Project Information Document/ Integrated Safeguards Data Sheet (PID/ISDS)

Concept Stage | Date Prepared/Updated: 1 February 2018 | Report No: 123325

BASIC INFORMATION

A. Basic Project Data

Country	Project ID	Parent Project ID (if any)	Project Name
KENYA	P165545		Long-term Finance for PPP/Nairobi-Nakuru Toll Road Guarantee
Region	**Estimated Appraisal Date**	**Estimated Board Date**	**Practice Area (Lead)**
AFRICA	August 2018*	October 2018*	Finance, Competitiveness, and Innovation (FCI)
Lending Instrument	**Sector(s)**	**Theme(s)**	**Borrower(s)**
IPF	Finance, Transport, PPPs, Guarantees		Government of Kenya
Implementing Agency			
Private sector concessionaire/ KeNHA			

*Estimated date which will depend on the tender process.

Financing (in USD Million)

Financing Source	Amount
International Development Association (IDA)	
Payment Guarantee and Possible Loan Guarantee	TBD
Total Project Cost	

Environmental Assessment Category	Concept Review Decision
A	

Have the oversight and clearance functions been transferred to the Practice Manager? (Will not be disclosed)

No

Other Decision (as needed)

B. Introduction and Context

Country Context

1. **Kenya is moving from a frontier to an emerging market**. It has enjoyed strong economic growth over that past five years. The key drivers for this growth include: a vibrant services sector, enhanced construction, currency stability, low inflation, low fuel prices, a growing middle-class and rising incomes, a surge in diaspora remittances, and increased public investment in energy and transportation. The shilling has been stable over the past two years. Kenya gained the status of middle-income country with a GDP per capita of USD 1455 (its neighbors Tanzania and Ethiopia have respectively 879 and 706).

2. **Yet, vulnerabilities have increased in the past months**. The annulation of the August presidential election and the re-run has created considerable uncertainties for businesses. The interest rate cap law passed in September 2016 had unintended consequences. Credit growth

has dipped to below 5 percent, a trend which started in September 2015 but intensified since the cap. Apart from the ICT sector, the weakness in credit growth to the productive sector has been broad. The Stanbic PMI indicator shows business sentiment to have fallen into contractionary territory for five successive months since April. The debt has been growing faster than GDP and has reached 57% of GDP in June 2017 versus 54% at the same period of 2016. Citing fiscal concerns, Moody's put Kenya's B1 rating under review for downgrade in October 2017.

3. **Infrastructure needs in Kenya are vast, and Government resources required to meet these needs are insufficient**. Addressing Kenya's infrastructure deficit would require sustained investment of over US$ 4 billion per year in the medium-term to meet the gap, which is about 6.1-7% of Kenya's GDP.[1] Kenya's budget is under strain with a fiscal deficit at 7% of GDP in September 2017.

Sectoral and Institutional Context

PPP and Financial sector context

4. **Kenya has adopted an enabling environment for Public-Private Partnerships (PPPs).** To address the country's infrastructure requirements, the Government of Kenya (GoK) has been looking at alternatives to public procurement for prioritizing infrastructure investments, and has made infrastructure development through Public Private Partnerships (PPPs) a priority. The GoK enacted the PPP Act in 2013 and subsequently developed PPP regulations for national and sub-national governments. A PPP Unit was also established under the National Treasury to promote and oversee the implementation of the PPP program. The Bank has supported the PPP legal and institutional framework through two loans (Infrastructure Finance and PPP – IFPPP -P121019 and P162182).

5. **A strong pipeline of PPPs has been developed**. 70 projects in transport, power, water and student housing have been approved by PPP Committee for inclusion in the PPP pipeline and 11 are at the procurement stage. Five road projects are ready to go to market, one is at pre-qualification stage (Second Nyali Bridge) and one is at Request For Proposal (RFP) stage (Nairobi-Nakuru Mau Summit). The total amount for these five road projects is about USD 3.8 billion, or 6% of GDP. Previous large infrastructure projects have been funded in US dollars which creates a potentially large contingent liability should the KES depreciate. For the proposed road toll projects, the GoK is committed to provide availability payments indexed to variation of the exchange rate KES/USD. The foreign exchange risk exposure is aggravated by the fact that the GOK has been relying heavily on foreign borrowings, with an external debt-to-GDP of 30% - considerably higher than its Sub-Saharan neighbors**.**

6. **Kenya has made progress in developing its local currency domestic capital markets and is ready for demonstration projects in long term financing.** With the support of the WBG Finance, Competitiveness and Innovation (FCI) Practice since 2011, the GoK has been working to improve the efficiency and depth of domestic capital markets. This has included a broad agenda covering policy, regulatory and training work in government and non-government bond markets, financial infrastructure, and investment regulations for institutional investors. While reforms in these areas still need to be reinforced, there is already a good base to kick start financial innovations to finance infrastructure. These could have a catalytic impact in accelerating ongoing reforms.

7. **In this context, local currency financing for the large upcoming infrastructure projects is critical to ensure a sustainable financing of the PPP pipeline**. Kenya has the basic pre-conditions for mobilizing institutional investors into infrastructure projects, namely:

- Domestic institutional investors (pension funds, insurance companies) are sizeable with assets under management at 18 percent of GDP. They are interested in infrastructure projects with local banks if suitable capital market vehicles can be set up, and regulatory constraints and institutional risks are addressed;
- Financial regulators are committed to enable infrastructure finance through capital markets;
- Ongoing reforms aimed at improving the efficiency of sovereign debt markets will reduce the risks of potential crowding out of investments into infrastructure, and provide a reliable price reference for long-term financing for infrastructure as an asset class;
- International institutional investors' interest: The National Association of Securities Professionals (NASP) has partnered with USAID to seek opportunities for US institutional investors to invest in Africa's infrastructure. NASP has signed a MOU with the WBG FCI Practice to

[1] AICD Country Report titled "Kenya's Infrastructure: A Continental Perspective, 2011

collaborate and exchange information to support US institutional investors to co-invest alongside domestic institutional investors in Kenya.

8. **Institutional investors are well placed to finance infrastructure assets due to their long-term liabilities.** Institutional Investors can extend financing at much longer maturities than banks (15-20 years) to match their long-term liabilities. By contrast, Basel 3 regulations have limited the capacity of international banks to invest into infrastructure assets. In Kenya, institutional investors are looking for new assets classes to diversify from their current portfolios dominated by government bonds, equities and property. The WBG is working on developing a suitable vehicle (infrastructure debt fund) to pool institutional investors' moneys so that they can provide senior debt to PPP projects within the same syndicate as commercial banks.

9. **The local commercial banking market is quite developed with the presence of major international and regional banks**. While local banks have experience in infrastructure financing and sufficient liquidity, the introduction of the interest rate cap in September 2016 has led them to shorten lending tenors in local currency, thus significantly limiting the availability of local currency long-term loans that are required to support PPP projects.

10. **The WBG has developed a broad engagement to increase private investment in the Kenya infrastructure market, and crowd-in local institutional investors.** The objective is to attract private finance in infrastructure across sectors and to sustain this participation over an extended period of time. This engagement consists of two loan operations to develop the PPP pipeline and build capacity on PPPs, technical assistance on fiscal commitments and contingent liabilities, and a large technical assistance program to address policy and capacity building constraints to mobilizing institutional investors into infrastructure PPPs.

Road sector context

11. **Kenya has witnessed major transport development over the last five years**. Three ministries previously managed the transport sector, namely, Transport, Roads, and Public Works. In 2013, the GoK consolidated all three under one Ministry of Transport, Infrastructure, Housing and Urban Development. The National Transport Policy of 2009 set its vision of "a world-class integrated transport system responsive to the needs of people and industry". It identified key elements of the transport framework and priority, including transport sector reforms, enhancement of the private sector involvement, integration of Non-Motorized Transport and Intermediate Means of Transport, and consolidation of urban transport. The Second Medium Term Plan (2013-17) under the "Vision 2030" pursued further investments in expansion, development and modernization of roads, rail, ports, ICT and telecommunications networks, aiming to put Kenya into a globally competitive position. By establishing a policy foundation, the transport improvements will effectively contribute to achieving the overall GDP growth and social development.

12. **Road transport carries 93 percent of all freight and passenger traffic in Kenya, indicating the minimum contribution of railways in movement of goods and people**. The road transport sector in Kenya has comparatively better infrastructure, operators and services than other countries in the region but the network was neglected for years. About 56 percent of the road network is in poor condition. With the support of the Bank, the GoK has successfully reformed the management of road transport institutions to start address challenges.

13. **Kenya road network plays a strategic role in the reginal integration of East African sub-region and serves as a logistics hub with its connection to the Mombasa port**. In addition to the Northern Corridor[2], substantial portion of which passes through Kenya, the road network in Kenya also provides regional connectivity to Ethiopia, Somalia, South Sudan and Tanzania to enhance logistics efficiency and reduce logistics costs, investments in the road network for its development and better maintenance are very critical.

14. **The new road PPPs are expected to be tolled; yet, the regulatory and institutional framework needs to be finalized**. A tolling policy has been approved by Cabinet. However, Kenya does not have recent track record in implementing road tolling, and free alternatives will not be available for all the toll roads. Local investors have raised concerns on the enforcement of toll collections, and enquired about the possibility of credit enhancement to backstop government's obligations to pay availability payments should the toll revenues be insufficient. The World Bank has a successful experience in credit enhancement in private projects in Kenya. It provided IDA guarantees to energy sector projects[3]

[2] The Northern Corridor is the main artery of transport facilities and infrastructure linking landlocked countries in the Great Lakes region of East and Central Africa. The corridor links Mombasa port with Burundi, D.R. Congo, Rwanda and Uganda
[3] Including Series of IPPs, KPLC commercial financing and currently KenGen (ongoing)

with private investments that have been successfully implemented. Such risk mitigation products will be essential for the PPP projects in the initial stages to boost investor confidence and build a track record for Kenya.

Relationship to CPF

15. **The project reflects the Maximizing Finance for Development (MFD) approach**. The project and broader ongoing engagement aims to promote capital market solutions to crowd-in local financiers into infrastructure PPP projects to create a fiscally sustainable way to finance PPPs. Applying this approach in the Nairobi-Nakuru Toll Road project will have a demonstration effects for all the PPP projects in the pipeline. It is made possible by the size of local institutional investors in Kenya and the well-developed capital markets. The WBG had a successful experience in Colombia to mobilize local pension funds in the financing of Toll Roads whose lessons are being applied in Kenya.

16. **The 2014-20 Country Partnership Framework highlights the need to leverage private investment in infrastructure**. It commits the WBG to ramp up its support to PPPs with a focus on transactions, and the creation of the enabling environment for private investment.

17. **The WBG Strategy commits the WBG to working with member countries financing the huge investment gaps in emerging market economies (Forward Look)**. Infrastructure plays a critical role as an engine of sustainable development, fostering economic growth, enhancing competitiveness, job creation, and poverty alleviation. There is a strong unmet demand for infrastructure investment in emerging markets and developing economies estimated at greater than US$1 trillion a year. The WBG provides impartial policy analysis drawing on considerable experience from previous infrastructure finance/PPP projects. The quality of our advice is also respected because of the global experience learned from many countries.

C. Proposed Development Objective(s)

18. **This project is part of a broader ongoing engagement to mobilize long-term finance from local investors into PPP projects**. This engagement consists of two loan operations to develop the PPP pipeline and build capacity on PPPs, technical assistance on fiscal commitments and contingent liabilities, and a large technical assistance program to address policy and capacity building constraints to mobilizing institutional investors into infrastructure PPPs.

19. **The development objective of this project is to expand capacity, improve quality and safety for the Nairobi-Nakuru-Mau Summit Road through mobilizing long-term commercial financing, including from local investors**. This will be achieved through attracting long term commercial financing and maximizing the potential participation of local institutional investors and local currency financing in support of the PPP Nairobi-Nakuru-Mau Summit project through the provision of an IDA Payment Guarantee and possible Loan Guarantee.

Key Results (From PCN)

20. **The key results will be the crowding-in of private finance by IDA guarantee and an improvement in the mobility of goods and passengers**. The IDA payment guarantee and possible loan guarantee will allow private financing of a project estimated at about US$700 month. The proposed PDO-level result indicators are: i) reduction in travel time between Nairobi to Mau Summit and ii) private commercial financing mobilized, including from local institutional investors (local banks, insurance and pension funds). Proposed intermediate indicators are: i) financial closure of the Nairobi-Nakuru Mau Summit PPP achieved; ii) the road is constructed; iii) the number of local investors that participate in the financing of this project; iv) local investors participate in subsequent infrastructure PPPs.

21. **The beneficiaries will be both the road users and Kenya's taxpayers**. The road users will benefit from enhanced safety and reduced travel time: the Nairobi-Nakuru-Mau Summit Road is amongst the top most dangerous roads on the planet according to the World Health Organization. It is expected that the current travel time would be cut by about half and fatalities will reduce after completion of the project. Until now, infrastructure projects have been financed through public debt with limited controls on the productivity and quality of infrastructure spending.[4] They have also been funded primarily in US dollars, with the government taking most, if not all foreign exchange risks, which is increasing the contingent liabilities. The mobilization of local currency would reduce fiscal contingent liabilities, allowing the GoK to backstop more PPP projects

[4] Kenya Economic Update 2016.

D. Concept Description

22. The road project is an expansion and improvement of an existing Nairobi-Nakuru-Mau Summit road. It is part of the A8 highway and of the Northern Corridor that connects the Port of Mombasa via Nairobi to Malaba at the border with Uganda and onwards to Kampala. The Northern Corridor is the busiest and most important transport corridor in East and Central Africa, providing a gateway through Kenya from Mombasa Port via road, rail and pipeline to the landlocked countries of Uganda, Rwanda, Burundi, South Sudan and Eastern DR Congo.

23. The A8 and A8 South road connections are unable to accommodate the ever-increasing traffic leading to extended travel times and worsening road safety. The slow moving heavy goods vehicles that do not have the power to maintain their speed in the hilly terrain, slow down the traffic which leads to dangerous situations upon overtaking. Average speed is rarely more than 60 km/hr which is below the desired level for an international standard highway. Between 2012 and 2014, 575 people were killed on the highway according to police statistics. The main risks are lack of barriers, poor condition of vehicles, poor driving techniques and inclement weather.

24. To address these problems, the GoK, through Kenya National Highway Authority (KeNHA as the Contracting Authority) has undertaken to improve the road safety and quality, through a PPP scheme. Towards this end, the project has been designed under a 30-year Design Build Finance Operate Maintain Transfer (DBFOMT) arrangement. The private concessionaire, through a special purpose vehicle (SPV) is expected to undertake widening, improvement, and operations and maintenance of the highway, which is separated into following segments:

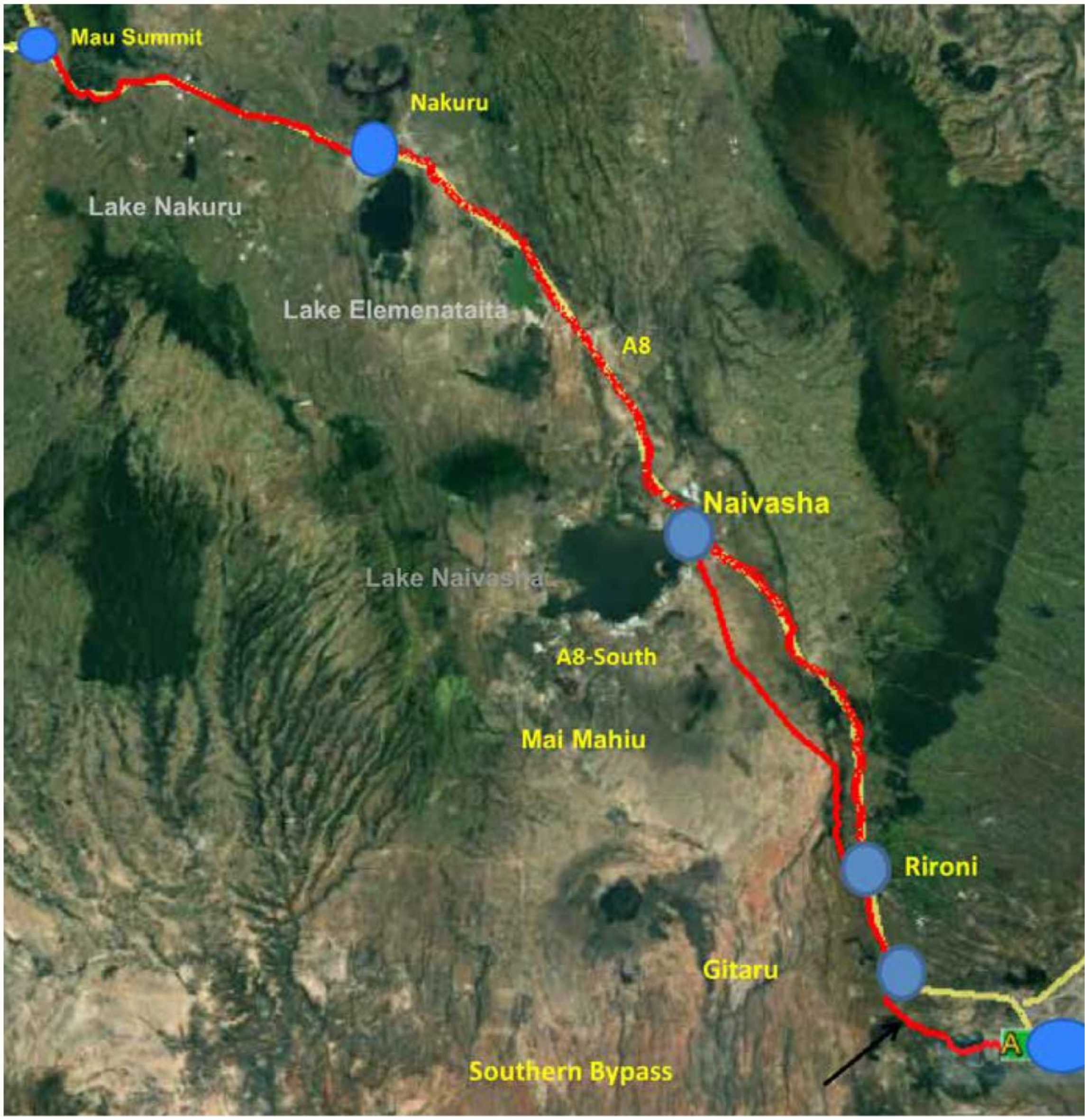
a. widening of 175km of the A8 highway between Rironi and Mau Summit and turning it into a four-lane dual carriageway, including operation and maintenance;

b. strengthening of 58km of the A8-South highway between Rironi and Naivasha, including operation and maintenance.

25. The procurement for the project is undertaken through a competitive process. KeNHA has prequalified four international consortiums (led respectively by Mota-Engil, IL&FS Transportation Networks, Strabag Ag, and Vinci Highways). The pre-qualified bidders received the RFP, draft Project Agreement and Schedules thereto in July 2017, which will be subject to a competitive dialogue process, after which a final set of bidding documents will be issued. The indicative procurement timetable is set out as below.

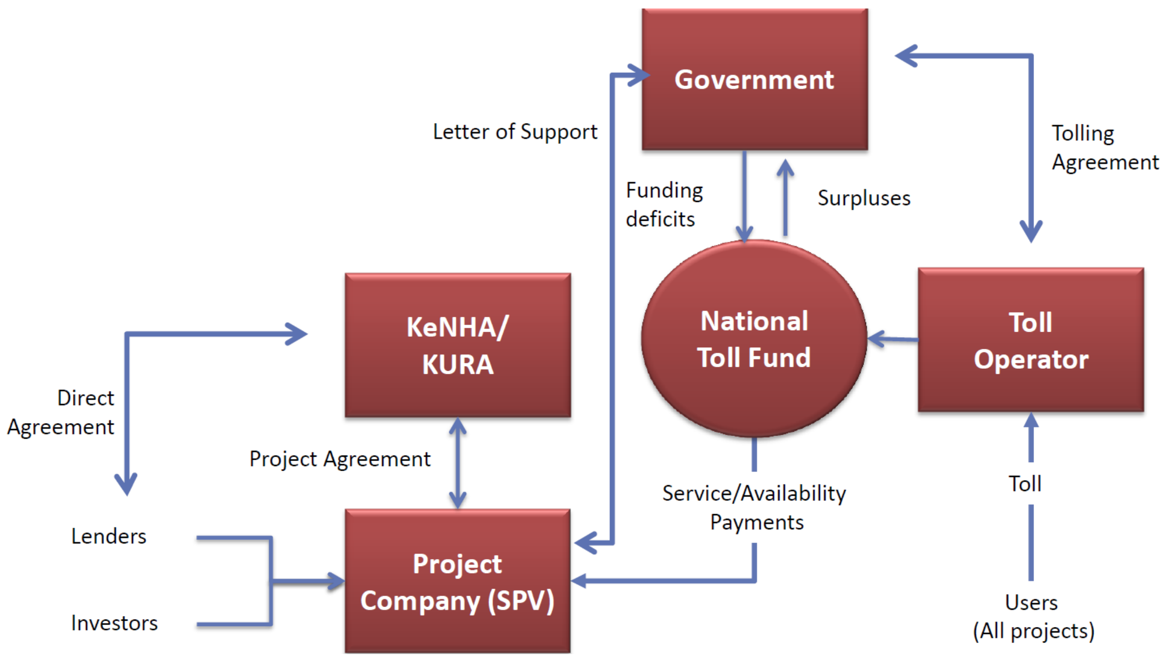
Description of Procurement Process	Date
RFP Issued	July 2017
First Competitive Dialogue	November 2017
Second Competitive Dialogue	Early February 2018
Final bid documentation issuance	End February 2018
Bid submission by pre-qualified bidders	End March 2018
Letter of Award to the Successful Bidder	September 2018
Financial Close	12 months from bid submission date

Figure 1: Nairobi-Nakuru-Mau Summit Road Extension



26. **KeNHA will sign a Project Agreement with the SPV, under which it will make regular performance-related Service Payments largely linked to the road availability and compliance with contractual performance standards**. To fund this and other PPP road projects, the GoK will introduce tolling arrangements. The National Tolling Policy was approved in 2016 by Cabinet but regulations and determination of tolls are pending approval. The procurement of a third party private toll operator responsible for establishing the tolling systems and collecting the tolls for the 5 road PPP projects is ongoing. A special fund (National Toll Fund) will be established where tolling revenues will be collected. The tolling revenues will be used to fund the Service Payments under this and other road PPP contracts. KeNHA's preliminary assessments indicate that the proceeds from tolling over the life of the project should be sufficient to cover the Service Payment obligations however in the event of a shortfall, GoK will cover the deficits (see Figure 2 below).

Figure 2: Project Contract and Payment structure



27. **The RFP includes incentives for the provision of local currency financing.** Bidders will have to indicate in their bids the proportion of the availability payment that should be indexed to foreign currencies, which will reward the bid with the lowest indexation. Availability payments will be adjusted to the Kenyan consumer price index after construction. Finally, the GoK will take the risk of the floating KES interest rate by adjusting availability payments to the movement of the local interest rate. [5]

Financing Instrument

28. **The proposed project is an Investment Project Finance (IPF) operation, utilizing an IDA guarantee product**. The IDA guarantee is proposed to be structured as a payment guarantee and possible loan guarantee. The payment guarantee will backstop certain payment obligations of the GoK and/or KeNHA. The main risk that the IDA payment guarantee mitigates is contractual payment default under the PPP contract due to the risk of non-availability of sufficient toll revenues in the National Toll Fund and insufficient funding of toll deficits by the Government. The risk of non-availability could arise from less traffic and toll revenue than Government projections and/or inadequate toll rates set by the Government over the life of the PPP contract. In addition, the same source of toll revenue is also expected to support more than one PPP project. The Government's intention under the National Toll Fund Regulation is to provide a cover ratio for all its obligations under the National Toll Fund/PPP contracts.

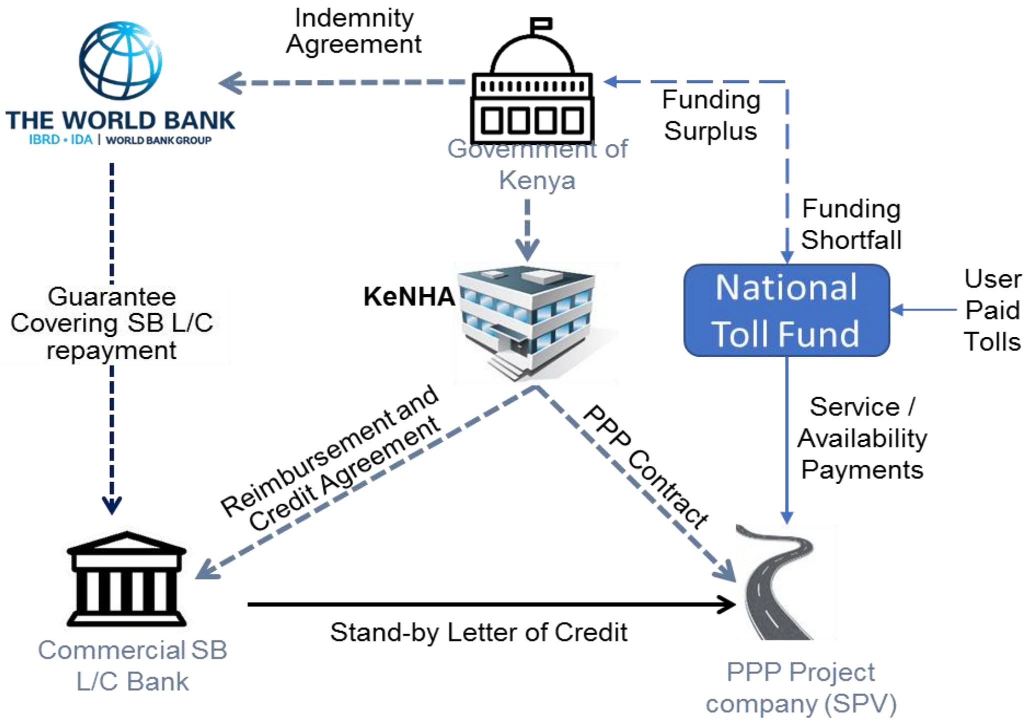
29. **The proposed IDA guarantee is expected to provide adequate comfort to both the SPV and its financiers that the availability payments will be made on time**. Following the World Bank core principle of guarantees, the coverage on payment risk will only be partial. The level of risk coverage and degree of partiality will be finalized after negotiations with the pre-qualified bidders and considering the project being the first PPP in the road sector.

30. **IDA payment guarantees will be offered through a standby letter of credit (SBLC) structure to be issued by a commercial bank (as a beneficiary of IDA guarantee), as explained in Figure 3**. The structure and the amount of IDA guarantees will be confirmed further during the discussions with pre-qualified bidders and discussion of risk allocation. Any payment made by IDA under the IDA guarantee will trigger the obligation on the part of GoK to repay IDA under the Indemnity Agreement (to be concluded between IDA and GoK). The Indemnity

[5] Local interest rates move according to the Central Bank of Kenya (CBK) base rate which is currently set at 10 percent. The GoK will effectively provide a swap by taking the floating rate in exchange for providing a fixed rate to the bidder; in practice the availability payments will be adjusted to the movement of the CBK base rate.

Agreement will require the GoK to repay IDA on demand, or as IDA may otherwise direct. Annex 3 provides the detailed term sheet for the IDA guarantee.

Figure 3: IDA Payment Guarantee with Standby Letter of Credit – Indicative Contractual Structure



ENVIRONMENTAL AND SOCIAL RISK MANAGEMENT

A. Project location and salient physical characteristics relevant to the E&S risk management analysis (if known)

The current project – Nairobi-Nakuru-Mau Summit Road Extension – represents a first mover PPP project that was prepared as part of the PPP pipeline development efforts by the GoK with support from the World Bank TA project, the Kenya infrastructure finance and PPP (P162182), which financed feasibility studies among other things. Feasibility studies included a Preliminary Environmental and Social Impact Assessment (PESIA), February 2016, and a Resettlement Action Plan (RAP), September 2017.

According to the preliminary assessment documents mentioned above, the following are key salient physical characteristics relevant to the E&S risk management analysis:

a. The project road starts at Rironi which is in Kiambu County and ends at Mau Summit in Nakuru County. High traffic road projects that will widen the existing 175km road, with potential construction of interchanges, underpasses, overpasses as part of road infrastructure (final design to be provided by concessionaire, which is considered to be bidder risk); it is currently a 2-lane single carriageway which will be widened to a 4-lane dual carriageway;

b. The exact parameters of land acquisition, number of project affected persons, and modalities will be confirmed through the process of updating the preliminary RAP by KeNHA as per the schedule indicated in section E below. The road passes through many communities. The expansion of the road will be implemented in the existing 60m road reserve which is owned by KeNHA. Provided that 60m road reserve is available for the entire length of the road (to be confirmed), land acquisition is only required for the construction of the interchanges, overpasses, underpasses, deceleration lane and market areas. The intent is that land acquisition be done mostly on willing-seller-willing-buyer principle, and to ensure that informal settlers (such as traders with businesses along the road), are adequately compensated in line with the World Bank requirements.

c. There are informal traders spread along the entire road alignment in the road reserve/right of way (ROW) – from Rironi to Mau Summit - and induced settlements occur along the road reserve and junctions. However, the preliminary RAP prepared by KeNHA was recently reviewed by the Bank and found to have excluded compensation for the informal traders who earn their livelihoods in the ROW. The RAP is therefore being updated to include compensation for this category of PAPs in accordance with the World Bank's OP/BP 4.12 and taking into account that the concessionaire will also need to ensure best practices have been applied in line with the requirements of international standards for private sector project finance (as the concessionaire may need to get financing from these sources).

d. The road is located along the Great Rift Valley. Protected areas are present in the direct proximity to the road. It crosses the wildlife habitat, particularly around Gilgil, but is well north of the wildlife migrations of the Masai Mara. While no direct impacts on these protected areas are envisioned, construction and the widening of the road may have impacts on wildlife that need to be further assessed (among other things to confirm that no critically endangered or endangered, restricted-range, or migratory/ congregatory species would be affected);

e. Road location in an area with limited physical construction space (hilly terrain in some parts) may result in potentially difficult environmental conditions resulting in occupational health and safety risks (as it would be the case for any road), potential complexity of managing labor risks related to work of contractors and sub-contractors, and some possibility of landslides. Construction impacts from works, ancillary facilities, health and safety, migrant labor, etc. are anticipated.

Rationale for categorization (para. 6 of BP4.03):
The project is categorized as **A** in accordance with OP/BP4.03 based on the analysis of risks and impacts that business activities under the project are anticipated to have potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented. The potential adverse impacts envisioned will be on residential areas, businesses, land acquisition and resettlement, and health and safety of communities and workers (including migrant workers), as well as proximity to protected areas and potential impacts on wildlife. The road corridor is dotted with various small villages and is one of the busiest and terribly accident-prone roads in Kenya with very heavy traffic.

B. Borrower's Institutional Capacity

Borrower capacity assessment for this PPP project is two-fold: (i) capacity of the government, and in particular the implementing agency, to manage risks and impacts under its control as well as oversee the performance of the concessionaire; (ii) capacity of the concessionaire to prepare and carry our necessary actions to comply with the E&S requirements included in its contractual obligations.[6]

Capacity of the implementing agency
KeNHA is the implementing agency for the project. KeNHA has previous experience with World Bank projects in the road sector, and has received capacity building from the PPP unit through the Kenya infrastructure finance and PPP (P162182). Under this project KeNHA has developed an Environmental and Social Management Framework (ESMF). The ESMF was last updated in February 2017 and incorporates a detailed description of Kenyan legislative framework, baseline data, determination of potential impacts from various subprojects, and capacity building. KeNHA has a fully staffed and qualified environmental and social department. KeNHA has substantial knowledge of the World Bank safeguard policies, but does not have any prior experience of working with the PPP or the E&S Performance Standards.

In preparation for the World Bank project, the capacity of KeNHA to manage the concessions will be assessed in detail and measures will be recommended to close the gaps. KeNHA would be expected to have the capacity to manage both environmental and social aspects of the tendering processes and oversee subsequent contracts with the private operator/ concessionaire. To do so, KeNHA will prepare and execute a coherent Environmental and Social Management System (ESMS) to manage E&S impacts at its level. Central to the ESMS at the level of KeNHA will be the operating procedures for the SPV that shall include provisions for the E&S risk management of the concession contract, which would be developed by KeNHA and will be integrated in the concessionaire's obligations as described below.

[6] World Bank would sign two project agreements, one with the concessionaire and one with KeNHA. KeNHA's obligations would be set forth in a project agreement and the concessionaire's - in the second agreement accordingly

KeNHA will be expected to have adequate capacity to:

- Manage E&S aspects of the bidding processes and oversee subsequent contracts with the private sector concessionaire;
- Prepare and execute a coherent system for managing E&S impacts under KeNHA's control (vs the concessionaire's), using all available tools and instruments such as SPV management procedures; legal documents and contracts (including legal remedies for non-compliance); stand-alone action plans on certain issues under KeNHA's control such as resettlement; concessionaire audits and other performance monitoring processes;7
- Implement the approved RAP, with specific social expertise, to ensure that all project affected people's living conditions improve -or at the very least remain the same- as compared to those observed during the baseline census.
- Put in place sufficient internal capacity to ensure high quality of E&S impact assessment and risk mitigation measures to be undertaken by concessionaire;
- In cases of risks where KeNHA and the concessionaire will have a shared responsibility, such as management of impacts on wildlife, KeNHA shall remain responsible for taking steps that would enable the private operators to meet their agreed obligations;
- Support capacity building plan for concessionaire and their contractors and sub-contractors and/or request such capacity building measures from the concessionaires themselves.

Capacity of the private sector entity

The private sector entity that will be responsible for construction and operation of the road is expected to be known in mid-2018.The focus of ensuring sound E&S risk management will be on preparing the bidding documents and contracts in such a way that stipulates clear and detailed obligations of the concessionaire. Based on initial analysis, high-level requirements may include:

a. The PPP contract would require the private concessionaire to comply with the national law and the World Bank Performance Standards. It will be required to design, build, and operate the project in accordance with the requirements of national legislation and the World Bank Performance Standards, and further guided by the applicable provisions of the WBG EHS Guidelines (namely General, Toll Roads, and Construction Materials Extraction);

b. Prepare and implement an ESMS at its level (such ESMS may be requested as part of bid submission to assess the capacity of the bidders), as required under Performance Standard 1;

c. Comply with the Environmental and Social Action Plan (ESAP). ESAP prepared with support of the World Bank will be the basis for the concessionaire of developing detailed management programs to enable it to comply with the Performance Standards. The part of ESAP detailing concessionaire's obligations[8] will be included in the concession agreement and will serve as a key instrument for KeNHA to stipulate the concessionaire's E&S obligations and track compliance over time. In particular, under the ESAP the concessionaire would be required to:

  - Based on the environmental and social impact assessment studies prepared before Board, conduct comprehensive E&S impact assessment(s) and supplementary studies on certain subjects (e.g. noise baseline, biodiversity impacts of construction), to the satisfaction of KeNHA and World Bank;
  - Put in place and execute management programs and plans to define mitigation and performance improvement measures and actions that address identified E&S risks and impacts to be implemented over time in line with the detailed timelines. E&S risk mitigation measures and plans shall be as per the outcomes of the E&S impact assessment. Examples include contractors ESMP implementation auditing plan, monitoring plan/manual setting out the air, noise and water monitoring programs, migrant workforce management plan, grievance mechanism for workers, community and other stakeholders;
  - Define and implement a process to engage with affected communities around issues such as appropriate behavior in the event of an unplanned release beyond the plant boundaries due to irregular plant operation/accident, or during transportation of material to the plants as well as nuisances;

[7] For example, it can be proposed that KeNHA and the concessionaires engage an Independent E&S Consultant to review compliance with the E&S obligations of the Concession Agreement.

[8] World Bank ESAP will consist of two parts (i) measures to be taken by KeNHA; (ii) studies, plans, actions to be undertaken by the concessionaire.

- The concessionaires and their contractors, if any, shall develop/maintain written human resources (HR) policies and procedures in accordance with Kenyan labor laws and World Bank Performance Standard 2 (Labor and Working Conditions) requirements.

Preliminary analysis shows that the concessionaire is likely to have prior experience with application of the Performance Standards. Four international consortia have been pre-qualified to bid for the project. IFC has worked with members of two of the pre-qualified bidders as follows:

- Consortium 1: IFC has invested $100 million in the Africa Infrastructure Investment Fund 2, an equity fund managed by Africa Infrastructure Investment Managers. In 2010, IFC supported the financing of new Cairo's wastewater for which a consortium of Egypt's Orascom Construction Industries and Spain's Aqualia (Orasqualia) won the bid for a public-private partnership (PPP) to build, operate and transfer (BOT) a 250,000 m³/day treatment plan.

- Consortium 4: In 2011, IFC supported the financing package for the TransJamaican Highway co-owned by Bouygues and Vinci Highways.

Mechanisms for consultation and disclosure, with an emphasis on potentially affected people

Consultation and disclosure will be a shared responsibility of the implementing agency (KeNHA) and the private sector concessionaire, as follows:

1. On its part, KeNHA shall undertake a stakeholder analysis with a view to establishing an effective communication and consultation strategy that will ensure consultations with, and feedback to and from all PAPs and other stakeholders. As part of the strategy, KeNHA shall:
   i. Undertake enhanced and in-depth consultations with all the project affected persons (PAPs), including the informal traders in the ROW, during the updating of RAP and throughout the RAP implementation process, with emphasis on the economic/livelihood displacement and compensation issues, and on physical relocation, should this be found to be necessary; establish an appropriate and accessible grievance redress mechanism (GRM) that is specific to the project in consultation with the PAPs;
   ii. Disclose the updated Environmental and Social Impact Assessment, the updated Resettlement Action Plan (including the agreed project-level GRM, in accessible locations and language). In particular, consultations on the physical and economic displacement issues would be required.

2. On the part of the private sector concessionaire, stakeholder engagement requirements stipulated in Performance Standard 1 will apply. In particular, a Stakeholder Engagement Plan will be required as part of the ESAP and shall include all required steps (stakeholder identification, information disclosure, consultations, negotiations and partnerships, grievance management, and stakeholder involvement in monitoring activities).

C. Environmental and Social Specialists on the Team

1. Yves Andre Prevost, Environmental Safeguards Consultant, GEN07
2. Ekaterina Grigoryeva, Environmental Specialist, GEN03
3. Kimberly Vilar, Senior Social Development Specialist, GSU07
4. Margaret Auma Ombai, Social Safeguards Consultant, GSU07

D. Policies that might apply

OP/BP 4.03 *("Performance Standards for Private Sector Activities"*) will be applicable to the project in lieu of the World Bank's safeguard policies, with the exception of OP4.12, that will govern government-led resettlement process to be conducted ahead of the concession. OP/BP4.03 is better suited for this project given that it will constitute private sector activities (the road to be built and operated by a private concessionaire). Additionally, application of OP/BP4.03 provides a strategic advantage for this project, as its long-term objectives is to crowd in private sector investment. The use of Performance Standards for the concessionaire will facilitate financing by IFC and/or MIGA, or any of the Equator Banks as the global E&S standard for private sector project finance. Based on the list of pre-qualified bidders, the winning bidder is also likely to have previous experience with applying Performance Standards.

OP/BP4.03 is an umbrella policy for application of the World Bank Performance Standards. Under OP/BP4.03, any of the Performance Standards may apply based on the outcomes of the process of identification of risks and impacts – by both KeNHA and the concessionaire – in accordance with Performance Standard 1. The scope of the ESIA must include both the main project and associated facilities as defined in PS1. The below analysis of impacts is based on currently available information and will be further detailed in the ESRS.

Policies	Triggered?	Explanation (Optional)
OP4.12 (Involuntary Resettlement)	Yes	The project requires land acquisition (on a willing-buyer, willing-seller basis to the extent possible), compensation and livelihood restoration. According to the RAP, dated February 2016, land is to be acquired for (i) interchanges outside the existing 60km corridor; (ii) additional deceleration lane (Kwambera Township); (ii) other improvements related to the interchanges. This will be carried out through a "willing-buyer, willing-seller" modality to the extent possible. Depending on the final design proposed by the winning bidder, other needs may be identified. Also, there is a possibility of residential structures and established businesses in the RoW especially in the first interchange (depending on what is proposed by the winning bidder). To the extent possible, the RAP should clearly identify the interchanges (appr. 6 are to be done under the PPP contract), and the amount of land to be acquired for each. RAP shall also identify compensation framework especially for the annual crops. The project also involves economic displacement. KeNHA has ROW along the whole road, but there are itinerant traders on this ROW who will need to be compensated for economic displacement and any assets that they may own in the ROW. These had not been accounted for by the original draft RAP. A livelihood restoration plan will also be needed to be included. This policy will apply to the process of government-managed resettlement. KeNHA would complete land acquisition and any needed resettlement beforehand, to ensure that land is free of encumbrance before the financial close of the project (although it's recognized that some land-related issues and other E&S aspects will depend on the detailed design to be prepared by the concessionaire and may need to therefore be addressed by KeNHA after financial close unless the concessionaire assumes responsibility under provisions of PS5 that deal with private sector responsibilities in case of government-managed resettlement). If land acquisition commences more than a year after the completion of the RAP, land valuation and consultations should be updated (this is anticipated as detailed designs have to take place after the winning bidder is selected).
Projects on International Waterways OP/BP 7.50	No	The project will not involve any impacts on international waterways.
Projects in Disputed Areas OP/BP 7.60	No	The project is not carried out in disputed areas.
Applicable Performance Standards	**Yes/No?**	**Explanation (Optional)**
PS1 (Assessment and Management of Environmental and Social Risks and Impacts)	Yes	The process of E&S risks and impacts assessment in line with PS1 will be a shared responsibility of KeNHA and the concessionaire. Studies conducted by KeNHA included a Preliminary Environmental and Social Impact Assessment (PESIA), February 2016, and a Resettlement Action Plan (RAP), September 2017. These will be updated. Based on the outcomes of this process, the concessionaire may be required to conduct additional E&S studies as part of the ESAP. To enable its compliance with the requirements of the Performance Standards, the

		concessionaire shall put in place and implement an ESMS that will – as required by PS1 - incorporate the following key elements: (i) an overarching E&S policy; (ii) organizational capacity, competency, and process to build internal capacity on E&S matters; (iii) a process to identify the E&S risks and impacts associated with the project over the entire concession period; (iv) management programs to define mitigation and performance improvement measures and actions that address identified E&S risks and impacts; and (v) a process to engage with affected communities.
PS2 (Labor and Working Conditions)	Yes	Since the project is focused on executing substantial works during construction and operation, OHS has been identified as one of the principal risk areas. Care must be taken to ensure that operators as well as other contractors and sub-contractors involved in the works have OHS policies,[9] processes, and practices in place such as employee training, handbooks, warning signs, Personal Protective Apparel (PPA) available, etc. A grievance mechanism for workers will also need to be in place.
PS3 (Resource Efficiency and Pollution Prevention)	Yes	Air, water, soil pollution impacts will be present during construction and operation.
PS4 (Community Health, Safety, and Security)	Yes	Adjacent communities would experience safety issues related to the road construction works and traffic accidents and fatalities during road operation due to increased traffic; other impacts may include community-related issues associated with migrant workers/labor influx during construction, improper management of security forces by the private concessionaire. An HIV/AIDS prevention campaign will be recommended.
PS5 (Land Acquisition and Involuntary Resettlement)	Yes	Relevant provisions of PS5 will apply to the concessionaire and more specifically those that cover private sector responsibilities under government-managed resettlement.
PS6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources)	Yes	The road passes close to but does not cross Lake Naivasha National Park, Lake Nakuru National Park and Hell's Gate National Park. It crosses the wildlife habitat, particularly around Gilgil, but is well north of the wildlife migrations of the Masai Mara. Potential impacts on wildlife, especially on migration, shall be further assessed and mitigation measures defined.
PS7 (Indigenous Peoples)	TBD	According to the initial screening carried out by the World Bank, it was concluded that Vulnerable and Marginalized Groups (VMGs), as defined by OP4.10, PS7 and current practice in Kenya, were not identified within, or as having a collective attachment to, the existing road reserve portion of the project area, as currently defined. The preliminary ESIA process to be conducted during project preparation will include informed consultations with national-level VMG organizations and community-level stakeholders, in order to verify the Bank's initial screening and collect qualitative inputs regarding the extent and nature of VMGs' current presence in, or use of, the project area of influence (in particular related to cattle grazing and road crossing) and any associated potential risks and impacts of the project on VMGs', as well as identify, consult, and appropriately document proposed mitigation measures, as relevant. If the guarantee is ultimately taken up by the concessionaire, the final ESIA prepared by the Concessionaire will follow the same approach. The contractual arrangements with the concessionaire will reflect the obligation to implement such mitigation measures.
PS8 (Cultural Heritage)	TBD	Although currently impacts on cultural heritage are not envisioned, further determination will be made based on the outcomes of the process of risks and impacts identification.

[9] General contextual risk that should be taken into account is that OHS standards exist in Kenya, but their enforcement is often inadequate, and credible data are lacking on workplace accidents, injuries and fatalities, for example.

E. Preparation Plan

Tentative target date for preparing the Appraisal Stage PID/ISDS

July 2018. In line with OP/BP4.03 applied to this project, an Environmental and Social Review Summary (ESRS), including a detailed Environmental and Social Action Plan (ESAP) detailing specific studies, risk management plans or actions to be completed by KeNHA and the concessionaire, will be prepared by the Bank to summarize the outcomes of Bank due diligence and describe the ESMS that will be put in place and maintained during project implementation by the concessionaire and KeNHA. The ESRS, together with updated preliminary ESIA and RAP, will be disclosed 60 days prior to the Board, in line with BP4.03. The Appraisal-stage ISDS will be prepared to serve as the cover page for the ESRS.

Time frame for launching and completing the studies that may be needed.

The following studies have been already prepared by the GoK in line with World Bank safeguard policies:

a. Preliminary Environmental and Social Impact Assessment (PESIA) dated February 2016
The client will update the PESIA to reflect the application of Performance Standards, specifically risks and impact not adequately captured in the PESIA (for instance migrant workers, presence of vulnerable and marginalized peoples) and information contained in the feasibility study. The updated PESIA will also be built upon to prepare ESRS and ESAP as stated above and based on new Terms of Reference that will allow to cover all key aspects of the risk and impacts identification process in line with the requirements of the Performance Standard 1. It is envisioned that the updated analysis of E&S risks and impacts will be completed by end February 2018.
b. Site-specific information provided in the feasibility report can be used to update the preliminary ESIA for disclosure 60 days prior to the Board in a quality that is acceptable keeping in mind that the final design will only be done after the Board once the concessionaire is selected and obligated to compete a full ESIA.
c. Resettlement Action Plan (RAP) dated September 2017
RAP will be updated based on the feedback from the World Bank in line with World Bank OP4.12. RAP will also account for the modality of application of the Performance Standards by the concessionaire. It is envisioned that update of the RAP will be completed by end February 2018.

CONTACT POINT

World Bank

Caroline Marie C. Cerruti Hailey
Senior Financial Sector Specialist
ccerruti@worldbank.org

Rajesh Rohatgi
Senior transport Specialist
rrohatgi@worldbank.org

Satheesh Sundararajan
Senior Infrastructure Finance Specialist
ssundararajan@worldbank.org

Borrower/Client/Recipient

Stanley Kamau
Director of the PPP Unit
Stanleykamau@yahoo.com

Eng. Peter Mundinia
Director General of KeNHA
dg@kenha.co.ke
ppp@kenha.co.ke

Implementing Agencies

Eng. Peter Mundinia
Director General of KeNHA
dg@kenha.co.ke
ppp@kenha.co.ke

FOR MORE INFORMATION CONTACT

The World Bank
1818 H Street, NW
Washington, D.C. 20433
Telephone: (202) 458-4500
Fax: (202) 522-1500
Web: http://www.worldbank.org/

APPROVAL

Task Team Leader(s):	Caroline Marie C. Cerruti Hailey Rajesh Rohatgi Satheesh Sundararajan

Approved By

Safeguards Advisor:	Nathalie S. Munzberg	1/31/2018
Practice Manager/Manager:	Niraj Verma	1/31/2018
Country Director:	Diarietou Gaye	2/1/2018