is initiated. On this basis and given its role of coordinating and guiding sector operations, the MoWSI has limited overall capacity to manage ESHS risks and impacts associated with interventions undertaken within the sector. The challenges are further amplified by the fact that there is no specific entity within the MoWSI that is responsible for the sector-wide management of ESHS effects. The sector also lacks a comprehensive framework/policy for managing ESHS risks and impacts concerning the development and maintenance of public water and sewerage works across the diverse institutions.

74. The sector has however developed guidelines on consumer engagement and complaints resolution, draft regulations on compensation for land/wayleaves acquired to develop and maintain national public water works, and a Workplace Policy on HIV/AIDS. These instruments focus on some (but not all) ESHS issues relevant to the sector and as identified among the challenges affecting service delivery. They include poor gender mainstreaming in water decision-making; limited participation of local communities in water resources management; exclusion of vulnerable groups (marginalized, the youth, and persons with disability); challenges in resolving water rights disputes and consumer complaints; encroachment of water catchment areas risking the sustainability of water resources, and low awareness levels on the importance of conserving water leading to wastage and straining provision of the services by WSPs, among others. The MoWSI's Workplace policy on HIV/AIDs does not address other important community health and safety issues relevant to the construction and maintenance of national public water works, such as impacts related to the influx of workers into the project areas (which usually are linked SEA-H risks). There is therefore a need for a broader ESHS risk management framework and stand-alone E&S unit crucial in steering the preparation, implementation, and monitoring of the ESHS frameworks in the sector.

75. These challenges notwithstanding, the MoWSI has made notable progress in the following areas:

- **Development of a well-defined consumer complaints handling system** with a detailed framework involving the WSPs, WWDAs, WASREB, the Water Tribunal and Water Action Groups (WAGs). The WSPs are the complainant's first entry point for filing concerns, while the Water Tribunal registers any appeals presented if the complainant feels aggrieved by WASREB's decision. The complaints handling framework encompasses WAG's Consumer Handling Procedures, which holds WSPs and WWDAs accountable toward the consumers. The WAG's procedures consist of the following steps. (i) Consumer complaints reported to WSP. (ii) Consumer complaints forwarded to WAGs for follow-up with WSP/WWDAs. (iii) WAGs forwards WSP/WWDA-related consumer complaints to WASREB after which any unresolved complaints are escalated to the Water Tribunal. Annually, WSPs are expected to report to WASREB on their consumer engagement activities via the Water Regulation Information

System (WARIS). This includes reports detailing consumer complaints received and resolved by area, service, complaint type, and resolution status. WASREB is required to monitor the performance of WSPs and WWDAs in resolving consumer complaints and report annually to the public on the complaints resolution performance of WSPs and WWDAs.

- **Establishment of a Water Tribunal which is a specialist judicial body** with a mandate of deciding on water-related disputes and providing an essential form of administrative justice and a mechanism through which the right to clean and safe water can be protected and realized. The Water Tribunal Rules 2019, developed in exercising the powers conferred by the Water Act, govern the Tribunal's procedures. The Tribunal provides a mechanism for faster and cheaper means of resolving water related disputes which will have the net effect of providing a means to greater access to justice. The lower fees, as compared to the court system, prescribed for filing an appeal will ensure that justice is accessible even to those who cannot otherwise afford filing fees and other costs within the court system. The simplified procedure proposed in the Water Tribunal Rules seeks to avoid legal technicalities and formality, fostering greater access to justice for majority citizens. The Tribunal has members with expertise and specialized knowledge on the subject matter and the possibility of granting intervener status to parties that seek to enforce the right to clean and safe water for hearings. Therefore, it is better placed to analyse facts pertinent to disputes and provide cheaper and faster access to justice for water-related disputes. A person aggrieved by a decision of the Tribunal may appeal to the Land and Environmental Court, established under article 162(2) of the Constitution, on an issue of law. Additionally, the fact that the Tribunal's procedure is simplified and less technical means that a good number of members of the public will be able to follow proceedings easily without feeling alienated from proceedings. The Water Tribunal has a net positive social impact of creating an equitable society where justice is accessible to a vast majority of the society.
- **Institution of the Water Resource Users Associations (WRUAs)** through the Water Act 2016 to promote community participation in water resources management. The Act provides for establishment of WRUAs, which are community-based associations for collective management of water resources and resolution of conflicts concerning the use of water resources. The National Policy 2021 notes that the community and stakeholders' facilitation, involvement, and engagement in managing water resources has not been fully realized. Additionally, the mechanisms for linking the programs of work and activities of WRUAs with those of county governments are not yet in place.
- **The Kenya Water Institute is established under the Kenya Water Institute Act 2001** to offer competency-based training, research, innovation, consultancy, and outreach Services in the water, sanitation, and irrigation Sector for sustainable development and to enhance the sector's capacity. The KEWI training curriculum centres on the water works' installation, operations and maintenance, GIS aspects, non-revenue water management, and water governance. The institute does not however offer trainings on management of ESHS aspects associated with water sector interventions.

Recommendations

- i. PCU at MoWSI to appoint at least one competent Environmental specialist and one Social specialist to manage and coordinate EHS activities for the program;
- ii. MoWSI to constitute a steering committee with representation from the key water sector institutions and resourced with competent E&S staff, to steer the development of ESHS risk management processes and guidelines within the Water sector. The committee should undertake an "As Is" ESHS system audit at the MoWSI and entire water sector to identify potential systems gaps and management measures to address the diverse ESHS risks affecting the water and sanitation sector and prepare a sector-wide framework/guidelines;

- iii. Develop strategies to strengthen the capacity of technical staff in all water and sanitation sector institutions on application of the sector wide framework for managing ESHS risks and impacts;
- iv. Evaluate the existing GRM systems within MoWSI to ensure they can receive complaints from the program activities;
- v. Expand the mandate of the Kenya Water Institute (KEWI) to include trainings on ESHS risk management, thereby making it a responsive center for capacity building for the water sector institutions.

6.3.2 County Governments

76. 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.

77. The main role of County Governments in 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
 - iii. Undertake monitoring as per the EHSMP during project investment implementation
 - iv. Prepare Annual Environmental Audit Reports for submission to NEMA

78. Although the County Governments are expected to develop frameworks for the E&S risk management based on the national systems, most of them have not done that and still use the national systems. However, a number of counties have enacted their own frameworks to facilitate management of E&S risks such as Kericho, that has developed the County Environment Management Act, 2021, Forest Conservation & Management Act 2021, Climate Change Act, 2021, Occupational Health and Safety Act 2007; Public Health Act Cap 242; and Water Act, 2016. Other counties including Kwale, Mandera and Baringo have also developed some E&S frameworks. However, most of these frameworks have not been institutionalized or formalized for use in county management of E&S risks.

79. The Water and Health Departments within the Counties will be the implementing agencies, especially in undertaking infrastructure projects under RA 1 and 2. These departments have undertaken small projects for the counties, such as expanding household water and sewer connections on behalf of the WSPs, mainly financed by the County governments. The assessments indicated that most of these projects were undertaken without proper due diligence and required assessments.

6.3.2.1 Environment Management systems

Organization and program structure on environmental management

80. The County governments are responsible for monitoring and implementation of Environmental, Health, and Social Management Plans (ESMP) for projects within their County. None of the Counties visited have prepared and operationalized an environmental and social policy.

81. 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. The CECs are composed of County departments of Environment, Water, Transport and Infrastructure, Urban Development, Housing, Natural Resources, Lands, Agriculture, Health, Education, Gender, and Social Service, among others. Most of the CECs are however not operational and have not undergone training and capacity building on how to manage environmental issues in the counties. Social issues are mainly handled by the Public Health, Social and Child Services department.

82. Through other Bank-funded PforR programs (KUSP, KDSP and FFLoCA), majority of the counties nominated the environmental and social safeguards focal points to support the management of environmental and social risks and impacts for the subprojects implemented by the Counties. The focal points have undergone training carried out by the respective Project Implementation Units (PIUs), the World Bank, 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.

83. The counties collaborate with NEMA in ensuring compliance of the contractors as per the ESMP for their projects. However, the personnel are still not enough to support the management of EHS risks, ensure compliance, and provide the required support to new and on-going projects being implemented by the counties.

Environment management Capacity and Performance Assessment

84. Capacity building done through WB financed KDSP and KUSP PforR programs have raised the awareness to the counties on the need to carry out EIA for most of the projects undertaken by the counties. However, this is based on the risks and intervention of NEMA to comply with the national systems. However, there are still some instances where the counties 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. Most of 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. The assessment also noted that the bidding/contract documents do not include ESHS clauses thus it is impossible to enforce compliance during implementation.

Public and Worker Safety

85. 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 collaborate and rely on the National Construction Authority (NCA) and DOSHS to oversee the monitoring and supervision of OHS for their projects.

86. Experience from ongoing PforR projects has shown non-compliance in the areas of occupational health and safety for the workers on many sites across the counties. The workers lacked adequate 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.

87. Due to limited human and financial resources, monitoring and enforcement by DOSHS is mostly missing across the counties, with many active construction sites not being registered or visited by an officer as required by the national framework on safety and health.

6.3.2.2 Social Capacity and Assessment

88. As is the case at the national level, the county systems for SRM are also not well developed. The Counties have Social Welfare departments, but social risk management is usually fragmented across individual ministries/departments such as public health, child services, Gender, and public participation. In addition, there is poor coordination of activities across the ministries/departments in regard to social risks management. In general, the management of social risks for county projects is poorly addressed, with the few social staff available scattered in different

administrative units in the County government having no clear direction on the roles and responsibilities they need to play in infrastructure projects. The understanding of social safeguards and management is also weak, and not well understood in comparison to the needs of the PforR principles. In addition, the country - including national and county governments – has no system in the form of policies, legislation and regulations for managing risks associated with sexual exploitation and abuse. There is a Sexual Offences Act but this is not specific to SEA/SH as required for Bank financed projects, especially the need for survivor centeredness while dealing with SEA/SH cases. In addition, the HR policies of most government entities have SH provisions, but these apply only agency staff (i.e. SH between government agency employees) but the requirement is not extended to the staff of government contractors/consultants.

Land Acquisition and Involuntary Resettlement

89. 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; and 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 to Project Affected Persons (PAPs). From discussions with the county officials from the county governments and the WSPs, it was clear that full replacement cost in the case of voluntary resettlement is not clearly understood, and in some instances, market value may not be the deciding factor, especially in instances where landowners may not understand the market valuation process or may be in dire need of money.

Social Conflicts and Management

90. Conflict between county governments and communities, and among communities: The assessment findings indicate that there have been some conflicts between communities and Counties in the past, mainly on issues regarding accessing benefits and sharing of resources (especially pertaining to water abstraction on shared rivers and watersheds), and usage of water resources. Other conflicts are as a result of poor site selection, equal distribution of resources, political interference, use of local labour, etc. Most of the conflicts was reported in the arid and semi-arid counties such as Makueni, Tana River, Kitui, West Pokot, and Turkana. The County leaderships usually engaged the communities through their leaders to resolve the contentious issues amicably or suspended the projects altogether if no solution is found. In the Rift Valley (Bomet, Nandi and Kericho), the counties reported conflicts related to the sharing of water resources benefits in the cases where water resource is in one county but serving also serving a neighbouring county. In such cases, the counties operate on the basis of MoUs for sharing the resources, but the MoUs are not always honoured. Such counties called for the development of substantive laws to guide the sharing of water resource benefits. Other conflicts related to grievances by upstream communities who feel they host the water sources but only the people downstream benefit from the development of such water sources. In addition to conflicts between communities and county governments, social conflicts are also prevalent, especially among communities in the ASAL areas, due competition for scarce resources such as water and pasture. Intercommunity conflicts are especially rampant when the country is experiencing drought situation. There is a likelihood that decisions on the location of subprojects may exacerbate the two types of conflicts.

2. To manage the above potential conflicts, the implementing agency is expected to undertake an open and transparent consultations and information disclosure process based on prior stakeholder identification and analysis, as well as enshrine the equitable distribution of project benefits among the various subgroups and clans within each participating county.

Vulnerable and Marginalized Groups

91. A total of five participating counties, West Pokot, Turkana, Samburu, Garissa and Mandera, Overwhelming VMG counties. The WASH project is designed purely for the benefit of these and circumstances requiring the FPIC of the VMGs as outlined in ESS7 are not anticipated under this project. However, subprojects with potential adverse impacts on VMGs or that require the taking of their lands which are traditional ownership under customary use or occupation, will be excluded from the project. As for ESS5, the Kenya government has adopted in-kind compensation in consultation with VMGs and the respective county governments for the Bank financed energy project, KOSAP, which is being implemented in these and other VMG counties. It is expected that the same approach of free prior and informed consultations with VMGs will be applied to this project to ensure decisions on the location of projects, and access to project benefits have considered the views of the VMGs and that VMGs agree on the nature of in-kind compensation where applicable.

92. As part of the devolution process, the Counties have a formalized mechanism for public participation in the budget-making, policy preparation, and projects identification and prioritization processes. The Counties also indicated that they consider the women, youth, and disabled persons as a category of vulnerable and marginalized groups and have initiated special targeted inclusion opportunities in employment and businesses. However, there was no indication that VMGs (IPs) who may lack political representation and economic power within the Counties are specifically targeted to enable them to participate or access the social and economic benefits of projects. Most of the counties do not have clear mechanism, guidelines, and procedures for targeting and inclusion of VMGs. The lack of targeted interventions, especially on meaningful public participation prevents VMGs from engaging deep in the development process and accessing culturally appropriate project benefits and opportunities.

Grievance Redress Mechanisms

93. Previous PforR projects established GRMs within the county structures. FFLoCA is also re-establishing these GRMs to make them functional from where the previous PforR projects left. The existing GRM systems at the county levels are however not fully formalized and seems to have been abandoned after KDSP/KUSP programs closed, and therefore have notable gaps in structure, functionality, logging, documentation, and weak systems on operationalization across projects undertaken by the counties.

Challenges in relation to E&S capacities

94. The main challenges for the counties on environment, health and social risk management include, but not limited to the following:

- i. Lack of, or inadequate allocation of resources (human, financial, vehicles, equipment, etc) to the departments responsible for environment and social management enable them to properly supervise and monitor EHS risks.
- ii. Poor organizational structures with fragmented staff across different ministries/departments with no clear roles and responsibilities on managing EHS risks,
- iii. Lack of clearly defined and sustainable structures for E&S management at the national and the county levels, especially in terms of qualified E&S staff, reporting lines, and dedicated budget lines for E&S activities. While some E&S staff have been trained under KDSP/KUSP, FFLoCA and othe Bank financed projects at the national and county levels, these remain associated with the respective projects and are yet to be substantively appointed and deployed for E&S management in all county level infrastructure projects regardless of financing sources, or, for E&S management in all the implementing agency infrastructure projects, at the national level.
- iv. At both the national and county levels, political expediency is sometimes prioritized at the expense of ESHS risks management. In this regard, infrastructure projects are implemented without due to consideration to their ESHS risks and impacts, or

sustainability. Examples include the LAPSET project whose implementation has stalled due to social risks which were not mitigated prior to the start of construction, and the Bank financed KOSAP project whose implementation has been greatly delayed due to safeguard issues.

- v. Inadequate commitment by the counties to supervise and monitor the actual implementation of the environmental safeguards.
- vi. Limited stakeholder identification and mapping, poor and meaningful public consultations, especially incorporating E&S as part of consultations and special considerations of VMGs
- vii. Poor quality of ESIs developed for projects missing key components of social and OHS
- viii. Poor supervision and monitoring of ESIs/ESMPs by relevant agencies and consultants

Recommendations to enhance ESHS Risk Management for implementing agencies

95. To sustainably build the capacity for ESHS risks and impacts management by the counties (and the MoWSI), the following are recommended for implementation under the K-WASH IPF component. As asserted by Water CECMs from the various counties (including the Kericho, Kirinyaga, Bomet, Nandi and Kiuti CECMs), the below recommendations are long overdue for their counties. The Water CECMs, believe that implementing the recommendations will ensure the E&S sustainability of not only the K-WASH Program, but they will also MoWSI and the counties in a trajectory of social and environmental sustainability of the infrastructure projects that they implement, regardless of financing sources for such projects.

- i. **Create a dedicated and adequately resourced countywide ESHS risk management unit, potentially in the office of the Governor (in the case of the counties), in the same way as the Climate Action Unit.** Counties (and the MoWSI) should create an ESHS unit to manage ESHS risks and impacts in all infrastructure projects, including PforR programs. The Unit should be adequately resourced, by ensuring it has adequate and qualified ESHS staff, and a dedicated budget line.
 - a. **In terms of staffing,** the counties and MoWSI should endeavour to substantively appoint and deploy the staff who have been trained as E&S specialists under other PforR programs to manage the E&S aspects of the K-WASH program. In case such staff are not available in the counties or at the MoWSI, or where there is need for additional staff, counties (and the MoWSI) should either employ or get seconded staff to be substantively appointed and adequately trained on all aspects of ESHS risks and impacts management in all infrastructure projects being implemented by the county (or the ministry), regardless of project financing sources.
 - b. **In terms of service delivery, the Unit should be regarded as a support resource for the county:** At the county level, the ESHS risk management Unit should be treated as a support/service Unit whose staff should be available to support E&S risk management in other county departments infrastructure projects and the WSPs, which are county governments entities. The Unit will inter alia, ensure that environmental and social issues are mainstreamed in operations of all county departments, and in procurement processes
 - c. **At the county level, establish a dedicated budget line for ESHS risk management for all county infrastructure projects and require all county departments responsible for infrastructure implementation to contribute a percentage of their infrastructure budget to this budget line.** To achieve sustainable social and environmental risk management in infrastructure projects, ensure subproject budgets include enough budget for implementation of E&S risk and impacts management activities, including stakeholder consultations, grievances management and monitoring of E&S activities of the K-WASH and other

infrastructure projects. This money should be held in a dedicated budget line, to be managed by the office/department in which the ESHS Unit is housed.

- ii. **Counties to Develop Environmental, Social, Health and Safety Management Systems (ESHSMS)** to be adopted as part of the county ESHS policies and procedures, aligning these to the national and international ESHS management laws and requirements. For K-WASH, the MoWSI will prepare these as part of the POM. The ESHSMS should clearly articulate the principles, procedures and processes for stakeholder engagement, land acquisition and compensation, labour management, VMGs targeting and inclusion, and, SEA/SH preventions and response, grievance management, etc.
- iii. **Ensure early onboarding of key and relevant implementation support agencies.** Integrate NEMA, DOSHS, NGECC, the SRM, CAJ, Unit etc. early into the program planning process, including participating in the screening of ESHS risks for the sub-projects, and necessary, collaborate with them at all times during implementation, to carry out capacity building through training to the program's implementation agencies, and contractors' workers on ESHS, public participation, and GRM.

6.3.3 Water Service Providers (WSPs)

96. As entities established by the county governments, the WSPs are responsible for provision of water services within the areas specified in their respective license; maintenance of water service infrastructures, and development of county assets for water service provision. As owners of County WSPs, the counties facilitate good governance, efficient and effective operations of county WSPs in line with water service regulations and standards set by WASREB.

97. As per WASREB regulations and service provision agreement signed with the WWDA, WSPs are mandated to provide safe water to rural communities. WSPs also work closely with the CG department of public health to ensure provision of water that is safe for household consumption. The WSPs do also undertake conservation of water catchment areas in their specific areas of operation in line with their strategic plans.

98. Most of the consulted WSPs do not have specific frameworks for managing E&S risks. As such, they apply national government systems especially in conducting EIA for projects financed by WSTF and other financiers and in this case, private EIA experts are engaged for this purpose. For projects financed by the county governments, screening and subsequently development of ESIA/ESMPs is not usually done. On land acquisition matters, the WSPs mostly rely on the NLC for support.

99. Due to the size of the WSPs in terms of number of staff and financial capacity, majority of the WSPs do not have E&S specialists or departments for in-house capacity for E&S risk management. Stakeholder engagement is also limited in WSPs since most of the projects they undertake are small in scope; mainly household water supply networks, small in-takes and household sewer connections, requiring minimal public consultations. None of the WSPs indicated having Environmental, Social, Health and Safety Management Systems (ESHSMS) in place in their organization. This applies to formal grievance redress mechanisms, which lacks in most of the WSPs.

Recommendations

- a. Strengthen the relationship between the CGs and WSPs especially on matters E&S risk management to assist the WSPs access the expertise and support of the E&S staff within the counties, especially staff of the proposed ESHS Unit.
- b. All WSPs to develop Environmental, Social, Health and Safety Management Systems (ESHSMS) to be adopted as part of the company policies and procedures, by adapting the ESHSMS to be developed by MoWSI under K-WASH.
- c. Review and strengthen the GRMs existing within WSPs at county level for application in grievance redress. The WSPs should also establish their own complaints handling mechanisms within themselves for ease of solving grievances directly from their customers/clients

6.3.4 Water Service Trust Fund (WSTF)

100. The **Water Sector Trust Fund** (WSTF or the Fund) is a Kenyan State Corporation under the Ministry of Water, Sanitation and Irrigation and established under the Water Act, 2016, with the mandate to provide conditional and unconditional grants to the Counties and to assist in financing the development of and management of water and sanitation services in the marginalised and underserved areas.

101. In the Water Act, 2016, the mandate of the the Fund is to provide conditional and unconditional grants to Counties to assist in financing the development of and management of water services in the marginalized and underserved areas including:

- Community level initiatives for the sustainable management of water resources.
- Development of water services in rural areas considered not to be commercially viable for provision of water services by licensees.
- Development of water services in the under-served poor urban areas.
- Research activities in the area of water resource management and water services, sewerage and sanitation.

102. As part of the devolution strategy, WSTF has engaged county-based resident monitors (CRMs), in all the counties in which WSTF has active investments, with the objective of enhancing efficiency and effectiveness in the project implementation cycle, and sustainability of the investments. The CRMs contracted by the WSTF work closely together with the county governments and the implementing partners with the following key roles (among others):

- Assisting the county/implementing partners with data collection (e.g. water point mapping using the method and tools approved by WASREB and WSTF)
- The identification of priority WSS interventions (rural, urban and catchment protection)
- Acting as the liaison persons between the county, the implementing partners and WSTF
- Monitoring and providing support to the WSTF-funded projects
- Identifying, together with the local stakeholders, capacity gaps and ensuring that the required expertise is made available by the WSTF for support.

103. In terms of E&S risk management, WSTF follows up to ensure that the WSPs comply with requirements of the national systems, such as acquisition of abstraction license from WRA, and NEMA licenses, especially for all WSTF and projects funded by other financiers. WSTF has a social specialist (who is supporting the K-WASH program preparation), but no environmentalist has been appointed for the role. Their mandate is to ensure compliance with E&S requirements for all WSTF and other financiers' supported water projects. Given its mandate of financing water projects implemented by counties and WSPs, and with the support of Environmental and Social focal points at the counties, WSTF is well positioned to ensure effective management of E&S risks associated with the water sector interventions by the county governments and WSPs.

Recommendations:

- i. Strengthen the capacity of WSTF E&S staff by hiring an Environmentalist
- ii. Include ESHS provisions in the WSTF financing agreements with County governments and WSPs.
- iii. Provision of financial resources to WSTF E&S team to enhance E&S safeguards supervision and monitoring of program investments

6.3.5 Water Services Regulatory Board

104. The WASREB is a regulatory state corporation established by the Section 70 (1) of the Water Act 2016 with the main objective to protect the interests and rights of consumers in the provision of water services, while ensuring other stakeholder's interests are also safeguarded. Accordingly, WASREB sets standards and enforces regulations that guide the sector in not only ensuring that consumers are protected and have access to efficient, affordable, and sustainable services, but also, provide for financial sustainability of WSPs, by allowing financing of operations, capital cost recovery and a return on capital that sustains services through ongoing investments.

105. The Mandate of WASREB as provided for under Section 72 of the Water Act 2016, is to approve tariffs, monitor and enforce water services standards and issue licenses to WSP. Accordingly, the core functions of WASREB under the Act include:

- Determine and prescribe national standards for the provision of water services and asset development for water services providers.
- Evaluate and recommend water and sewerage tariffs to the county water services providers and approve the imposition of such tariffs in line with consumer protection standards.
- Set license conditions and accredit water services providers.
- Monitor and regulate licensees and enforce license conditions.
- Develop a model memorandum and articles of association to be used by all water companies applying to be licensed by the regulatory board to operate as water services providers.
- Monitor compliance with standards including the design, construction, operation and maintenance of facilities for the provision of water services by the water works development bodies and the water services providers.
- Advise the Cabinet Secretary on the nature, extent and conditions of financial support to be accorded to water services providers for providing water services.
- Monitor progress in the implementation of the water strategy and make appropriate recommendation.
- Make regulations on water services and asset development which shall include business, investment and financing plans in order to ensure efficient and effective water services and progressive realization of the right to water services.
- Advise the cabinet secretary on any matter in connection with water services.
- Make recommendations on how to provide basic water services to marginalized areas.

106. With regard to management of E&S risks and in line with its mandate, the WASREB has made progress in the following areas:

- Development of consumer engagement guidelines to facilitate the consultation process between consumers and sector institutions.
- WASREB ensures quality standards in design, construction, and operations by licensing qualified WSPs, water resources consultants, and engineers. The Water Act 2016 mandates WASREB to set license conditions and accredit WSPs. As a tool for regulating the sector, the license sets out the conditions and targets of performance to be observed by WSPs to ensure quality in service provision.

Challenges

107. Challenges however remain in areas such as in ensuring inclusivity in access to water services as an affirmative action for VMGs and other vulnerable groups, including children, marginalized communities, youth, and persons with disability, among others, has not been fully implemented. The National Policy 2021 underlines the limited consideration of investment needs for the marginalized and under-served urban and rural areas. In line with the Water Services Regulations 2021, WASREB is required to consider factors such as the affordability of the proposed tariff and proposals on cushioning consumers who, on account of poverty, cannot afford the proposed tariff in approving regular tariffs. This is mainly due to the lack of an integrated investment plan for water supply

infrastructure which limits resource mobilization and precludes other consumers from participating and accessing the accruing benefits.

Recommendations:

- i. WASREB to develop sector wide ESHSM provisions in the licensing requirements of WSPs.
- ii. WASREB should incorporate ESHS compliance monitoring during routine supervision of WSP to enforce license conditions
- iii. Strengthen the capacity of WASREB technical staff to include E&S specialists as part of Monitoring and Inspectorate team for managing ESHS risks and impacts

7 MEASURES TO STRENGTHEN SYSTEM AND INSTITUTIONAL PERFORMANCE

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

7.1 ESSA Findings

109. The ESSA established that:

- At the national level, Kenya has well developed and robust legislation, regulations, and systems to manage environmental, health, and safety risks, consistent with the PforR six Core Principles on ESHS management.
- There is however no equivalent legislation or systems to manage distinctly social risks, at the county or national 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 counties have benefited significantly in terms of capacity from implementation of other PforR programs such as FLoCa, KDSP, SEQUIP and KUSP. The capacity building done through these programs has raised awareness on the need to manage E&S risks across the counties. However, there is still low-level commitment towards environmental and social risks management, as exemplified by inadequate resourcing (budgets and staff) for E&S risk management at the national and county levels, and overall low levels of compliance;
- The counties have established environment, climate change and natural resource management departments which are tasked to drive the county's environmental management agenda. The department functions are however not well structured and coordinated with those of other departments, and in practice, they do not have oversight roles over other departments on environmental issues. On the other hand, counties rely on the Social Development Department (within the county) of the Statement of LSP&SCAs, but the Social Development Officers (SDOs) of these departments are not adequately conversant with the social risks and impacts of infrastructure projects;
- The WSPs do not have Environment and Social specialists within the organizations to manage E&S risks;
- Limited domestication of national level ES frameworks impeding application of risk mitigation measures at both the WSPs and County levels;
- There is weak and ineffective grievance management system impeding timely resolution of complaints and grievances;
- Limited consideration for cultural appropriateness and inclusion of VMGs and other marginalized groups in participation and accessing benefits accruing from county projects;
- Limited and/or inadequate stakeholder engagement potentially leading to increased complaints and grievances (especially on E&S risks), and
- Limited monitoring and reporting on ES risk management potentially impeding identification and implementation of corrective measures.

7.2 ESSA Recommendations

110. The counties should capitalize on gains made from other PforR programs, especially the E&S systems set up under KDSP, KUSP, and by FLoCa in managing the environmental and social safeguards of the K-WASH program. KDSP and KUSP PforR programs were meant to build safeguards capacity at the county levels, where environmental and social focal persons were trained to implement these programs. In addition, this capacity has further been expanded under FLoCa program. The K-WASH

program should encourage the counties to utilize these trained specialists, to reduce the learning curve, and also apply the lessons learned from these programs to implement the K-WASH program. In addition, the participating counties should strengthen and utilize the existing GRM systems available at the county and national levels as developed under KDSP, KUSP and/or FFLoCA, and organize a learning workshop with the implementing agencies and relevant staff county staff.

111. Implementing institutions and agencies associated with the environmental and social risk management for the K-WASH program should be integrated early into the program planning process. All subprojects will be required to undergo screening, preparation of relevant environmental, health and social safeguard instruments, and monitoring of the implementation of the instruments in subproject activities as per the requirements of the country systems. Further, any associated facility to subprojects financed under the program (supported independently by a different financier), shall comply with the applicable requirements of the country systems, the financing agreement of the program, and in accordance with the applicable requirements of the Environmental and Social Commitment Plan (ESCP) of the program. In addition, the Program to ensure that Environmental and Social risk management strategies, including provision of adequate resources are allocated for safeguards implementation during the planning process. During identification of investment activities, all lead agencies, and institutions (NEMA, DOSHS, MLSD) that will be involved in management of safeguards will be integrated into the program early at the planning stages to ensure that they understand the roles they will play in the program.

112. Lessons learned from previous or ongoing PforR programs in Kenya indicates that adequate resources (especially financial resources) are not allocated due to the limited resources within the counties and partner implementing agencies. The ESSA highlights the importance of allocation of resources for safeguards in the proposed investment budgets, to support capacity building and training of staff at County and WSPs levels involved in the program, to enhance proper implementation and supervision of safeguards.

113. 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
- actions to build the capacity of relevant institutions for staff involved in the Program to enhance environmental and social management performance.

114. **K-WASH will incorporate measures to address environmental and social risks early in the Program design.** The Program will exclude high risks projects - projects that have significant negative environmental and social impacts that are sensitive, diverse, or unprecedented. The Program will also develop an Environmental, Social, Health and Safety Management (ESHSM) Manual to guide in the screening and management of E&S risks of K-WASH activities. The Manual which will be incorporated in the main Program Operational Manual (POM), will have guidelines and Standard Operating Procedures (SOPs) in line with the existing country's environmental and social management systems and legislation. Implementing institutions and agencies with mandate for environmental and social risk management such as NEMA, DOSHS, and SRM department at Ministry of Labour and Social Development (MLSD) will be integrated early into the program planning process, including participating in a rigorous screening of environmental and social risks for the sub-projects. In addition, the Program will ensure that environmental and social risk management strategies are incorporated at an early stage in the planning process, including the allocation of adequate resources for safeguards implementation.

115. Strengthening the environmental, health and social risks management systems. To strengthen EHS risk management, implementing agencies including the WSPs will be required to develop Environmental, Health and Social Management Systems (EHSMS) to identify and manage inherent risks in their operations. The systems will provide for the screening, preparation of environmental, health and social safeguard instruments, and monitoring of the implementation of the instruments in subproject activities as per the requirements of the country systems. In addition, to address ESHS implementation challenges for the counties and WSPs, and in order to enhance their understanding of the country systems on EHS risks management and their application, the NPCU, in partnership with NEMA, MLSD, and DOSHS, will conduct training on: (i) environmental and social risks management and reporting; (ii) occupational health and safety risk management; (iii) labor and working conditions requirements; (iv) grievance redress and reporting and (v) training of contractors on ESHS. Other topics such as economic and physical displacement, and land acquisition will also be included. These trainings shall be done before project effectiveness, with regular trainings during program implementation.

116. Enhancing capacity of Environmental and Social Staff at the NPCU and WSPs/County level. The NPCU is currently staffed with one social specialist. However, an environmental specialist is yet to be recruited. To strengthen the coordination as well as environmental and social risk management, the Program shall be required to strengthen the ESHS staffing at the NPCU level with an additional social specialist. At county/WSP level, the county administration shall be required to appoint and maintain a qualified environmental specialist and a social specialist during the implementation of the Program, as a minimum condition to access the UDG. World Bank funded projects including KDSP, KUSP and FLLOCA facilitated capacity building of counties on E&S risk management by training environment and social focal persons on screening and managing E&S risks, enhancement of citizen engagement, grievance redress mechanisms (GRM), and on participatory mechanisms. The Program will encourage the counties to utilize these existing systems, including the use of these trained specialists, to reduce the learning curve, and also apply the lessons learned from these programs to implement the K-WASH program. When necessary, the WSPs/counties will engage experts to offer consultancy services to support the WSPs on the various ESHS risk management aspects, including preparation of ESIA/ESMPs and carrying out regular environmental, social and health and safety audits, and abbreviated resettlement action plans (ARAP) if needed.

117. Strengthening the implementation and monitoring of environmental and social risks management. To ensure proper management of E&S risks, the program will develop procedures for assessing the performance of the Program on environment and social management that will rely on environment and social performance protocol, that will be outlined in the EHSRM and the POM. Building on lessons learned from other PforRs in Kenya, the Annual Performance Assessment (APA) Terms of Reference (ToRs) shall also include environment and social performance assessment procedures to ensure a robust verification process. In addition, the Program Action Plan (PAP) recommends; (i) Incorporating ESMP and OSH contractor/supplier clauses in the bidding and contract documents for civil works, including signing of code of conduct, (ii) WSPs/Counties to develop GRM structures based on guidelines provided in the ESHSM manual to facilitate improvement on grievance management; (iii) Program to partner with relevant lead agencies in the ESHS risks management, that will include DOSHS, NEMA, NCA and NLC to deliver capacity building to WSPs and contractors.

118. The above measures are summarized and crystalized in the Program Action Plan matrix below, as recommended by Stakeholders during the ESSA consultations.

PROGRAM ACTION PLAN (PAP)

Deploy at least one qualified and experienced environmental and social safeguards experts on a fulltime basis	MoWSI NPCU, Participating Counties	Prior to effectiveness	The NPCU and each Participating County, has at least 1 qualified and experienced Environmental and 1 qualified and experienced social expert and confirmed annually through APA.
Create a dedicated and adequately resourced Countywide ESHS risk management unit and operationalize it.	Participating Counties & WSPs	Within six months of effectiveness	An ESHS Unit with adequate staff, budget line, clear responsibilities, and reporting lines in every county and WSP. The Unit to provide support to other county departments implementing infrastructure projects.
Develop Environmental, Social, Health and Safety Risks Management (ESHSRM) Manuals and GRM Structures and train the E&S staff and their supervisors on their application.	Participating Counties & WSPs	Within year one of effectiveness	ESHSRM manuals with clearly articulated ESHS risk management principles, procedures, processes, and timelines, and aligned to the national and international ESHS management requirements, including on GRM structures. Annual training delivered on ESHS in collaboration with lead agencies and confirmed through APAs.
Include a robust E&S risks management verification protocol in the Annual Performance Assessment (APA)	MoWSI/NPCU T	Before APA After APA	<ul style="list-style-type: none"> • APA verification indicators are included in the ToRS for APA • A chapter on E&S performance is included in the main APA reports
Include the ESHS clauses in the bidding and contract documents for civil works, including signing code of conduct by contractor employees.	MoWSI NPCT County PIT	Prior to advertising for submission of bids	<ul style="list-style-type: none"> • Bidding and Contract document templates with ESHS aspects • Percentage expenditure on ESHS aspects in line with the allocated budget. • Supervision and monitoring reports and confirmed through APA.

8 Annexes

8.1 Annex 1: List of Stakeholders Consulted for the ESSA

List of Participants for the K-WASH ESSA Consultations

County: Nyanza National Level Stakeholders Workshop
Date: 11/04/2023

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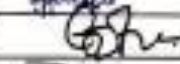
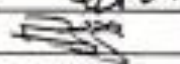
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REPUBLIC OF KENYA
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KENYA WASH PROGRAM FOR RESULTS (P179102)
PRE-APPRAISAL MISSION APRIL 11- 21, 2023

DATE: 17/04/2023

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REPUBLIC OF KENYA
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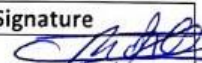
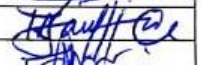

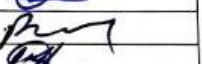
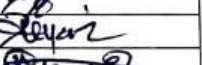
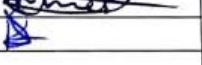
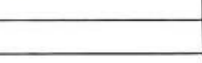



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8.2 Annex 2: The Land Tenure System in Kenya

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 community forest, grazing areas or shrines”), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas. Definitions of the various land and tenure systems Kenya include the following:

1. **Public Tenure:** Land owned by the Government for its own purpose, which includes unutilized or unalienated government land reserved for future use by the Government itself, but which may be available to the public for various uses. The land is administered under the Land Act, 2012 (as amended in 2019). Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships, and other urban centres, and open water bodies.’
2. **Community Land:** Community Land in Kenya is governed by the Community Land Act, 2016, which provides for the management, administration, and transaction in community land. It is premised on the registration of community land in order to enable transaction on it, in similar manner as private land, with the Community Land Management Committee as the legal entity mandated to manage, administer, and transact on community land. Nevertheless, registration of community lands is yet to be realized in Kenya, meaning that land in the arid and semi-arid areas of the country is mostly unregistered community land that is held in trust for the respective communities by the respective county governments. The Community Land Act, 2016, however prohibits the county government from transacting on community land. The unregistered community land can however be acquired compulsorily, for public good project purposes, and the compensation monies paid into an interest-bearing account held by the county government until the community has registered their land, after which the county government is required to transfer the compensation monies into the community’s account. The other way of acquiring unregistered community land is by conversion.

The following excerpts from the Community Land Act, 2016, provides insight into the complexities that involve the acquisition of community land for project purposes, and which the GREEN Program will need to take into account because, by design, since the Program will potentially be implemented countrywide, including in areas with unregistered community land.

2.1 Part III of the Community Land Act: Administration and Management of Community Land

Section 15. Functions and powers of the community land management committee

- 1) A registered community shall have a community assembly which shall consist of all adult members of the community.
- 2) The quorum for decision making by the community shall not be less than two thirds of the community assembly.
- 3) The community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee.

The functions of the community land management committee shall be to—

- i. have responsibility over the running of the day-to-day functions of the community,
- ii. manage and administer registered community land on behalf of the respective community,
- iii. coordinate the development of community land use plans in collaboration with the relevant authorities,

- iv. promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and,
- v. prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

- (1) Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.

2.2 Part V of the Community Land Act: Conversion of Land

Section 21. Conversion of community land

(1) The Community land register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act, 2012 (No. 3 of 2012) contain the particulars of all conversions involving community land.

(2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.

Section 22. Conversion of community land to public land

(1) Community land may be converted to public land by—

- (a) compulsory acquisition,
- (b) transfer; or
- (c) surrender.

(2) Nothing in this Act limits the Land Act, 2012 (No. 6 of 2012) and any other compulsory acquisition of land.

(3) Reversionary interest of such land shall lie with the community in the first instance upon expiry of such public use interest.

(4) Transfer of community land shall, subject to the approval of the members of the registered community in a community meeting, be done in accordance with the Land Act, 2012 (No. 6 of 2012) and any other applicable law.

23. Conversion of community land to private land

Registered community land may, subject to the approval of the registered community, be converted to private land through—

- (a) transfer; or
- (b) allocation by the registered community, subject to ratification of the assembly as provided in section 21(2).

Section 26. Setting aside community land for public purposes

(1) A community may set aside part of the registered community land for public purposes.

(2) Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land.

2.3 Section 31. Transactions in community land

(1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the approval of the registered community in a meeting convened for such purpose.

(2) For the purposes of this Act, contracts and transfers over community land shall be carried out in a manner similar to transactions over private land as provided in the Land Act, 2012 (No. 6 of 2012) and registered as provided in the Land Registration Act, 2012 (No. 3 of 2012).

Part VI: Special Rights and Entitlements in Community Land

Section 31. Transactions in community land

(1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the approval of the registered community in a meeting convened for such purpose.

(2) For the purposes of this Act, contracts and transfers over community land shall be carried out in a manner similar to transactions over private land as provided in the Land Act, 2012 (No. 6 of 2012) and registered as provided in the Land Registration Act, 2012 (No. 3 of 2012).

3. Customary Tenure

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 socio-economic practices, climatic conditions, and cultural practices.

4. Freehold Tenure

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period, or in perpetuity. The Land Registration Act, 2012, governs freehold land. 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.

5. Leasehold Tenure

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, for example, relating to developments and usage.

6. Land Acquisition Process in Kenya

Proof that Compulsory Possession is for Public Good

It is explicit in the LA, 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 LA 2012. The possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, 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.

The respective government agency or cabinet must seek approval of the NLC

The respective Cabinet Secretary or Government agency or the County Executive Committee (CEC) Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The NLC will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. 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.

6.1 Inspection of Land to be Acquired: The 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 public purpose, it shall express the satisfaction in writing and serve necessary notices to landowners and or approve the request made by the authority intending to acquire land.

6.2 Publication of Notice of Intention to Acquire: Upon approval, NLC shall publish a notice of intention to acquire the land in the Kenya Gazette and County Gazette. 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 description of land, public purpose for which the land is acquired and the acquiring public body. The Land Registrar shall then make 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.

6.3. Serve the Notice of Inquiry: Thirty days after the publication of the Notice of Intention to Acquire, the NLC then schedules a hearing for public inquiry. The 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.

6.4 Holding of a Public Hearing: 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.

Besides, at the hearing, the Commission shall make full inquiry into and determine who the persons are 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 opportunity to those interested in the land to hear the justification of the public authority in laying claims to acquire the land.

6.5 Valuation of the Land Part III of the LA 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. 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.

6.6 Matters to be Considered in Determining Compensation: 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, for example, agricultural, residential, commercial or industrial.

6.7 Award of Compensation: Under the LA 2012 section 117, the State may award a grant of land in lieu of money compensation (“land for land”), upon agreement, and provided the value of the land awarded does not exceed the value of the money 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.

Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, the NLC prepares and serves a written award of compensation to each legitimate claimant. 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. 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.

6.8 Payment of Compensation: 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 land before a notice of acquisition is issued. Section 119 provides a supplementary condition and states that if the size of 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”. 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.

6.9 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 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.

6.10 Transfer of Possession and Ownership to the State: 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 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.

6.11 Temporary Possession: 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.

6.12 Opportunity for Appeal: The Kenya Constitution establishes 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 endeavour to encourage application of alternative dispute resolution (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 application of the parties to a dispute, to direct the application of ADR, including traditional dispute resolution mechanisms.

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

- i. The determination of such person's right over the land,
- ii. The amount offered in compensation; and
- iii. 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.

8.3 Annex 3: List of Water Sector Documents Reviewed

1. The Irrigation (General) Regulations, 2021
2. National Irrigation Services Strategy 2022 – 2026
3. Introduction to The Kenyan Water Sector and Sanitation Sub-Sector
4. Code of Practice for Test Pumping of Boreholes
5. Code of Practice for Borehole Construction
6. Code of Practice for Borehole Siting
7. Compensation for Development of National Public Water Works Regulations 2021 – March 08 2021
8. Hydrologists Act No. 19 Of 2017
9. Intergovernmental Water Sector Consultative Framework
10. The Irrigation (General) Regulations, 2020
11. The Irrigation Act, 2019 No. 14 Of 2019
12. Water Sector Regulations
13. Kenya Water Supply and Sanitation Structure
14. The Kenya Water Institute Act, 2001 No. 11 Of 2001
15. The Water Act (No. 43 Of 2016)
16. Water Sector Regulations
17. Mwongozo, The Code of Governance for State Corporations
18. Workplace Policy On HIV and AIDS
19. National Irrigation Policy 2017
20. National Water and Sanitation Strategy 2020-2025
21. National Museums of Kenya Chance Finds Management Plan
22. The National Water Services Strategy (2007 – 2015)
23. Water Security and Climate Resilience Project (KWSCR) Support to Water Sector Reforms
24. The Draft Hydrologists Rules and Regulations, 2021
25. The National Water Harvesting and Storage Strategy (NWHSS) (2020 – 2025)
26. The National Water Resources Strategy (2020 - 2025)
27. Water Services Regulatory Board Consumer Engagement Guideline
28. Water Services Regulatory Board Water Governance Training Handbook November 2021
29. Water Services Regulatory Board Strategic Plan 2018-2022
30. Water Services Regulatory Board Issue Impact a Performance Report of Kenya's Water Service Sector - 2020/21
31. Water Services Regulatory Board the Water Act, 2016 Arrangement of Sections
32. Water Services Regulatory Board Water Action Groups.
33. Licensed Qualified Water Resource Contractors for The Year 2021
34. The Water Harvesting and Storage Regulations, 2021
35. Qualified Water Resource Professionals/Consultants for The Year 2021
36. The Water Resources Regulations, 2021 Arrangement of Regulations
37. The Water Services Regulations, 2021
38. Water Tribunal Rules, 2019 Arrangement of Rules
39. Water Service Providers Register.
40. National Master Plan 2030
41. National Water Policy 2021

8.4 Annex 4: ESSA Assessment Tool

Core Principles	Key Planning Elements	Guiding Questions
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.	Operate within an adequate legal and regulatory framework to guide E&S impact assessments, mitigation, management and monitoring at the PforR Program level.	<ol style="list-style-type: none"> 1. What relevant E&S policies, laws, regulations, procedures, decrees, strategies or other mandatory legal instruments are available at the national and county government levels that are applicable to the Program activities and associated impacts and risks? (Consider laws under multiple agencies such as, NEMA, DOSHS, including the implementing agency at national and county levels). 2. 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 mechanism, where appropriate, to ensure objective, or independent assessments of E&S impacts? 6. How will E&S aspects be coordinated between the implementing agency and the various compliance authorities, such as NEMA, DOSHS etc.? 7. Does the implementing agency at the national and county levels have access to adequate and qualified capacity (in-house or outsourced) to carry out E&S assessments and management of E&S risks and impacts? 8. What are the foreseen gaps and challenges that may impede effective E&S risk management at the national and county levels
	Incorporate recognized elements of good practice in E&S assessment and management including: <ol style="list-style-type: none"> i. Early screening of potential impacts. 	<ol style="list-style-type: none"> 9. Do applicable procedures require E&S screening or assessment of activities associated with the proposed PforR operation that presents risks? 10. Is there a criterion for screening E&S risks and impacts in place? 11. Does the implementing agency apply the screening criteria in the E&S assessment? 12. 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?) 13. What E&S risk categories are applied? 14. 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/physical and economic displacements, IPs/VMGs, physical cultural heritage, labour influx and related impacts, forced and child labour, gender aspects etc.? 15. Do screening procedures include the opportunity for stakeholder involvement engagement and consultation in identification of E&S risks and impacts?

		<p>16. Do these requirements clearly apply to the Program proposed for support by the PforR operation? Has screening for, and estimation of, E&S effects been part of the borrower's program design?</p> <p>17. Does this screening process consider opportunities to enhance the range and reach of Program benefits?</p> <p>18. Is E&S screening done in an integrated manner, so that both E&S risks and impacts are identified early on?</p> <p>19. Is the scope of Program screening broad enough to cover all potential significant E&S issues?</p>
	Consideration of strategic, technical, and site alternatives (including the "no action" alternative)	<p>20. Do the applicable systems require the consideration of feasible alternatives or other forms or options to avoid or minimize potential impacts and risks? for example are strategic, technical, and site-selection alternatives considered, including a "do nothing" options?</p> <p>21. 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?</p> <p>22. Does Program design (i.e., identification of activities or expenditure) consider the relative environmental costs and benefits of feasible alternatives?</p>
	Explicit assessment of potential induced, cumulative and transboundary impacts.	<p>23. 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?</p> <p>24. 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?</p> <p>25. Do the systems require such issues to be managed if they are relevant to the Program?</p> <p>26. Are Program activities set within strategic management plans that provide an operational framework for understanding and managing such impacts?</p> <p>27. Do the procedures include measures for evaluating critical global environmental issues such as transboundary pollution, biodiversity loss, international waterways, and climate change?</p> <p>28. Does the assessment provide adequate opportunity to engage stakeholders on induced, cumulative and transboundary impacts?</p> <p>29. Do the systems require considering the implications to and from climate change associated with Program activities including estimating GHG emissions from Program activities?</p> <p>30. Do Program systems require assessing the risks from natural disasters or human-induced emergencies?</p>
	Identification of measures to mitigate adverse E&S risks and impacts that cannot be otherwise avoided or minimized.	<p>31. Do the applicable systems effectively promote the application of mitigation hierarchy (e.g., avoid, minimize, mitigate, compensate/offset)?</p> <p>32. Do E&S management plans provide sufficient operational detail to guide effective implementation?</p> <p>33. Are mitigation/management measures called for under the system relevant and realistic? (e.g., not requiring disposal of hazardous wastes in a licensed facility if there aren't any in the country)?</p> <p>34. Do E&S management plans require time-bound actions?</p> <p>35. Do they have clear targets and clear assignment of responsibilities for implementation and for monitoring/oversight?</p> <p>36. Do applicable systems include clear and appropriate repercussions and remedies in case E&S mitigation measures are not applied?</p>

	Clear articulation of institutional responsibility and resources to support the implementation of plans.	<p>37. Are implementing agencies clearly identified? How is the responsibility assigned at national and county level?</p> <p>38. Are institutional/organizational responsibilities supported by adequate human and financial resources to implement environmental and/or social management (includes occupational health and safety aspects) procedures or plans?</p> <p>39. 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?</p> <p>40. Are E&S experts in-house or outsourced?</p> <p>41. Does the county have an E&S safeguards specialist?</p> <p>42. If so, what is the scope of work for the specialist?</p> <p>43. How often are the E&S staff re-trained on E&S aspects?</p> <p>44. If the Program does not build 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?</p> <p>45. 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?</p> <p>46. Is there a coordinating body that is empowered to resolve coordination issues or delays in required actions?</p> <p>47. Are the Program entities effective at applying their E&S frameworks in practice?</p> <p>48. Are “adaptive management” processes in place to respond to unanticipated E&S management issues that may arise?</p> <p>49. Do Program entities have access to contingency funds for unexpected impacts or budget shortfalls?</p> <p>50. Do processes and procedures related to E&S protection routinely, effectively, and equitably implemented?</p>
	Responsiveness and accountability through stakeholder consultation, timely dissemination of the PforR information, and responsive GRM.	<p>51. What mechanisms are available for program entities to use to ensure that stakeholders are identified, mapped, consulted, engaged and their views, concerns, and suggestions are systematically considered?</p> <p>52. Does the implementing Agency have effective feedback mechanisms from stakeholders for ongoing programs i.e., response time expected from relevant stakeholders</p> <p>53. Are consultations conducted early enough that stakeholder feedback can be considered in the design of new or changing Program activities?</p> <p>54. Are consultations conducted in a manner that encourages an open exchange of views, without fear, coercion, intimidation?</p> <p>55. Do consultations processes promote communication and informed decision-making? Do those who may be affected have prior access to information about the topics for consultations?</p> <p>56. 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 or traditionally excluded)?</p>

		<p>57. Does the sampling capture jurisdictional or geographical diversity?</p> <p>58. Does the borrower consult with stakeholders on various aspects of Program design and operation? Does the borrower have a Stakeholder Engagement Framework or Plan that can be adapted to the Program?</p> <p>59. Is information relating to E&S effects made available to the people or communities that are potentially affected in a timely manner?</p> <p>60. Do Program implementation arrangements include measures for responsive communications of relevant E&S concerns?</p> <p>61. 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?</p> <p>62. Does the system include mechanisms for independent oversight and monitoring where appropriate?</p> <p>63. Does the Program have an accessible GRM with established procedures for submission of grievances?</p> <p>64. Do the established GRMs accept and process grievances relating to E&S management issues?</p> <p>65. Are there established routines and standards for responding to grievances received? Are records/logs available?</p> <p>66. Does the management of the implementing agency act on identified issues consistently, objectively and timely?</p> <p>67. Does the borrower have experience implementing GRM with established procedures for submission of grievances and resolution?</p>
<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 resulting from the Program. Program activities that involve the significant conversion or degradation of critical natural habitats or critical physical cultural heritage are not eligible for PforR financing.</p>	<p>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>	<p>68. Has Program screening identified potential impacts on modified, natural, or critical natural habitats or physical cultural resources?</p> <p>69. Are there areas where if the Program activities are implemented will affect environmentally sensitive habitat areas with local importance, such as streams, wetlands, ponds, and vegetated riparian areas?</p> <p>70. If such impacts involve the significant conversion or degradation of critical natural habitats, have the activities been excluded from the Program?</p> <p>71. 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?</p> <p>72. Are Program activities planned and carried out in the context of land use or other management plans that identify sensitive habitat areas?</p> <p>73. Is screening at a sufficient level of detail and granularity to identify the location and geographical extent of natural and critical habitats?</p> <p>74. Would Program activities lead to the fragmentation of existing habitat areas, both at the level of localized Program activities and at larger landscape levels?</p> <p>75. Do management plans require appropriate conservation and mitigation measures to be in place, including those required to maintain ecological services?</p>

	Support and promote the protection, conservation, maintenance, and rehabilitation of natural habitats.	<p>76. 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?</p> <p>77. Do management systems include measures to avoid, restrict, or otherwise forbid the introduction of exotic or invasive species that may threaten ecosystems or value?</p> <p>78. Are monitoring measures in place to determine the extent to which habitats are affected by the Program?</p> <p>79. If Program activities affect protected areas are such activities consistent with approved and up-to-date protected area management plans?</p> <p>80. 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?</p> <p>81. 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>
	Avoid significant conversion or degradation of critical natural habitats (modified habitats, natural are defined as in ESS 5 in the Bank's ESF)	<p>82. 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?</p> <p>83. When available data are insufficient to determine the extent or severity of biodiversity impacts, are new biodiversity surveys or inventories, conducted by qualified individuals or organizations, required as part of the Environmental Impact Assessment process?</p> <p>84. Are appropriate measures in place to ensure that incidents of non-compliance are dealt with in a timely and effective manner (e.g., through work stoppage, penalties or other legal remedies)?</p>
	If avoiding the significant conversion of natural habitats is not technically feasible, include measures to mitigate or offset the adverse impacts of the PforR Program activities.	<p>85. 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>86. Do plans require appropriate conservation offset measure to be in place, including measures to maintain ecological services?</p>
	Take into account potential adverse effects on physical cultural property and provide adequate measures to avoid, minimize or mitigate such effects.	<p>87. Does the screening review involve careful attention to avoiding impacts (damage to, relocation of and restriction to access) on resources of archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance?</p> <p>88. Is the mitigation hierarchy principle applied in the management of potential adverse impacts on the physical cultural property?</p> <p>89. Are management measures in place to avoid, minimize or mitigate such effects?</p> <p>90. Do procedures require the use of authoritative source materials or field-based surveys to identify existing physical cultural resources before works commence?</p> <p>91. 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>

<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>Promote adequate community, individual and worker health, safety and security through the safe design, construction, operation, and maintenance of Program activities, or, in carrying out activities that may be dependent on existing infrastructure, incorporate safety measures inspections or remedial works as appropriate.</p>	<p>92. Does the Program have a legal framework that addresses and promotes workplace safety?</p> <p>93. Are there mandatory measures that compel contractors and facility operators to operate equipment and facilities in a manner that protects individuals and communities?</p> <p>94. Does the Program include adequate measures to protect people and the environment from the effects of hazardous or toxic materials that are used in construction and production processes or wastes that are generated as a by-product of construction or facilities operations?</p> <p>95. Does screening consider impacts related to the influx of labor in project areas, such as GBV-SEA/SH, spread of communicable diseases, insecurity etc.</p> <p>96. Does the borrower require measures to help protect individuals and/or communities from violence, intimidation, harassment, criminal activity or other negative interactions with contractors, laborers, operators, or other workers associated with a project activity? For instance, the implementation of worker Codes of conduct, awareness creation to communities and workers to mitigate the SEA/SH risks?</p>
	<p>Promote measures to address child and forced labor.</p>	<p>97. Does the borrower have specific laws and regulations to avoid the use of child and forced labor in the implementation of Program activities? If so, what are the specific provisions outlined in these laws and regulations?</p> <p>98. Are these laws and regulations enforced at MoWSI? If so, how? And who enforces them?</p> <p>99. What is your current experience with child and forced labor?</p> <p>100. Are contractors required to prepare and implement a Child Protection Policy as well as sign clauses on child labor and forced labor?</p>
	<p>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>101. Does the borrower have specific laws, regulations, procedures, standards, etc. to effectively evaluate and manage the potential effects of hazardous or toxic materials in the workplace?</p> <p>102. Are qualified technical experts engaged for the design, construction supervision, operation and maintenance of all infrastructure that may pose a significant risk to public safety (including periodic safety inspections)?</p> <p>103. Does the Program include safety measures and standards for emergency preparedness for pre-existing civil works or works under construction that pose potential hazards to people or the environment?</p> <p>104. Are emergency preparedness plans implemented?</p> <p>105. What emergency preparedness measures are contractors' and sub-contractors obliged to implement, and how are these procedures evaluated/reviewed? If so, how often are they reviewed?</p>

		106.If an emergency preparedness plan is deficient, what safety measures or remedial works do Program entities need to undertake?
	Promote the use of integrated pest management practices to manage or reduce the adverse impacts of pests or disease vectors.	107.Where relevant, do Program systems promote the use of integrated pest management practices to manage or reduce pests or disease vectors? 108.Does the Program promote reducing the use of hazardous synthetic chemical pesticides? 109.Does the Program include appropriate technical guidelines and training for the safe production, storage, transport, use and disposal of hazardous pesticides or other chemicals in accordance with international conventions?
	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.	110.Do applicable systems invest in the development of staff skills for handling hazardous materials? 111.Have past training practices been sufficient in terms of technical scope and depth? Are workers able to implement good practice in the workplace? 112.Are there systematic constraints to the application of good industry practice in these areas?
	Include adequate measures to avoid, minimize, or mitigate community, individual, and 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.	113.As relevant, does the Program include measures to ensure that people or the environment would not be put at increased risk from natural hazards such as flooding, earthquakes, earthquakes, landslides, severe weather or climatic events, or other disasters? 114.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?
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.	Avoid or minimize land acquisition and related adverse impacts.	115.Does the Program screen all planned activities to determine whether they may require the involuntary taking of land-including wayleaves, relocation of residences or businesses, or restrictions on access to natural resources? 116.What requirements are in place for identification and mitigation of all significant impacts? 117.Do systems adequately protect individuals and communities against “forced evictions?” 118.What measures are in place to mitigate the forceful removal of persons from land identified for the project? 119.Do systems require the preparation of RAPs where physical and/or economic impacts are anticipated, and disclosed to affected persons? 120.If so, are RAPs prepared by qualified experts? How are these qualifications/skill sets determined? 121.Who reviews and approves the RAP? 122.Are the approved RAPs proportionate to the scale, magnitude and nature of the impacts related to land acquisition and resettlement?

		<p>123. Do the RAPs clearly outline responsibilities to prepare, implement, monitor RAP activities and audit RAP completion?</p> <p>124. Are these responsibilities aligned with provisions in applicable laws e.g., in the management and administration of land as mandated by the Land Act 2012 and ensuing regulations?</p>
	Identify and address economic or social impacts caused by land acquisition or loss of access to natural resources, including those affecting people who may lack full legal rights to resources they use or occupy.	125. What measures are in place to identify or recognize that an area intended for the project is a communal property or is customary claimed or used by squatters or belongs to indigenous groups and what do you do about impacts on such groups. Do Program processes require identification and mitigation of all significant impacts affecting informal users or occupiers of land (or other resources)? particularly those occupying or using the land before the project cut-off date?
	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>126. What compensation arrangements are in place for land and other assets under this program? E.g., Do you consider the replacement cost when land acquisition or physical relocation is required?</p> <p>127. If not, can the Program provide supplemental payments to meet this requirement? (<i>Current value of land or resource + transactional cost</i>)</p> <p>128. Are transitional expenses and resettlement assistance allowed under the borrower's systems? If not, are there mechanisms to mobilize additional resources to support this requirement?</p> <p>129. What are the compensation arrangements under the system for loss of land/wayleaves, other assets, damage to livelihood sources (trees, crops)?</p> <p>130. Does the borrower's system allow for post-compensation/resettlement monitoring?</p> <p>131. Is financial literacy training provided to persons receiving cash compensation?</p> <p>132. If not, what mechanisms are in place to provide such support under the Program?</p>
	Restore or replace public infrastructure and community services that may be adversely affected by the Program.	<p>133. In case of physical relocation, what provisions are there to restore or replace public infrastructure lost or damaged because of Program activities?</p> <p>134. If not, what mechanisms are in place to address such concerns under the Program?</p>
	Include measures in order for land acquisition and related activities to be planned and implemented with appropriate disclosure of information, consultation, and informed participation of those affected.	<p>135. Under the land acquisition procedures what requirements are there for the participation of program affected peoples?</p> <p>136. What kind of information do you give the program affected people to enable them to make informed decisions?</p> <p>137. Does information on land acquisition and/or resettlement provide sufficient notification of the obligations and rights and entitlements of those affected, including rights to compensation, timely resolution of grievances or complaints as well as notice to vacate?</p> <p>138. Does the Program entity ensure that just compensation is paid promptly and in full?</p>

		139.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 Historically Underserved Traditional Local Communities, and to the needs or concerns of vulnerable groups.	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.	<p>139. 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, or other ethnic minorities, the poor, or other groups that might be underrepresented)?</p> <p>140.What are the efforts made at National, county and site level to identify the presence of different social, cultural, religious and vulnerable groups and ensure their participation.</p> <p>141.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?</p>
	Ensure that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (VMGs) 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 Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.	<p>142.Does the sampling capture jurisdictional or geographic diversity?</p> <p>143.Do Program entities regularly review and consider consultation results to obtain or broaden community support?</p> <p>144.Do systems require seeking the Free Prior Informed Consent of VMGs?</p> <p>145.Does the Program exclude activities involving: adverse impacts 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?</p> <p>146.Are VMGs provided with access to culturally appropriate benefits?</p>
	Give attention to groups of vulnerable to hardship or discrimination, including, as relevant, the poor, the disabled, women and children, the elderly, ethnic minorities or other	<p>146.What considerations are given to ensure distributional equity, affordability, and cultural or gender constraints to access to benefits and opportunities or participation? How are women and the elderly considered? How are the occupants of the land or building with no formal title or claims considered?</p> <p>147.Does the incentive structure within Program agencies promote outreach measures to encourage equitable and affordable access to Program benefits?</p>

	marginalized groups; and if necessary, take special measures to promote equitable access to PforR Program benefits.	148. 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? What measures are in place 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.	Consider conflict risks, including distributional equity and cultural sensitivities.	<p>149. Is the Program being implemented in areas of recognized fragility or in post-conflict zones? If so, what special risks does this context present regarding the achievement of E&S objectives and outcomes?</p> <p>150. Is the Program being implemented in areas of boundary dispute, land title disputes or disputes related to access to natural resources? If so, what special risks this program's actions may reinforce?</p> <p>151. Could the Program contribute in any way to underlying tensions or civil strife by reinforcing inequities or grievances?</p> <p>152. Would support for the Program in any way prejudice one party's claims inland or territorial disputes?</p> <p>153. 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?</p> <p>154. Are Program agencies open to discussion with the Bank and consultation with stakeholders on potentially sensitive issues?</p>

8.5 Annex 5: Capacity Assessment Tool

The Enabling Environment
<ul style="list-style-type: none"> • What policies, legal and regulatory frameworks guide the institution (s) in fulfilling its environmental, social, health and safety mandates? • What are the institutional mandates for environmental, social, health and safety management, in relation to the PforR the operation? • What institutional compliance enforcement measures are in place for management of environmental, social, health and safety effects? • Are there inter-agency relationships that facilitate effective environmental (including health and safety) and social management? • Who coordinates such relations? • Is there institutional support for citizen engagement initiatives?
Individual Skills Assessment/Resources
<ul style="list-style-type: none"> • What institutional E&S technical capacity exists? • Is there an institutional budget that is adequate for managing the environmental and social effects? • What are the gaps and challenges for E&S risk management
Organizational Capacity/Performance
<ul style="list-style-type: none"> • Is there an operational institutional environmental and social management system (ESMS) in place? • Including: <ul style="list-style-type: none"> ○ A sound E&S Policy endorsed by senior management; ○ A system for identifying and managing E&S impacts; ○ Adequate and qualified personnel for effective E&S management; ○ Support from the senior leadership on E&S risk management; ○ Frameworks and Plans for managing E&S effects, including land acquisition, stakeholder engagement, grievance management, OHS etc; • Are institutional E&S implementation guidebooks/manuals with guidelines in place? • Have E&S training modules and manuals for the E&S staff been developed and if so, are they being applied? • Do train-the-trainer initiatives on E&S management exist within the institution? • What institutional mandate and capacity exists for land acquisition and resettlement? • What measures and capacity are in place to carry out meaningful consultations and stakeholder engagements? • What mechanisms are in place to ensure adequate opportunity for affected people to raise complaints or grievances and to have those concerns timely addressed? • How will the institution facilitate or encourage transparency and accountability during implementation? • How often does the institution engage in E&S gap analysis to identify major capacity constraints and needs of its interventions (not limited to Bank funded operations)? • What institutional capacity exists to conduct requisite environmental and social assessments to agreed quality and standards, upon Program effectiveness? • What institutional capacity exists to supervise and monitor ESMPs for project implementers to ensure compliance and results are achieved? • What institutional capacity exists to respond to ESHS compliance or management issues based on Program progress reports and results? This includes remedial actions and resources to be deployed in response to issues flagged.
Specialist Institutions: NEMA, DOSHS, NLC, MoLPP, Labour and Social Protection

- What is the specific entity's mandate as related to the E&S risk management?
- Based on the institutional mandate, what role can the institution play to deliver or enhance the delivery of the WASH Program?
- Are technical resources available to support Program entities to manage the E&S risks?
- What institutional capacity exists to support Program entities on E&S management?
- What are the staffing numbers of the relevant E&S staff at the devolved units, and are they resourced to deliver on their mandate?
- Elaborate on coordination/synergy with other key agencies in the water sector.
- What citizen engagement and participation mechanisms are in place at the entity and how effective are they?
- What feedback and grievance redress mechanisms are in place at the County/Entity and how effective are they?
- How does the entity handle grievances/issues relating to projects from the members of the public?
- What has been the entity's experience (positive and negative) of World Bank funded projects in the management of E&S issues?
- Propose key recommendations for adoption in the WASH Program based on lessons learnt from implementation of related projects.

8.6 Annex 6: Institutional Implementation Arrangements

The key implementing agencies under the Programme and planned arrangements for the implementation are:

1. **The Programme will be managed by the Ministry of Water, Sanitation and Irrigation (MoWSI) through the Department of Water, Sanitation and Sewerage Development.** A dedicated **Programme Management Unit (PMU)** will be set-up by MoWSI under the department (supported under the IPF component) for the overall management of the proposed Programme. The key functions of the PMU will be to: (a) lead Programme communications and stakeholder engagement activities; (b) lead M&E activities for the Programme to assess overall performance and monitor results; (c) ensure compliance with the Environmental and Social Systems Assessment (ESSA), PAP, procurement and fiduciary management guidelines, and other World Bank standards; (d) oversee results verification through the engagement of a Credible Verification Agent (CVA); (e) facilitate disbursement of annual PforR financing to the counties on the basis of the CVA's Results Verification Report by recommending transfers from The National Treasury (NT) to County Revenue Fund (CRF) for Result Area 1 (RA1) and Result Area 2 (RA2) and effecting transfers to WSPs via WSTF for Result Area 3 (RA3); (f) undertake activities under Results Area 4 (RA4); (g) provide accounting and reporting for the Programme; (h) act as the interface with the World Bank's supervision and implementation support team; (i) to provide Technical Assistance to counties and WSPs under structured technical support agreements. The PMUs capacity to carry out its responsibilities will be strengthened through the IPF component, which may involve the hiring of required specialists or consulting firms.
2. The ministry will hire a **Credible Verification Agent (CVA)** whose function is to ensure that only verified outputs are reimbursed, through: a) certifying that the contractual outputs, as reported by each Implementing Agency (IA), have been physically delivered and that pre-agreed Disbursement Linked Indicators (DLIs) have been achieved, and b) validating the IA's reimbursement request (performing cost reconciliation by multiplying the quantity of outputs achieved by their unit cost), and recommending to MoWSI to honour payment.
3. **Results Area 1 (RA1) and Result Area 2 (RA2) :- Sustainable access to Rural Water Supply and Sanitation and elimination of Open Defaecation (OD)**

County Governments will be the main implementing agencies under RA1 and RA2, and they will be supported, empowered and incentivized to improve performance and investment planning and execute the activities under the Programme. Each participating county government shall establish a Programme Implementation Unit (PIU) within the County Water Department to lead county-level reforms, infrastructure development, professional service delivery improvement, and coordination with WSPs and other partners. The PIU will include staff from the County Department of Health to coordinate the sanitation and ODF activities, as well as accountants/staff from the County Treasury to support Financial Management/NAWASIP expenditure tracking aspects. Through the office of the County Director (Water), implement projects outside the boundaries of WSPs, and transfer implemented projects to WSPs.

4. **Result Area 3 (RA3):- Improved operational and financial performance of Water Service Providers in Participating Counties**

WSPs which will be the main implementing agencies for RA3 within their areas of jurisdiction. They shall (a) Prepare a Project Implementation Plan for their county detailing how the WSP will prioritize their projects and activities to ensure the achievement of K-WASH goals, (b) Utilize the K-WASH Transfers to finance Operation and Maintenance costs for improvements in service delivery, (c) Utilize the K-WASH Transfers to improve the WSP's operational and financial performance through appropriate investments, such as in NRW reduction, energy

efficiency improvement, improving organizational efficiency and improving collection efficiency, (d) Utilize K-WASH Transfers with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial, environmental and social standards and practices, including in accordance with the provisions of the Anti- Corruption Guidelines and the project ESMF, Request For Proposal (RFP) and PIM, (e) Procure the goods, works and services to be financed out of the K-WASH in accordance with guidelines set in the Public Procurement and Asset Disposal Act, 2015, (f) Maintain policies and procedures adequate to enable WSTF and MoWSI to monitor and evaluate the progress and performance of the K-WASH, (g) Maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards, both in a manner adequate to reflect the operations, resources and expenditures related to the K-WASH, (h) Prepare and submit monthly progress reports to WSTF and MoWSI, (i) Prepare and submit a monthly K-WASH performance scorecard to WASREB, (j) Provide, in a timely manner, documents and accurate information requested by the Independent Verification Agency for purposes of independent verification of performance, (k) Request WSTF to initiate K-WASH Transfer upon acceptable Performance Verification Report from the CVA, (l) Follow up on any issues raised by the CVA in the Performance Verification Report, and (m) Attend and participate in the quarterly meetings and other meetings called by MoWSI, WSTF, WASREB and CVA.

The Water Sector Trust Fund will: (a) Provide K-WASH Transfers to eligible WSPs. (b) Inform WSPs on the methodology for determining the amount of K-WASH Transfers. (c) Prior to providing K-WASH Transfers or loans to eligible WSPs, conduct an appraisal in accordance with guidelines set forth in the K-WASH guidelines. (d) Monitor compliance of the WSPs with the fiduciary and safeguards arrangements for K-WASH Transfers. (e) Enter into a Memorandum of Understanding with CVA on achievement of DLIs. (f) Suspend or terminate the right of any WSP to use the proceeds of the K-WASH Transfer or obtain a refund of all or any part of the amount of the K-WASH Transfer, upon the WSP's failure to perform any of its obligations under the PforR Agreement. (g) Conduct an audit of the K-WASH at the end of the implementation period. (h) Prepare and submit quarterly progress and financial reports to MoWSI for consolidation and onward submission of payment details from WSPs to National Treasury through MoWSI.

The Water Services and Regulatory Board regulates the water supply and sewerage sector to ensure protection of the public interest and to create a transparent regulatory framework. Under the PforR WASREB will have a supervisory role in areas closely related with the proposed operation of WSPs with regards to eligible activities financed by WSTF which includes: (a) the preparation of Business Plans, Performance Improvement Actions Plans (PIAPs), including improving systems for the professional management of rural water services in compliant with regulations; (b) the oversight of compliance with license and other regulatory requirements and protection of customer interests and (c) take a lead role in advising participating WSPs on interventions to improve financial and operational efficiency of the K-WASH projects.

5. Results Area 4 (RA4): Improving Sector reforms, Coordination and M&E Capacity

The Ministry will be implementing RA4 whose activities will include (a) Improvement of efficiency of sector spending through: (i) a Water Sector Performance-Based Financing Mechanism, (ii) monitoring/tracking mechanism for sector spending at National and county level (iii) relooking at the sector levies and fees (iv) leveraging on private funding, specifically commercial financing (iv) developing PPP framework for the water sector (b) To improve intergovernmental coordination through: (i) operationalization of the Intergovernmental Coordination Forum (ii) Ensuring Performance Based Conditional Transfers is in place and functioning (c) To improve sector M&E and performance reporting System.