# GREEN AND RESILIENT EXPANSION OF ENERGY (GREEN) PROGRAM (P176698)

## ENVIRONMENTAL AND SOCIAL SYSTEM ASSESSMENT - ESSA

**March 2023**

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# List of Acronyms

| | |
|---|---|
| ADMS | Advanced Distribution Management System |
| ADR | Alternative Dispute Resolution |
| AMI | Advanced Metering Infrastructure |
| DOSHS | Directorate of Occupational Health and Safety |
| E&S | Environmental and Social |
| EIA | Environmental Impact Assessment |
| EPRA | Energy and Petroleum Regulatory Authority |
| ESF | Environmental and Social Framework |
| ESHS | Environmental Social, Health and Safety |
| ESIA | Environmental and Social Impact Assessment |
| ESMF | Environmental and Social Management Framework |
| ESMMP | Environmental and Social Management and Monitoring Plan |
| ESSA | Environmental and Social System Assessment |
| FLLOCA | Financing Locally Led-Climate Action Program |
| GBV | Gender Based Violence |
| GHG | Greenhouse Gas |
| GoK | Government of Kenya |
| GREEN | Green and Resilient Expansion of Energy |
| GRM | Grievance Redress Mechanism |
| IPF | Investment Project Financing |
| IP | Indigenous Peoples |
| KDSP | Kenya Devolution Support Program |
| KENGEN | Kenya Electricity Generating Company |
| KeNHA | Kenya National Highway Authority |
| KERRA | Kenya Rural Roads Authority |
| KETRACO | Kenya Electricity Transmission Company |
| KFS | Kenya Forestry Service |
| KOSAP | Kenya Off-Grid Solar Access Project |
| KPEELP | Kenya Primary Education Equity in Learning Program |
| KPLC | Kenya Power and Lighting Company |
| KUSP | Kenya Urban Support Program |
| KWS | Kenya Wildlife Service |
| LMC | Last Mile Connectivity |
| MoE | Ministry of Energy |
| MoLPP | Ministry of Land and Physical Planning |
| MoTI | Ministry of Transport and Infrastructure |
| MPA | Multi-phase Programmatic Approach |
| NARIG | National Agricultural and Rural Inclusive Growth Project |
| EEPH | Eastern Electricity Highway Project |
| NEMA | National Environment Management Authority |
| NGEC | National Gender Equality Commission |
| NLC | National Land Commission |
| NT | National Treasury |
| OVI | Objectively Verifiable Indicator |
| PAP | Program Action Plan |
| PDO | Project Development Objective |
| PforR | Program for Results |
| RAP | Resettlement Action Plan |
| REREC | Rural Electrification |
| RPF | Resettlement Policy Framework |
| SDASAL | State Department of Arid and Semi-Arid |
| SDSP | State Department of Social Protection |

| | |
|---|---|
| TNA | Training Needs assessment |
| SEA-H | Sexual Exploitation and Abuse, and Harassment |
| SEP | Stakeholder Engagement Plan |
| SH | Sexual Harassment |
| SRM | Social Risk Management Unit |
| T&D | Transmission and Distribution |
| TA | Technical Assistance |
| ToR | Terms of Reference |
| VMGs | Vulnerable and Marginalized Groups |
| VRE | Variable Renewable Energy |
| WB | World Bank |

# Executive Summary

## E1. Introduction

**E1.1 Background.**Access to clean, adequate, affordable, and reliable energy is paramount to achieving the Government of Kenya's (GoK) goal of transforming Kenya into a newly industrializing middle income country, providing a high quality of life to all its citizens. This goal is anchored in the national development blue print - Vision 2030. To this end, Kenya has committed itself to increasing access to clean energy for all its citizens, which is envisaged to generate strong social, economic, and environmental benefits that include savings from the opportunity cost of electricity substitutes (kerosene, charcoal), replacement of diesel generation, and reduced firewood consumption, all of which should result into significant reduction in Green House Gases (GHGs) emission.

**E1.2 The PforR Program.**To contribute to the achievement of universal access to electricity and 100 percent clean energy by 2030, the GoK is seeking the support of the World Bank to finance the Green and Resilient Expansion of Energy (GREEN) Program as a Multi-phase Programmatic Approach (MPA) with the first phase as a Program for Results (P4R) to be implemented by Kenya Power and Lighting Company (KPLC). The Program design is based on four Result Areas that include; i) **Results Area 1: Improved sector planning, governance, and generation expansion:** for purposes of strengthening sector governance and least cost planning; ii) **Results Area 2: Financial sustainability of the sector:** aimed at addressing the short-to-medium term financing constraints of KPLC to help it revert back to a financially sustainable path toward universal access; iii) **Results Area 3: Improved service delivery:** for enhanced quality and reliability of service and reduction of losses; and iv) **Results Area 4: Increased access to electricity:** that aims to accelerate the grid access program based on an improved last mile electrification program informed by the updated Kenya National Energy Strategy (KNES).

The Bank has had a long engagement with KPLC in a number of operations over the last two decades,which helped to strengthen its organizational systems and implementation capacity. The GREEN Program is expected to advance the gains made in this regard and especially in the management of the Environmental, Social, Health and Safety (ESHS) effects[1]. The Bank and the borrower are proposing to finance theProgram through a Program for Results (PforR) instrument with a small technical assistance component as an Investment Project Financing (IPF). In accordance with the Bank's PforR Policy, the proposed Program will apply the borrower systems (policies, legislation, regulations, institutional requirements, and procedures) in the management of ESHS effects. In line with the PforR policy, the Bank has undertaken an Environmental and Social Systems Assessment (ESSA) to confirm the robustness of the Country system for management of the ESHS effects and evaluate the extent to which the system is consistent with the PforR Six Core Principles and the corresponding Key Planning Elements. Specifically, the ESSA seeks to: (i) identify the Program's potential ESHS effects, (ii) assess the current system for ESHS management applicable to the Program, including a review of institutional responsibilities; (iii) evaluate the capacity of the relevant institutions to implement requirements under the system; and (iv) recommend specific actions to address gaps if any, in the system, by providing material measures for improving program design and implementation. Measures for addressing the identified gaps are organized into a Program Action Plan (PAP).

The Bank undertook the ESSA exercise betweenOctober 17-29, 2022. This report presents the findings and recommendations of the ESSA exercise.

**E1.3 ESSA scope and methodology**. In conducting the ESSA, the Bank applied a number of approaches including: i) initial screening of the Program interventions per Result Area, to identify potential ESHS effects and evaluate any activities for exclusion; ii) comprehensive **desk review** of country ESHS system, program documents, and similar ESSAs carried out in the recent past; and iii) **County level** stakeholder **consultations in** 16sampled counties comprisingNairobi, Kwale, Kilifi, Taita Taveta, Vihiga, Trans-Nzoia, Homabay, Kisii, Kisumu, Tharaka Nithi, Kiambu, Murang'a, Nakuru, Kitui, Machakos, and Kericho. During the County field

[1] "Effects" is used in this document to refer collectively to benefits, impacts, and risks. The term "benefits" refers to positive consequences whereas "impacts" refers to adverse or negative consequences of actions taken. "Risks", expressed in terms of probability and severity of consequences occurring in the future, are used to denote the potential for loss or damage of an existing environmental or social issue.

visits a number of stakeholders were engaged consisting of KPLC (national level staff at the County/regional level), the National Environmental Management Authority (NEMA), Department of Occupational Health and Safety (DOSHS), Kenya Wildlife Service, National Employment Authority (NEA), National Land Commission (NLC), Department of Labour, Kenya Forest Service (KFS), relevant County Government Departments (Lands, Physical Planning, Agriculture, Water, Youth, Social Protection, Environment etc) and Non-governmental Organizations such as Dakatcha Woodland Conservation Group and Children Society of Kenya in Kilifi County; and SautiyaWanawake and WumweriGhodu Umbrella CBO in Taita Taveta County.Focus Group Discussions were also held with representatives of the Indigenous Communities such as Sengwer and Ogieks in Trans Nzoai and Wakifundi and Waatain Kwale and Kilifi respectively.

**In addition, National level** stakeholder **consultations** were carried out with key relevant Ministries, Departments and Agencies (MDAs) including Ministry of Energy, KPLC, National Treasury, Kenya Electricity Transmission Company (KETRACO), Rural Electrification and Renewable Energy Corporation (REREC),Energy and Petroleum Regulatory Authority (EPRA), Kenya Electricity Generation Company (KENGEN), Ministry of Land and Physical Planning (MoLPP), Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KERRA), National Land Commission (NLC,), National Gender Equality Commission (NGEC), State Department of Arid and Semi-Arid (SDASAL), State Department of Social Protection (SDSP), Social Risk Management (SRM) Unit etc. Lastly, consultations on **the ESSA findings were undertaken after internal reviewof the draft ESSA reportby sharing the draft report with stakeholders and requesting them to provide written feedback to the Bank.**Stakeholders feedback from thisverification and validation exercise have been used to finalize this ESSA report. The final version of the ESSA report has beendisclosed by KPLCand the World Bank.

## E2.Potential Programs ESHS Effects

**E2.1 The Program has many ESHS benefits.**These will be derived from; i) increased access to electricity services for households in Kenya, ii) inclusion of vulnerable households in line with the last mile program pro-poor focus objectives that makes connection affordable; iii) reduced dependency on kerosene and firewood as sources of energy for cooking and lighting thus reducing the cutting of trees and reduction of carbon emissions; iv) reduced energy losses; v)improved KPLCs financial sustainability thus helping to provide affordable supply of electricity; v) improvements in quality of public service delivery such as schools and health care facilities v) adoption of climate resilient infrastructure therefore reducing the overall operation and maintenance costs of KPLC; and vi) promotion of clean energy transition hence reducing the national GHG emissions.

**E2.2 Environment, Health and Safety risks and impacts.** include: i) potential destruction of crops, vegetation and or/trees, following the acquisition of wayleaves to construct medium-voltage (MV) and low-voltage (LV) lines to extend the distribution network and to connect new households and businesses; (ii) potential solid and liquid waste generation from project activities; iii) potential increased surface runoff during rainy season that could lead to erosion in areas with unprotected soil in neighbouring facilities; iv) civil and electrical works are likely to expose workers and the proximal community members to occupational safety and health related hazards and accidents; v) potential inability of last mile customers to access technicians accredited by the sector regulator (EPRA) to wire premises; vi) equipment and machinery used could be a source of hazardous and noxious waste such as running engines, oil from wet transformers, electronic waste, used engine oil and oil filters; and vii) community health and safety risks including spread of diseases such as Covid and HIV and AIDs.

**E2.3 Social risks and impacts:**include: i) the potential acquisition of MV and LV wayleave without compensation,and loss of land value along the wayleave trace due to usage restrictions; ii) potential exclusion of Vulnerable and Marginalized Groups (VMGs) and vulnerable households and individuals[2] from Program benefits including consultations and electricity access due to their inability to pay for wiring and connection costs; iii) potential disproportionate impact of potential tariff increases on the poor households;iv) potential increase in Sexual Exploitation and Abuse, and Sexual Harassment (SEA-SH) casesdue to influx of workers into sub-project areas; v) potential failure to institute differentiated treatment of VMGs and other vulnerable households, leading

[2] Vulnerable individuals, households and groups who need to be included and specifically targeted by the Program include, People Living with Disabilities, the Poor Older Members of Society, Poor Youth, Poor Female/Male/Orphans headed Households, and Minority Groups/Clans

to the recovery of idle meters and vending machines from persons unable to pay for the connection and/or service andthe token system is likely to further exclude the IPs and vulnerable households from accessing project benefits,vi) risk of undifferentiatedtargeting of VMGs and other vulnerable households under the last-mile connectivity and elite capture (e.g. of ready Boards) by the 'knowledgeable' VMGs and non VMG individuals , limiting the participation of VMGs and other vulnerable households in the project's activities; vii) risk of illegal and unsafe extensions of LV lines and connections, resulting in increased exposure to electricalaccidents; viii)limited stakeholder engagements and disclosure of program information presenting risks of increased grievances;

## E3. ESSA Findings

**E3.1 Kenya has robust systems that can effectively be applied to manage E&S effects of the GREEN Program.** Overall, the ESSA confirms that Kenya has a robust written ESHS systems in the form of policies, regulatory, legal, and institutional frameworks, as well as strategies and plans that are materially consistent with the Six PforR Core Principles.These country frameworks have strong and enforceable provisions which if implemented in line with the objectives for which they were established, are capable of effectively managingthe ESHS effects of the GREEN Program, including land and wayleave acquisition and compensation, public participation, grievances management, OHS and environmental effectsof the GREEN Program. The ESSA reviewed a total of 56 country frameworks, 5 internal frameworks of KPLC (with provisions on land and wayleaves acquisition and compensation), and 16 institutions, which would be responsible for the management of ESHS effects under the GREEN Program. Table 3 in the main body of this report, presents a detailed analysis of policy, regulations, and legislative frameworks, with focused and detailed analysis of the frameworks (country and KPLC) systems with implications for land and wayleave acquisition and compensation. Table 4 presents the analysis of the 16 institutions that were assessed by the ESSA, for their relevance for the GREEN Program.

**E3.2 There are gaps in the system as written and the system as practiced.**In spite of its robustness, the system as practiced in the management of ESHS risks and impacts is sometimes in conflict with the system as written.For example, KPLC's internal frameworks that should guide the company in compensation matters are the Lands and Right of Way Policy, the Property Damage Assessment and Compensation Procedure, and the Wayleave Acquisition Procedure. These KPLC internal E&S systems are in line with the with the requirements of the country's Land and Energy Acts. Despite the requirements of these country and KPLC's own E&S system, the ESSA established thatboth the country and KPLC frameworks are being applied inconsistently and at times, in contradiction to what is written and required by law.For example, the KPLC Lands and Right of Way Policy and the KPLC Property Damage Assessment and Compensation Procedure are clear that compensation should be paid for land, wayleave, and structures, but in practice, KPLC only pays for wayleave for MV and LV wayleave when there is abudget line for the same in a project, but when these are not budgeted for, KPLC resorts to seekingwayleave donation/consent from affected PAPs as the strategy for wayleave acquisition.The inconsistency in the application of the frameworks as written and as practices was affirmed by the ESSA, especially in relation to 33kv and 11kv lines.

**E3.3 Management of ESHS effects are uncoordinated.**There are many frameworks with provisions for the management of ESHS effects,as well as institutional implementation arrangements, but these are uncoordinated. Also, the applicable frameworks and implementing institutions may not be known to all the implementing agency staff charged with the responsibility of ESHS risk and impacts management. The ESSA found that the institutions generally work independently of each other, resulting in uncoordinated efforts at ESHS risks and impacts management. This is confirmed by the feedback on the draft ESSA report by the Ministry of Lands and Physical Planning, which observed that "the lack of an integrated work plan amongst the various players (i.e., water, roads, telecommunication, sewerage etc.) in service delivery" could lead to "many cases of incessant re-routing of lines, disconnections and disruptions and even loss of life, hence a burden to the already meagre resources available".

**E3.4 Potential for narrow application of E&S risk management systems.**Due to the multiplicity of policy, regulatory and legislative frameworks, and their uncoordinated application, implementing agencies tend to be keen in applying only the legal requirements of regulatory authorities such as NEMA, which must give permits and licenses for all civil works projects. In this regard, the ESSA found that KPLC has a strong relationship with NEMA, but the company has not established any relations with, e.g., the National Gender and Equality Commission or the department of social services which are responsible for social risk management and oversight, respectively.

**E3.5 There is no regulatory, coordination or oversight entity for social risk management (SRM)**.The country has no single legally recognized regulatory, coordinating or oversight institution such as NEMA, for the management of social risks and impacts of projects. Consequently, despite the provisions of the Constitution of Kenya, 2010, e.g., for the inclusion of Indigenous Peoples (known in Kenya s Vulnerable and Marginalized Groups VMGs) and other social requirements, there is no mandated regulator or oversight entity responsible for ensuring the inclusion of social risks management strategies into instruments such as ESIA. Where financing institutions such as the World Bank require these to be included, the approval lies with NEMA which has neither the mandate nor the capacity or qualified personnel for the review of social risks aspects of the ESIA.

**E3.6 Implementation of some of the country's legal requirements are externally driven.**Examples include the country's legal requirementsfor meaningful stakeholder engagement, grievance management, SEA-SH prevention,and the inclusion of VMGs and vulnerable individuals.Development of plans for the inclusions of these social risk management issues into the project design and implementation, especially in externally financed projects, are externally driven. In the case of World bank financed projects, such plans remain in the PIUs of the respective implementing agencies with no overall responsibilities for them at the corporate level. For example, KPLC does not, as a matter of practice require their contractors to have SEPs, SEA-SH or Labour management plans. The assumption is that, because these are legislative requirements, contractors and sub-contractors would adhere to them without oversight. Stakeholder engagement under the Last Mile Connectivity project, for example, is a one off public informational meeting. If the people at the meeting respond that they like the proposed project and are supportive of it, the response is taken as a community consent, and many times, private individuals have found electricity infrastructure in their land, including the home, without their prior consent as required by the Energy Act, 2019.

**E3.7The National Energy Policy acknowledges that challenges exist in the distribution of energy.**While the challenges are outlined in the Policy, implementation of the Energy sector Act remains weak. This is attributable to a number of factors including: (i) the absence of regulations to help streamline the implementation of the Act, (ii) inadequate coordination and synergy among the energy sector public institutions (KPLC, REREC, LKETRACO, GDC and KenGen), and inadequate oversight at all sector levels to enforce adherence to the E&S laws. Thesocial challenges identified by the policy, among others, include: (i) encroachment of way-leaves trace; (ii) the scattered nature of homes in rural areas, (iii) systemic challenges related to the lengthy way-leaves acquisition process; (iv) absence of a comprehensive and fair compensation mechanism; absence of a national Resettlement Action Plan Framework; and Inadequate health, safety, environmental and quality laws to regulate energy projects. Nevertheless, KPLC informed the ESSA team that while as yet no regulations to guide implementation of the Act, this is something the Ministry of energy is seized of, and is trying to work on ensuring the regulations are developed.

**E3.8In practice, KPLC has an internal 'legally binding' Wayleave Agreement/Grant Forms for acquisition of wayleave through grant/donation.**The need or justification for these Formsis neither described in the KPLC internal E&S frameworks or the country's laws for land and/or wayleave acquisition. Additionally, neither the Agreement/Grant Forms nor the KPLC Lands and Right of Way Policy, the Property Damage Assessment and Compensation Procedure, or the Wayleave Acquisition Procedure has defined the situations or types of wayleaves(whether only MV, LV or HV wayleaves) to which the Agreement Forms apply. It is therefore recommended that in reviewingits internal E&S risk management frameworks as part of the GREEN Program implementation, KPLC should ensure clarity as to when and for what,the Grant/Donation Formsare applicable. KPLC should not use these forms for land/wayleave acquisition of private land or community landfor KPLC implemented projects, including the GREEN Program and all World Bank financed projects.

**E3.9Responsibility for ESHS risk management at KPLC (and at REREC) is scattered across manydepartments**.For example, in relation to social risk management in projects, whether funded by the GoK or by external financiers, stakeholder engagement responsibility at KPLC falls in three departments - the Business Development Department (during project preparation),Design and Construction department (during project implementation), and the Wayleaves Section of the Power System Design and Construction Department (during project implementation). On its part, SH (no provisions for SEA) is domiciled in the HR Division.
The problem is exacerbated by the fact that there is little or inadequate collaboration and synergy amongst departments of KPLC and REREC that have ESHS risk management and program implementation mandates, e.g.,REREC's E&S practices have implications for KPLC and vice versa. In this regard, externally financed projects which insist on Focal Points for social risk management, a social specialist in the SHE department is usually deployed as the PIU social specialist, but in practice, any SEA-SH complaint is referred to the HR Division while stakeholder engagement is in three departments, according to the state of project implementation (design, construction, O&M).

**E3.10There is little effort at institutionalizing ESHS management best practices.**There is no single Division or Department at KPLC or RERERC with responsibility for all aspects of ESHS risk management, with the result that no single person can authoritatively articulate the overall KPLC policy or strategy for ESHS risk management. Instead, for the various aspects of ESHS risk management, the ESSA team was referred to various people in different Divisions and Departments for consultation. Likewise, there is no institutional repository at KPLC or REREC for the E&S risk management frameworks, including the ones that were reviewed as part of the ESSA process. According to KPLC management staff, examples of good practice ESHS processes include those acquired while implementing externally financed projects (e.g., the PIU concept, the SEP, GRM, LMP etc.) Currently, these practices belong to the PIU and are little known at the corporate level. Moreover, while externally financed projects would require instruments such as ESMP to be part of the bidding and contract documents, the same is not applied to other projects implemented by the same agency, making it a challenge to institutionalize such requirements.

**E3.11Inadequate financial and human resources allocation for ESHS risk management.**Most of Kenya's institutions responsible for infrastructure projects, the energy sector agencies included, are usually ill equipped in terms of human and financial resources allocation for corporate level activities. Due to the NEMA requirements, there are, at least some environmental staff as well as some financial allocation, e.g., for ESIA and environmental audit activities, but not so for social and occupational health and safety. Where there are social and safety staff due to project financier requirements, these are usually 'hidden' in the environment section/department. Similarly, there is a general underrating of the cost of ESHS risk management activities including stakeholder engagement, grievances management, community level E&S training activities, OHS equipment purchase, etc. Due to this, ESHS risk management activities are not prioritized in the budgeting process and where they are, they are underbudgeted. This problem is compounded at KPLC by the fact that the SHE department, which has responsibility for OHS and environmental risk management, does not sit in the budget committee, which is the financial planning entity at KPLC. The situation is worse for social, which would otherwise be represented in the budgeting process by environment section.

**E3.12 Other system ESHS risk management challenges.**The factors that undermine the effectiveness of the system as writtenfor the management of ESHS effects include: i) limited internalization and application of the ESHS system at the County level; ii) inadequate financial and human resources allocated for ESHS management at both the central and county levels of government; iii) inadequate collaboration and synergy amongst key agencies with mandate for program implementation and ESHS risk management; iv) weak compliance monitoring and reporting, consequently presenting uncertainties in actual implementation of ESHS mitigation measures; v)limited familiarity by ESHS staff at the corporate level, with the national ESHS system processes, including mitigation measures; vi) inconsistent application and limited mainstreaming of ESHS in development project across MDAs; vii) gaps in the written ESHS system in areas such as social and OHS risk screening and management, specific frameworks for management of risks related to IPs and/or poor households and families, among others; viii) inadequate documentation, disclosure and application of Grievance Redress Mechanism (GRM) within KPLC and among MDAs; ix) gaps in the documentation and application of land management frameworks (delayed registration of community land, varied rates applied for compensation for destruction of crops and trees, inconsistent compensation, i.e.,KPLC pays for kV33 and kV11 wayleave acquisition when it has a budget line for the same in a project, and does not pay when there is no compensation budget line. On its part, REREC does not pay for compensation. On the other hand, both KPLC and REREC do not pay for loss/devaluation of land due to wayleave restrictions);x) inconsistent engagement of NLC on land acquisition processes by all public energy sector agencies, which potentially triggers grievances, social conflicts, loss of livelihood, and, legal suits, with negative consequences on overall program implementation.

**E3.13 Consultations with, and feedback from stakeholders on the Draft ESSA report:** In response to the to the requirement to undertake stakeholder consultations on the draft ESSA Report, the E&S team shared the draft report with stakeholders on February 28, 2023, with a request for them to provide their feedback by March 10 (i.e., within two weeks). Feedback was received from stakeholders from the national and county governments. The key stakeholders who provided feedback on the draft ESSA report included (i) KPLC; (ii) the National Gender Equality Commission (NGEC); (iii) Ministry of Lands and Physical Planning; (iv) State Department of ASALs & Regional Development; (v) Sub-County Social Development Office, State Department of Social Protection and Senior Citizen's Affairs, Department of Social Protection, Machakos County; (vi) Labour Officer, Trans Nzoia County; (vii) Labour Inspector, Trans Nzoai County; (viii) Department of Occupational Safety and Health Services (DOSHS), Tranz-Nzoia County; (ix) State Department of Social Protection and Senior Citizen's Affairs, Department of Social Development, Homa Bay County; (x) Department of Occupational Safety and Health Services (DOSHS), Kisumu County; and, (xi) the Department of Lands and Physical Planning, the Physical Planning Office, Vihiga County.

Overall, the stakeholders concurred with the ESSA findings. For example, NGEC found the ESSA report to be extensive and well aligned to the principles of equality and freedom from discrimination. According to NGEC, the robustness of the report was achieved due to the involvement of diverse stakeholders in the ESSA process, including consultations with the vulnerable groups and communities. NGEC further notes that the report affirms the Bank's commitment to the realization of specific legal and policy frameworks in support of Program implementation. These include policy and legal frameworks related GBV prevention and response, Gender and Development, Persons with Disability, and the NGEC Act, among others. DOSHS noted that the report had adequately covered issues of concern under OSH, and highly recommendedit for adoption. On their Part, the Ministry of Lands and Physical Planning (MoLPP), Vihiga County, noted that "the ESSA Report has captured the most fundamental issues discussed with a range of stakeholders, vis-à-vis the generation, distribution, and consumption of electricity. Participants' views drawn from all sectors of life has been addressed. Of particular interest has been how meticulously views touching on physical planning and land use have been documented, especially matters touching on land tenure, road network accessibility, encroachment on road reserves, rights of way (easements and wayleaves) and compensation inter alia".

In addition to the positive feedback, stakeholders also provided comments and suggestions for enhancing the ESSA report. In this regard, feedback was provided nine (9) key issues that are aligned to the PforR Core Principles. They included issues touching on: (i) Inclusion, (ii) Land and wayleave acquisition, including the need for "an integrated work plan amongst the various players (i.e., water, roads, telecommunication, sewerage etc.) in service delivery"; (iii) compensation, (iv) The question of who should be the regulator for Social Risk Management (SRM), (v) Stakeholder Engagement, (vi) Sexual Harassment (SH) and Equality, (vii) Sexual and Gender Based Violence (SGBV), (viii) Skills Development for E&S risk management, and, (ix) Grievance Redress. It is important to note that most of the comments and suggestions from stakeholders were already captured by the ESSA report,either as findings or recommendations. However, where applicable, the feedback recommendations have been incorporated in the appropriate sections of the report. For example, the Labour Act has been changed to Employment Act, and vulnerable groups, individuals, and households,[3] have been defined (see Footnote3), to ensure these groups of people are included in Program activities and specifically targeted to access Program benefits.

A summary of the key issues and suggestions raised by stakeholders is insection6.3.3 of this report, while their unedited feedback is in Annex 2 (b).

[3]People Living with Disabilities, the Older Members of Society, Poor Youth, Poor Female/Male/Orphans headed Households, and, Minority Groups or Clans

## E4. Capacity Building Recommendations for the Program Action Plan (PAP)

**E4.1 Enhancing ESHS Risk Management is a corporatewide requirement.** In consideration of the ESHS risk management challenges that have been experienced by the energy sector agencies and as identified by the ESSA and the National Energy Policy, it is recommended that the energy sector agencies, in particular, KPLC and REREC should urgently implement the recommendedquick win corporationwide measures outlined below, to enable the corporations quickly achieve the required level of efficiency and effectiveness in the management of ESHS risks of infrastructure projects implemented by them. At the same time, the country should consider adopting the recommended strategies for application, not only in the energy sector, but in other sectors as well by all infrastructure development institutions, in both private and public sector.

**E4.2 Recommendations for strengthening ESHS risk management capacities of the energy sector institutions.**Based on the ESSA findings as summarized above, the following three measures, details of which are in the PAP section of this report, are recommended for implementation by KPLC to ensure the effective management of the PforR Program (as well as for other sector agencies, especially REREC).

1. Develop and enforce a corporationwide E&S management Policy, Procedures, Guidelines, and Processes that are aligned to the country's legal frameworks and the PforR Core principles, international Good Industry practice, and ISO certification requirements, to guide KPLC in its ESHS risk management work. These include Policy, Procedures, guidelines, and processes for:
    a. Social Risk Management, including:
        - Land and wayleave acquisition and compensation,
        - Stakeholder engagement,
        - Labour management,
        - Grievances/complaints/disputes management,
        - Management of risks related to Sexual Exploitation and Abuse (SEA) and Sexual Harassment
    b. Environmental Health and Safety Risk Management, including:
        - Assessment and management of Environmental Social Health and Safety (ESHS) Risks and Impacts,
        - Community and workers occupational health and safety and working conditions,
        - Efficient utilization of environmental resource, pollution prevention and management,
        - Biodiversity conservation and sustainable management of living natural resources,
        - Management of cultural heritage and chance finds,

2. Establish the implementation arrangement for ESHS risk management at KPLC that is in line with the corporatewide E&S management policies, procedures, and processes. This includes:
    a. Establishing a clear, visible, and efficient ESHS risk management department/division,
    b. Clearly defined functions and responsibilities for social aspects of ESHS (see 1(a) above), and for environmental, health and safety aspects of ESHS(see 1(b) above. These should be complete with clear reporting lines for social and environment ESHS staff,
    c. Adequate and qualified social,environmental, health and safetypersonnel, and,
    d. Adequate financing and equipment for each activity of the ESHS department/division.

3. Train the ESHS risk management staff on their roles and responsibilities to fulfil the mandate envisioned in No. 1 and 2 above.

# 1.0 Government Program

## 1.1 Background

1. Kenya has made significant progress in creating a well-diversified energy generating mix, with more than 90 percent being generated from clean sources and the potential to achieve a fully green grid in the near future.On average, more than 90 percent of current generation is from renewable energy resources, mainly geothermal (48 percent), hydro (33 percent), and wind (12 percent).Kenya has more than quadrupled its developed geothermal capacity in the last 10 years from 198MW in 2010 to 950MW. Currently, the development of geothermal, wind, and solar energy generation has enhanced energy security, significantly reduced weather-induced supply shortages typical in systems with a large share of hydro, and also displaced generation from thermal sources (from 45 percent in 2010 to only 7-8 percent currently).

2. The connection campaign under the Last Mile Connectivity (LMC) program saw Kenya add more than a million new connections per year between 2015 and 2019, more than doubling its connection base from 3.2 million in 2015 to over 8 million today. Challenges to implementation of the LMC program included fiscal constraints as budgetary transfers from the Government of Kenya (GoK) for connections were either delayed or too low to cover incurred costs. The absence of public funding meant that the Kenya Power Lightning Company (KPLC) had to resort to short-term and high-cost commercial debt to cover for LMC costs.

3. World Bank supported the Kenya National Electrification Strategy (KNES) of 2018, which established that the least-cost pathway for achieving universal access by 2022 through grid and off-grid access (mini-grids and stand-alone solar systems) at 70 and 30 percent respectively. Informed by the KNES, the World Bank (WB) is supporting the Kenya Off-grid Solar Access Project (KOSAP, P160009) that is targeting roll-out of private sector solar systems, mini-grids, solar water pumps, and improved cookstoves in the underserved counties of Kenya. In addition, grid support is provided through the ongoing Kenya Electricity Modernization Project (KEMP, P120014) targeting grid electrification, network automation(to improve quality and reliability), and system loss reduction.

4. The Kenya Green and Resilient Expansion of Energy (GREEN) Program is aligned with the Kenya Country Partnership Strategy (CPS) for the Financial Year (FY) 2022-2027.The operation will extend sustainable infrastructure services to the last mile, contribute to higher-level outcomes of faster and equitable labour productivity and income growth and sustainable equity in service delivery outcomes. Consistent with one of the priority focus areas of the CPS, the Program leverages climate financing - Green Climate Fund-(GCF) and Climate Investment Funds-(CIF) in support of renewable energy development in Kenya.

## 1.2 Government’s Program

5. The draft Energy Sub-Sector Fourth Medium Term Plan (MTP IV 2023-2027) has an overarching objective to facilitate the provision of adequate, clean, sustainable, affordable, competitive, reliable, and secure energy services at least cost while protecting the environment. The plan has five main strategic areas of focus: a) universal access to electricity through grid and off grid solutions; b) accelerated adoption of and access to clean cooking fuels and technologies; c) ensuring adequate, reliable, affordable, and secure energy at least cost; d) increasing the share of clean energy for environmental sustainability; and e) creating an enabling environment for energy development. The plan includes implementation of programs, projects, policies, and legal and institutional reforms towards lowering the cost of power, improvingreliability, reducing system losses, enhancing good governance, and securing energy infrastructure to improve efficiency and effectiveness in service delivery.

6. The World Bank shall support the goal towards achieving universal access to electricity and clean energy by 2030, through a Multi-phase Programmatic Approach (MPA) that allows flexibility in application of a variety of financing instruments. The first phase of the MPA, through the GREEN Program, is proposed as a Program for Results (PforR) with US$300 million of IDA focusing on improvements in sector planning, governance, financial sustainability and operational efficiency of KPLC, and an improved last mile program focusing on better targeting of last mile areas informed by the updated KNES and mainstreaming of productive use of electricity.

7. The second phase aims at increasing system stability and flexibility through increased regional trade capacity, studies, technical assistance, and public investments for Variable Renewable Energy (VRE) integration including grid upgrades and grid resilience. The third and fourth phases will build on the reinforced financial position of KPLC, long-term financial and operational sustainability, and grid reinforcement investments undertaken in previous phases and implement the updated KNES through grid and off-grid solutions to reach universal access. Moreover, the improved financial situation of the utility and grid stability will be critical in attracting the private sector to support Kenya's energy transition planned for subsequent phases and underpinned by de-risking instruments.

## 1.3 Proposed MPA Program Development Objective

8. The proposed Program Development Objective (PrDO) of the MPA is to increase access to electricity in Kenya in a financially and environmentally sustainable manner. The proposed PrDO level indicators are:

a. People provided with new or improved electricity services (number)
b. Sector revenue shortfall reduced
c. Increased renewable energy-based grid electricity supply achieved.

9. Each phase of the MPA will have its own Project Development Objective (PDO) that includes:

i. Phase 1 will focus on improving financial viability of KPLC to sustainably underpin a return to faster connections rollout toward universal access. Achievement of Phase 1 PDO will therefore be measured by indicators related to access to electricity by households, KPLC revenue shortfalls and system losses.
ii. Phase 2 is focused on increasing cheaper and cleaner imports from Ethiopia through supporting grid stability equipment which will help increase the share of renewable energy in the generation mix and reduce the cost of supply.
iii. Phase 3 will aim to support increasing private sector participation in renewable energy through supporting a solar auction and invest in shared infrastructure (solar parks) in addition to supporting transmission and distribution investments for increasing access to electricity.
iv. Phase 4 will continue with the priority transmission and distribution investments to help achieve the goal of universal access to electricity.

## 1.4 Proposed Program Development Objective

10. The proposed **Program Development Objective (PDO)** for the GREEN Program is to improve financial viability of KPLC and increase access to electricity.

## 1.5 Outcome Indicators

11. The following outcome indicators will be considered in measurement towards achievement of the PDO:

a. People provided with new or improved electricity services (number),
b. KPLC revenue shortfall reduced,
c. Reduction in technical and commercial system losses.

## 1.6 Program Description

12. For the PfroR component, the Result Areas and Disbursement Linked Indicators for the GREEN Program include:

i. **Results Area 1 (Improved sector planning, governance and generation expansion):** The Program will support policy actions aimed at ensuring long-term planning, institutional stability and capacity, and improved governance at KPLC, including a timely competitive selection of the Managing Director, and the election of three positions of independent directors to the Board nominated by the minority private shareholders to strengthen the Board objectivity and ensure the right balance between the social and commercial objectives of the utility. Several other governance strengthening measures will be supported under the Program, which includes, enhancing transparency in KPLC Board appointments through disclosure of the qualification and skills-mix requirements of new directors to be appointed every year (one-third of KPLC directors are up for re-election by the shareholders every year); updating of various governance documents (Board manuals etc); a succession plan for senior management and talent pool development to build a pipeline for senior management positions as part of strengthening of management capacity; strengthening the control environment through various policies and processes including robust risk management policy and framework. The Program will also support adoption and implementation of a turnaround strategy for KPLC. The strategy will be focused on key strategic areas including business operational efficiency, loss reduction, supply reliability, revenue collection, improved customer experience, innovative business growth, and corporate sustainability. These measures will pave the way for greater private participation in shareholding in KPLC in the future. The Program will also support strengthening of management capacity and of systems and processes including ESHS risk management.

ii. **Results Area 2 (Financial sustainability of the sector):** By ensuring that KPLC receives sufficient revenues to recover its ongoing costs and compensation for services rendered under the last mile program, the Program aims to restore sustainability to the sector and provide a firm basis from which to implement future connectivity campaigns toward universal access. It will mitigate KPLC's off-taker risk, critical for private sector-led renewable energy generation, by reducing arrears to KenGen, IPPs and other power suppliers. The Program will support the sector to revert to cost-reflective tariff principles and reduce the unsustainable fiscal burden on the government while achieving affordability through improved planning, timely GoK transfers to eliminate the need for commercial funding of social objectives, T&D loss reductions, increased hydro-based import and renewable generation in the energy mix, competitive procurement of solar and wind, and other cost savings across the value chain. Options to include last mile O&M in KPLC's revenue requirement will be explored as part of efforts to find a sustainable solution to last mile program funding challenges. The Program will support an objective, transparent, and independent tariff review process by EPRA while ensuring that the reduced (lifeline) tariff is continued to keep the electricity affordable to vulnerable and poorer households. The Program will also support gradual clearing of outstanding dues of KPLC to other sector agencies such as KETRACO and REREC towards achieving financially sustainable sector operations.

iii. **Results Area 3 (Improved service delivery):** The Program will build on initiatives on system loss reduction and revenue protection under implementation through the Bank's on-going support (KEMP, P120014), including Advanced Distribution Management System (ADMS), Advanced Metering Infrastructure (AMI) for large users, and a customer mapping exercise that involves door-to-door verification of meters installed to identify meter tampering/faults and geo-tagging. AMI rollout and corrective actions based on data analytics have already shown promising initial reductions in losses and will be continued under the Program. It is expected that the AMI rollout expansion and metering at distribution feeders supported under the Program will further help to improve monitoring of energy flow and reduction of losses. The Program will cover investments in distribution network expansion, maintenance, upgrade and modernization and mainstream climate resilient standards. The Program will exclude transmission network and other investments with high safeguards risk.

iv. **Results Area 4 (Increased access to electricity).** The Programaims toaccelerate thegrid access program following planning principles stipulated by the updated KNES, site prioritization based on technical optimization and economic considerations, and pro-poor targeted subsidy schemes. The 2018 KNES identified areas for grid and off-grid least-cost electrification through geospatial analysis, but its recommendations are yet to be fully integrated into KPLC operations. An update of the KNES is currently being undertaken under KOSAP and is expected to inform future grid roll-out. The Program will adopt better targeting of last mile areas and low-cost electrification technologies to ensure grid electrification reaches economically viable areas in a cost-effective manner ensuring better revenue earning for KPLC from the last mile areas. It will mainstream gender considerations through implementing the five-year KPLC gender action plan (currently under development for adoption by KPLC). The Program will enable demand stimulation and productive uses of electricity (PUE) through inclusive public awareness programs on the benefits of electricity, market development by enabling partnerships with appliance providers, financiers, businesses, and local communities based on analytical work supported by the Bank. To ensure effective dissemination and access of PUE by female headed households and women owned businesses, the inclusive public awareness program will ensure integration of modalities to reach female headed households and women owned businesses.

13. Table 1 below outlines the Result Areas and Disbursement Linked Indicators for the GREEN Program. The DLIs will be finalized during appraisal of the proposed support.

*Table 1: Result Areas and Disbursement Linked Indicators*

| Results Area (RA) | Disbursement Linked Indicators/Results (DLIs/DLRs) |
|---|---|
| RA 1: Improved KPLC governance | DLR 1.1 KPLC turnaround strategy approved<br>DLR 1.2 New KPLC MD competitively recruited<br>DLR 1.3 Adequate representation of private shareholders on the KPLC Board |
| RA 2: Financial sustainability of the sector | DLR 2.1-2.12Detailed tariff review and timely implementation of full passthroughs<br>DLR 3.1-3.9 Timely clearance of last mile receivables from the NT and recovery of O&M for last mile either from GoK or from tariff<br>DLR 4.1-4.20 Clearance of KPLC payables to KenGen, IPP, KETRACO and REREC |
| RA 3: Improved KPLC service delivery | DLR 5.1- 5.15<br>Reduction in system losses<br>Reduction in transformer failure rate<br>Improvement in reliability (SAIDI at 33/11 kV) |
| RA 4: Increased access to electricity | DLR 6.1 Adoption of improved last mile program<br>DLR 6.2-6.6 New connections under improved last-mile program |

14. For the IPF component will finance technical assistance and capacity building support and pre-feasibility studies, strategies, and policies that do not directly lead to high-risk downstream investments. The component will support: (i) implementation support including project management, fiduciary, safeguards, and monitoring and evaluation support, particularly the independent verification agent (IVA) for the verification of the DLIs under the PforR; (ii) training and capacity building support to KPLC and other sector agencies; (iii) pre-feasibility studies for solar parks, transmission, and battery storage; (iv) strategic environment and social assessments; (v) update of the low carbon and least cost plan for generation; (vi) other strategies, plans, and policies, including for variable renewable energy (solar/wind) integration that do not directly lead to high-risk investment projects; (vii) update of the Kenya National Electrification Strategy; (viii) development and update of the distribution master plan; (ix) feasibility studies for climate resilient distribution network including distribution substations; (x) any other studies that will not directly lead to high-risk downstream investments. This component will be complemented by analytical studies under Bank-executed trust funds as well as support from other development partners

## 1.7 Program beneficiaries

15. Program beneficiaries will include the following:

i. **Sector institutions.** All sector institutions are expected to benefit from better planning, KPLC is expected to benefit from improved governance and financial sustainability and enhanced efficiency across the value chain. KPLC's management is expected to put forward a broad vision to achieve universal access in a financially sustainable way and enable enhanced capacity to achieve this mission.TheKenGen, IPPs and other suppliers will benefit from reduced arrears. Improved efficiencies in the T&D system are expected to be reflected in the reduction of technical and commercial losses resulting in overall cost savings. A better implementation of the updated KNES is expected to ameliorate the financial situation of the utility.

ii. **Households.** TheProgram is expected to provide households with improved energy access and better-quality electricity service. It will also have an increased pro-poor access focus, mainstreaming targeted subsidy mechanisms to make the connection affordable for disadvantaged and vulnerable groups like female-headed households. Access to electricity will allow the use of additional household supplements such as televisions, fan, refrigerators, time and energy saving cooking stoves etc. It will enable households to undertake productive and income-generating activities and enhance access to relevant electricity information and communication through phone, radio and television. Empirical evidence shows the health benefits associated with the use of electricity especially for women and girls due to the reduction of indoor air pollution from the use of kerosene lamps and candles for lighting.

iii. **Social institutions.** Improvements in the quality of public service delivery are expected through increased electricity connections, especially of public facilities such as schools; clinics; hospitals including health care centers that provide prenatal and postnatal reproductive health care services for women, girls and children (for example, for cold chain, child delivery, vaccine and medicine refrigeration, lighting, sterilization); and water pumping stations (for example, for safe drinking water) used by poor and vulnerable households.

iv. **Productive enterprises.** The Program mainstreams good practices for demand stimulation and productive uses. This includes demand simulation for women target groups to ensure they access productive uses of energy at affordable cost. Improved access to electricity supply will contribute to increased income and productivity of enterprises (particularly for micro/small/medium enterprises) and will assist them in reducing their dependency on expensive diesel generation that has a substantially higher per unit cost. In addition, productive uses of electricity can boost job creation and lead to overall positive spillover effects to the communities.

v. **Gender-differentiated benefits.** Providing rural households, social services, and enterprises with improved electricity services has the potential to promote gender equality, create employment and business opportunities for women, and improve development outcomes for example, health and education.

## 1.8 Institutional and Implementation Arrangements

16. The Program will be implemented by KPLC under the oversight of the Ministry of Energy (MoE).The Program will use the Government and KPLC's systems for Program implementation, oversight, financial management, procurement, ESHS management, monitoring and evaluation and reporting arrangements. A Program Operations Manual will be developed setting out detailed institutional, administrative, financial, technical, and operational procedures for the implementation of the Program and Program Action Plan (PAP).

## 1.9 Results Monitoring, Evaluation, and Verification Agencies

17. The KPLC will be responsible for results monitoring and reporting of the PforR component. KPLC has a robust system in place to monitor achievement of results with detailed financial model developed earlier with support from the Bank to monitor financial performance of KPLC including projecting liquidity and revenue gap under different scenarios. This system will help to monitor performance under results area 2 (financial sustainability of the sector). The internal information system of KPLC is effective in tracking progress in reducing system losses and transformer failure rates (results area 3). KPLC also has adequate system in place to monitor connections under the last mile program (results area 4).

18. The KPLC will recruit an Independent Verification Agency (IVA) to verify the achievement of the DLIs using terms of reference satisfactory to the World Bank. The DLIs will be verified based on review of official data and reports supplementing evidence-based methods. The periodic IVA reports will serve as the basis for assessing progress toward achievement of the DLI targets and for disbursement authorization by the World Bank.

## 1.10 Disbursement Arrangements

19. The Program disbursements will be based on achieved results. The supporting documents for accountability of Bank funds will be the certificate of completion issued by the IVA for the achievement (or partial achievement) of DLIs. KPLC shall ensure Program resources are sufficient for the achievement of the results. All Program funds for both IPF and P4R will be included in the annual KPLC budget approved by the National Treasury (NT) through MOE. The IPF funds will have separate segregated IDA budget codes opened specifically for the Project while the P4R will utilize identified existing government budget codes. For the PforR Program, the Program funds would be used directly to finance activities necessary for the achievement of the results. This is in view of the weak cash flow position of KPLC which could adversely impact on the achievement of the results and overall Program implementation.

# 2.0 Environmental and Social Systems Assessment Scope and Methodology

## 2.1 Purpose and Objectives

20. The GREEN 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 WB PforR policy requirements, the borrower-willapplynationalsystems for the management of environmental and social effects associated with the PforRProgram activities, provided these are consistent with the World Bank's PforRpolicy requirements, including the six PforR Core Principles. In this context, the WBis required to conduct a comprehensive ESSA to determine the capacity of theborrower's systems to plan and implement effective measures for the management of environmental and social effects associated with the Program. Through the ESSA process, the Bank is also required to identify E&S system gaps if any, and to make recommendations for enhancing themanagement of the Program's environmental and social effects. The recommendations are outlinedin theProgram Action Plan (PAP) section of this ESSA.

21. The main objectives of the ESSA are to: (i) identify the Program's potential environmental, social and health& safety effects; (ii) review the existing legal, regulatory and policy frameworks that are relevant to the management of environmental and social effects of theProgram's interventions; (iii) assess the capacity of implementing institutions that will be responsible for managing potential adverse environmental,social, healthand safety risks and impacts associated with the Program; iv) assess the Program's system performance with respect to the six PforRcore principles and identify gaps in Program performance; and, (v) recommend specific actions to address gaps in the Program's environmental and social management systems that will be embedded into the PAP to strengthen the Program's performance to ensure sustainable implementation of the Program's activities.

## 2.2 The ESSA Approach

22. The GREEN Program's ESSA has been prepared to establish the extent to which the borrower system is consistent with the Six Core Principles of the World Bank's PforR policy for purposes of enhancing effectiveness in themanagement of the Program Environmental, Social Health and Safety(ESHS) effects while promoting sustainable development. These six Core Principles include:

i. **General Principle ofEnvironment 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.
ii. **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.
iii. **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.
iv. **Land Acquisition:** 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.
v. **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 Peoples[4] and to the needs or concerns of vulnerable groups.
vi. **Social Conflict:** To avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial dispute.

[4]In Kenya, IPs are referred to as Vulnerable and Marginalized Groups (VMGs)

## 2.3 The ESSA Methodology

23. In conducting the ESSA, the WB team applied various techniques, including the following:

i. **Assessment of the ESHSeffects of the Program**: an ESHSrisk screening of the proposed Program activities was undertaken during the concept stage to identify potential ESHS effects and toconfirm that there are no Program activities that meet the defined exclusion criteria are included in the Program, in line with the World Bank guidelines forPforR.

ii. **Comprehensive desk review** ofthe existing national system consisting of policies, legal, regulatory and institutional frameworks, Program documents, and similar ESSAs carried out in the recent past. The review examined the set of applicable national level policy, legal,regulatory and institutional frameworksthat are relevant for the management ofESHSeffects in the Energy sector. In addition, the assessment examined technical and supervision documents from previous and ongoing WB PforR Programs such asthe Kenya Devolution Support Program (KDSP), Kenya Urban Support Program (KUSP), Financing Locally Led-Climate Action Program (FLLOCA), and the Kenya Primary Education, and Equity in Learning Program (PEELP).

iii. **County level stakeholder consultations:** A WB team conducted field visits to16 counties sampled fromfrom the seven (7)Kenya Power and Lighting (KPLC) regions of Kenya, as applicable to the Program boundary, namely, Coast; Rift Valley; Central, Lower Eastern; Upper Eastern; Western; and, Nyanza regions. The16 sampled countiescomprised Nairobi, Kwale, Kilifi, Taita Taveta, Vihiga, Trans-Nzoia, Homabay, Kisii, Kisumu, Tharaka Nithi, Kiambu, Murang'a, Nakuru, Kitui, Machakos, and Kericho. During the field visits that were conducted from October 17 - 29, 2022, a number of stakeholders at the county level were engaged individually and through Focus Group Discussions for purposes of understanding thecountry and institutional systems as written and as applied for ESHS risk management. The consultations were also done to assess the capacity of these institutions in terms of financial resourcing, competence and adequacy of staff for effective management of ESHS risks and impacts. Some of the county stakeholder who were engaged included: the National Environmental Management Authority (NEMA), Department of Occupational Health and Safety (DOSHS), National Employment Authority (NEA), National Land Commission (NLC), Department of Labour, Kenya Forest Service (KFS), relevant County Government Departments (Lands, Physical Planning, Agriculture, Water, Environment etc) and Non-governmental Organizations such as Dakatcha Woodland Conservation Group and Children Society of Kenya in Kilifi County; and SautiyaWanawake and WumweriGhodu Umbrella CBO in Taita Taveta County.Focus group discussions were also held with representatives of the Indigenous communities (Sengwerof Trans Nzoia, Ogieks of Mt Elgon, and Wakifundiof Kwale).

iv. **National level stakeholderconsultations:** In addition to the county level consultations, national level stakeholders were also engagedto enable the World Bankto understand the existing systems and institutional experiences with regard to the application of the E&S systems at the national level for the management of ESHS effects. To this end, the ESSA process also involvedinstitutional analysisto assess the capacity of key institutions to effectivelyimplement the required ESHS actions. The assessment of these key institutions focused ontheir capacity for environmental and social risk management, public and worker safety, labour related issues and inclusion of vulnerable groups including the women, youth, and persons with disability.Some of the key relevant stakeholders consulted at the national level included Ministry of Energy, National Treasury, KETRACO, REREC. EPRA, KENGEN, Ministry of Lands and Physical Planning (MoLPP), Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KERRA), National Land Commission(NLC), National Gender and Equality Commission (NGEC) , State Department of Arid and Semi-Arid (ASAL), State Department of Social Protection (SDSP), and Social Risk Management (SRM) Unit among others. The comprehensive list of all nationaland county stakeholders consulted is presented in Annex 1 of this report.

V **Stakeholder Consultations on the Draft ESSA report.** The draft ESSA report was shared withstakeholderson February 28, 2023, after internal reviews, and feedback was received up to March 10, 2023.The stakeholder feedback is included in section 6.3.3 of this report, and as appropriate, some of the feedback has been used to strengthen specific sections of the report as well as recommendations for action by KPLC. The final version of the ESSA report has been disclosedonthe client's website and on the World Bank external website.

# 3.0 Environmental and Social Effects (Benefits, Risks, And Impacts) of theProgram

## 3.1 Purpose of the Program and Exclusions

24. **Purpose of the Program**. The GREEN Program will support KPLC in the first phase of the 4-phase MPA towards achieving financial and operational sustainability and realising the vision of universal access to electricity. The Program intends to support the expansion, maintenance, upgrade and modernization of the distribution network, and the mainstreaming of climate resilient standards in infrastructure projects.

25. **Exclusion Principle.** 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 mean that an excluded activity is not included in the identified investment menu. The exclusion principle also applies to anyactivity that requires completion of non-eligible activity to achieve its contribution to the PDO and/or DLI. The GREEN 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 project activities shall be screened against the six PforR Core Principles and the EMCA to determine the risk categorisation. Specifically, land take related impacts such as wayleave acquisition will be screened against the provisions of PforR Core Principle 4. Those aspects of the project that are indicated as high-risk projects will not be undertaken in addition to those that are listed in paragraph **Error! Reference source not found.** below. All this will be captured in the Program Operation Manual that will specify the suitable criteria through which the program components will be screened. The six core principles under the PforR will apply to all investments as a mechanism for avoiding, minimising, or mitigating adverse ESHS risks/impacts.

26. **Excluded activities**: More specifically, the Program shall exclude projects likely to involve:

i. Any investments that trigger high risk rating under the World Bank Environmental and Social Framework (ESF).
ii. Air, water, or soil contamination leading to significant adverse impacts on health and safety of individuals, communities, and ecosystems.
iii. Significant conversion or degradation of critical natural habitats or cultural heritage sites.
iv. Workplace conditions that expose workers to significant health and personal safety risks.
v. Large-scale changes to land-use or restriction of access to land and/or natural resources.
vi. Adverse E&S impacts covering large geographical areas, including transboundary impacts or global impacts such as greenhouse gas (GHG) emissions.
vii. Significant, cumulative, induced, or indirect impacts.
viii. Activities that require land acquisition and/or largescale involuntary resettlements of a scale or nature likely to have significant adverse impacts to affected people, e.g.,activities that involve physical and/or economic displacement which would require the preparation and implementation of a full RAP, or use of forced evictions.
ix. Activities that involve compulsory acquisition of land and/or wayleave.
x. Activities that involve the use of forced or child labour.
xi. Activities likely to cause marginalisation of, or conflict within or among social groups.
xii. Activities with potentially high labour influx risks and the related risks of GBV, in particular, and SEA-SH.
xiii. Activities that may negatively impact Indigenous Populations (VMGs) or natural resources subject to traditional ownership or under customary use or occupation, e.g., relocation and displacements.

27. For the social aspects of the excluded activities, the implementing agency will be required to screen activities that will be proposed for implementation under the PforR component to determine ifa proposed activity needs to be excluded due to any of the reasons listed in items viii-xiii of the excluded activities above. In the event that a proposed activity would lead to physical and/or economic the displacement of encroachers on the wayleave trace, KPLC will be required to compensate such encroachers in line with the requirements ofPforR Core Principle #5. Finally, the screening criteria and process will be outlined in the Program Operations Manual (POM), and as necessary, in the IVA TOR. Also to be clearly spelt out in the POM and IVA ToR will be the

manner in which the Program will ensure VMGs are included in the Program consultation process and access to Program benefits, including how the Program should cushion them against high connection costs and consumption tariffs.

## 3.2 Potential Environmental,Social,Health, and Safety Benefits and Risks

28. **Benefits of the proposed PforRProgram**. It is anticipated that theProgram will havemanyESHS benefits. These will be derived from: i) increased access to electricity, ii)improved electricity services in Kenya, (iii) improvements in quality of public service delivery such as schools and health care facilities,iv) contribution to the inclusion of vulnerable households in line with the last mile connectivity program objectives; v) reduced dependency on kerosene and firewood as sources of energy for cooking and lighting,which, in turn, will lead to reduced cutting of trees and reduced carbon emissions; vi)reducedenergy losses, and, (vii) improved KPLC's financial sustainability.

29. **Negative E&S impacts.**As outlined inError! Reference source not found.**,** and given the nature and scale of the proposed Program, negative ESHS effects could emanate from Program activities that negatively impact the biophysical and social environments. In this regard, negative ESHS effects could arise from: i) ground disturbance due to vegetation clearance, ii) excavation or digging for pole erection; iii) masonry activities to reinforce electric poles; iv) onsite concrete mixing; v) waste management within and around the core activities area; vi) destruction of structures, crops and trees; vii)devaluation and/or restriction of land use due to land acquisition for theconstruction of low voltage (LV) and medium voltage (MV) lines (kV11 and kV33 lines respectively); viii) non-payment of project affected persons for the taking of their land for LV and MV lines; ix), potential exclusion of VMGs from project benefits, including consultation with them in non-culturally appropriate ways; x), potential for enhanced SEA and SH risks; and, (xi) potential failure by the implementing agency to put in place an effective grievance redress mechanism (GRM).

30. **Anticipated negative Program impacts are likely to be substantial.**It is important to notethat in most cases, the anticipated negative ESHS effects are expected to be minimal, site specific and manageable in nature.However, due to scale, geographic coverage of P4R activities, potential sensitivity of some subproject locations, KPLC institutional E&S weaknesses, and in some instances, the push by KPLC contractors to have customers connected (at the expense of the required E&S procedures and processes), there is a potential that KPLC`s wayleave might encroach on private land, thus justifyingsubstantial rating.For example, while it is known that KPLC tries as much as possible to constructLV and MV lineson road reserves, it is also expected that, there will be few instances when land for such lines might be acquired from private individuals/communities. In such cases, the PAPs will be compensated,in line with the provisions of the PfoR Core Principles, and the Energy, Land and Wayleave Acts, unless exemption to compensation requirements is obtained in line with footnote 3 below.

31. **The potential Program effects.**On the basis of activities planned under the key results areas, the ESSA has identifiedpotential ESHSeffects associated with the GREEN Program as shown in Table 2. Some of the risks were identified by IPs (VMGs) in Trans Nzoiaand Kwale counties, and could potentially apply to IPs in other areas targeted by the GREEN Program.Similarly, some of the effects were confirmed by stakeholders who provided feedback on the draft ESSA report as outlined in section6.3.3. Table 2 below presents the ESHS effects associated with Program activities under the key Results Areas.

*Table 2: ESHS Effects Associated with Program Activities Underthe Key Results Areas*

| Result Area | Activities | Environment and Social (E&S) Effects | |
|---|---|---|---|
| | | **Benefits** | **Risks** |
| **RA 1 Improved sector planning, governance and general expansion** | ▪ Support policy actions aimed at ensuring long-term planning, institutional stability, and improved governance at KPLC<br>▪ Competitive recruitment of KPLC management<br>▪ private shareholder representation on KPLC Board<br>▪ Update of least-cost power development plan<br>▪ Preparation and implementation of a turnaround strategy for KPLC | ▪ Improved KPLC governance<br>▪ Energy loss reduction,<br>▪ Business operational efficiency,<br>▪ Improved customer experience,<br>▪ Innovative business growth (revenue diversification and growth),<br>▪ Digital transformation,<br>▪ Corporate sustainability, and developing new business models. | **Social**<br>▪ Potentially inadequate consideration of ESHS effects at the planning stage, leading to little or no budget considerations for ESHS management activities resourcing (financial, human, equipment) at this stage<br>▪ Political interferrances which may result in inadequate targeting of VMG areas or prevent VMGs from accessing project benefits<br><br>**Environmental**<br>▪ Potentially leaving out key stakeholders during planning phases of the program could lead to poor decision making allow for disintegrated approach biodiversity protection i.e., consultation with Kenya Forest and leaving out NEMA could lead to a one-sided approach to environmental protection<br>▪ Shorter response time in responding to emergency calls since in some instances the reporting lines have a long waiting time to report emergencies. |
| **RA 2 Financial sustainability of the sector** | ▪ Creation of liquidity support facility to cover medium-term KPLC liquidity shortfall<br>▪ Reduction of arrears to KenGen, IPPs and other power suppliers.<br>▪ The Program will support the sector to revert to cost-reflective tariff principles and reduce the unsustainable fiscal burden on the government while achieving affordability through improved planning,<br>▪ Timely GoK transfers to eliminate the need for commercial funding of social objectives<br>▪ Sustainability of last mile program by ensuring timely compensation to KPLC for connections either through GoK support or the tariff<br>▪ The Program will support an objective, transparent, and independent tariff review process by EPRA. | ▪ Restore sustainability to the sector and provide a firm basis from which to implement future connectivity campaigns toward universal access<br>▪ Mitigate KPLC's off-taker risk, critical for private sector-led renewable energy generation,<br>▪ Improved access to electricity by VMG and IPs | **Environmental**<br>▪ Increase in demand for supply of electric poles at a fair price could lead to increased deforetration<br>▪ Increased factory activity supplying a revamped KPLC will increase pollution where they operate<br><br>**Social**<br>▪ Focus only on KPLC's financial sustainability might lead to exponential increase in consummer-paid tariffs, which may be beyond the affordability limits of VMGs and poor households and individuals, thus locking them out of project benefits |

| Result Area | Activities | Environment and Social (E&S) Effects | |
|---|---|---|---|
| | | Benefits | Risks |
| | | | |
| **Results Area 3 Improved service delivery** | ▪ The Program will build on initiatives aimed at reducing system losses under implementation through the Bank's on-going support (KEMP, P120014), including Advanced Distribution Management System (ADMS), Advanced Metering Infrastructure (AMI) for large users, and a customer mapping exercise that involves door-to-door verification of meters installed to identify meter tampering/faults and geo-tagging.<br>▪ The Program will cover investments in distribution network expansion, maintenance, upgrade and modernization<br>▪ Mainstream climate resilient standards. | ▪ Advanced metering infrastructure will help to improve on the monitoring of energy flow and reduction of losses.<br>▪ Mainstream Climate resilient infrastructure, helps to improve reliability of service provision, increase asset life and protect asset returns | **Social**<br>▪ The likely acquisition of MV and LV wayleave without compensation, and loss of land value along the wayleave due to usage restrictions may lead to risk of delayed Program imoplementation or high rerouting costs;<br>▪ Potential exclusion of Vulnerable and Marginalized Groups (VMGs) and vulnerable households and individuals from Program benefits including consultations and electricity access due to their inability to pay for wiring and connection costs would mean a failure of the Progam to achieve its objectives for the Last Mile Connectivity<br>▪ Potential increase in SEA-SH cases due to influx of workers into sub-project areas, especially should KPLC not require its contractors and subcontractors to include management measures as part of the works bidding and contract documents;<br>▪ Recovering of idle meters and vending machines from persons unable to pay for the connection and/or service the token is likely to further exclude the VMGs and vulnerable householdsfrom accessding project benefits, v) risk of elite capture by the comparatively more knowledgeable VMGs and none VMG elites limiting the targeting of VMGs and other vulnerable households under last-mile connectivity;<br>▪ Risk of illegal and unsafe extensions of LV lines and connections, resulting in increased exposure to electrical accidents; vii) limited stakeholder engagements and disclosure of program information presenting risks of increased grievances;<br>▪ Exclusion of VMGs and other vulnerable individuals and households from Program benefits: There are instances where IPs are consulted during project conceptualization and inception. However, once the project is approved, and implementation commences, only the dominant communities areas are targeted for implementation of project activities. (An example of this situation which KPLC can learn from, is the National Agricultural and Rural |
| **Results Area 4 Increased access to electricity** | ▪ The Programaims toaccelerate thenew grid connections towards universal access.<br>▪ Better targeting of last mile areas<br>▪ The Program will enable demand stimulation and Mainstreaming productive use of electricity for enhanced last-mile impact | ▪ Promote increased access to electricityto all households including the vulnerable groups, which will in turn contribute to increased economic and social welfare<br>▪ Public awareness on the benefits of electricity, market development by enabling partnerships with appliance providers, financiers, businesses, and local communities.<br>▪ Gender mainstreaming will promote inclusivity and sustainability of energy programs<br>▪ Reduce dependency on | |

| Result Area | Activities | Environment and Social (E&S) Effects | |
|---|---|---|---|
| | | **Benefits** | **Risks** |
| | | kerosene and firewood as sources of energy for cooking and lighting | Inclusive Growth Project (NARIGP) where VMGs were consulted and later on not engaged in project implementation). Another example was also given in Trans Nzoia where a total of 10 IP villages with a total of about 1,000households have no electricity despite being with then 600 meters radius of the health facility that has been connected to electricity (see details in section 5.3)<br>▪ Political interference in disenfranchising VMGs: There are instances when electricity projects have been implemented in IP areas, only for poles, conductors, and meter boxes to be withdrawn after a while, a fact that IPs attribute to political interference<br>▪ Exclusion of vulnerable households unable to pay for the wiring of their premises and the connection feefrom accessing electricity services<br>▪ Potential for unscrupulous KPLC contractors withdrawing the installed meters once the assigned task has been certified as complete by KPLC<br>▪ Limited or inadequate stakeholder engagements and disclosure of Program information<br>▪ Community health and safety risks including spread of diseases such as Covid and HIV and AIDs.<br><br>**Environment, Health and Safety**<br>▪ Cumulative impacts arising projects within a project vicinity to exacerbate the impacts of the project i.e., vegetation clearance to further reduce the vegetation cover of project areas if they are being cut to pave way for another project.<br>▪ Indirect impacts such as access to electricity leading to demand in raw materials such as wooded poles that lead to deforestation in order to supply wooden poles to suppliers.<br>▪ Direct impacts would include but not limited to:<br>o Potential destruction of crops, vegetation and or/trees following the acquisition of wayleaves to construct MV and LV lines to strengthen distribution network and to connect new households and businesses<br>o Potential solid and liquid waste generation from project activities<br>o Potential increase surface runoff during rainy season |

| Result Area | Activities | Environment and Social (E&S) Effects | |
|---|---|---|---|
| | | Benefits | Risks |
| | | | that could lead to erosion in areas with unprotected soil in neighboring facilities<br>o Civil and electrical works are expected to expose the workers and the proximal community members to occupational safety and health related hazards and accidents<br>o Inability of last mile customers to access technicians accredited by EPRA to wire premises which may present health and safety risks when non-accredited technicians are used<br>o Equipment and machinery used could be a source of hazardous and noxious waste i.e., running engines, oil from wet transformers, electronic waste, used engine oil and oil filters<br>o Risk of fire from sparking transformers: This has caused concern amongst the IP communities;<br>o Limited awareness on safe usage of electricity presenting a risk to IP communities. This can be mitigated through safety sensitization and awareness creation when connecting Ips to electricity<br>o Risk of electrocution and fires from illegal connections: There are cases of illegal connections even within the IP communities which poses health and safety risks to the wider community. In addition, there are also cases of power connections done by incompetent persons resulting in incidences of electrocution and a near miss electrocution of a children within the IP community<br>o Risk of electrocution from fallen live conductors especially during rain seasons |

# 4.0 Environmental, Social, Health and Safety Management Systems

32. **The policies, regulations, and legislative frameworks reviewed by the ESSA**.This section describes the existing ESHS management system applicable to the GREEN Program. It provides an overview and analysis of Kenya's policy, legal, and regulatory, frameworks for the management of ESHS effects, with the aim of identifying gaps if any, in the adequacy and effectiveness of the system for the management of the ESHS effects under the GREEN Program.

33. The assessment of how the ESHS systems functions in practice is presented in section six (7) of this report, which is structured as a SWOT analysis of KPLC'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 (8) of this report, which assesses the country systems against the PforR's Core Principles.

34. Table 3 below presents Kenya's policies, regulations, and legislative frameworks that are applicable for the management of ESHS effects of the GREEN Program, as well as some gaps that have been identified.

*Table 3: Country System (Policies, Regulatory and Legislative Frameworks) as Written and Relevance to the GREEN Program*

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| 1. | Kenya Vision 2030 | Kenya's Vision 2030 is the current national development blueprint covering the period 2008 to 2030. The blueprint aims at transforming Kenya into "a newly industrializing, middle-income country providing a high quality of life to all its citizens in a clean and secure environment." The Vision is anchored on three key pillars: Economic; Social; and Political Governance. The political governance pillar envisages public participation during project development, while social pillar envisages development through equitable social development. The third medium Term Plan (2018-2022) of the vision 2030 identifies the Last Mile Connectivity as one of the infrastructure flagship projects to be undertaken, and through which over 5 million new households, and 15,000 public facilities will be connected through grid and off-grid solutions. Distribution network expansion and improvement is also proposed, along with improvement of power supply reliability through replacement of overhead distribution power lines across major towns and their environs. The proposed activities to achieve universal access to electricity were to be implemented through the Kenya National Electrification Strategy (KNES). The Vision 2030 policy anticipates possible environmental and social impacts during the rollout of flagship projects requiring mitigation measures to be put in place in line with the requirements of the Environmental Management and Coordination Act (EMCA), 1999 and the Environmental Management and Coordination (Amendment) Act, 2015. Harmonization of environment-related laws is also envisaged, for better environmental planning and governance. | This policy is relevant and aligns well with the ESF E&S sustainability requirements. It conforms with the objective of the GREEN Program which aims to increase access to electricity by supporting the last mile connectivity strategy as envisaged under this policy. 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 GREEN 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. On its part, the proposed GREEN program's activities are aligned with provisions of Vision 2030, the Fourth MTP, and the KNES. | - |
| 2. | 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 | This policy is well aligned with the ESF environmental sustainability requirements. relevant to the proposed GREEN program in so far as it supports E&S sustainability and public participation. The GREEN Program activities will undergo an environmental, social and safety screening and projects likely to | 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 |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | | 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. | 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. | electricity transmission and distribution systems |
| 3. | National Occupational Safety and Health Policy, 2012 | | 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 work in the renewable energy sectors, remote working among others. |
| 4. | National Energy Policy, 2018 | Overall, the Policy's main mission is to facilitate provision of clean, sustainable, affordable, competitive, reliable and secure energy services at the least cost, while protecting the environment. One of the specific objectives of the Policy is to ensure that prudent environmental, social, health and safety considerations, as well as issues of climate change are factored in the energy sector developments. The policy acknowledges that challenges exist in the distribution of energy. These include vandalism of electric power infrastructure; encroachment of way-leaves trace; illegal power line connections and theft of electricity; lack of provision of an infrastructure corridor for electricity reticulation in physical plans; and, scattered nature of homes in rural areas, among other challenges. Other systemic challenges related include a lengthy process of way-leaves | The policy aligns with the ESF in so far as it provides for E&S sustainability. However, the proposed Program activities of network expansion to increase access to electricity is likely to face similar challenges of vandalism, encroachment of wayleaves, lack of wayleaves, illegal connections, and disputes related to compensation for loss and damage. | • The policy does not obligate the energy sector players to pay encroachers or to meaningfully undertake resettlement activities because the policy requirements for a legal and regulatory framework on encroachment, trespass on energy infrastructure, and for a national Resettlement Action Plan Framework for energy projects, are yet to be realized. As a result, the classification of |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | | acquisition; absence of a comprehensive and fair compensation mechanism; absence of a national Resettlement Action Plan Framework; and Inadequate health, safety, environmental and quality laws to regulate energy projects. To address the challenges, the policy outlines the government's strategy which includes inter alia, ensuring and supporting reinforcement and development of the distribution network so as to improve reliability and quality of supply; reviewing and enforcing legal provisions with respect to energy related offences which are classified as economic crimes; **collaboration with the relevant agencies to review and set rates payable for compensation in respect of damage caused by energy sector players**; collaboration with other land regulatory agencies to ensure that energy infrastructure corridors are provided for in the national plan; developing and enforcing a legal and regulatory framework on encroachment and trespass on energy infrastructure; and developing and implementing a national Resettlement Action Plan Framework for energy projects | | energy related offences as economic crimes and the requirement for the review and enforcement of legal provisions to such offences may be applied to evict wayleave trace encroachers without compensation |
| 5. | National Land Use Policy, 2017 | The National Land Use Policy is important in addressing issues of optimal utilization of land and land related resources by providing principles and guidelines for proper management of land resources to promote public good and general welfare; land use planning to enhance sustainable development; anchoring land development initiatives; mitigating problems associated with poor land use; and promoting environmental conservation and preservation; among others. The goal of the Policy is to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at national, county and community levels. The policy recognizes that areas with potential for energy production falls in land that is privately or communally owned, or in property that has been settled, thus requiring acquisition, relocation and compensation. It further recognizes that the process of acquisition, relocation and compensation has in most cases resulted in conflict between the resulting land uses, affected people and energy developers, thus hindering exploitation of these energy resources. The Policy is premised on the philosophy of economic productivity, social responsibility, environmental sustainability and cultural conservation. The Policy seeks to establish a framework of principles that will inter alia, enable coordination and integration of institutional linkages in planning at sectoral and cross-sectoral levels to | The Policy aligns well with the ESF requirements for environmental and social sustainability and climate change adaptation. The GREEN Program activities for enhancing access to electricity through distribution infrastructure will be carried out within the provisions of the physical planning and environmental management laws that operationalize the National Land Use Policy | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | | foster collaboration and decision making among different land users; enable environmental management and sustainable production in the utilization of land resources; and mitigate problems associated with poor land use. The Policy outlines the Government's thematic commitments including: provision of a clear legal framework within the physical planning law for effective coordination and enforcement of development control; Incorporate multi stakeholder participation in afforestation programmes; Enhancing the capacity of regulatory and enforcement agencies including NEMA, KFS, KWS, WRA and KWTA to protect natural resources and prevent environmental degradation; and Establishing and empowering appropriate physical planning structures at county level with adequate resources and capacity to ensure their effective and efficient performance<br>Finally, the policy recognizes the need to address challenges related to climate and obligates the government to, among others: (i) identify and map climate disaster prone areas; (ii) promote the use of NEMA Guidelines on Hazardous and Disaster Management; (iii) Strengthen capacity of institutions involved in climate change trends analysis and mitigation; (iv) promote land use practices that increase climate resiliency and reduce effects on climate change; and, (ix) develop disaster awareness programs that sensitize the communities on best land use practices that incorporate disaster mitigation and incorporate climate change, adaptation and preparedness | | |
| 6. | National Climate Change Action Plan (NCCP) 2018-2022 | 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 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 climate-proofing of energy infrastructure, promoting renewable energy development, and increasing uptake of clean cooking solutions. Other actions proposed include reduction in losses in transmission and distribution of energy, rolling out of energy efficiency and conservation projects including the distribution of compact fluorescent lights to households, use of | Program activities of construction and O&M of infrastructure will require to consider impacts of climate change on the infrastructure and take appropriate climate-proofing measures. | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | | concrete poles to replace wooden poles, conservation and rehabilitation of water catchment areas. Some enabling actions also proposed include the development of a policy to guide vegetation management, wayleaves acquisition and corridor for energy infrastructure. | | |
| 7. | 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). For the energy sector, the NAP recognizes that rigorous incorporation of climate change considerations into current and future sectoral actions is required to build a resilient energy system that reinforces Kenya's development. It also acknowledges that access to reliable, affordable energy is a key component of building climate resilience. Mainstreaming climate change adaptation into the operational management of existing assets and the design of new assets is also essential. The sub actions proposed in the sector include conducting risk and vulnerability assessments of energy infrastructure, promoting energy efficiency programmes, and rehabilitation of water catchment areas in order to provide sustainable ecosystem services, including energy production | | |
| 8. | Constitution of Kenya (CoK) 2010 | 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. It is premised on the need for good governance to be realized through enhanced citizen participation and social justice and entrenches a wide range of social, political, economic, and cultural rights. It revolutionizes the entire system of socio-political governance by devolving authority to county governments, advocating for affirmative action and equity in the distribution of the country's development resources, and decreeing the need for citizen participation in decision making. It enshrines the right to information and makes principles of international law and treaties ratified by Kenya to be part of the country's law.As related to the environment, Article 42 of Chapter four, The Bill of Rights, confers to every person the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative measures, particularly those contemplated in Article | The CoK, 2010 is well aligned to the ESF in so far as it upholds the requirements for E&S sustainability in line with almost the ESF policy provisions as well as in conformity to the ESSs including ESSs 1, 5, 6, 7 and 10, among others. Implementation of the GREEN Program's activities will promote environmental sustainability, and ensure equitable sharing of accruing benefits by beneficiaries, including VMGs as foreseen by the CoK, 2010 and adherence to the right of every individual to a | Some aspects of the CoK, 2010, are yet to be conclusively and effectively operationalized, e.g., the constitutional provisions requiring the registration of community lands, despite the existence of the Community land Act, since 2016. |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 69. Section 69 (2) states that every person must cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. Section 70 provides for enforcement of environmental rights. Article 260 of the Constitution provides for the inclusion of marginalized communities and groups in the development agenda of the country. | clean and healthy environment. Program activities shall be carried out to ensure compliance with the constitution on all aspects related to E&S management, including public participation, environmental and social impact audits, and monitoring. | |
| 9. | Environmental Management and Coordination Act, 1999 and the Amendment Act of 2015,<br><br>Legal Notice No. 31 of April 2019 on the EMCA. | 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 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.<br><br>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.<br><br>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 | The Program is expected to:<br><br>a. Ensure all activities are carried out in an environmentally friendly manner throughout the design, construction, and operation phases of projects.<br>b. 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.<br>c. 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<br>d. Projects screened to be in the High-risk category are excluded from the GREEN | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | | | program | |
| 10. | 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 legislation further explains the legal consequences of partial or non-compliance to the provisions of the Act.<br>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 | The Program will adhere to this Act especially as the Program will cover investments in distribution network expansion, maintenance, upgrade and modernization and mainstream climate resilient standards. Infrastructure projects will require a full or partial Environmental Impact Assessments (EIA) before commencement, depending on the nature and magnitude of impacts. | |
| 11. | 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.<br>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.<br>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, although it is noted that this may not be the case in MV and LV lines | |
| 12. | 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 identified as hazardous materials, to be handled in accordance with set procedures. The Regulations also provide that the waste transporter shall be licensed. | The proposed Program will abide by these regulations in management of wastes generated from construction and O&M activities.<br>Procedures for handling hazardous wastes such as waste oils from decommissioned or refurbished transformers in the Program will be required<br>NEMA licensed waste handlers | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | | will be engaged to manage waste generated from project sites. | |
| 13. | 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. | |
| 14. | 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. | |
| 15. | 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 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. | 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. | |
| 16. | The Water Act, 2016 | 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 | Program activities including construction and O&M activities for infrastructure have potential to cause water pollution.<br>Program activities will consider best approaches to water resource management including protection of water resources and avoidance of pollution to nearby water | |
| 17. | Water Resources | These Rules prohibit the discharge of wastewater or effluent into a | | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
|---|---|---|---|---|
| | Management Rules, 2007 | watercourse without a permit, or the discharge of effluent that does not meet the water quality requirements in a discharge permit | sources such as rivers and streams. | |
| 18. | Public Health Act, Chapter 242 | 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.<br><br>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. | 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.<br><br>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. | |
| 19. | Occupational Safety and Health Act (OSHA), 2007 | The Act establishes the office of the Director ofOccupational 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.<br>The Act provides for the safety, health and welfare of all workers and all persons lawfully present at 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 | The GREEN 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 workers from work related injuries and/or other health hazards.<br>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 | 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 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 |

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| | | and safety of workplaces, general health, and basic welfare of workers to ensure compliance with the OSH Act. | appropriate PPE to workers among other measures.<br>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. | Directorate include: (i) Lack of presence in 18 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 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. |
| 20. | 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 | 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 | |

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| | | hearing protection to the affected workers, medical examinations and hearing tests for workers, selection and use of hearing protection. | control measures are adhered to. | |
| 21. | 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 bone 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. | |
| 22. | 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, 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. | 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 GREEN Program shall observe adherence to the rules by facilitating the reduction of potential fire risks. | |
| 23. | 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 GREEN Program shall observe adherence to the rules by facilitating the formation of Safety and Health Committees, as applicable. | |
| 24. | The Work Injury Benefits Act (2007) | 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 | KPLC and its goods and services 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 | 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 |

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| | | Act.<br>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<br>Part III Section 10 of the Act provides for the compensation of employees involved in any occupational accident resulting in the employee injury, disablement, or death<br>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<br>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 | of occurrence of accidents during implementation of program activities. | 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 the social contributing scheme. |
| 25. | 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 | Program activities such as construction and O&M works are likely to be implemented wholly or partly by contractors who must be registered with NCA to provide electrical engineering services | |
| 26. | The County Government Act, 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<br>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<br>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.<br>Part XI of the Act empowers County Governments to oversee planning of development projects by coordinating and ensuring integrated planning including coordinating the public participation and environmental protection. | Development planning is a consultative process, and the Program's infrastructure development planning will require to be aligned with the development plans of each county<br>The GREEN Program will adhere to the Act provisions by obtaining all the required permits, licenses, facilitate consultations with key organs, and the public, and ensure environmental protection. | |

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| 27. | Climate Change Act (2016) | 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. | The GREEN Program will align to this Act by enhancing climate change resilience and sustainable through supporting efficiency improvement and greater reliance on renewable energy-based generation. The Program will also enhance resilience of the distribution network to greater climate vulnerabilities. | |
| 28. | Urban Areas and Cities Act, 2011 | The Act gives effect to Article 184 of the Constitution; to provide for the classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes. | The Act is applicable where projects will be in urban areas and cities. | |
| 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. | |
| 30. | Land Act, 2012 (as 2019 amended) | 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, and for connected purposes. 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 | The Land Act is aligned to the ESS5 requirements for compensation for land, trees and crops, but no compensation for encroachers of public land is envisaged. It is anticipated that there will be land acquisition and | The Land Act, like the Energy Act and other legal frameworks related to land does not envisage compensation of encroachers on public land or right of way, including wayleave trace encroachers. Instead, the law |

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| | | land. Section 148 of the act provides for Compensation in respect of public right of way, including the wayleave land and anything on the land including trees and crops, and obligates the applicant to promptly comply with the payment for the wayleave acquisition. It also mandates a person dissatisfied with compensation amounts, process, or timeframe to seek the intervention of a court of law. In the following subsections, the act states that: 148(1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer; 148(3) damage caused as a result of the creation of a wayleave shall include any preliminary work undertaken in connection with surveying or determining the route of that wayleave, and whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary; 148(4) the duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly; 148(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation; 148(6) mandates the Commission to make Regulations prescribing the criteria to be applied in the payment of compensation under this section and to give effect to this section. In 2017, the National land Commission made the regulations as demanded by the Act. Section 152(4) on rights of entry provides that "*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* | under Result Area 3 of the GREEN Program and potential destruction of crops and trees on the distribution lines wayleave. The provisions of this Act will be applied, together with the provisions of the Energy Act, in such cases | requires that encroachers are only given notice to vacate, contrary to the PforR Directive which requires 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 addressed |

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| | | *to the person whose land or thing on the land have been damage"* | | |
| 31. | 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 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. | The provisions of this Act shall be considered together with the provisions of the Land Act 2012 (as amended in 2019) 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 | The Community Land act only permits transactions over community land by registered community members. In spite of the provisions of the Act, community land in the ASAL counties of Kenya remain unregistered, making it difficult to acquire and compensate for land in those counties |
| 32. | The Land Laws (amendment) Act, 2016 | The Act applies the effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes. The Act provides amendments to the Land Registration Act, the National Land Commission Act, and the Land Act, 2012. | The GREEN Program will not entail significant land acquisition except the Right of Way (ROW) acquisition for LV and MV distribution lines. For the acquisition of land for MV substations the willing-seller willing buyer principle will apply.The Act shall be applicable in the review of infrastructure land acquisition framework. It will also apply if program activities under | |

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| | | | Result Area 3 will be implemented in unregistered community lands. | |
| 33. | 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. | |
| 34. | Land Registration Act, 2012 | The Act gives provisions to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. The Act applies to: a) registration of interests in all public land as declared by Article 62 of the Constitution; (b) registration of interests in all private land as declared by Article 64 of the Constitution; and (c) registration and recording of community interests in land. | The Act shall be considered on land registration related matters, especially if Program activities will be implemented in unregistered community lands. | - |
| 35. | 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. | |
| 36. | Water Act, 2016 | The Act provides for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services; | Provisions of the Act shall be considered as the Program shall facilitate improvements in the quality of public service delivery including water pumping stations. | |
| 37. | The Energy Act, | The Act provides for establishment, powers, and functions of the | The Act is aligned to the ESF in | There are, as yet, no rules and |

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| | 2019 | Energy and Petroleum Regulatory Authority (EPRA) and other national energy entities including the Energy and Petroleum Tribunal, Rural Electrification and Renewable Energy Corporation (REREC), and Nuclear Power and Energy Agency (NPEA). Under the Act, EPRA is an independent regulator meant to formulate licensing procedures, issue permits, make recommendations for further energy regulations, set, and adjust tariffs, approve power purchase agreements (PPAs) and prepare national energy plans. The Act provides for the rights and obligations of transmission/distribution licensees including building, maintaining and operating a safe, efficient, coordinated and economical transmission/distribution system, and the licensing of electrical contractors among other requirements. Part VII of the Act requires the seeking of prior consent of landowners before entry to carry out exploratory activities related to development of energy infrastructure, just compensation for damages resulting from such entry and the need to pay compensation for any loss or damage sustained in the development of energy infrastructure<br>Section 178 of the Act gives power to the licensee to erect electric supply lines and other infrastructure on/across a public street, road, railway, or Government property including forests, National parks, reserves, and heritage sites in line with the conditions provided by the Act and other relevant laws.<br>**The specific provisions of the act in relation to wayleave acquisition.** The act has pronounced itself in several sections on the matter of wayleave acquisition. Examples include:<br>• Section 171(1) of the act states that "*A person who wishes to enter upon any land, other than his own to—*<br>*(a) undertake exploratory activities relating to exploitation of energy resources and development of energy infrastructure, including but not limited to laying or connecting electric supply lines..., (b) carry out a survey of the land for the purposes of paragraph (a), shall seek the prior consent of the owner of such land, …, where the owner cannot be traced, the applicant shall give fifteen days' notice through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of* | so far as it requires prior consent of a landowner to enable energy sector actors to enter into and use private land for energy infrastructure purposes. It provides for compensation for land, trees and crops in line with ESS5. The Environmental, social and safety management practices shall be adopted to facilitate the preservation of natural resources, protect the health and safety of workers and communities. As applicable, activities shall commence after subjection to NEMA approved EIA's. | regulations to help in the interpretation of the energy act. Consequently; (i) it is unclear if the words in section 171(2) that empowers the Minister to "…*prescribe the forms and procedures for seeking and granting of the consent*" empowers the minister or energy sector entities such as KPLC the power to develop and apply legally binding land donation document/form such as the one being used by KPLC to acquire wayleave for kV 33 and KV 11 distribution lines without compensation; (ii) it is unclear if the provisions of section 173(1) that states that "…*and any consent so given shall be binding on all parties having an interest in the land…"* is the provision being used to make the consent form legally binding; (iii) it is unclear if the provisions of section 172 which state that *"...government may authorize in writing, any person to enter upon any land specified in section 171(1)…"* is what KPLC usesto enter into, and undertake wayleave construction activities on private land (following a public informational/awareness meeting) without the owner's consent, despite the express requirement for prior consent of the owner, and without compensation; (iv) it is also not |

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| | | *local coverage for a period of two weeks"*.<br>Section 171(2) states that *"The Cabinet Secretary shall prescribe the forms and procedures for seeking and granting of the consent"*[5].<br>• Section 172 of the act states that the *"… government may authorize in writing, any person to enter upon any land specified in section 171(1) and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose. Provided that if there is any damage resulting from such entry, the applicant shall pay in full, just compensation as is payable under the relevant written law"*.<br>• According to section 173(1) of the act, *"An owner, after receipt of a request for consent under section 171, may consent in writing to the development of energy infrastructure, upon agreement being reached with the applicant as to the amount of compensation payable, if any, and any consent so given shall be binding on all parties having an interest in the land, subject to the following provisions, (a) that any compensation to be paid by the licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to consent to the application except under this Act, shall be paid to the legal representative of the owner; and (b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the development of energy infrastructure, including but not limited to laying or connecting electric supply lines, … as long as the claim is made within three months after the development"*.<br>• Section 173(2) states that *"No consent expressed in writing in accordance with subsection (1) shall be void by reason only of noncompliance with any statutory requirements as to registration"*.<br>Section 177 states that *"The provisions of this Act shall not relieve a licensee of the liability to make compensation to the owner or occupier of any land, or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of this Act, for damage or loss caused by the exercise or use of any power or* | | clear, why in some instances, KPLC is paying compensation for kV33 and kV 11 wayleave acquisition as well as compensation for trees and crops, and in other instances, these are not paid for, i.e., why does the company include budget lines for compensation in some projects, and not in others, despite the provisions of section 180 of the Energy Act. |

[5]The 'forms and procedures for seeking and granting of the consent…' as provided for in this article of the Energy Act, does not seem to refer to the Agreement/Consent Form being used by KPLC to acquire land/wayleave through donation rather than compensation.

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| | | *authority conferred by this Act or by any irregularity, trespass or other wrongful proceeding in the execution of this Act or by the loss or damage or breaking of any energy infrastructure or by reason of any defect in such infrastructure".*<br><br>**Provisions of the Act in relation to the cutting of trees or crops**<br><br>The energy act provides for compensation for trees, hedges or crops that need to be cut or lopped for purposes of construction of energy infrastructure. It also provides for dispute resolution in the event of a disagreement over the compensation amounts. Section 180(1) states that "w*here any tree or hedge obstructs or interferes with the construction by a licensee of any energy infrastructure, or interferes or is likely to interfere with the maintenance or working of any such infrastructure, owned by any licensee, such licensee shall give a seven days' notice to the owner or occupier of the land on which the tree or hedge is growing, requiring the person to lop or cut it so as to prevent the obstruction or interference of the infrastructure, subject to the payment by such licensee of the expenses reasonably incurred by the owner or occupier of the land in complying with the notice: Provided that in any case where such a notice is served upon an occupier who is not the owner of the land on which the tree or hedge is growing, a copy of the notice shall also be served upon the owner thereof if his address is known. Section 180(3) obligates the licensee to cause as little damage as possible while cutting such trees. It states that "the licensee shall issue instructions to his servants and agents with a view to ensuring that trees and hedges shall be lopped or cut in a way that as little damage as possible is done to trees, fences, hedges and growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land".* In section 180(5), the act compares the felling of trees with the lopping of trees/hedges in relation to compensation. It states that *"Where it is necessary to fell any trees, this section shall apply to the felling of trees mutatis mutandis as it applies to the lopping of trees"* | | |
| 38. | Wayleave Act, Revised Edition, 2010 (1989) | Chapter 292 of the revised Wayleave Act makes provisions for wayleave acquisition for sewer, drains and pipeline and provides for compensation for trees and crops. The act states in section 6(1) that | The act is aligned to the ESF requirement for compensation for trees and crops | The Act does not make reference to wayleave acquisition for the energy sector activities which may be used |

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| | | *"the Government shall make good all damage done and shall pay compensation to the owner of any tree or crops destroyed or damaged, in the execution of any power conferred by this Act"*. It also states in section 6(2) that "*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 person interested may apply to the District Commissioner, who shall award to the person entitled to receive compensation such compensation as he thinks reasonable; and that award, subject to appeal to the Provincial Commissioner, shall be final*". | | by energy sector players to argue that compensation for trees and crops under this act is only binding in cases of wayleave for sewers, drains and pipelines, but not transmission or distribution lines |
| 39. | KPLC Lands and Right of Way Policy | KPLC has an internal policy on Land and Rights of Way, with Chapter three (3) dealing with the management of Rights of Way acquisition. The opening statement of item (i) of chapter 3 states that: "The Wayleaves Function is custodian of the processes in Acquisition of maps, Rights of way (Wayleaves) acquisition, Public approvals, **property damage compensation**, sorting out Wayleaves infringements & encroachments and resolving Wayleaves related complaints & disputes. Chapter 3 item (iv) states that "**Assessment and compensation of property damage** shall be processed before a scheme that involves extension of infrastructure is commissioned and capitalized". Section 3.2 of the policy prescribes the roles and responsibilities of various Functions for compensation approval. ***It is to be noted that while the concepts of land donations and grants are introduced in section 3.4.1.1(xviii) of the policy, the policy does not explain the practical aspects of this, or specify the types of wayleave acquisition to which donations or grants are to be applied. Also, there is no indication in any of the other sections/subsections of the policy that there are any types of ROW acquisition, against which the policy prohibits compensation. On the other hand, KPLC has a Standard Wayleaves Agreement Form for wayleave acquisition through Grant, in leasehold lands, and a Non Standard Wayleaves Agreement Form for wayleave acquisition through Grant, in Freehold lands.*** *Also, it is unclear which part/section of the Land Act or the Energy Act mandates KPLC or the Ministry of Energy to prescribe a legally binding "Wayleave Agreement Form" for the grant or donation of land without compensation.* Examples of sections of the policy which deal with compensations are listed below | The internal KPLC E&S risk management frameworks, in particular, the Lands and Right of Way policy, the Property Damage Assessment and Compensation Procedure, and the Wayleave Acquisition Procedure, are relevant to the GREEN Program, in so far as they are materially consistent with the ESS5 requirements for compensation for land, structures and wayleaves. However, as currently applied, some of the practices may negatively affect the GREEN Program implementation, in particular, the objective of social sustainability<br>. | There is non-conformity between the ESF, the PforR Core Principle #4 on land acquisition, Kenya's legal frameworks such as the Constitution of Kenya, 2010; Land Act, 2012; and the Energy Act, 2019 on one hand (all of which advocate for compensation for land, structures and wayleave), and KPLC's Standard and Non-Standard Wayleave Agreement Forms on the other, both of which seem to advocate for donation or grant of wayleave without compensation |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | I. Section 3.2.3 of the policy prescribes the Property functions as follows, among others.<br>i. Carryout market valuation of Wayleaves trace for compensation purposes<br>ii. Carry out market valuation of existing buildings and other structures on Wayleaves trace for compensation purposes<br>iii. Offer technical expertise when deemed necessary in negotiations for right of way compensation<br>II. Specifically, section 3.4.2 on Property Damage Assessment and Compensation states that, "For purposes of this section, property includes but not limited to: buildings, structures, (permanent, semi-permanent and temporary) trees & fruit trees, crops et al" and makes a prescription for the Function to assess the damage in the presence of the property owner or their authorized representative, and to "…process the property damage report in readiness for compensation payments". It further states that "**damages for trees, fruit trees, crops and small structures will be costed using the company approved compensation rates**".<br>III. Section 3.4.3 on Wayleaves trace compensation and registration of easements prescribe the following with regard to compensation:<br>i. The Head of Division will consider and forward to the MD&CEO details on the Wayleaves traces to be compensated<br>ii. The Survey function shall establish the acreage of the Wayleaves trace to be compensated.<br>iii. The property function shall value the Wayleaves trace using the data and information availed by the Survey and Wayleaves Function<br>iv. The Wayleaves Function shall issue offer letters at 50% of the market value or as may be approved by the company<br>v. Land owners who object to the offer amount, will negotiate with the company appointed team and the agreed amount shall be approved by the MD&CEO<br>vi. Compensation payments are processed as per the | | |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | approved amounts and the Wayleaves Function in conjunction with the Finance function shall effect the payments<br>vii. The land owners shall surrender the original title deed/lease certificates at the point of receiving payments to facilitate registration of easements. The original title deed/lease certificates shall be returned to the rightful owners upon successful easement registration<br>viii. Only registered land owners will be paid Wayleaves trace compensation, beneficiaries of deceased land owners can only be paid upon submission of Letters of administration or certificate of confirmation of grants.<br>ix. Registered easements will not be discharged as long as the power line infrastructure or part thereof exists in the subservient land<br>x. Upon request by the land owner, the company shall give a 'no objection' letter to allow for any permissible uses on subservient land<br>xi. Upon request by the land owner, the company shall give a 'no objection' letter to allow for any proposed land transaction on subservient land<br><br>Other sections of the policy in which compensation is discussed are sections 3.3.3(a) which mandates the Function Head to report all property damaged during project implementation, for assessment and compensation, and 3.3.3 (d) which mandates the Function Head to confirm that property damage compensation has been carried out before commissioning schemes in DCS. The head of Legal is mandated to offer technical expertise in negotiations for rights of way compensation. **However, section 3.4 of the Policy Framework states in subsection 3.4.1.1(xviii) "The function in liaison with both governmental and non-governmental agencies, shall proactively participate in planning, conceptualization, and implementation of proposed schemes/projects/plans to ensure the company needs of Wayleaves corridors are captured through land allocations/donations, grants etc.**This is confusing, given all the above provisions for compensation for wayleave. It is also confusing because there is no justification in support of donation/grants. | | |

<table>
<tr><th></th><th>Policy/ Legislations /Guidelines</th><th>Provisions as Written</th><th>Relevance to the GREEN Program and Alignment with the ESF</th><th>Identified Gaps</th></tr>
<tr><td>40.</td><td>KPLC Standard Wayleaves Agreement Form</td><td rowspan="2">KPLC has a document entitled “Standard Wayleaves Agreement Form” (for grant of wayleave in Leasehold Lands) and “Non-Standard Wayleaves Agreement Form (for grant of wayleave in Freehold Lands) which a landowner (Proprietor) is required to sign in order to give consent to KPLC to construct electric line on the Proprietor’s property, “in consideration of the first and final payment to me of the sum of One Kenya Shilling(receipt acknowledged)”. Both forms do not state the amount of land for which the Proprietor should give consent, but they give:<br>i. “Discretion to KPLC at any time during the construction of and prior to the completion of the electric line to alter or vary the alignment of the route of the electric line and also to alter or vary the position of any line support erected within the area of the trace by not more than a horizontal distance of two metres in any direction”.<br>ii. KPLC or its agents the right to enter the land for various reasons, “and may also in the case of an aerial line clear and keep clear a track approximately parallel with and adjoining the route of the electric line not exceeding three metres in width”.<br>iii. KPLC the power to determine “the position of the trace by reference to the electric line as constructedand not as marked on the sketch plan”.<br>In addition, both Agreements place restrictions on the Proprietor with regard to the planting of shrubs/trees and erection of buildings on the wayleave trace. Other restrictions include prohibitions from making any excavation within a radius of two metres from any part of a line support or of any stay connected therewith or relating thereto”. Proprietor is also required to, “where applicable, provide transformer room according to KPLC standards. The transformer room SHALL be free of lease or rent charges”. On its part the Standard Agreement Form seems to provide for compensation for any destruction to the proprietor’s assets. In this regard, the Agreement Form states that “the Company shall make good any damage caused by it to the land of the Proprietor and to the crops thereon as the same shall be mutually agreed”between the company and the proprietor. The nature of destruction for which KPLC “would make good” is not defined in the Agreement</td><td rowspan="2"></td><td rowspan="2"></td></tr>
<tr><td>41.</td><td>KPLC Non-Standard Wayleaves Agreement Form (for grant of wayleave in Freehold Lands)</td></tr>
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| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| 42. | KPLC Property Damage Assessment and Compensation Procedure | KPLC has an internal procedure document which prescribes guidelines for executing major tasks/activities involved in property damage assessment and payments. The procedure gives guidance on the steps involved in payment for damages from the moment information about damages is received, how assessment is done, recorded, and costed, to the moment payment of crops and property damages are paid, complete with the approval steps and the witnessing of the payment. It covers damages occasioned during survey, construction, or maintenance of power lines. (This internal KPLC document does not state if there are some powerlines that are not to be compensated). It also prescribes the period within whichpayments are tobe made (60 days of occasioning the damages). It further specifies responsibility for implementing the procedures. Although the procedures are for payment of all damaged assets, it focuses more on payment for damaged trees and crops. | | |
| 43. | KPLC Wayleave Acquisition Procedure | The procedure outlines the process of Wayleaves acquisition and approval for proposed power line schemes. It covers the period from the time the proposed design schemes are received in the Wayleaves section to the time it is approved and delivered to the Business Development section. The procedure makes reference to the Energy Act 2019; the Land Act, 2012; the Land Registration Act, 2012; and the KPLC Land and Rights of Way Policy. It prescribes responsibility for its implementation to KPLC's Wayleaves Officer and the steps to be followed until approval is received, including the timeframe for the entire process. In the event that some landowners should refuse to sign the Agreement Form (see items 33 and 34 above), the procedures obligate KPLC to "immediately explore an alternative route" and to repeat the steps for seeking consent.<br><br>*While this Wayleave Acquisition Procedure does not refer to compensation for wayleaves, it however relies on the procedural steps as set out in the Land and Energy Acts in relation to the steps to be followed in wayleave acquisition. Both the Land Act and the Energy Act, have explicit requirements for compensation.* | | |
| 44. | 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, | 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 | National Policy for Prevention and Response to Gender Based Violence, 2014: The operationalization of this policy and its entrenchment into the country |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 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 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 | 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 KPLC, its contractors and its suppliers, in alignment with this National Policy | 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 |
| 45. | National Policy on Gender and Development, 2019 | The Policy outlines the national agenda for gender equality and how Kenya intends to realize these ideals. It details the overarching principles, which will be adopted and integrated into the National and County Government sectoral policies, practices and programmes and by all state and non-state actors. Aims of the policy include achieving equality of opportunity and outcomes with respect to access to and control of national and county resources and services, and equality of treatment that meets the specific and distinct needs of different categories of women and men. Special focus is however given on the empowerment of women who are currently the marginalized gender. Policy applies specifically and directly to all Government Ministries, Independent Bodies, Quasi-autonomous entities, and Departments and Agencies both at the national and county levels of government. The principles, strategies and approaches in the policy also apply to the private sector and civil society.The proposed policy actions include inter alia: developing and implementing national guidelines for mainstreaming gender, and standards for measuring compliance to gender mainstreaming in all sectors at all levels; Strengthening capacity of institutions with the responsibility of implementing and | Compliance with the Policy aims and objectives of ensuring gender equality will be necessary in the GREEN Program. KPLC and its contractors and suppliers will require to demonstrate commitment to gender equality 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 GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 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 | | |
| 46. | Labour Relations Act 2012 | 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.<br>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 dispute concerns terms and conditions of employment or the recognition of a trade union. | 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 required to have contracts in place that provides for non-violation of workers labour rights | KPLC is yet to escalate the provisions of this Act as a requirement for its contractors, sub-contractors and client, in particular, those relating to freedom of association and picketing by workers |
| 47. | The Employment Act, 2007 | 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.<br>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 | The Act aligns well with the Bank's non-discrimination and inclusion agenda and is applicable to the GREEN Program. Itapplies to KPLC, its contractors and its suppliers since employer-employee relationships exist presently in both instances and will continue during implementation of Program activities.KPLC and the contractors will need to provide | Despite the provisions of this law, inclusion of VMGs in employment opportunities in the country is still below per, while gender equity in employment remains a challenge for most public (and private) sector institutions in Kenya |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 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 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 | conducive terms of employment for their workers/staff and will also need to ensure no child labour in their workforce. The Program will advocate for equal pay for equal work. Child labor 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 | |
| 48. | 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.<br>The Act in Section 46 also provides for the publication of a Wage Order setting the minimum rates for remuneration among other work-related provisions, to be adhered to in employment of workers | Program activities will require employment of workers by KPLC, and goods and services providers in the electricity distribution value chain.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. |
| 49. | Persons with Disability Act, | This Act provides, in Section 3 – 10, for the establishment of a National Council for Person's with Disability, and defines its | This Act too, aligns well with the Bank's inclusion and non- | Despite the existence of these laws, their provisions are yet to be |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | 2003 | 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, compensationprivileges, 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<br><br>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 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. | discrimination agenda. The Program will facilitate inclusive mechanisms for PWDs such as in employment opportunities and public participation forums. | realized. For example, many public facilities such as toilets and buildings are still disability unfriendly |
| 50. | 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 | The operation will adopt gender inclusive mechanisms in line with the five-year KPLC gender action plan, to be developed under the GREEN Program. In facilitatingincreased electricity access, (pillar 4), there shall be gender mainstreaming in policies, budgeting, planning, M&E, and project management. | The Commission's activities are yet to be decentralized or devolved despite its equality oversight roles |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 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. | | |
| 51. | 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 GREEN Program will require to establish measures that prohibit and take action against sexual offences listed in the Act for both KPLC staff, contractors and suppliers. | |
| 52. | 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 GREEN Program shall ensure measures are in place to observe the rights of children as well as avoid forced and child labour. | - |
| 53. | Children Act, 2022 | The Act in Section 22 provides that No person shall subject a child, to child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child’s education or is likely to be harmful to the child’s health or physical, mental, moral, or social development. | The Act is aligned to ESS2 that prohibits child labour in Bank financed projects and he GREEM Program activities will uphold the provisions of this Act | |
| 54. | 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. | This Act is aligned to the ESS 10 on information disclosure and will be upheld by the GREEN Program in relation to ensuring stakeholders have timely information on all project activities, including the effects of each Program activity. Through the Program, KPLC will be encouraged to institutionalize information disclosure in all its operations in line with this Act. | - |

| | Policy/ Legislations /Guidelines | Provisions as Written | Relevance to the GREEN Program and Alignment with the ESF | Identified Gaps |
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| | | 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. | | |
| 55. | 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 will be considered in the Program as HIV/AIDS shall be incorporated in KPLC'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. | |
| 56. | 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 review of infrastructure land acquisition framework. | |

# 5.0 The Country's Institutional Arrangements for the Management of ESHS Program Effects

35. This section describes the country's institutional framework for the management of ESHS effects of projects, regardless of the financing source.

36. The ESSA found that a number of institutions have varying degrees of mandates for the management of ESHS effects. However, the efforts of these institutions are uncoordinated, and their activities are not planned in reference to each other. Consequently, there is limited consultations among the institutions and in most cases, they operate independently of each other, with the result that their effectiveness is hardly felt in practice. For example, one of the organizations consulted to provide feedback on the draft ESSA report noted that "the lack of an integrated work plan amongst the various players (i.e., water, roads, telecommunication, sewerage etc.) in service delivery" could lead to "many cases of incessant re-routing of lines, disconnections and disruptions, and even loss of life, hence a burden to the already meagre resources available".

37. While KPLC has no mandate to bring about the countrywide coordination that is required for the management of the ESHS effects of projects implemented by the sector and by the Government of Kenya, regardless of the financing source, KPLC however, has the obligation to consult with all relevant institutions (and stakeholders) while implementing the GREEN Program and other projects for which it has the sole implementation mandate.

38. Table 4 below presents the various institutions found by the ESSA to have varying degrees of responsibility for the management of ESHS effects of the GREEN Program.

*Table 4: Institutional Framework for ESHS Management Under the GREEN Program*

| | Institution | Responsibilities | Relevance to the program |
|---|---|---|---|
| 1. | National Environment Management Authority | 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 approving mandated EIAs of proposed infrastructural developments in the Program and Environmental Audits of existing infrastructure |
| 2. | County Environmental Committees | 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 impact of KPLC's proposals of network expansion and maintenance (particularly vegetation management) at the county level and provide guidance and approval |
| 3. | National Environmental Complaints Committee | 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 | The NECC will receive and investigate any complaints on environmental damage occasioned by the Program's construction and O&M activities |
| 4. | Energy and Petroleum Regulatory Authority (EPRA) | Established by Section 9 of the Energy Act, 2019, functions of the EPRA include: regulation of the importation, exportation, generation, transmission, distribution, supply and use of electrical energy; formulation, enforcement and review of environmental, health, safety and quality standards for the energy sector, in coordination with other statutory authorities | EPRA will oversight network expansion and maintenance activities to ensure that they comply with established standards in the energy sector |
| 5. | 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 network expansion and maintenance activities in or traversing through gazetted conservation areas (National Parks and Reserves) |
| 6. | 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 network expansion and maintenance activities in or traversing through gazetted conservation areas (Public Forests) |
| 7. | 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 and register construction sites for distribution infrastructure as workplaces, receive mandated periodic and ad hoc reports from KPLC and its contractors, and inspect workplaces for compliance with the OSHA, 2007 and WIBA, 2007 |
| 8. | 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 distribution network |

| | Institution | Responsibilities | Relevance to the program |
|---|---|---|---|
| 9. | 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, KPLC will be encouraged to sensitise people who are affected by its operations, including rhe GRREN Program, to seek help for the CAJ. On its part, it is expected that CAJ will beinvolved to investigating any complaints raised against KPLC, being a public entity, and the Program host |
| 10. | 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 |
| 11. | Department of Labour | The Department is anchored in the Ministry of Labour and Social Protection, 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 |
| 12. | 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 GBV |
| 13. | 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 contractors on the need to employ local youth as appropriate as a way of reducing the influx of external labour into the project areas |
| 14. | 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 KPLC in ensuring these are mainstreamed in the GREEN Program |

| | Institution | Responsibilities | Relevance to the program |
|---|---|---|---|
| 15. | National Lands Commission (NLC) | Although and 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 GREEN Program, especially in cases where land may need to be acquired compulsorily for program purposes |
| 16. | Commission on Administrative Justice (CAJ) | 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, in fulfilment of Article 59 (4) of the Constitution of Kenya, 2010.The CAJ is mandated to address all forms of maladministration, promote good governance and efficient service delivery in the public sector by enforcing the right to fair administrative action. CAJ investigates abuse of power, manifest injustice and unlawful, oppressive, unfair or unresponsive official conduct. | CAJ is relevant for the successful implementation of the GREEN Program, especially in cases wherecorruption, poor governance or injustice in relation to inclusion, grievance redress or stakeholder engagement |

# 6.0 Stakeholder Assessment and Consultations

This section describes the outcome of the consultations process undertaken during the ESSA at the national and county levels, and highlights key issues discussed and recommendations made. A detailed description of the outcome of the ESSA consultations is provided under Chapter 7 of this ESSA, 7, which presents the analysis of ESHS performance against the PforR key Principles and Planning Elements.

## 6.1 Stakeholder Assessment and Consultations at the County and National Levels

39. A number of stakeholderswith ESHS risk management at both the national and county levels were consulted and their capacities analysedduring the ESSA process to enable the Bank to understand the country's and institutional systemsfor the management of E&S risks in infrastructure projects, as written and as practiced.The stakeholders provided insights into the performance of the E&S management systemsagainst the 6 Core Principles and highlighted areas of weakness and opportunities for improvement.

40. At the national level, the stakeholders consulted included the relevant staff from various institutions and government departments including the management and SHE department of KPLC, NEMA, DOSH, KWS, Climate Change, KFS, Ministry of Lands and Physical Planning, KeNHA, the Department of ASAL, NGEC, the Social Risk Management Unit, andthe Directorate of Social Development among others, as well as Civil Society Organizations, including the Children's Society of Kenya and the National Council of Persons with Disabilities. At the county level, the stakeholders consulted included county directors of environment, water, lands and county planning, forestry, public health, as well as county level national government agencies staff such NEMA, DOSHS, NCA, and NLC, among others. The full list of the stakeholders consulted are presented in Annex 2. The findings of the stakeholder consultations regarding the performance of the ESHS systems in Kenya is outlined in Section 7, which presents the analysis of ESHS performance against the six PforRCore Principles and Planning Elements.

## 6.2 Environmental, Social, Health and Safety Effects as Identified by Stakeholders During the Fieldwork Consultations

41. In addition to the Potential GREEN Program effects that were identified at the screening stage, additional Program effects were identified from consultations with stakeholders, especially at the county level, as highlighted below:

- The current drought potentially exacerbates the level of vulnerability and destitution amongst vulnerable groups hence increasing the risk of community vulnerability to SEA and GBV, child labour etc.This situation is made worse by the uncertainty especially amongst women and girls, who due to lack of information do not know where to go to seek for help or demand for their rights, not only in relation to SEA, but also when land is sold for project (or other) purposes without consulting since women do not yet have much say in the sale of land in spite of legal provisions for them to be consulted.
- The risk of mistrust when communities do not have confidence in accessing benefits of the program due to previous experience e.g., LMC where similar interventions were put in place and the IPs did not get connected to electricity supply.
- Limited access to information (especially on the dangers associated with electricity) by the VMGs especially and the elderly who may not be able to read brochures or flyers written in English or Swahili and displayed high up on the electrical post.
- Limited targeting of the right stakeholders during consultation for land/way leaves acquisition. For example, while elderly persons among IPs feel they are the rightful owners of land proposed for acquisition for substations, they claimed they are hardly consulted.

- Failure to adapt business model to cultural sensitivity of the IPs.
- Women hardly benefit from compensation for acquired land and therefore feel negatively affected by the project
- Exclusion of youth and children from participation in Program activities.
- The inadequate assessment of social impact of programmes once implementation is concluded to determine the extent of inclusion of vulnerable groups, access to project benefits, impact of compensation on gender, extent of livelihood restoration.
- Risk of drug and substance abuse from project workers due to high levels of vulnerability amongst communities.

## 6.3 Consultation with IP Communities

42. The ESSA team consulted with IP communities including the Ogiek, Sengwer, and Wakifundi. During the consultations, a presentation of the Program was made to them to sensitize them on the objectives, geographical scope, key result areas, of the Program, the implementing agency as well as some of the potential ESHS risks and impacts. The presentation formed the basis of the consultations.Some of concerns raised by IPs are highlighted below.

### 6.3.1 Potential risks and impacts of the Program as Perceived by IPs

43. The potential ESHS effects of the proposed GREEN Program as perceived by IP communities include:

- **Vandalism of KPLC assets hence impacting access to electricity: The VMG community has in the past experienced** vandalism of KPLC assets by rogue persons who pretend to be KPLC staff. To abate this challenge, KPLC needs to provide badges to all their workers for purposes of ease of identification. Without the identification badges it is difficult to identify a genuine from a rogue KPLC staff making the protection of the KPLC investments at the village a daunting task.There are also incidences where unscrupulous KPLC contractors withdraw the installed meters once the assigned task has been certified by KPLC. Specific cases of KPLC meters being withdrawn after installation have been reported, especially where the power connection was done using the National Government Constituency Development Fund (NGCDF) resources. The IPs recommended that early engagement of the community is critical for enhancing community ownership and protection of the KPLC investments.
- **Exclusion of IPs:** There are instances where IP communities are consulted during project conceptualization and inception. However, once the project is approved and implementation commences, the major tribes or communities end up being the main beneficiaries while the IPs are left out. A good example which KPLC can learn from, is the National Agricultural and Rural Inclusive Growth Project (NARIGP) where VMGs were consulted and later on not engaged in project implementation.
- **Limited access to electricity:** In Trans Nzoia, there are a number of IP villages with approximately 1000 households. However, a significant proportion of the IP communities living in these villages do not have access to electricity. Past projects have extended the electricity to a nearby health facility and primary school, providing a good opportunity toserve most of these IP villageswith electricity since they claimed to be living within the required600m radius of the nearest the transformer. This concern could be ignorance among rural stakeholders on the respective roles of KPLC and REREC, which can easily be mitigated through an awareness campaign. The Table below presents IP villages in Trans Nzoia which participated in the ESSA consultations and who claimed to be without electricity connections.
- **Risk of fire from sparking transformers**: The sparking of the transformers causes safety concerns amongst the IP community. KPLC needs to ensure careful matching of the consumers and capacity of the transformer to reduce the risk of fire from the sparking transformers.
- **Limited awareness on safe usage of electricity presenting a risk to IP community**: Most of the IP communities are not connected to electricity and thus not familiar with its

usage and hence require training in order to reduce the risk of electrocution and fires. Thus,KPLC should train the IP communities on aspects such as purchase of token, safe usage of electricity, energy efficient appliances etc prior to electrification of their homes.

- **Political interference:** KPLC should not allow politics to interfere with their work as there are times when electricity projects are done within the IP communities and later on all the poles, conductors and meter boxes are withdrawn. As a community, we are concerned that politics may re-direct projects targeting the IPs communities.
- **Risk of electrocution from illegal connections:** There are cases of illegal connections even within the IP communities which poses health and safety risks to the wider community. In addition, there are also cases of power connections done by incompetent persons resulting in incidences of electrocution and a near miss electrocution of a child within the IP community.

44. Table 5 presents some of the IP villages in TransNzoiaCounty who reported having no access to electricity despite being within the 600 meters radius of the nearest transformer (in a school and in a health facility) are presented

*Table 5**: IP villages without electricity in Trans Nzoia***

| Sengwer Villages | Ogiek Villages |
|---|---|
| Segerger | Kapchebramut |
| Kipsai | Segerger |
| Mogotu | Sikinwa Farm |
| Kachimakwer | Toboo |
| Kapkonger | Lapot |

### 6.3.2 Perceived Barriers and recommended mitigation measures

45. The IP community members were also asked to describe the barriers that potentially impede IPs form accessing social and economic benefits of the proposed program and also suggest mitigation measures for overcoming the said barriers. The following were identified:

- In some of the areas that IPs live, the dominant tribes are the majority and have a much louder voice than IPs. In this context, the IPs concerns may not be heard. It is therefore recommended to facilitate the formation of IP only committees who will work with the project staff. This way, the IPs will have a great opportunity to internally discuss their concerns and voice them out to the project responsible parties.
- The targeting of project beneficiaries should not be done at locational level but rather at village level as this is where the targeting of IPs will be more likely. In this context, the IPs will have a greater opportunity to participate and also be in a position to voice their concerns. If the targeting is done at locational level where the IP communities are fewer, chances are that the IP communities will be under-represented in most of the community governance structures and hence their voice will not be heard.
- Politicians have a large influence on matters regarding access to electricity. During the LMC where IPs were targeted, the politicians influenced the withdrawal of all the poles, cables and meter boxes installed in IP villages to other areas.
- Road network to the IP villages is not passable and may deter transportation of the electricity materials to such areas. KPLC needs to engage the area MCAs and the County Government (CG) to grade the roads and make them passable.
- Due to the low socio-economic status of the IPs, it is at times very hard to afford transportation cost to participate in project consultation meetings. In this regard, the program needs to facilitate (in meeting transport costs) the IPs so as to ensure their effective representation in the program implementation.
- While IPs are not against undertaking unpaid work for the program, they wondered if it was possible to facilitate IPs to enhance their participation in development meetings so that they are compensated for the opportunity cost. There are instances when IPs take credit from mobile money applications in order to cater for transportation costs when attending consultations meetings which they need to repay.

- At the time of contracting, KPLC need to consider ring fencing employment opportunities for the IPs as a strategy to ensure access to the socio-economic benefits of the program.
- According to Ips consulted during the ESSA, KPLC has a program of loaning customers to cater for the wiring of their houses, with the repayment of the loan being spread over a 3-year period. This is in a bid to enhance access to electricity to KPLC customers. The IPs wondered if this arrangement be extended to Ips, since through this approach, it is possible for IPs to get access to electricity.
- Ready boards need to be provided to communities who are not in a position to do wiring as a strategy to hasten access to electricity by IP communities.
- When supplying power to the IPs homestead ensure all the houses within the homestead are provided with ready boards with separate meters to reduce conflict among family members as well as address health and safety concerns arising from power connection by unqualified personnel.
- Should opportunity arise, KPLC needs to consider hiring of qualified IP students with competence in matters electricity.

### 6.3.3 Consultations with, and Feedback from Stakeholders on the Draft ESSA Report

46. In response to the to the requirement to undertake stakeholder consultations on the draft ESSA Report, the E&S team shared the draft report with stakeholders on February 28, 2023, with a request for them to provide their feedback by March 10 (i.e., within two weeks). Feedback was received from stakeholders from the national and county governments. The key stakeholders who provided feedback on the draft ESSA report included (i) KPLC; (ii) the National Gender Equality Commission (NGEC); (iii) Ministry of Lands and Physical Planning; (iv) State Department of ASALs & Regional Development; (v) Sub-County Social Development Office, State Department of Social Protection and Senior Citizen's Affairs, Department of Social Protection, Machakos County; (vi) Labour Officer, Trans Nzoia County; (vii) Labour Inspector, Trans Nzoai County; (viii) Department of Occupational Safety and Health Services (DOSHS), Tranz-Nzoia County; (ix) State Department of Social Protection and Senior Citizen's Affairs, Department of Social Development, Homa Bay County; (x) Department of Occupational Safety and Health Services (DOSHS), Kisumu County; and, (xi) the Department of Lands and Physical Planning, the Physical Planning Office, Vihiga County.

47. Overall, the stakeholders concurred with the ESSA findings. For example, NGEC found the ESSA report to be extensive and well aligned to the principles of equality and freedom from discrimination. According to NGEC, the robustness of the report was achieved due to the involvement of diverse stakeholders in the ESSA process, including consultations with the vulnerable groups and communities. NGEC further notes that the report affirms the Bank's commitment to the realization of specific legal and policy frameworks in support of Program implementation. These include policy and legal frameworks related GBV prevention and response, Gender and Development, Persons with Disability, and the NGEC Act, among others. DOSHS noted that the report had adequately covered issues of concern under OSH, and highly recommended it for adoption. On their Part, the Ministry of Lands and Physical Planning (MoLPP), Vihiga County, noted that "the ESSA Report has captured the most fundamental issues discussed with a range of stakeholders, vis-à-vis the generation, distribution, and consumption of electricity. Participants' views drawn from all sectors of life has been addressed. Of particular interest has been how meticulously views touching on physical planning and land use have been documented, especially matters touching on land tenure, road network accessibility, encroachment on road reserves, rights of way (easements and wayleaves) and compensation inter alia".

48. In addition to the positive feedback, stakeholders also provided comments and suggestions for enhancing the ESSA report. In this regard, feedback was provided nine (9) key issues that are aligned to the PforR Core Principles. They included issues touching on: (i) Inclusion, (ii) Land and wayleave acquisition, including the need for "an integrated work plan amongst the various players (i.e., water, roads, telecommunication, sewerage etc.) in service delivery"; (iii) compensation, (iv) The question

of who should be the regulator for Social Risk Management (SRM), (v) Stakeholder Engagement, (vi) Sexual Harassment (SH) and Equality, (vii) Sexual and Gender Based Violence (SGBV), (viii) Skills Development for E&S risk management, and, (ix) Grievance Redress. It is important to note that most of the comments and suggestions from stakeholders were already captured by the ESSA report, either as findings or recommendations. However, where applicable, the feedback recommendations have been incorporated in the appropriate sections of the report. For example, the Labour Act has been changed to Employment Act, and vulnerable groups, individuals, and households,[6] have been defined (see Footnote 3), to ensure these groups of people are included in Program activities and specifically targeted to access Program benefits. A summary of the key issues and suggestions raised by stakeholders is provided below, while their unedited feedback is in Annex 2 (b).

49. **Inclusion of Populations in Remote Areas, Vulnerable Groups, Individuals and Households.** While finding the report to be comprehensive and inclusive, the National Gender Equality Commission (NGEC) suggests that there is a need to define the vulnerable groups, individuals, and households in the report to ensure they are specifically targeted by the GREEN Program. These include special interest groups (SIGs) such as persons with disabilities, older members of society and youth. NGEC further suggests that there is need to specifically target remote and hard to reach areas and to meaningfully consult with target groups in those areas, as well as with the SIGs. Also, both NGEC and the MoLPP have recommended that awareness creation and civic education, training and capacity building for all stakeholders, especially people in remote areas and SIGs, on the benefits of green energy, should be part and parcel of the GREEN Program implementation strategy. Finally, NGEC recommends that KPLC should look into the issue of challenges with its meters, which currently is a barrier to accessing electricity. On their part, the State Department of ASALs & Regional Development notes that the project should opening up hitherto unserved areas such as the ASALs should be mainstreamed with the aim of providing them with electricity. This will open new markets and new business ventures such as kinyozi (barber shops), phone charging, posho mills etc., thus creating employment.

50. **Land and Wayleave Acquisition:** According to the Ministry of Lands and Physical Planning (MoLPP), the land tenure systems in place in Kenya are sufficient to support full implementation of the GREEN Program. Despite this, the land governance and existing land tenure system needs to be looked at keenly when talking of GREEN Program. There is a need to look keenly into the issues regarding land that is needed by KPLC for wayleaves for the GREEN Program (and other energy sector agencies such as KETRACO, KenGen or pipeline and crude oil and gases agencies). In this regard, KPLC should survey and map the land to be acquired, in line with the existing laws. This also applies to wayleave acquisition in areas with community land tenure system. In this regard, resettlement policies should be well formulated, while being cognizant of the fact that a good percentage of land in Northern Kenya is under communal ownership and is home to many refugees and IDPs. In such cases, the intention to acquire wayleaves should be rolled out either by the Cabinet Secretary in charge of Lands or the County Executive Committee Member (CECM) in charge of lands in respective counties to enable the National Land Commission (NLC) to undertake the valuation and planning before the onset of the project. While implementing the GREEN Program, care should be taken to ensure that where necessary, Physical Planning plans that are GIS based are prepared in line with the provisions of the Physical and Land Use Planning Act (PLUPA).

51. **Compensation:** The MoLPP suggests that KPLC should take care while providing compensation under the GREEN Program to ensure it averts "possible corruption in the compensation process" since "history has shown that real beneficiaries have been short-changed, parallel bank accounts opened, and land sold last minute to take advantage of the vulnerable populations".

52. **Regulator for Social Risk Management (SRM) in government projects, including the GREEN Program:** The State Department of ASALs & Regional Development recommends that

[6] People Living with Disabilities, the Older Members of Society, Poor Youth, Poor Female/Male/Orphans headed Households, and, Minority Groups or Clans

that the government should consider mandating the State Department for Social Protection and Senior Citizens' Affairs to be the regulator for SRM. Furthermore, the State Department should be resourced with sufficient finances and qualified staff to undertake this role.

53. **Stakeholder Engagement.** The State Department for Social Protection and Senior Citizens' Affairs' recommends that, in undertaking stakeholder engagement, KPLC should be guided by the"National Public Participation/Stakeholder Engagement Frameworks".

54. **Prevention of Sexual Harassment and Ensuring Equality in Program Implementation:** The Labour Department suggests that labour issues are paramount for the success of the Program's implementation and KPLC should ensure that training on labour issues is undertaken. Also, KPLC should ensure adherence to the sexual harassment policy and the limitation of discrimination of any nature during the Program implementation. To achieve this, it is recommended that that KPLC should engage local communities in designing the selection and recruitment procedures

55. **Sexual and Gender Based Violence (SGBV):** SGBV is the most devastating form of gender inequality, yet there is a complete disconnect between the envisioned legislation for the prevention of SGBV, the experiences of the survivor, and implementation through practical application of the laws within different sectors. Commitment to fight all forms of SGBV calls for enhanced multi-sectorial and well-coordinated approach within relevant structures and agencies. It is for this reason that the County Government of Homa Bay through the Department of Gender and Social Services, and SGBV Technical Working Group, has initiated a guiding framework aimed at eradicating SGBV in the County through a Multi Sectorial Approach in intervention and programming. KPLC is invited to work with the Department of Gender and Social Services, and SGBV Technical Working Group in the management of SGBV in the GREEN Program implementation in the County.

56. **Skills Development.** A motivated workforce is key for the success of the Program. Therefore, the Department of Labour recommends that KPLC should prioritize and implement a skills development program to ensure there is a motivated and productive workforce the training should target areas such as the sexual harassment policy, discrimination in employment, and health and safety at the workplace.

57. **Grievance Redress:** The Department of Labour recommends that KPLC should put in place a proper grievance handling process and should liaise with the County Labour Office in addressing labour complaints/disputes that may arise in the course of the project so as to avert strikes.

# 7.0 Assessment of the KPLC Capacity for Managing ESHS Effects of The GREEN Program

## 7.1KPLC Organizational Structure for ESHS Risk Management

58. KPLC is the key institution responsible for implementing theGREEN Program.As a company, KPLC has the Board of Directors as the apex policy and decision-making structure.Under the Board, the management team is headed by the Managing Director&CEO. Under the CEO are tenDivisionsat the central office (Corporate Affairs & Company Secretary, Internal Audit, Infrastructure Development, Network Management, Commercial Services & Sales, Regional Coordination, Business Strategy, Human Resources & Administration, Information & Communication Technology, Finance and Supply Chain & Logistics, headed by General Managers who report directly to the MD. The Divisions are organized into Departments headed by Departmental Managers, and Departments are organized into Sections, led by Section Heads.In addition, the company's operations are arranged into six geographical regions (Nairobi, Coast, Central rift, North rift, south Nyanza,Mt. Kenya and North-eastern), each region headed by a regional manager. The regional managers manage the company's business and operations upto the county level.

59. KPLC has a Safety, Health, and Environment (SHE) Department which is one of the departments in the Human Resources and Administration Division. The SHE department has three sections, Safety, Health, (Occupational Health and Public Safety), and Environment (which also covers social). The SHE department is guided by the Environmental Management Coordination Act (EMCA) and the Occupational Safety and Health Act, 2007, and endeavours to ensure compliance with the requirements of this Act, including environmental audits, conducting EIAs, and RAP preparation where applicable. The SHE department is responsible for E&S risk management in all infrastructure projects implemented by KPLC regardless of the source of financing.Although social aspects are not foreseen in the naming/title of the SHE department, the department has two social (national level) staff, whose functions are seen only in terms of making contributions to the ESIA and RAP documents (especially for Bank financed projects), but with no presenceat the regional or county levels where infrastructure projects are implemented.

60. The capacity of KPLC to effectively manage ESHS effects of the GREEN Program was assessed at the national and county management and SHE department levels. People consulted at the national level included managers responsible for the SHE department, Wayleaves section (which is under the Power System Design and Development department), Operations, Design and Construction, Turnkey Projects and Connectivity, Distribution Planning, Security, Enterprise Risk Management, Treasury, Projects Accountant,Property, HR, and Legal,among others. Annex 2 presents the list of stakeholders consulted, including KPLC staff at the national and county levels.

61. Overall, the KPLC capacity assessment found that KPLC has no one stopFocal Point or coordination for E&S management. While KPLC is familiar with implementation of World Bank and other externally financed projects, responsibility for E&S risk management is scattered in various departments, with no single department or section responsible for E&S risk management in its totality (see Table7 below). Good coordination for E&S risk management is achieved in World Bank financed projects because of the requirement for the establishment of a PIU, but, while acknowledging that this is a good practice, the concept is not yet applicable to KPLC's operations at the corporation level. Moreover, staff are (officers/managers with some level of E&S responsibilities) are careful not to cross E&S responsibility boundaries in case they "step on each other's toes". Also, the SHE department, which currently sits in the Human Resources and Administration Division, hasfound itself in one Division of the Companyor the other, at different times of the corporation's life.

62. During the national level consultations, there was a general consensus by KPLC consultation participantsabout the need for the corporation to rethink the place, and placement of the SHE department to make it more effective in its E&S performance, and to strengthen the company's capacity to manage social risksand to give a wholesome approach to E&S management by adoptingE&S risk management as a corporationwide agenda, not just in response to the NEMA or World Bank requirements.

*Table 6: Summary of How the ESHS Risk Management is Distributed within KPLC*

| E&S Aspect | Department |
|---|---|
| Occupational Health, Safety and Environment | SHE |
| Land acquisition | Administration and Property |
| GBV (with a focus of Sexual Harassment) | HR |
| Stakeholder Engagement | • Business Development (during project preparation)<br>• Design and Construction (during project implementation)<br>• The Wayleaves Section of the Power System Design and Construction department (during project implementation) |
| Wayleave acquisition | Power System Design and Development |

| | |
|---|---|
| | (Wayleaves Section) |
| Grievances Management (corporationwide) | • The Commercial Services' Incident Desk |

63. The KPLC capacity assessment findings, which have been organized in the form of a SWOT analysis are presented in detail in Table 8 below. SWOTis a framework for leveraging an organization's strengths, identifying, and improving weaknesses, minimizing threats and risks, while taking advantage of the available opportunities.

*Table 7: Analysis of KPLC's ESHS Risk Management Strengths, Weaknesses, Threats and Opportunities*

| Strengths | Weaknesses | Threats | Recommendations/Opportunities |
|---|---|---|---|
| **Overall Findings** | | | |
| *E&S risk management*<br>• Currently, externally financed projects have very clear project teams that are clearly structured, but not so for internally and some externally financed operations<br>*E&S Financing*<br>• There is a Planning Committee that articulates the strategic activities of the company within any financial year, and which allocates budget lines according to company priority actions. In this regard, the head of department in charge of a Function (budget holder) proposes a budget for each activity of the department in the year<br>• The committee composed of GMs in charge of Divisions, the MD and the Board's finance and risk committee which then presents it to the full board for a budget conference.<br>• From the board, the KPLC budget is presented to the – ministry of Energy which in turn presents it to the National Treasury. At any of these stages, an increase or reduction of the budget can be proposed<br>• At the planning and budgeting stage, all design and construction costs are budgeted under specific projects (except for environmental audits).<br>• At the project design stage, there is budget lines for land and wayleave acquisition (compensation for 66kV lines and above)<br>• Projects have contingency budget lines which project managers may tap into, in case of need<br>• The SHE Department has a clear mandate and is able to carry out its functions despite the Division or Department that it might be place in<br>• KPLC has the Enterprise Risk Management Department which looks at enterprise risks for KPLC across board, including infrastructure and financial risks<br>• The SHE department's key mandate is to ensure compliance with EMCA/NEMA requirements, including EIA and environmental audits, | • Internally financed KPLC projects have fragmented E&S teams who do not work in a coordinated way (due to fear of crossing responsibility boundaries)<br>• No Focal Point for E&S grievances management<br>• The SHE department is not involved at the Planning Committee level, making it to be under-resourced at times, perhaps because E&S issues do not receive the required level of priority in the scale of things, especially when there is competition for scarce resources among KPLCs priority actions<br>• There is generally inadequate planning of E&S activities in terms of things that should be anticipated and included in the budget, or, failure to quantify budget requirements properly and adequately, leading to implementation delays when money is required for non-existent budget lines<br>• Inability of E&S mandate holders to take the changing E&S fundamentals into account when budgeting, e.g., not taking lessons learnt into account, or budgeting for things that will not be implemented<br>• Inability to meet E&S budget requirements due to liquidity challenges<br>• There is no specific budget lines for social risk management activities (stakeholder engagement and consultations, GRM, SEA/SH management, inclusion of VMGs, information disclosure etc.)<br>• Failure to require contractors to prepare SEA/SH prevention and response plans to guide their relationships between their staff and the community or among the staff<br>• The SHE Department was at one time under the office of the MD, then it moved to the Network Management Division, then to HR and Administration (where it sits currently, with a potential for another restructuring anticipated in 2023). Another reorganization is expected by January 2023<br>• There is no department or Section dedicated to social risk management in the KPLC structure. It has only two socio-economists at KPLC headquarters who | • The assumption that the various departments/sections with responsibility for E&S risk management, and in particular, stakeholder consultations, are actually doing this job effectively<br>• The lack of social staff to undertake meaningful stakeholder consultations and grievances management at the county/regional levels<br>• Failure to require contractors and subcontractors to prepare and implement SEA/SH prevention and response plans | • Developing a companywide E&S management policy to guide the E&S risk management mandate holders (departments and sections) in their management of respective E&S risks.<br>• As a precursor to the development of the E&S policy, KPLC should undertake a corporatewide**'As Is'** analysis in order to clearly understand how the corporation is currently managing E&S risks with a view to breaking the silos currently being experienced in E&S management<br>• The company's E&S policy should clearly describe potential E&S risks and related risk management owners as well as the linkages between project implementers and risk owners to guide the various risk owners on E&S risk management<br>• Consider creating a social risk management section – to bring together all social risk management aspects that are currently in different Divisions/departments, to bring about coherence and efficiency in social risk management without creating conflict among various departments, and resource it with adequately skilled personnel, financing, and other resources<br>• Consider renaming the SHE department as "Environmental and Social Risk Management Department (to include all the current SHE Department Sections and the newly created social section)<br>• Consider placing the E&S Department under the ERM Division (which should act as the Corporation's PIU) to accord it the high-level attention and resourcing that it deserves<br>• Involve the ESHS department at the design and planning committee levels to ensure all E&S activities are budgeted for |

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| | report to the head of the Environment Section. | | |

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| **Management of ESHS Risks and Impacts** | | | |
| • KPLC Relies on the Energy Act, the Land Act and KPLC's Land and Right of Way policy on matters of land and wayleave acquisition, especially on matters of compensation.<br>• Both Acts provide for just and fair compensation for spaces acquired (e.g. wayleave trace for sub-transmission and transmission lines (66kV and above) and for substations (which are acquired on a willing-seller-willing buyer basis)<br>• The Energy Act requires that livelihoods are not affected and should be compensated for, if affected. In this regard, KPLC compensates for affected crops and trees provided these are not related to service lines (dropping of electricity into an individual's house)<br>• The Energy Act empowers the Minister for Energy to "*…prescribe the forms and procedures for seeking and granting of the consent*"<br>• There is no easement placed on distribution lines but the legally binding agreement places restrictions on land use by the landowner<br>• The Energy Act safeguards the safety of the energy sector infrastructure and people and forbids encroachment of the wayleave trace (right of way)<br>• There are two socio-economists staff under the Environment Section of the SHE Department<br>• On Sexual Harassment in the workplace, KPLC is guided by the provisions of the Employment Act which requires any employer with more than 20 employees – to have a SH policy. Emphasis is on workplace related SH including how KPLC Meter Readers should conduct themselves in relation to their customers. In this regard, KPLC relies on the Code of Conduct (extracted from the Public Officers Code of conduct at the workplace | • No overall country system or energy sector policy, legislation, or regulation governing the management of social risks in infrastructure projects in their entirety, and KPLC also lacks the same at the corporate level<br>• There are no regulations as yet, to operationalize the act<br>• Without rules and regulations to guide the implementation of the Energy Act, it is unclear if the Legally binding Wayleave Agreement that KPLC uses to acquire MV and LV distribution lines without compensation, is what is foreseen by the powers of the Minister to *prescribe the forms and procedures for seeking and granting of the consent*<br>• Energy Act is silent on compensation to potential encroachers of the wayleave trace. Instead, the Act empowers the implementing agency such as KPLC to give adequate notice, following which KPLC would rely on other relevant laws to remove illegal and unsafe buildings or encroachers from the wayleave, without regard to their assets or livelihoods. (In this regard, KPLC liaises with the county administration and/or police to evict encroachers in line with the guidance of the Multisectoral Committee on encroachment of public spaces)<br>• KPLC has no dedicated department or Section/Unit responsible for social risk management in infrastructure projects<br>• Responsibility for various aspects of | • NEMA's weak compliance monitoring of KPLC interventions.<br>• Variance in enforcing E&S compliance from different donors financing last-mile activities.<br>• The lack of national regulation to guide sand harvesting, quarrying, and burrow pits in areas where KPLC has installed its infrastructure poses a risk to KPLC investments.<br>• KPLC risks sanctions and prohibitions from MDAsdue to non-compliance.<br>• NEMA has no provision for acknowledging and licensing the LV lines<br>• Threat of ineffective social risk management due to the inadequate attention to social risks of infrastructure projects | • KPLC should support the development of regulations to operationalize the Energy Act, including clear provisions on compensation for land for distribution lines<br>• Employ more social staff or seek the support of other government departs (e.g., department of social services or the Social Risk Management Unit) to ensure effective social risk management<br>• Review the Human Resources Policy and Procedures Manual to clearly include the conduct of KPLC employees and their contractors in relation to the communities among which they work, and to require contractors and subcontractors to prepare and enforce a workers' codes of conduct for employees and in relation each other and to the communities<br>• KPLC should explore all aspects of environmental risk management and expand the mandate of the SHE department to cover the same<br>• KPLC to give equal focus to social risk aspects, similar to how it treats occupational and safety issues. This would entail implementing the following measures.<br>  ○ Outlining clear and comprehensive social objectives in the company policy statement.<br>  ○ Revising the name 'SHE' to include social and adequately resourcing it.<br>  ○ Engaging adequate and competent environmental, social, health, and safety specialists at the regional and county offices guided by clear Terms of Reference (ToRs).<br>  ○ Carrying out environmental and social risk assessments and compliance monitoring<br>  ○ Involving E&S specialists in project design, implementation, and monitoring<br>  ○ Allocating sufficient human and financial |

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| • KPLC has developed a Human Resources Policy and Procedures Manual which includes provisions on SH at the corporation level. The Manual will be launched in January 2023<br>• Environmental management is guided by the EMCA<br>• A dedicated department (SHE) for safety, health and environmental risk management<br>• The health aspect of the SHE department deals with occupational health of staff and making the workplace safe for visitors (e.g. short term contractors)<br>• Prepares EIAs and conducts initial EIA audits during the construction phaseas required under the EMCA Act<br>• Has a system for screening investments for E&S effects, including consideration of site alternatives before carrying out environmental and social assessments and sub-projects implementation.<br>• Uses both private and own (KPLC staff) NEMA-registered lead experts to carry out EIAs.<br>• Has a substantive Safety, Health, and Environment department with E&S staff at the national office responsible for managing E&S safeguards aspects.<br>• Has national, regional, and county offices with crucial departments.<br>• Carries out Environmental Impact Assessments (EIAs) for all projects with substantial risks.<br>• In some counties, KPLC assigns a supervisor to each contractor to oversee project implementation.<br>• KPLC has elaborate and comprehensive procedures for reporting accidents/incidents, including the necessary processes for compensation.<br>• KPLC is ISO certified and thus able to develop and implement Standard Operating Procedures (SOPs) applicable to environmental risk management.<br>• KPLC has well-defined procedures for the management and disposal of waste.<br>• KPLC’s safety section has a WhatsApp platform incorporating the NGAO that allows Chiefs, village heads, etc., to report to KPLC safety-related issues, power interruptions, and infrastructure breakdowns. | social risk management (land and wayleave acquisition, stakeholder engagement, grievances management, Sexual Harassment, information disclosure etc.) are scattered across various departments or sections (which work independently of each other), with no dedicated Focal Point for the same within those departments or counties. This arrangement for E&S risks and impactsmanagement hinders an integrated approach to E&S risk management especially since there are no qualified E&S management staff in these departments/units<br>• The two social staff under the environment section of the SHE department are in practice responsible for RAP preparation and grievance management, where applicable. They are headquarters-based, with no presence on the ground<br>• The SHE department is not devolved to regional and county offices. Consequently, these offices and active work fronts do not receive timely EHS advisory and guidance when needed. EHS support to these regions is only reactive when there are OHS issues of concern or severe incidents instead of being proactive and anticipatory.<br>• The SHE department is biased towards environmental and safety aspects, which in practice means that social issues such as inclusion, stakeholder engagement, grievance management, and GBV-SEA/SH are not given much attention and weight. Instead, there is a general feeling that social risks are not serious enough or adequate – perhaps because they are scattered in different departments - to warrant the creation of a | | resources for stakeholder engagement, assessing the ESHS risk, implementing mitigation measures, and monitoring compliance, grievance, labour and SEA/SH management<br>○ KPLC can benefit from the County Environmental Committee, a platform that creates synergies between NEMA (Chair), KFS, and KWS and manages environmental issues, including environment-related grievances from institutions, communities, etc.<br>○ KPLC to engage external trainers certified by DOSHS as provisioned under the OSH Act 2007 and ensuing regulations.<br>○ Devolve ESHS risk management activities to the regional level to ensure efficiency of implementation<br>○ Involve the Regional managers/engineers in the preparation of ESHS management instruments to enable them take responsibility for their implementation |

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| • KPLC is part of the county-level development committees and benefits from timely access to information, including E&S issues.<br>• The service level agreement between REREC and KPLC has outlined their specific responsibilities (technical and implementation of E&S aspects).<br>• KPLC internal team has been certified by DOSHS to undertake annual health and safety for its health and safety staff.<br>• KPLC regularly undertakes toolbox talks.<br>• KPLC conducts staff assessments to qualify staff for various roles. | department or section (or to highlight the 'S' in the SHE to give it the prominence that it deserves<br>• The Employment Act provides clear guidance on matters of SH in the workplace but not on SEA of communities by KPLC or contractor personnel<br>• The SH section of KPLC's HR Policy and Procedures Manual has no provisions for SEA risk management and does not make demands on contractors and sub-contractors to uphold the KPLC SH policy. This means that KPLC will not as a matter of policy or practice (after the launch of the Manual), demand their contractors and subcontractors to apply the requirements of the Employment Act or the KPLC Manual<br>• KPLC hardly relies on other government departments such as the Department of Social Services or NGEC to support them on social risk management in infrastructure projects (e.g. stakeholder engagement, including consultations with IPs, and grievances management)<br>• KPLC is yet to institutionalize the KEMP frameworks and plans for managing social risks and impacts (IPs, wayleaves acquisition, GBV-SEA/SH, etc.).<br>• SEA/SH management plans are prepared largely for World Bank financed projects but not as a matter of policy or practice for all KPLC's operations<br>• Most procedures for managing E&S risks and impacts (e.g., Gender Policy) are inward-lookingare not extended to contractors and subcontractors.<br>• The expansion of electricity to last-mile consumers has increased unsafe electricity utilization through, e.g., illegal | | |

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| | connections.<br>• KPLC has a narrow map of its key stakeholders, thus excluding core government entities, NGOs, and CBOs critical to its operations.<br>• More emphasis on the operational safety of staff, contractors, and customers/the public) and safety of KPLC infrastructure, but less emphasis on other environmental issues such as biodiversity or physical cultural resources management<br>• The Scope of work of KPLC's Environment Section puts more emphasis on the preparation of ESIAs and less on other environmental risk management aspects<br>• There is no defined policy on how KPLC integrates E&S management into its processes, e.g., during the planning, design, and implementation phases.<br>• NEMA categorizes low-voltage transmission lines and electrical substations implemented by KPLC as medium-risk projects requiring the preparation of project reports. However, KPLC does not prepare and submit project reports for low-voltage transmission lines to NEMA.<br>• Limited follow up on implementation of the EIA recommendations by the regional and county offices because the EIA license conditions remain at the SHE department at national level<br>• The SHE department is challenged in undertaking effective compliance monitoring due to limited human capacity at regional and county levels to review all the new projects and E&S reports and monitor the sites simultaneously. | | |

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| | • KPLC has internal annual audit procedures that do not contain explicit ToRsoutlining the core E&S issues to audit. Moreover, the audits are more environmental in nature, in fulfillment of the NEMA requirements, and therefore has less emphasis on social aspects<br>• KPLC E&S audits are done from the head office in Nairobi and the teams in the counties are not preview to the contents of the audit reports and thus not able to implement the recommendations.<br>• KPLC does limited follow-ups to ensure families of those affected by accidents/incidents receive timely compensation.<br>• The procedures for E&S risk management are focussed on the management of oil disposal and do not have timelines, and they do not include other waste, e.g., obsolete transformers. | | |
| **E&S Instruments and Plans** | | | |
| • Under KEMP and KOSAP, KPLC has become familiar with the preparation of a number ofE&S instruments and plans. Theseinclude:(i)Environmental and Social Framework (ESMF), (ii) Vulnerable and Marginalized Frameworks (VMGF), (iii) Resettlement Policy Framework (RPF), (iv) Stakeholder Engagement Plans (SEP), (v) Grievance Redress Mechanism (GRM), (vi) Workers Code of Conduct, and (viii) Criteria for allocating ready boards to vulnerable households. Other documents prepared by KPLC include:<br>○ KPLC Work Implementation Manual.<br>○ Infringement Notice applicable where KPLC activities interfere with private land.<br>○ ISO Certification Manual.<br>○ Un-documented Grievances Uptake Channels Request, Complements, | • E&S instruments and plans are domiciled in different units, making their application and usage difficult.<br>• There is limited awareness among KPLC staff on how to apply the E&S instruments and plans.<br>• County teams are unaware of the E&S instruments and plans prepared under KEMP. | • | • KPLC to institutionalize the existing E&S instruments and plans.<br>• KPLC to build capacity strengthening within KPLC to ensure they apply the E&S instruments.<br>• KPLC to develop a map of all their key stakeholder with mandates to E&S risk management. E.g., labour, social protection, NLC, NEMA, NGEC, MoLPP, KFS, and others.<br>• KPLC to prepare a corporate SEP that leverages the KEMP SEF, including the map of the critical stakeholders in<br>• Make it mandatory for all KPLC contractors to prepare and enforce SEA/SH and grievance management in their relationships with communities among whom they implement projects on behalf of KPLC.<br>• Leverage the ISO manual and prepare specific procedures for managing key social risks and impacts. E.g., management of IPs, SEA/SH, people |

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| Complaints and Suggestions (RCCS)<br>○ Standard Operating Procedures (SOPs). | | | with disabilities, waste management, biodiversity conservation, OHS, etc.<br>• KPLC to enforce compliance to ensure implementation of the E&S instruments and plans. |
| **Resourcing: Human Capacity and Financing** | | | |
| • KPLC's department of Safety, Health, and Environment (SHE), domiciled at KPLC's head office in Nairobi, has four (4) environmentalists and two (2) social specialists.<br>• Each KPLC region has a Wayleaves Officer, a Safety Officer, and a Property Officer.<br>• The property officer and wayleaves officer are responsible for land and wayleaves acquisition, respectively. In addition, the Wayleaves Officer is assisted by Wayleaves Assistants at the county level.<br>• Previously, SHE covered safety, health, and environmental aspects only. However, the inclusion of a social specialist was strengthened under KEMP in line with the provisions of the World Bank's safeguards policies.<br>• The safety officer is also involved with the KPLC county teams when there are safety emergencies and provides trainings for the authorization of personnel.<br>• KPLC can easily collaborate with other MDAs willing to work with the corporation to support the management E&S aspects.<br>• KPLC is ISO certified and thus able to develop and implement Standard Operating Procedures (SOPs) applicable to E&S risk management.<br>• KPLC has an annual budget that supports the procurement of PPEs.<br>• KPLC has introduced a Certificate Course on Wayleaves Management at Kenya Power Institute of Energy.<br>• Some of the Wayleaves Assistants have undergone induction in wayleaves management.<br>• KPLC tailors trainings for their staff in various departments. | • There is limited awareness of the relevant E&S provisions within KPLC by contractors and workers.<br>• Currently, externally financed projects have project teams that are clearly structured but not for GoKfunded operations.<br>• E&S aspects arescattered across departments: SHE (E&S specialists), human resources (property officer), construction and design (wayleaves officers and assistants), and business development.<br>• The SHE department is overstretched and unable to oversee the management of environmental and social issues throughout the corporation.<br>• The SHE department is not devolved to the regional and county levels. There is no in-house E&S staff at the county and the regional offices responsible for E&S safeguards. Instead, regional and county offices rely on the team at the national office.<br>• There is no specific budget line for E&S activities under<br>• KPLC. E&S activities are spread across various departments. For projects, there is no budgeting for E&S aspects during project preparation. Funding of project activities begins once the contractor is onboard.<br>• There is a provision to have one Wayleaves Assistant attached to each county. However, for the Coast region, two Wayleaves Assistants and one | • Due to the gaps in capacity, KPLC may fail to ensure E&S compliance, delaying project implementation. | • Capacity building of all KPLC departments on ESHS risk management and reporting<br>• Develop an E&S risk management manual and a training program for its staff. The training program to cover the statutory requirements on E&S management, the anticipated E&S effects on KPLC interventions, and material mitigation measures.<br>• Involve the E&S department at the design and planning committee levels to ensure all E&S financial requirements are captured at the design and budgeting stages. |

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| | Wayleaves Officer are responsible for Taita Taveta, Lamu, Tana River, and Mombasacounties.<br>• KPLC uses its surveyors in land and wayleaves matters. However, there is no surveyor attached to Kwale county. A surveyor is requested from Mombasa County.<br>• Wayleaves Assistants report to the Design and Construction (D&C) Officer. The D&C officer, Property Officers, and Safety Engineers are degree holders, while the requirement for Wayleaves Assistants is a driving license. They are low-skilled, low-cadre persons taking on the vital role of acquiring wayleaves. For instance, they have inadequate skills for strategizing, advising county teams such as Engineers and County Business Managers, or making informeddecisions, and<br>• KPLC infrastructure development and distribution planning department does not liaise with the SHE department to determine the impacts of a proposed action during the concept phase and for the SHE team to advise the design team should there be a need to realign the powerlines.<br>• The budget for E&S management is considered counterpart financing/dependent on government financing. Therefore, in case of delayed disbursement of funds, implementation of E&S aspects tends to slack.<br>• The resources allocated to the SHE department are inadequate. As a result, the team cannot sufficiently support the implementation of E&S risk management including monitoring and reporting.<br>• Wayleaves Assistants cannot access | | |

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| | trainings in critical skills such as negotiation etc. for example, the Wayleaves Assistant in one of the counties has been learning on the job for seven years. He has since received two induction trainings on wayleaves.<br>• There are instances of limited first aid and firefighting training carried out for the staff in the county offices as required by law. | | |
| **Wayleaves Acquisition and Consents** | | | |
| • KPLC acquires land for sub-stations through a willing seller, willing buyerprinciple. Alternatively, NLC, in consultation with communities and the county government, can allocate KPLC land set aside for public utilities.<br>• KPLC undertakes crop damage assessments during network design to understand the scale and magnitude of losses.<br>• KPLC sometimes includes beneficiaries (households, schools, hospitals) in the mapping of wayleaves before executing the projects.<br>• KPLC engages its surveyors and way-leaves officers in the way-leaves acquisition and conducts official searches at the Ministry of Lands and Physical Planning.<br>• KPLC includes surveyors in the wayleaves acquisition process, identifies the network routes, and ensures correctnetwork designs to mitigate infringement. | • Inconsistency in compensation payment for trees and crops. Project affected persons reported instances where individuals are paid different amounts for the same trees or crops. There were also reports of some people being compensated for trees and crops while others are not, potentially causing conflicts and grievances.<br>• There is no NLC involvement to guide the process of wayleaves acquisition, including valuation of interests and claims and determination of compensation payable.<br>• No budgeting for compensation for loss of land value along the kV 11 and kV33wayleaves' trace for.<br>• KPLC may or may not engages MoA and KFS in valuing trees and crops and determining compensation due to affected persons.<br>• KPLC has no comprehensive system to handle the negotiation, documentation, and monitoring of wayleaves acquisition.<br>• KPLC inadequately consults affected persons and may not provide a robust system for managing wayleave-related concerns. Consultations are one off public informational meetings without follow up consultations with the affected | • Risk of increased litigations against KPLC due to limited stakeholder engagement during the process of acquisition of wayleaves.<br>• Potential for physical harm or injury to KPLC staff and contractors because of inadequate information disclosure and stakeholder engagement with communities, communities, and also due to the claim of inconsistent compensation amounts for crops and trees. | • KPLC should develop a compensation strategy that is consistent with the provisions of the Energy Act, the Land Act, and the Community land Act, among other applicable laws. In this regard, KPLC should reconcile/harmonize its compensation rates with MoA and KFS guidelines.<br>• KPLC to involve NLC in acquiring wayleaves, particularly where they have a stalemate/dispute.<br>• Compensate for loss of land value, especially where the affected person is not a direct beneficiaryof the supply line.<br>• Compensate for the loss of trees and crops, including crops/trees on distribution lines (kV11 and kV33). In this regard, work with the Ward Agricultural Officers and Frontline Extension Officer to assess and value affected crops.<br>• Implement a platform for all corridor users to align on the management and sustainable use of road corridors.<br>• Where feasible, consider underground cabling to mitigate the cutting of trees.<br>• Consider the registration of caveats.<br>• Engage physical planners in network design to understand the futuristic needs of the corridors.<br>• KPLC to update the existing wayleaves acquisition policy outlining clear procedures for acquiringconsent and compensatingfor losses.<br>• Provides compensation sufficient to purchase replacement assets of equivalent value and to meet any necessary transitional expenses, paid prior to |

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| | private individuals/households<br>• There is limited coordination between KPLC and the physical planning departments when designing networks and acquiring wayleaves.<br>• KPLC delegates wayleaves acquisition and documentation to contractors.<br>• KPLC may not restore or replace public infrastructure and community services that may be adversely affected during installations.<br>• Time lapses between wayleaves acquisition and construction lead to encroachment of wayleaves, with the consequent removal of encroachers without compensation for their assets<br>• KPLC does not always re-design the network when people encroach on previously identified network routes, resulting in conflicts.<br>• Under group schemes, as long as the public forum agrees to the project, KPLC may not necessarily seek consent from the specific landowners. A number of landowners reported having found electricity poles/infrastructure on their land, without them having interacted with KPLC or signing any agreements with KPLC<br>• Those upstream or close to the network route cannot refuse to provide wayleaves to connect those downstream. Grievances have arisen due to improper or no acquisition of consents.<br>• The request to clear a tree from a private land is obtained from the landowner, while the county gives the go-ahead for KPLC to remove the tree on public reserve land. The involvement of NEMA, the Directorate of Environment, and KFS is unclear. | | taking of land or restricting access<br>• KPLC to optimize the functionality of their GIS system. For instance, to include several layers of information from key stakeholders, such as corridor users and socio-economic data, as it applies.<br>• Engage a qualified social specialist to be in charge of stakeholder engagements and management of land acquisition and resettlement issues instead of the customer experience officer (marketer)<br>• Opportunity to set up an oversight agency to monitor wayleaves acquisition<br>• Consider securing the wayleave ROW to avoid encroachment of the same |

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| | • KPLC, in some cases, electrifies beneficiaries on land under disputes which can be interpreted as legitimizing land-related illegalities.<br>• Where land is unadjudicated or where the landowner is absent, KPLC may obtain partial consentfrom some of the family membersor from family members or neighbours who are not the landowners resulting in a turf with the legal owners or actual occupier of the land.<br>• Wayleaves consent forms are for donating wayleaves and not compensation; thus, KPLC does not compensate for wayleaves (loss of land value).<br>Compensation rates for trees and crops are below the current market price. As a result, grievances and disaffection from communities discourage restoration efforts. | | |
| **Biodiversity** | | | |
| • KPLC, in some cases, contact KFS for advice before cutting trees; this should be institutionalized so that it becomes a standard practice<br>• KPLC in some areas are using insulated powerlines or passing the lines underground to avoid electrocution of the wildlife<br>• KPLC consults and seeks authorization from KFS and KWS before passing powerlines through a protected area<br>• The SHE department actively reviews reports from consultants and advises the design team of areas where NEMA might not approve EIA reports due to unmitigated risks.<br>• There are efforts by KPLC to restore the environment through tree planting. KPLC has a tree nurseries program under the SHE department to promote afforestation.<br>• At the national level, while undertaking large projects, KPLC initiates consultations with NEMA, | • KPLC puts more emphasis on the operational safety of staff, contractors, and customers/the public) and safety of KPLC infrastructure, but less emphasis on other environmental issues such as biodiversity or physical cultural resources management.<br>• KPLC does not share information on smaller distribution lines with KWS. Given the habitats for some of the critically endangered species are in urban habitats, this has affected some animals.<br>• KPLC does not carry out due diligence on the sourcing of wooden poles. It is, therefore, unclear whether the pole suppliers sustainably harvest the trees.<br>• KPLC does not replant trees in the same counties where they cut the trees.<br>• KPLC does not subject wooden pole | • Inadequate consultations between KPLC and with institutions mandated to manage biodiversity aspects leading to non-compliance issues, accidents and incidents.<br>• No requirement by KPLC to have the suppliers comply with KFS requirement on the certificate of origin for tractability to mitigate illegal logging. | • In areas with wild animals or dense vegetation cover, KPLC must avoid such sites or use insulated power lines.<br>• Increase height of powerlines in areas where animals such as giraffes and elephants regularly frequent to avoid electrocutions.<br>• KPLC should record the number of trees they cut per county and demonstrate the number of trees replanted to cover the trees trimmed.<br>• KPLC to institutionalize the practice of informing KFS when a tree is cut to pave way to the project.<br>• KPLC to keep a database of how many trees are cut,and planted.<br>• KPLC as a CSR support, to provide tree seedlings to schools to encourage reafforestation.<br>• Consider the use of insulated wires particularly when passing through indigenous/critical/protected habitats, to mitigate destruction of trees and animals.<br>• Support reforestation in the counties where they |

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| KFS, and KWS when passing power lines in protected areas. | suppliers to an audit requiring them to get a certificate of origin demonstrating where they sourced the wooden poles to mitigate illegal tree cutting.<br>• KPLC does not get advice from KFS foresters on the best time to prune trees and how to prune them. Pruning trees during the dry season or pruning at the wrong section leads to the loss of the trees.<br>• KPLC's environmental conservation issues are centralized in Nairobi instead of the counties where its impacts are felt.<br>• While KPLC has a SHE department, the institution does not have guidelines or SOPs for identification and screening of potentially important biodiversity and cultural resource areas, or protection of natural habitats and physical-cultural resources<br>• While there are MDAs with a mandate tomanage natural habitats and physical-cultural resources, there is no defined system in KPLC for engagingthem.<br>• The lack of risk assessments and weak compliance monitoring, particularly of KPLC's labour and Transport contractors, predisposes KPLC to the risk of destruction of natural habitats and physical-cultural resources in project areas.<br>• KPLC does not take stock of trees destroyed; thus, they do not have a systematic way to restore the lost vegetation. | | have cut the trees. i.e., if 300 trees are cut in Nairobi, they should be replanted in Nairobi and not elsewhere<br>• Acquire biodiversity GIS maps from IBAT database, KFS and KWS to superimpose them on their design plans. This will guide them on areas of significant biodiversity<br>• Form a WhatsApp group specifically for NEMA, KWS,KFS and Roads to help improve efficiency in getting environmental inputs.<br>• Seek clearance from NEMA, KFS and KWS in areas where they need to extend power lines. This will improve project screening to avoid project delays or potential conflict with other agencies.<br>• Maintain a database of all the trees cut and which region to know how many trees they have cut to meet the target the distribution targets.<br>• Maintain database of all the areas where animals have been killed to determine potential areas with high risk of electrocution or collision.<br>• Reach out to KFS foresters on how to prune and cut tress because some trees, depending on how they are pruned or cut, could wither |
| **IPs and Vulnerable Groups** | | | |
| • KPLC provides ready boards to eligible vulnerable households.<br>• KPLC identifies vulnerable households through a physical assessment of their surroundings to | • KPLC has no clear and well-defined strategy to promote the inclusion of IPs and vulnerable households in program activities, including engagement and | • Some vulnerable households feel that electricity is not a priority, and it was imposed on them through the group schemes. | • KPLC to prepare and implement a clear strategy on including IPs and vulnerable households in project activities and incorporating their views in project designs. |

| Strengths | Weaknesses | Threats | Recommendations/Opportunities |
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| determine their level of vulnerability, with support from NGAO.<br>• KPLC E&S staff screen sub-projects to identify vulnerable groups and ensure inclusion, including avoiding intrusion of cultural sites. | consultation.<br>• KPLC does not have written procedures for identifying and supporting vulnerable households.<br>• KPLC entry meetings do not include the social protection departments, CBOs, and NGOs working on aspects that concern IPs and vulnerable households. Further, there islimited or not engagement of crucial actors supporting the inclusion of IPs and vulnerable groups. These include, NGEC, NCPWD, and the relevant county departments.<br>• Inadequate documentation and disclosure of the KPLC GRM to enable timely resolution of the complaints reported by IPs and vulnerable households.<br>• Weak capacity for compliance monitoring within KPLC and among national and county government agencies necessary for promoting social accountability.<br>• Inadequate stakeholder engagement presents a risk of exclusion of IPs and vulnerable groups from accessing culturally appropriate benefits and opportunities.<br>• The limited knowledge amongst KPLC staff on the inclusion of IPs and vulnerable groups to ensurethey access the social and economic benefits of the program.<br>• The existing KPLC infrastructure (offices) is not PWD-friendly.<br>• Elite capture of last-mile connectivity and government procurement opportunities, denying IPs and vulnerable households benefits and opportunities. | • KPLC is recovering idle meters and vending machines from persons unable to pay for the connection and/or service the token. This activity mainly affects vulnerable households who should be accorded preferential treatment to enable them access project benefits<br>• The requirement by county governments for KPLC to pay for each pole erected in the county will lead to higher power costs that will affect vulnerable persons disproportionately.<br>• Limited consultation with IPs and vulnerable households and disclosure of information on the Program may result in conflicts that may hamper program implementation.<br>• There is a risk of excluding IPs and VMGs from accessing program benefits such as employment opportunities and access to electricity.<br>• EPRA is concerned with the standards/quality of the ready boards disseminated to vulnerable households. | • KPLCshould design innovative waysto ensure electrification programs are initiated that specifically target IPs and vulnerable households based on their needs and priorities.<br>• KPLC to enhance the existing PWD Policy to ensure application to all stakeholders.<br>• KPLC is familiar with WB GRM requirements and has previously developed a SEP and GRM for a WB-financed projects. As a result, KPLC can adopt the SEP and GRM principles to all their corporate level activities. This is an opportunity to ensure the inclusion of IPs and vulnerable households in the stakeholder engagement and grievance management processes.<br>• The SEP and GRM to consider local structures for engaging IPs and give voice to IPs, particularly in areas with dominant communities, including holding separate consultation sessions with IPs in locations accessible to them, using languages they can easily understand, considering any mobility, disability, and literacy challenges.<br>• KPLC to ensure proper staff identification to mitigate rogue persons impersonating KPLC personnel and conning vulnerable persons.<br>• This will enable vulnerable households to engage in productive uses of energy.<br>• KPLC to mitigate the risk of elite capture.<br>• KPLC is to adhere to the requirements to provide 30% of government procurement opportunities to youth, women, and PWDs.<br>• KPLC to engage IPs and vulnerable households to understand their electricity needs and priorities better, and their ability to pay for the connections as well as service tokens, before electrifying their households.<br>• KPLC to consider the opportunity to further subsidize power connections to vulnerable households and/or provide credit facilities/stima loans payable over aspecified period of time, with longer repayment period.<br>• KPLC to undertake a customer satisfaction survey, |

| Strengths | Weaknesses | Threats | Recommendations/Opportunities |
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| | | | including an assessment of the social outcomes of their operations.<br>• |
| **Stakeholder Engagement, Information disclosure and Grievance Management** | | | |
| • KPLC undertakes public participation in the form of entry meetings. The business development team convenes project entry meetings with potential customers in coordination with local leadership. The meetings constitute representation from KPLC's design and construction engineers, surveyors, wayleaves teams; the local authority (Chiefs, MCAs Nyumba Kumi), and potential beneficiaries.<br>• Sometimes, KPLC undertakes customer safety education before constructing the network and electrifying respective households.<br>• KPLC employs diverse uptake channels for receiving requests, compliments, complaints, and suggestions (RCCS). The channels includeNational Center call number 9771; direct calls to KPLC offices at the county level; various operators working in shifts; physical visits to the KPLC office toreport a grievance.<br>• The SafetySection hasinitiated WhatsApp group through the NGAO (Chief, Assistant, DOs, and CCs), for emergency and other incident reporting. KPLC representation includes the Regional Manager, County Business Manager, Functional Heads at the county level, Distribution Area Engineers and Emergency Desk Operators.<br>• Other uptake channels include Emergency office/number;Public Barazas;Emails;SMS to *977#; WhatsApp Group for Large power consumers with representation from the Kenya Association of Manufacturers and KPLC (General Manager, County Business Managers, Functional Heads at the county level, Distribution Area Engineers). In addition, Latch power consumers have VHF radios to contact KPLC directly.<br>• Most issues raised through the RCCS include operational issues such as delayed connection, billing challenges, safety, infrastructure breakdown, | • KPLC has no written policy on stakeholder engagement, including project entry meetings. As a result, county business teams (marketers) have no reference point for their approachtostakeholder mapping, timing, and frequency of consultations. They may also not be adequately qualified to effectively undertake stakeholder engagement and information disclosure requirements.<br>• The project entry meetings focus on disclosing general project informationsuch as the benefits of electricity, communicating the need for wayleaves donation in case of private land, requesting statutory documentation for electricity connection, and registering potential customers. However, KPLC rarely discloses the foreseen E&S risks and impacts to potential customers, e.g., possible loss of assets and livelihood sources, and the appropriate management measures (avoidance, compensation etc); alternative justice systems for grievance redress are also not documented or disseminated to stakeholders.<br>• KPLC is a commercial entity with one main stakeholder (the customer), and the entry meetings are solely for identifying potential consumers with the aim of convincing them about the benefits of having electricity in their homes/businesses. This limits the engagement process and does not address all E&S issues related to the provision of electricity, including the payment | • KPLC does not currently provide a budget for stakeholder engagement in its corporate-wide operations.<br>• While the program has nationwide coverage, it is also possible that inclusion gaps persist, and last-mile delivery of electricity connection to IPs may remain an issue, potentially causing increased complaints.<br>• IPs and vulnerable groupsare at risk of exclusion due to the lack of explicit regulations guiding their engagement. | • KPLC to develop a policy/strategy/system for stakeholders engagement (including the project entry),information disclosure and grievances management to be materially consistent with international best practices, in line with the environmental sustainability guidelines under EMCA.<br>• KPLC to integrate and synchronize all the grievances uptake channels and improve the functionality of the uptake processes.<br>• KPLC to leverage the KEMP GRMfor corporationwide use, and document and disclose their grievance management procedures to all stakeholders. These procedures include keeping an updated grievances log, the responsibility to log grievances, outlining the structures for resolution, and the focal point person for convening such structures.<br>• KPLC to utilize the grievances log to generate reports to understandthe program's position on managing reported grievances and subsequent compliance on E&S issues.<br>• With the expansion of the last mile connections, KPLC to initiate a robust customer education program on safety aspects. |

| Strengths | Weaknesses | Threats | Recommendations/Opportunities |
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| power interruptions, etc.<br>• Operational complaints are received, logged in, and dispatched to the relevant county and/or department. Further, the complainant gets a text message informing them that the issue has been resolved.<br>• KPLC disseminated the RCCS to stakeholders through local radio stations, revenue collection days, and public forums.<br>• Wayleaves-related complaints touch on issues of compensation, infringement, and trespass on private property. Such grievances are captured in the complaints register book and assigned to the wayleaves assistant for resolution.<br>• KPLC consolidates the complaints received through the national call centre (NCC), maps, and refers to the responsible officers in the various counties for resolution. Through the NCC, KPLC generates a grievance management report that shows the type and age of complaints received, the number resolved, the number escalated, and those pending resolution. Based on this report, KPLC can follow up to ensure the timely resolution of the grievances. | conditions related to electricity consumption<br>• The approach to stakeholder engagement is narrow and only limited to electricity consumers hence leaving out consultations on key E&S issues with the core government agencies who have a mandate to enforce compliance on the E&S risks associated with KPLC interventions<br>• There is a consensus across board that KPLC rarely consults relevant stakeholders despite having an obligation to collaborate with both governmental and non-governmental stakeholders<br>• Key internal and external stakeholders are not present during the entry meetings. They include the department of Safety, Health, and Environment (SHE), the department of social protection, public health, the Ministry and Agriculture, KWS, KFS, CBOs, and NGOs that champion the inclusion and protection of vulnerable persons are also not involved.<br>• The timing of project entry meetings is uncoordinated and KPLC prioritizes wayleaves acquisition over stakeholder consultations. For instance, entry meetings – which is the only opportunity for the limited stakeholder consultations, happen before or after the wayleaves acquisition.<br>• KPLC has diverse channels for receiving grievances. However, some grievances are not being resolved promptly, pending for years.For this reason, affected persons may not always utilize the KPLC’s reporting channels and choose alternative recourse such as the following.<br>  ○ Ombudsman of the county government, | | |

| Strengths | Weaknesses | Threats | Recommendations/Opportunities |
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| | ○ Energy and Petroleum Regulatory Authority,<br>○ Ministry of Energy and Petroleum,<br>○ Local leaders-legislators.<br>○ Advocates.<br>• The KPLC GRM is not well documented and disclosed for ease of use by stakeholders, impeding its utilization. | | |
| **Public and Worker Safety** | | | |
| • KPLC has prepared and implemented Codes of Conduct for workers on KEMP covering, among other aspects, SEA/SH and Child Exploitation and Abuse (CEA).<br>• On Sexual Harassment in the workplace, KPLC is guided by the provisions of the Employment Act, which requires any employer with more than 20 employees – to have an SH policy. Therefore, emphasis is on workplace-related SH, including how KPLC Meter Readers should conduct themselves in relation to their customers. In this regard, KPLC relies on the Code of Conduct (extracted from the Public Officers Code of conduct at the workplace.<br>• KPLC has developed a Human Resources Policy and Procedures Manual, which includes provisions on SH (which is skewed to SH at the corporation level). The Manual will be launched in January 2023.<br>• KPLC has an active SHE department that actively works to advise KPLC on safety, health, environment, and social issues.<br>• There is an existing Health and safety pocket handbook for employees that they can constantly use to refresh their knowledge of the safety aspects of their jobs<br>• Actively carry out EIAs for large infrastructure projects and supervise the contractor.<br>• KPLC carries out Health and Safety audits for significant projects, and at the national level, this should be cascaded to county stations and reports | The specific areas of limited compliance by KPLC to DOSHS requirements include:<br>• Non-registration of construction sites,<br>• Inadequate provision of PPE to workers,<br>• Inadequate risk assessment pre-project implementation and non-inclusion of EHS clauses within their contracting documents hence weakening enforcement,<br>• Late reporting of incidences and delayed compensation of casualties,<br>• Weakened level of responsibility on compliance due to a long chain of sub-contractors well,<br>• Non-existence of OSH committees in contractor-managed sites<br>• Weak monitoring by KPLC and limited involvement of the mandated government agencies (DOSHSS) in monitoring to ensure compliance.<br>• Little education is provided to the public on safety aspects.<br>• Increased electrical incidences and fatalities due to poor verification of installations and engagement of unqualified technicians.<br>• Limited awareness of the existing | • Inability of last mile customers to access technicians accredited by EPRA to wire premises.<br>• KPLC network installation is aging and KPLC not matching the required operation and maintenance presenting health and safety risks.<br>• Inadequate resource allocation (finance and human) to promote health and safety measure | • KPLC to obligate the contractor to prepare and implement a policy on Child Exploitation and Abuse.<br>• KPLC to facilitate the participation of public health officers in their public forums/entry meetings.<br>• KPLC to mark their wayleaves like the Kenya pipeline to help the public health department enforce it. I.e., ensure no structures are built close to or under the powerlines.<br>• Clear procedures for monitoring contractors and sub-contractors on safety issues.<br>• KPLC to obligate the contractor to obtain a letter of compliance from DOSHS.<br>• KPLC to mainstream health and safety issues (OSHA and WIBA) in the bidding and contract documents.<br>• KPLC to engage stakeholders during site monitoring. Such exercises to include DOSHS, Labour officers, Social Protection, Public health,and the National Employment Authority.<br>• KPLC to also submit the health and safety related reports to the DOSHS county or regional offices.<br>• KPLC to obligate contractors and sub-contractors to have health and safety officers in their teams.<br>• KPLC to ensure that all workers undergo medical assessments before, during and after work engagements as provided for in the Medical Examination Rules.<br>• KPLC to ensure that health and safety audits are undertaken regularly. |

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| submitted to the county DOSHS offices.<br>• KPLC has active WhatsApp groups with national government and administration officers where Power issues are raised. However, this can be improved to bring about electrical safety awareness.<br>• KPC has good policies on health and safety, which can be built upon to strengthen the SSHE in their operations further.<br>• There is a KPLC hotline that is provided, this hotline has an active operator who responds to queries from customers and redirects the calls to their respective departments<br>• KPLC ensures that its power lines are safe from Highrise buildings. However, some powerlines installed long ago are very close to buildings.<br>• The site staff are issued with the necessary training for field work and equipped with PPE.<br>• KPLC requires contractors to undergo training at the Kenya Power training school before working with KPLC. In addition, a capacity assessment is carried out to ensure that the contractor has the resources to carry out the work.<br>• The suppliers of concrete and wooden poles are subjected to factory inspections to ascertain capacity and quality systems.<br>• The wooden poles and concrete poles are subjected to various tests before they are supplied to KPLC; this is checked a second time before they are taken to the sites where they are eventually erected. This helps ensure safety.<br>• KPLC requires each premise to have a wiring certificate to ensure the community's safety. However, this requirement is not standardized across last-mile projects.<br>• KPLC inspects PPE, tools, and equipment at the laboratory before distributing them to the county teams.<br>• KPLC head office maintains a list of PPEs to be acquired, which has been incorporated into the KPLC systems and allocated a budget.<br>• Contractors must show sufficient capacity, including | legislation and procedures on GBV management.<br>• Reporting GBV cases to the police gender desk is hindered by the costs, trauma, and stigma surrounding GBV.<br>• KPLC does not include public health officers when designing projects. This is important to ensure that health facilities are considered in the electrification.<br>• KPLC does not coordinate with public health officers in project entry meetings on awareness creation- educate the community, labour influx, educate communities on, e.g., HIV/AIDs, facilities-water, latrines. Align with local administration (Chiefs/public Barazas). | | • Implementation of CoC by all those with physical presence on site. |

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| having appropriate and adequate PPEs, tools, and equipment to carry out the jobs.<br>• SHE policy exists that guides the operations.<br>• There is a booklet with work and safe working procedures.<br>• There are national and regional health and safety engineers who offer support to the counties on health and safety issues.<br>• There is a KPLC training school registered by DOSHS to offer OHS trainings with in-house staff to offer training such as first aid, fire safety, OHS, and risk assessment. KPLC has OHS procedures in place and harmonized appropriately and cascaded to the counties.<br>• KPLC has a system of undertaking annual safety audits, fire audits, risks assessments, and inspection of equipment<br>• Competence authorization of staff to undertake various operations in the system. | | | |
| **Compliance Monitoring** | | | |
| • There is a Service Agreement between KPLC and REREC to clarify specific roles and ensure that EHS aspects are well coordinated.<br>• Contractors undergo an induction based on KPLC's EHS policies, anchored on OSHA 2007.<br>• Undertakes field visits and inspections to confirm whether contractors meet the EHS requirements.<br>• Each county has its labour and transport contractors, which makes it easy to monitor and make them accountable.<br>• Each L&T is assigned a project supervisor to ensure that the work is executed as per the contract.<br>• County-level structures such as the county integrated development committees, county environmental committees, and NGAO allow monitoring of compliance and installations. | • Inadequate monitoring of contractor's compliance with E&S requirements poses a risk to the effective implementation of the ESMP.<br>• Some L&T contractors are sent to work in counties without the knowledge of the CBM. | • Inadequate inclusion of EHS provisions in the contract.<br>• Management of social risks such as SEA/SH and community grievances are not key corporate-wide requirements by KPLC from their contractors. The assumption is that contractors will, as a matter of principle, adhere to the provisions of the Employment Act in relation to SH<br>• Gaps in the implementation of contractor EMPs.<br>• Delayed management of grievances. | • For ease of compliance monitoring, make it mandatory in the ESMP for all KPLC contractors to prepare and enforce SEA/SH and grievance management in their relationships with communities among whom they implement projects on behalf of KPLC, and attach the ESMP as part of the bidding and contract documents<br>• KPLC to enhance their monitoring capacity (competence and adequacy of staff, and logistical and budgetary support).<br>• KPLC to audit their infrastructure and installations as per EPRA regulations.<br>• KPLC to undertake a customer satisfaction survey, including assessing the social outcomes of their electrification interventions, and implement the proposed corrective actions. |

# 8.0 Environmental, Social, Health and Safety Systems Assessment inRelation to the PforR Core Principles and Planning Elements

64. This section summarizes the operational performance and capacity of mandated institutions for the management of ESHSeffects associated with the Program activities. The assessment has analysed the defined national systemswith the aim of confirming their consistency with the PforR financing Core Principles and Key Planning Elements.The summary outlines the applicability of the six core principles, and using the SWOT, an analysis is done, of the country's ESHS system (with respect to policies, legal frameworks, regulations,and institutional requirements) in terms of its strength, weakness, opportunities, and threats/risks for the management of Program effects.Based on the analysis, mitigation measures and actions are proposed to strengthen the existing ESHS system. The proposed mitigation measures and actions areincluded in the Program Action Plan (PAP).

65. From the ESSA findings, it is evident that the national system is comprehensive and adequate for the management of many ESHS aspects, and is, overall, materially consistent with the Six PforR Core principles. However, gaps have been noted in ESHS management system both as written and as being implemented by KPLC and REREC (since the ESHS practices of REREC has implications for KPLC and vice versa), and the other relevantMinistries, Departments and Agencies (MDAs). Consequently, as KPLC is expected to apply the national system for the management of the GREEN Program ESHS effects, the gapsare apotential risk to the effective management of program ESHS effects, and will need to be strengthened to enable KPLC to effectively manage these potential risks. Table 9 below provides a detailed comparative analysis of the national system against the Six PforR Core principles.The analysis has incorporated the findings of the ESSA stakeholder consultations at both the national and county levels.

*Table 8: ESSA Findings against the six Core Principles*

<table>
<tr><td colspan="2">Core Principle 1: General Principle of Environment and Social Management</td></tr>
<tr><td colspan="2">Bank Policy for Program-for-Results Financing: Environmental and social management procedures and processes are designed to:<br>a) promote environmental and social sustainability in Program design.<br>b) avoid, minimize, or mitigate against adverse impacts; and<br>c) promote informed decision-making relating to a program’s environmental and social effects.</td></tr>
<tr><td colspan="2">Bank Directive for Program-for-Results Financing: Program procedures will:<br>a) Operate within an adequate legal and regulatory framework to guide environmental and social impact assessments at the program level.<br>b) Incorporate recognized elements of environmental and social assessment good practice, including:<br>• early screening of potential effects of all projects.<br>• consideration of strategic, technical, and site alternatives (including the “no action” alternative).<br>• explicit assessment of potential induced, cumulative, and trans-boundary impacts.<br>• identification of measures to mitigate adverse environmental or social impacts that cannot be otherwise avoided or minimized.<br>• clear articulation of institutional responsibilities and resources to support implementation of plans.<br>• Responsiveness and accountability through stakeholder consultation, timely dissemination of program information, and<br>• responsive grievance redress measures.</td></tr>
<tr><td colspan="2">Applicability: Applicable<br>i. Core Principle 1 is considered applicable in terms of environmental and social risks and impacts management for the energy sector during implementation of the Green Program. The PforR component of the Green Program includes investments such as distribution network expansion, upgrade, and modernization, new grid connections toward universal access, and climate resilient infrastructure, among others.<br>ii. Implementation of these type of investments is likely to have a physical footprint with varying degrees of ESHS impacts though expected to be localized and manageable, with some being temporary in nature, therefore requiring mitigation.<br>iii. Potential impacts may includesolid and liquid waste generation from project activities, destruction of crops, vegetation and trees to pave way for construction of MV and LV lines, occupational and community health and safety risks associated with civil and electrical works, elite capture limiting appropriate targeting of last mile connectivity, risks associated with wayleave acquisition for LV and MV lines without compensations (if the current KPLC policy is applied), land acquisition for on willing buyer willing seller principle for construction of the new MV sub stations, SEA-H and GBV risks to communities from project workers; exclusion of VMGsand vulnerable households and individuals from electricity access due socio economic barriers among others.<br>iv. Program-related activities will, therefore, be required to undertake environmental and social assessments, and toprovide and implement appropriate measuresto mitigate adverse ESHS impacts.</td></tr>
<tr><td>STRENGTHS<br>• Kenya has robust national laws and regulations guiding the management of environmental risks and impacts, consistent with Core principle 1. The Environmental Management and Coordination Act (EMCA), 1999 (revised 2015) is the substantive environmental management and conservation law. EMCA empowers the National Environmental Management Authority (NEMA) to develop regulations, prescribe measures and standards, and issue guidelines for managing and conserving natural resources and the environment in consultation with the lead agencies. In addition, EMCA provides for environmental protection through environmental impact assessment, environmental audit, monitoring, environmental restoration orders, conservation orders, and easements.<br>• In addition to the EMCA, the NEMA guidelines on environmental sustainability seek to ensure that MDAsintegrate environmental considerations in their operations to ensure a clean, healthy, and sustainable environment for all.<br>• The NEMA guidelines set the requirements for adopting and maintaining good practices, such as</td><td>WEAKNESSES<br>• MDAs are unable to estimate the cost of implementing EMPs during planning, and project costs will certainly only include the cost of preparing the EIA and obtaining the NEMA license.<br>• Counties have prioritized budgets to implement physical projects and EIA implementation to obtain a NEMA license; however, funds are hardly or never allocated for EMP implementation unless it is a donor-funded project. As a result, E&S management, including EIA and EMP implementation, is factored in the contractor bill of quantities. In addition, there are notable challenges in accessing facilitation for monitoring EMP by MDAs due to capacity (competence and adequacy) and financial constraints.<br>• A number of counties are yet to domesticate national frameworks for ESHS risk management. Without the domestication of E&S management systems, there is no justification to access funds for E&S management from the exchequer.<br>• There is minimal coordination efforts between the national and county governments that</td></tr>
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| establishing and operationalizing institutional environmental committees and undertaking environmental audits that contribute to the environment's quality on a long-term basis.<br>• The Environmental Impact Assessment and Audit Regulations, 2003 stipulates guidelines for conducting EIAs,audits, and field study and outlines the structure of EIAs and Audit reports. The legislation also explicitly outlines the legal consequences of partial or non-compliance to the provisions of EMCA.<br>• The EIA is the only known tool for identifying and mitigating E&S risks and impacts, including cumulative and transboundary. However, once the EIA study flags a specific impact, such as transboundary pollution, soil erosion, siltation, and GHGs, a specialist is brought on board to undertake further analysis.<br>• As a legal requirement, all EIAs are undertaken by independent registered NEMA experts, reviewed by lead agencies, and licensed by NEMA.<br>• MDAs are responsible for screening projects for E&S risks and impacts to determine the risk category and the scope of the study. The E&S screening checklist is shared with NEMA for review, and a determination of whether the project requires a full EIA, or a project report is made.<br>• Risk categorization is done as per NEMA guidelines.<br>• Most projects implemented in the country are either low, medium,or high-risk.<br>• Full EIAs are undertaken for high-risk projects, while project reports apply to low-risk projects.<br>• In some cases, MDAs consider alternative project sites and designs if project risks, and impacts are adverse.<br>• MDAs have the legal and regulatory authority to commit financial and human resources during budgeting for management of environmental and social risks and impacts. They also have an opportunity to engage registered consultants and collaborate across departments to make up for in-house capacity gaps.<br>• Counties respond to unanticipated E&S issues as they arise. The county executive and county Assembly make decisions on how to manage ESHS issues.<br>• Oversight on interagency collaboration is mainly through, (i) county delivery unit headed by County Secretary, mandated to oversee and report on development progress, (ii) county service delivery committee headed by county commissioner, cascaded down to county, as part of presidential service delivery unit, (iii) community participation in monitoring and evaluating their projects, which ensures interagency collaboration in delivering socio-economic benefits to the people, (iv) county monitoring and evaluation unit, (vi) user departments and (vii)county executive and legislature.<br>• County departments plan and budget for various activities. The County Fiscal Strategy Paper (CFSP) sets out the amount of money allocated to each sector. County spending cannot exceed the ceilings in the CFSP.<br>• Counties have a provision to include 10% contingency and emergency funds in their budgets during planning. **Contingency funds** can take care of additional expenses from items already in the budget.<br>• **Emergency funds** cater for natural and human-induced disasters. MDAs may not view E&S management as an emergency. However, E&S risks, such as the disposal of toxic materials, will be considered an emergency due to the direct negative impacts it presents to people and the environment.<br>• **External financing** can only be utilized as a contingency fund if this was initially itemized in the | leads to duplication of activities as well as lack of or weak flow of information between departments.<br>• NEMA has limited capacity (adequacy of staff and financial resources), which allows them to prioritize high-risk projects.<br>• NEMA is weak in enforcing compliance with environmental and social management.<br>• County environmental officers have inadequate knowledge of the requirements of the Environmental Management and Coordination Act (EMCA) 2015 and subsidiary legislations.<br>• There is limited mainstreaming of environmental and social aspects in the development agenda across MDAs.<br>• The mandate to authorize the felling of trees is unclear. There are many levels involved, including NEMA, KFS, the county department of environment, etc.<br>• MDAs are given 21 days to comment on ESIAs, but most do not get to undertake the review due to workloads.<br>• Projects are hardly classified as a medium risk since counties' focus is on two extremes (low or high).<br>• NEMA's screening checklist is biased toward environmental aspects and does not cover social issues.<br>• NEMA defines environment as both 'physical and social,' but most EIA experts are conditioned to focus more on environmental aspects than social.<br>• Public participation is the sole medium that EIA experts utilize, to sum up anticipated social risks and impacts. However, many a time, EIA public participation forums do not target the relevant stakeholders and therefore not capturing significant social risks and impacts.<br>• Limited support provided to Counties or MDAsby NEMA on screening procedures thus presenting a risk of not fully identifying potential ESHS risks and impacts<br>• NEMA guidelines are not very explicit on managing cumulative and transboundary impacts. Therefore, the NEMA expert must have the expertise to identify all categories of impacts a proposed project can potentially give rise to and their mitigation measures outlined in the EMP.<br>• EMCA is an environmental management law and NEMA is an environmental management entity. Both are weak in the management of the social aspects of infrastructure projects, as anticipated by Core Principle 1, including the management of anticipated E&S risks under the GREEN Program |

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| budget.<br>• **Supplementary budgets** reallocate funding between programs and sub-programs within the same department if the amounts are unlikely to be used at the end of the year. Utilization of development projects for recurrent expenses is prohibited.<br>• All financial decisions counties take must adhere to the **Public Finance Management Act 2012.**<br>• Public participation is mandatory, and the budget controller requires MDAs to provide evidence of stakeholder engagement. For these reasons, stakeholders are engaged from project onset through public forums, during the EIA process, and through local project committees that provide project oversight.<br>• Stakeholders are informed about the project, give views to be considered in project design, and are involved in monitoring project implementation. However, in most public participation forums, communities are more interested in the project's value; thus, project proponents emphasize the project's socio-economic benefits, and little is or may be disclosed on potential E&S risks and impacts.<br>• The EIA report is a public document, and EMCA regulations require that MDAs fully disclose and gazette EIA report in the case of high-risk projects.<br>• Counties implement public participation during the development of County Annual Development Plans (CADP) and County Integrated Development Plans (CIDPs).<br>• Grievances are redressed using the following channels:<br>    o NEMA- National Environment Complaints Committee.<br>    o Grievances committees at the county, sub-county, and ward levels.<br>    o Ombudsman at the Office of Public Complaints.<br>    o Public Service Management Department.<br>• NEMA can upgrade the risk rating of a project outlined under Legal Notice 31 as low or medium risk to high risk if they present displacement (physical) impacts.<br>• EMCA provides for project proponents to have in-house environmental experts to streamline the management of environmental risks and impacts.<br>• NEMA licenses havestipulated ESHS conditions to be implemented by the project proponent failure to which the project can be stopped byNEMA.<br>• The 0.1% (of the total project cost) project licensing fee is a crucial source of revenue that enables NEMA to undertake its supervision mandate.<br>• The Kenya Forestry Service (KFS) is adequately represented in each county and is part of the County Environmental Committee.KFS enforces its mandate on environmental conservation, working with diverse stakeholders, including communities (tree cutting, re-afforestation, issuing tree felling permits, etc.)<br>• The moratorium to stop logging has to a certain extent mitigated tree harvesting and selling of wooden poles to companies. | |
| **OPPORTUNITIES**<br>• The following committees can significantly guide KPLC in managing various ESHS risks and impacts, the:<br>    o National Environment Committee, headed by NEMA, and cascaded at the county level, led by the County Commissioner.<br>    o County Environment Committee chaired by the Governor.<br>    o Social Risk Management Unit (SRM) at the national level that includes critical government entities, such as NEMA, Social Protection, NGEC, Labor, etc., relevant to | **THREATS/RISKS**<br>• Limited allocation and delayed disbursements of funds to MDAs for effective ESHS risk management<br>• Low-quality EIAs which in some cases do not comprehensively identify ESHS risks hence limiting appropriate risk management<br>• EIA experts may not give an objective and independent assessment of E&S risks and |

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| KPLC operations. The SRM unit is devolved to the counties through SRM Committees.<br>• KPLC is familiar with the World Bank (WB) policies on environmental and social (E&S) risk management and can leverage these to institutionalize effective E&S risk management for all its operations. For example, KPLC has the opportunity under the Green Program to institutionalize the gains made under KEMP, including the E&S frameworks and plans prepared and implemented, as well as the recommendations of the ESSA report.<br>• KPLC is ISO certified and thus able to develop and implement Standard Operating Procedures (SOPs) applicable for E&S risk management by incorporating a system to manage environmental, social, health and safety risks and impacts.<br>• KPLC can leverage the goodwill from other government agencies for joint ESHS risk identification, management, and compliance monitoring. | impacts due to other overriding interests<br>• Exclusion or inadequate assessment of social risks in E(S)IAs either because this is not a NEMA requirement or due to limited social skills among E(S)IA teams |
| **Core Principle 2: Natural Habitats and Physical Cultural Resources** | |
| 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 | |
| Bank Directive for Program-for-Results Financing: Program procedures will:<br>a. Includes appropriate measures for early identification and screening of potentially important biodiversity and cultural resource areas.<br>b. 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.<br>c. Takes into account potential adverse effects on physical cultural property and as warranted, provides adequate measures to avoid, minimize, or mitigate such effects. | |
| **Applicability:Applicable**<br>i. The provisions in Core Principle 2 are considered as part of the ESIA process analyzed under Core Principle 1.<br>ii. Core Principle 2 is applicable to the Program due to potential destruction of natural habitats and physical cultural during implementation of interventions such as i) construction and rehabilitation of LV, MV lines and MV substations; ii) rehabilitation of distribution lines and connecting new households and businesses,<br>iii. Implementation of these type of investments is likely to have ESHS impacts though expected to be localized, manageable and temporary in nature, and needs to be mitigated.<br>iv. Potential risks impacts may include destruction of crops, vegetation and trees to pave way for construction of MV and LV lines, destruction of physical cultural resources of value to target communities that may contribute to increased social conflicts<br>Program-related activities will, therefore, be required to undertake biodiversity and culture assessments as part of theenvironmental and social assessments, provide, and implement appropriate measures, to mitigate adverse impacts on natural habitats and physical cultural resources.<br>i. The Program will not support activities that will either impact or convert critical natural habitats or physical cultural resources. | |
| **STRENGTHS**<br>• EMCA provisions protect critical habitats and physical and cultural resources and require MDAs to conduct public participation during the project planning, implementation, and operation phases.<br>• Other key legislations relevant to identifying, managing, and utilizing natural habitats and physical and cultural resources include the National Museums and Heritage Act, the Forest Conservation and Management Act, and the Kenya Wildlife Conservation and Management Act, among others. Further, the National Museums of Kenya provide for the management of physical cultural resources through the Chance Finds Management Plan. In addition,the State Department for Culture and Heritage has to a large extent mapped physical and cultural sites and giventhem a special protection status preventing degradation or damage.<br>• There is a strong correlation between areas of critical biodiversity, such as forests and water | **WEAKNESSES**<br>• Natural ecosystems and physical and cultural resources are supposed to be mapped as part of spatial planning to document sensitive natural habitats and areas of cultural importance.<br>• The County Government Act obligates all 47 counties to prepare county spatial plans. However, NLC has approved spatial plans from about six counties. In addition, most counties do not have a land use policy, without which spatial planning will not be effective.<br>• Monitoring critical ecosystems is challenging due to inadequate technical capacity and financial resources.<br>• EMPs are not entirely addressing the aspect of chance-finds. There is limited knowledge among communities and contractors on identification of physical cultural |

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| bodies, and cultural heritage resources; thus, communities use indigenous knowledge to identify areas of essential biodiversity and cultural importance and subsequently protect them.<br>• The national ESHS system mandates the MDAs to undertake screening of effects on areas of ecological, archeological, and cultural importance and determinationof appropriate conservation, preservation, rehabilitation, and mitigation measures.Screening is undertaken by both environment directorates, NEMA registered experts, and government institutions that are authorities in various fields, e.g., biodiversity, cultural heritage, indigenous peoples, etc. Screening entails utilizingdata from national government sources (documentaries, maps), conducting transect walks and aerial mapping, and tapping into indigenous knowledge of respective communities.<br>• If projects present adverse effects oncritical habitats and physical and cultural resources,MDAs are expected to find alternative sites for projects.<br>• A multi-agency approach through the relevant county and national government agencies and user communities is being applied to ensure the protection, conservation, and rehabilitation of endangered habitats. In this regard, agencies mandated to protect and preserve critical habitats (KFS, KWS) and neighboring communities work together through sustainable harvesting or utilization of such ecosystems. E.g., the Waatha in Kilifi County and Shirazi in Kwale county utilizing the Dakatcha Woodlands north of the Sabaki river and Shimba Hills, respectively.<br>• A participatory management plan has been developed, owned, and implemented by forest users and relevant agencies, and decisions on managing critical habitats are made consultatively.<br>• All protected areas in Kenya are governed by protected area management plans under the Kenya Wildlife Service (KWS), which set out precise prescriptions of what can or cannot be done in different parts of the area. For instance, the Tsavo East National Park in Kitui is managed through a multi-agency collaboration of KWS, KFS, and environment dockets at the county, guided by the relevant national legislation.<br>• There are several greening strategies at the county and national levels, in addition to the management actions by KFS, KEFRI, and KWS. E.g., the government banned tree harvesting (including mangroves) and charcoal burning in Kwale, tree logging in Kitui county, and cutting of cashew trees in Kilifi county.<br>• Counties are mandated to implement livelihood projects or nature-based enterprises along forest buffer zones, such as beekeeping and butterfly farming. | resources hence difficult to put in place material mitigation measures.<br>• There is no policy and regulations to inform on chance finds except the National Museums of Kenya (NMK) Chance Finds Management Plan.,<br>• Limited collaboration between MDAs and specifically with institutions such as NMK that are mandated with protection of physical cultural resources |
| **OPPORTUNITIES**<br>• Government entities with the mandate of managing natural habitats and physical-cultural resources have a presence at the national and county levels. Therefore, this is an excellent opportunity for KPLC to engage these entities and comply.<br>• The existing governance structures within county governments, such as county integrated development committees and the county environmental committees, provides KPLC with a good entry point into stakeholder engagement and, by extension, the capacity for managing natural habitats and physical-cultural resources.<br>• The Program has an opportunity to undertake biodiversity and physical cultural assessments in project target areas to inform laying out of the infrastructure and where necessary development of appropriate risk mitigation plans | **THREATS/RISKS**<br>• Due to the national geographic coverage of the program, there is a likely risk of destruction of natural habitats and physical cultural resources.<br>• Limited collaboration between MDAs managing important ecosystems and physical cultural resources |

**Core Principle # 3: Public and Worker Safety**

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.

Bank Directive for Program-for-Results Financing: Program procedures will:

- 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 labor.
- 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.

**Applicability:Applicable**

i. The provisions in Core Principle 3 are considered as part of the ESIA process analyzed under Core Principle 1.
ii. Core principle 3 is fully applicable due to physical infrastructure, civil and electrical works proposed under the Program including the construction and rehabilitation of LV and MV lines, construction of MV substations, and connecting 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.
iii. The risk of GBV, especially SEA-SH amongst project workers and between workers and communities resulting from the influx of workers into sub-project areas; and,
iv. The expansion of electricity to last-mile consumers may increase unsafe electricity utilization through, e.g., illegal connections.

| STRENGTHS | WEAKNESSES |
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| • The EMCA provides for MDAs to identify and mitigate public and occupational health and safety-related risks and impacts. The EMCA obligates MDAs to meet the institutional requirements (such as NEMA, DOSHS, National Construction Authority (NCA), and Public Health, among others) for enforcement of healthyand safe working environment to ensure safety of both workers and communities.<br>• Occupational health and safety is a national government function, with officers from the Directorate of Occupation Safety and Health Services (DOSHS) devolved to support counties.<br>• The Occupational Safety and Health Act, 2007, and subsidiary legislation provide for maintaining a safe working environment and protection of workers. In this respect, MDAs are expected to register workplaces, provide workers with personal protective equipment (PPEs), and establishhealth and safety committees. Further, the Employment Act 2007 declares and defines the fundamental rights of workers and, in turn, promotes workplace safety and security and sanctions the use of forced and child labour.<br>• The DOSHS is active in majority of the counties considered as fast growing and have a high employment index and implements a menu of activities.<br>○ Keeps a list of qualified consultants who offer specialized safety advice to employers,<br>○ Rregisters workplaces,<br>○ Enforces stringent requirements to access the DOSHS permit,<br>○ Maintains a designated list of medical officers allowed to provide a medical assessment of employees for occupational reasons, as well as a database of approved safety practitioners on its website,<br>○ Receives and reviews Health and Safety Audit reports from agencies, | • DOSH Lack of presence in 18 counties: currently, only 29 county offices have substantive representation. The rest of the country, especially the rural areas have no DOSH coverage,<br>• Functions of the Directorate are not devolved and remain as a function of the State Department for Labour nationally,<br>• Inadequate staffing levels in counties where DOSHS is represented (the Directorate has 144 members of staff meant to serve more than 17.8 million workers, in both the formal and informal sectors in Kenya,<br>• The DOSHS does not have expertise in electrification to carry out safety audits of KPLC works and installations, thus, it relies on KPLC to monitor itself,<br>• There is limited familiarity with the DOSHS requirements amongst MDAs that inhibit compliance,<br>• Lack of continuous professional development of its technical staff, Inadequate institutional system and infrastructure including office space, laboratories, specialized surveillance equipment, vehicles, protective equipment to fulfil their mandate safely and competently,<br>• Lack of an information management system to collect and collate OHS data and statistics for policy and decision making,<br>• DOSHS has the mandate to register all workplaces in the country yet do not have the autonomous independent authority and matching human and material resources to fulfil this obligation. As a result of this, only about 15,000 of the workplaces in the country's 144,000 registered companies are registered by DOSHS as workplaces,<br>• When workers get injured at work, the system of compensation is not up to international good practice. The Worker Injury Benefits Act is an employer-liability based workers |

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| ◦ Legally, DOSHS does not have prosecution powers, but it can stop works by issuing a prohibition order.<br>• The Directorate of Public Health sensitizes communities and workers on public health aspects and inspects premises after completion to issue the occupation certificate.Generally, public health officers are devolved to the sub-county level. For instance, Machakos county has 120 public health officers (an average of 25 per sub-county).<br>• The Energy and Petroleum Regulatory Authority (EPRA) keeps a database of accredited electrical technicians on its website. These technicians are critical in wiring premises to be electrified and subsequent safety of beneficiaries.<br>• Health and safety committee are appointed by law under the health and safety committee rules. They work on behalf of DOSHS. They should meet every quarter carry out the inspections and copy of signed minutes sent to DOSHS. Statutory documents should be under the secretary of OHS committee and must present details to the committee during meetings.□• | insurance system, and thus covers only the formal sector which employs only around 20% of the country's workers. |
| **OPPORTUNITIES**<br>• The WhatsApp platform created by KPLC's safety department and representation from National Government Administration Offices (NGAO) is an opportunity for KPLC to quickly address any health and safety issues reported to the group by NGAO.<br>• KPLC can further engage NGAO to provide a platform by which it can sensitize communities on public health and safety as well as the safety of its installations. KPLC can utilize the existing engagement structures at the community level (public barazas). Continued dissemination of health and safety-related information to the community will mitigate public safety risks.<br>• There is an opportunity to:<br>  • Engage DOSHS officers in the training of MDAs, OSH committees and workers on institutional requirements for enhanced occupation health and safety. Strengthen coordination with key partners e.g., Public Health, NEMA, National Construction Authority (NCA), and National Industrial Training Authority (NITA)<br>  • Develop workers code of conduct for contractors to include clauses on child labour, forced labour and sensitivity on multicultural diversity.<br>  • Opportunity to strengthen external monitoring by DOSHS through shared OSH reports, signed health safety committee minutes and reports on statutory plant equipment's. This also includes involvement of DOSHS experts to support in training KPLC staff.<br>  • Assess and map out the natural disasters prone areas including areas prone to landslides, floods, lightning, rising waters from the lake, tremors as a strategy toreduce risks related to such sensitive ecosystems. Where feasible, integrate to KPLC Geospatial mapping system for improved planning, design and decision-making process. | **THREATS/RISKS**<br>• Inadequateresourcing of public health officers to sensitize communities and workers on health and safety concerns especially in working environments.<br>• Child labour is normalized because of the remoteness of some of the project sites and the high poverty levels presenting a risk for engagement of child labour in some of the Program interventions and sites.<br>• Illegal connections and vandalism of electricity infrastructure presentshealth and safety risk that may lead to electrocution.<br>• Some contractors do not adhere to employment regulations, such as providing written contracts to workers and an opportunity to air their concerns (worker grievances system).<br>• Non-compliance with the set standards on health and safety by contractors due to general lack of information on public health and safety measures leading to increased cases of community and occupational health and safety risks |
| **Core Principle # 4: Land Acquisition** | |
| Bank Policy for Program-for-Results Financing: 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 | |
| Bank Directive for Program-for-Results Financing: As relevant, the program to be supported:<br>• Avoids or minimizes land acquisition and related adverse impacts.<br>• 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.<br>• 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.<br>• 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, | |

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<li>Restores or replaces public infrastructure and community services that may be adversely affected</li>
<li>(Program activities for which the borrower’s land acquisition and resettlement (LAR) processes have significant gaps with this principle, or for which the borrower lack sufficient capacity to manage LAR impacts in a manner consistent with this principles, should not be considered eligible for the PforR Financing regardless of the number of people affected, unless supplemental arrangements are agreed with the Program authorities and endorsed by the CESSO, GSUSS, and/or the Regional Standard Advisor).</li>
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Applicability: Applicable
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<li>The Green Program’s activities will require wayleave for the LV and MV lines (which currently KPLC is compensating inconsistently, but REREC doesnot compensate), and land for construction of MV Substations, which will be acquired on a willing buyer willing seller principle.</li>
<li>The construction of the LV and MV distribution lines may result in minimal destruction of crops, vegetation and or/trees; potential loss of livelihood; devaluation of land and restriction in use of land following the acquisition of wayleaves to construct MV and LV lines to strengthen distribution network and to connect new households and businesses</li>
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STRENGTHS
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<li>The constitution of Kenya 2010 guarantees the right of affected persons to full, just, and prompt compensation.</li>
<li>Legislations governing land acquisition and resettlement of affected persons are spread throughout several laws, including the Community Land Act, 2016. However, the Land Act 2012 (revised 2019) is the substantive law outlining provisions on land acquisition (including public rights of way or easements), involuntary resettlement, and compensation of affected persons.</li>
<li>The Land Act outlines the processes for acquiring interests in land and mandates the National Land Commission (NLC) to exercise compulsory acquisition powers on behalf of the county and national governments. In this regard, NLC undertakes public participation and sensitization by holding meetings, workshops, and any other appropriate fora to inform the public about the proposed project and matters pertaining to procedure, expectations, and responsibilities of stakeholders in the land acquisition process. In addition, NLC inspects and collects data on: (a) the location; (b) the area to be acquired; (c) the proposed land use in the national, regional, or county spatial plans; (d) existing use of the land; (e) improvements made on the land; (f) the impacts of the acquisition; and (g) any other information relevant for the acquisition, in consultation with the affected persons. Further, NLC undertakes field inspections for valuation purposes as per the guidelines of the Institution of Surveyors of Kenya (ISK).</li>
<li>The NLC conducts an inquiry to hear and determine issues of propriety and claims for compensation by persons interested in the land. NLC ensures that the choice of the place of inquiry observes the principle of subsidiarity taken at the lowest administrative level possible and ensures it is as close to the project site as possible.</li>
<li>NLC bases the valuation of land for purposes of compensation on the provisions of the Land Act, and the Land Value Index developed for that purpose by the Cabinet Secretary of Lands in consultation with county governments and approved by the National Assembly and the Senate.</li>
<li>The Land Act mandates the Ministry of Lands and Physical Planning to implement settlement schemes for the poor, the landless, and those displaced by disasters, conflicts, and development projects. Accordingly, MoLPP has settled squatters in schemes implemented across the country. They include the 6800 squatters settled in Bomani, Mwangea, and MaunguBuguta areas of Taita Taveta county.</li>
<li>MoLPP employs local structures, such as the NGAO, to identify occupants of unadjudicated land and to ensure they receive their entitlements. Therefore, the lack of adjudication does not slack development projects.</li>
<li>The Department of Urban and Physical Planning defines the corridors for utilities, the MoLPP surveys, and titles the road corridors, while NLC manages the road corridors, including the respective infrastructure.</li>
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WEAKNESSES
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<li>Land in some counties is unadjudicated, and road corridors are unmarked, leading toencroachment, and narrowing of the road corridors. As per the law, the minimum width of the road corridor should be 9 meters. However, encroachment has reduced this corridor to as low as 4 meters wide.</li>
<li>Conflicts during wayleave acquisition due to unclear land boundariesor non-compensation for kV11 and kV33 lines.</li>
<li>Where land is fully adjudicated, there are cases where rivers were excluded from the adjudication process, presenting challenges in determining the riparian boundary, thus promoting encroachments on riparian land.</li>
<li>The tenure of the land in informal settlements is undefined. As a result, there’s a looming uncertainty when one applies for power since KPLC requires land ownership documents to connect a customer. Further, most road ccorridorsin informal settlements are heavily encroached, leaving little room for infrastructure projects to thrive.</li>
<li>There is an awareness gap amongst communities on the benefits of land adjudication.</li>
<li>There is a lack of a coordinated approach for managing wayleaves acquisition and compensation across the matrix of last-mile projects financed by different donors.</li>
<li>The Energy Act does not specify if there are exceptions to the compensation requirement for private land as argued by KPLC regarding compensation for 11kV and 33kV distribution lines in the event that such lines are constructed on private land.</li>
<li>The Energy Act is silent on what happens in case of encroachment of the wayleave trace, and does not cater for compensation of encroachers.</li>
<li>There is a lack of harmonization of compensation rates for trees and crops between the mandated authorities (Ministry of Agriculture - MoA and KFS) and MDAs. Further, in many cases, the compensation rates used by MDAs do not reflect the current market prices.</li>
<li>Although planners are critical in advising on where to acquire wayleaves on road corridors, MDAs bypass them during the wayleaves acquisition process because of the rigidity in the land processes regarding the involvement of physical planners. For example, the Survey Act 1989 (revised 2009) does not accommodate physical planning aspects. Further, the capacity of physical planners is inadequate, and they are yet to be recognized as critical in the process of wayleaves acquisition. For instance, three planners are covering Machakos county, and far-flung counties do not have registered physical planners.</li>
<li>The Department of Survey has not updated Registry Index Maps for more than ten years,hindering-georeferencing of land (a requirement that MDAs must meet before the</li>
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| • The law defines clear processes for valuation and compensation for the loss of crops and trees. The Ministry of Agriculture has diverse and devolved capacities regarding Ward Agricultural Officers and Frontline Extension Officers. In addition, the State Department of Crop Directorate prepared draft guidelines on crop compensation rates in 2019 to harmonize the compensation of crops in the country. The guidelines are pending public participation, gazettement then adoption.<br>• The Community Land Act provides for the registration of community lands, and mandates county governments to hold unregistered community lands in trust for the communities until they register their lands. The Act prohibits county governments from transacting on unregistered community lands held in trust for the community<br>• Compulsory acquisition of unregistered community lands is allowed in law, which also prescribes how compensation monies payable for compulsorily acquired unregistered community lands are to be held in trust by the concerned county government in interest bearing accounts until the community has registered their lands<br>• In-kind compensation for unregistered community land is acceptable under the law and in practice. KETRACO has provided in-kind compensation to communities in Marsabit while implementing the Eastern Electricity Highway Project (EEHP).<br>• The process of registering communities and community land is ongoing across the country. So far, good progress has been made in Laikipia, West Pokot, Kajiado and Samburu counties. The governmentregularizes land to squatters and persons living in informal settlements to give them the security of tenure.<br>• The Energy Act also has provisions for land acquisition, compensation and dispute resolution, and empowers the Minister for Energy to *prescribe the forms and procedures for seeking and granting of the consent*<br>• In case of urgent land or wayleaves acquisition, or when MDAs cannot agree with landowners on land/wayleaves acquisition, NLC engages landowners to agree on the acquisition procedures and amounts payable based on market value. NLC only employs eminent domain as a last resort. Furthermore, NLC can grant MDAs early entry to land under acquisition provided the land has no physical developments on it.<br>• Most road corridors are marked (particularly highways), gazetted, and deposited under the Ministry of Transport and Infrastructure (MoTI) and MoLPP.<br>• MDAs prepare Resettlement Action Plans (RAP)utilizing a full RAP team comprising surveyors, environmentalists, socio-economists, and valuers.<br>• The Constitution of Kenya provides for compensation of occupants in good faith as per the provisions of the Land Act<br>• On its part, KPLC makes effort to construct kV 11 and kV 33 lines on road reserves so as to avoid impacts associated with wayleave acquisition | land is acquired), digitization of infrastructure, and development of spatial plans. In addition, the lack of Registry Index Maps has led to land title deeds based on mutations.<br>• There is no legal provision for wayleaves users to consult and seek consent from road corridor owners(KeNHA, KERRA, and KURA).<br>• Lack of consultations among road corridor users including MDAs has led to relocation of services or demolition of structures, thus burdening taxpayers.<br>• Land searches to confirm parcel ownerstake time, and delay the process of land/wayleaves acquisition.<br>• The Community Land Act 2016 has primarily supported group ranches transiting to community land. E.g,. Laikipia, West Pokot, Kajiado and Samburu. However, the registration of community land in the North and Northeastern countieswhich hold most of the unregistered community lands, is still lagging.<br>• There is no oversight provided on the Community Land Management Committees, and where compensation funds are paid to the committee to trickle down to other community members.<br>• The 5% KFS valuation fee may deter many MDAs from utilizing KFS services.<br>• Inter county boundary conflicts such as the one observed in TharakaNithi, and Meru counties presents risk that limits land/wayleave acquisition |
| **OPPORTUNITIES**<br>• The REREC spatial database is under development.<br>• The proposed energy sector spatial database to facilitatedigitization of the power infrastructure countrywide.<br>• The Energy sector regulations under development by the MoEP.<br>• The National Land Value Index under development by the MoLPP.<br>• A community land registration unit in SamburuCounty supported by FAO will facilitate acquisition of land and wayleaves | **THREATS/RISKS**<br>• Many beneficiaries of electricity may not ask for compensation for the loss of their livelihood sources, such as trees and crops, because they consider electrification a favour, despite paying for it, both for connection and for consumption<br>• Many people engage in informal subdivisions of land. Such sub-divisions have led to narrowroad corridors that cannot adequately accommodate utility needs and subsequent infringement on private property.<br>• Non-compensation for wayleave for MVand LV lines by KPLC and REREC is a cause of dispute by many private landowners, especially in counties such as Kisii where land is |

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<li>Resettlement Policy Framework (RPF) prepared by KETRACO. KETRACO is engaging NLC and MoLPP to make the RPF a regulation.</li>
<li>Land set aside for public utilities (water, hospitals, electricity) within the counties is public land managed by the NLC. The NLC can allocate this land to MDAs implementing projects that meet a public purpose.</li>
<li>The KISIP project implemented by the State Department for Housing and Urban Development supports the regularization of tenure in informal settlements.</li>
<li>School titling program under the MoLPP.</li>
<li>National Land Commission RAP guidelines under preparation.</li>
<li>Train on land acquisition to contractors and other relevant MDAs</li>
<li>Create awareness to the community on the wayleave process</li>
<li>Streamline sharing of planning documents and action plans with the relevant stakeholders e.g. (Road agencies, County/city departments etc) for effective implementation.</li>
<li>Citizen engagement and public participation must be improved and done at all levels</li>
<li>Disparities in the valuation of crops, fruit trees, etc offers an opportunity for the harmonisation of compensation value through review of the policy document (updated before devolution) on compensation rates.</li>
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scares and a meter of land is a big deal
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<li>In most parts of the country, where land adjudication was done in the 80s, land title deeds are still in family names, and families do not follow up on cases of adjudication unless under succession.</li>
<li>New-generation encroachers on MoLPP implemented settlement schemes make it difficult for MDAs to provide services such as electricity.</li>
<li>Community acceptance that individuals occupying community land do not have an absolute title is a challenge that drags the implementation of the Community Land Act 2016.</li>
<li>Some communities are against the provisions of the Community Land Act 2016, such as having their funds held by the county government on their behalf until they form a Community Land Management Committee.</li>
<li>Most counties have not submitted to MoLPP the inventory of community land. As a result, the MoLPP is unable to implement the Community Land Act 2016 without the inventories.</li>
<li>Land adjudication is government-supported but customer driven. No law obligates a person or a community to pursue land adjudication. They can, however, request through their leaders (e.g., county assembly) for MoLPPto adjudicate their land.</li>
<li>Responsibility to adjudicate land lies with the national government through the MoLPP. However, there is limited financing to achieve 100% land adjudication.</li>
<li>The Land Act allows for the eviction of illegal occupiers from private, public, and community land. The Act further outlines the process and procedures to evict illegal occupiers.</li>
<li>There is no law that is specific to livelihood restoration.</li>
<li>Voluntary land/wayleaves donations cause delays and affect project implementation.</li>
</ul>
</td>
</tr>
<tr>
<td colspan="2">Core Principle 5: Indigenous People and Vulnerable Groups</td>
</tr>
<tr>
<td colspan="2">Bank Policy for Program-for-Results Financing: Program E&S systems give due consideration to the cultural appropriateness and/or 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.</td>
</tr>
<tr>
<td colspan="2">Bank Directive for Program-for-Results Financing: As relevant, the Program to be supported will:
<ul>
<li>Undertakes free, prior, and informed consultations if Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are potentially affected (positively or negatively) to determine whether there is broad community support for the program.</li>
<li>Ensures that Indigenous Peoples can participate in devising opportunities to benefit from the exploitation of customary resources or indigenous knowledge, the latter (indigenous knowledge) to include the consent of the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.</li>
<li>Gives attention to groups vulnerable to hardship or disadvantage, including as relevant the poor, the disabled, women and children, the elderly, or marginalized ethnic groups. If necessary, special measures are taken to promote equitable access to program benefits.</li>
</ul>
</td>
</tr>
<tr>
<td colspan="2">Applicability: Applicable<br>Due to its national geographic scope, the Program interventions are likely to be implemented in areas with IP presence, thus presenting risks such as: i) inadequate engagement and consultation with IP communities with limited sensitivity to cultural appropriateness,; ii) limited information disclosure ; iii) exclusion of IPs from accessing project benefits; There is also a risk of: i) exclusion of vulnerable households and IPs who are unable to wire their premises from accessing electricity; ii) risk of elite capture limiting targeting of last-mile connectivity. Other risks include the expansion of electricity to last-mile consumers which may increase unsafe electricity utilization through, e.g., illegal connections. and recovering idle meters and vending machines from persons unable to pay for the connection and/or service the token will mainly exclude the vulnerable households, due to the prevailing socio-economic challenges</td>
</tr>
<tr>
<td>STRENGTHS
<ul>
<li>The Constitution of Kenya 2010 presents minority groups and marginalized communities as a</li>
</ul>
</td>
<td>WEAKNESSES
<ul>
<li>Lack of a National Framework or policy on managing IPs and vulnerable groups.</li>
</ul>
</td>
</tr>
</table>

| | |
|---|---|
| unique category of persons/communities that deserve special attention to bring them to par with the rest of the country.<br>• The Constitution identifies women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and particular ethnic, religious, or cultural communities as vulnerable groups. It also requires allstate organs and public officers to address their needs.<br>• Affirmative Action redresses disadvantages suffered by individuals or groups because of past discrimination and marginalization.<br>• 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.<br>• In addition, the National Cohesion and Integration Act 2008 outlaws discrimination on ethnic grounds and promotes ethnically equitable distribution of public resources.<br>• The ESIA process requires stakeholder identification, mapping, and public participation, which ensures the inclusion of IPs and vulnerable groups in the development agenda.<br>• The government has set up specific programs or safety nets to ensure women, youth, OVCs, the elderly, and persons with disabilities have equal access to project benefits.<br>• Counties are putting in efforts to ensure socio-economic empowerment, i.e., social safety nets, loans, and grants; training self-help groups; and passing legislation to alleviate retrogressive cultural beliefs and practices.<br>• Conflicts involving vulnerable persons are resolved by Court Users, NGAO, civil organizations (FIDA), and Embassies of countries-where child support is needed<br>• Some actors working on child protection, GBV, and gender aspects include the following:<br>o Child protection volunteers embedded in communities-trained and facilitated.<br>o Area Advisory Committee under the National Council for Children Services chaired by the County Commissioner and involving stakeholders whose mandate includes children<br>o Court Users<br>o Community structures (Chiefs, Community Health Volunteers) trained on child protection and rescue missions<br>o Child Welfare Society of Kenya<br>o Children's department<br>o Child Protection Centres<br>o NGOs and CBOs; Catholic Relief service, Kesho Kenya, Action Aid, World Vision Plan International, Dakatcha Woodlands Conservation Groupetc.<br>o Local FM and TV stations for sensitization.<br>• Police stations have gender desks that handle GBV cases. In addition, child protection volunteers, community health volunteers, and paralegals are trained in GBV aspects and provide the necessary support to GBV survivors. | • Existing safety nets are not explicitly targeting children from poor backgrounds, many of whom are engaging in child labor.<br>• The lack of targeted interventions prevents IPs and vulnerable groups from engaging in the development process and accessing culturally appropriate project benefits and opportunities.<br>• Weak capacity (human and financial) of MDAs to adequately engage IPs and vulnerable groups and promote social inclusion. For example, the Children's' department in Taita Taveta county has four Children Officers, one Children Coordinator and a Clerk, with zero vehicles at their disposal. |

| OPPORTUNITIES | THREATS/RISKS |
|---|---|
| • The Constitution mandates the National Gender and Equality Commission (NGEC) to reduce gender inequalities and discrimination against IPs and vulnerable groups.<br>• The SRM Committees at the county level are an opportunity to address issues that affect indigenous peoples and vulnerable groups.<br>• County Development Implementation Coordination Committee, chaired by the County Commissioner and comprising all government bodies implementing projects at the county level, is an avenue for KPLC to engage with agencies whose core mandate is to protect IPs and Vulnerable groups.<br>• 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.<br>• The Socio-economic survey register to be prepared under KISIP2 will support MDAs in identifying those vulnerable and matching them with appropriate safety net measures.<br>• Projects such as the Kenya Youth Empowerment Opportunities (KYEOP) and the gender and blue economy are critical in strengthening the socio-economic position of IPs and vulnerable groups.<br>• County gender sector working groups chaired by the County Commissioner and CECM Gender, and gender stakeholders forums, including government departments, NGOs, and CBOs, are a platform of collaboration and consultative mechanisms for gender, GBV, child protection, etc. Plans are underway to activate the working groups at the sub-county and ward levels.<br>• There is an opportunity to domesticate some of the applicable social policies and legislations at national levels to the counties.<br>• There is opportunity to develop stakeholder engagement plan to ensure inclusion of IPs and VMGs | • While the program has nationwide coverage, it is also possible that inclusion gaps persist, and last-mile delivery of electricity connection to IPs and vulnerable groups may remain an issue.<br>• Perceptions of stakeholders who feel that IPs are no longer the 'IPs of the past' and should not be accorded any special attention.<br>• Land-related conflicts involving vulnerable people hinder the electrification of vulnerable households.<br>• Severe drought and famine that has further disenfranchised vulnerable groups.<br>• High poverty levels hinder vulnerable personsfrom accessing electricity, mainly where the transformer is not subsidized.<br>• Inability tocomply with the law against child labour in light of the prevailing socio-economic plight of poor children, who end up working to support their households.<br>• EPRA is concerned about the standards of the ready boards issued to minority IPs and vulnerable households and KPLC issuing wiring certificates to potential beneficiaries. |
| **Core Principle # 6: Social Conflict** | |
| Bank Policy for Program-for-Results Financing: Avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes | |
| Bank Directive for Program-for-Results Financing: As relevant, the program to be supported:Consider conflict risks, including distributional equity and cultural sensitivities. | |
| **Applicability: Applicable**<br>i. Social conflicts may arise due to influx of workers into project areas that results in Gender-Based Violence (GBV) in particular, Sexual Exploitation and Abuse and Sexual Harassment (SEA-SH), an increase in crime, insecurity and upset community dynamics, competition for scares resources (water, health facilities etc.) and culturally inappropriate activities among others.<br>ii. Projects may 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.<br>iii. Social conflicts may also be exacerbated as a result of implementing intervention in areas with inter county boundary conflicts.<br><br>The Program will not undertake projects that cause or exacerbate social conflict in fragile states, post-conflict areas, areas subject to territorial disputes, impact distributional equity or associated cultural sensitivities. | |
| **STRENGTHS** | **WEAKNESSES** |
| • The National Government Administration Unit (NGAO) is enhancing the ability of communities to identify and report health and safety-related incidents pertaining to KPLC operations and vandalism of KPLC assets. The NGAO maintains a visible presence upto the lowest community/village levels and are effective in community mobilization and capacity strengthening with practical competenceto quell flare-ups should they arise. | • Encroachment of the wildlife corridors leads to human-wildlife conflicts.<br>• Most SEA/SH occur in already traumatized/vulnerable/marginalized communities that do not trust officialdom, making it harder to report to the relevant departments<br>• Arbitrary compensation strategies (unequal compensation for the same or similar assets |

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| • There is presence of active GBV networks across the counties that can support MDAs in managing GBV at the project level.<br>• The Constitution provides a comprehensive framework to address conflicts through institutions such as the Office of the Ombudsman; the Land Acquisition Tribunal; Alternative Justice Systems which include traditionaldispute resolution mechanisms; Court Users, and the Environmental and Land Court, among others.<br>• The Natural Resources Benefits Sharing Bill 2018 seeks to provide a legislative framework for establishing and enforcing a system of benefit sharing in natural resource exploitation between natural resource exploiters, the national government, county governments, and local communities.<br>• The Sexual Offences Act of 2006 has explicit provisions for preventing sexual offensesand protecting all persons from unlawful sexual acts. | such as crops and trees or compensation of some people and not others) can cause distress, mistrust and conflict among community members or between affected people and Program implementers |
| **OPPORTUNITIES**<br>• The social conflicts provide opportunities for KPLC, county governments, and other multi-partner agencies to collaborate and deliver solutions to real and perceived challenges at the community level.<br>• Previous experiences provide the opportunity for strengthening community referral systems that promote the management of GBV/SEA/SH, etc.<br>• KPLC can utilize the Critical Infrastructure Protection Unit to secure its installations.<br>• KPLC E&S management systems can be strengthened to ensure E&S risks and impacts are identified, and appropriate mitigation measures outlined, implemented, and monitored effectively. E.g., stakeholder engagement, indigenous peoples, cultural heritage and workplace safety, GBV-SEA/SH, among others.<br>• Capacity development in social accountability mechanism and strengthen the GRM system to address social conflicts | **THREATS/RISKS**<br>• There are already conflicts experiences in some of the target areas as a result of human-wildlife disputes, pasture, fishing grounds, land boundary conflicts, and ethnicity, and which are exacerbated by drought and famine.<br>• Project workers engaging in the Sexual Exploitation and Abuse (SEA) of community members.<br>• The need for land for sub-stations and wayleaves, especially in areas with land disputes and land scarcity, unadjudicated areas, resulting in land conflicts.<br>• Infringing into natural habitats depended upon by IPs, leading to conflicts.<br>• Inadequate stakeholder engagement and information disclosure leading to potential social conflicts<br>• In some of the counties, there are areas with intercommunity/intercounty boundary conflicts such as between Meru and Tharaka Nithi County that affects access to services such as power transmission.<br>• Politically instigated conflicts exacerbate social conflicts and are hard to predict and plan against. |

# 9.0 Conclusion and Recommendations for the Program Action Plan

## 9.1 Conclusion

### 9.1.1 Conclusions in relation to country ESHS management systems

66. **Kenya has Robust Systems that can effectively be applied to manage E&S effects of the GREEN Program**. Overall, the ESSA confirms that Kenya has a robust written ESHS systemsin the form of policies, regulatory, legal, and institutional frameworks,as well as strategies and plans that are materially consistent with the Six PforR Core Principles.All the country level policy, regulatory and legislative frameworks and the internal KPLC frameworks are relevant for the management of social, environmental, and occupational health and safety effects of the GREEN Program

67. **The country has strong legislative and institutional frameworks**, which, if implemented in line with the objectives for which they were established, are capable of effectively managing social,environmental, and occupational health and safety risks associated GREEN Program. Despite the availability at the country level, of sound written policies, regulations, and legislative frameworks, and KPLC's internal frameworks for the management of E&S risks and impacts, and in spite of the frameworks as written being consistent with the World Bank's ESF and the six PforR Core Principles, the ESSA found gaps in the practical application of these systems by KPLC. For example, despite KPLC havingpolicy, procedures and guidelines outlining how compensation for land, structures and wayleave acquisition should be undertaken and managed, in line with the requirements of the Land and energy Act, these internal frameworks are not being followed to the letter. For example, compensation is paid when there is a budget line for it in a projects. It is however not paid when a project has no compensation budget line.

68. **Kenya has many pieces of written policies, regulatory, and legislative frameworks with provisions for the management of E&S risks and impacts, and different institutional arrangements for their implementation, but implementation is uncoordinated**. However, these may not all be known to the implementing agency staff charged with the responsibility of E&S management.For example, For the systems assessment, the ESSA identified and reviewed a total of 42 pieces of policy, strategy/plans, and legislative frameworks and a total of five (5) internal KPLC policy, procedures, and guidelines that deal with compensation for land, structures, wayleave acquisition, and other processes. The ESSA also identified and reviewed the E&S responsibilities of a total of 16 institutions which, among them, have the mandate for the management of social, environmental, and occupational health and safety risks and impacts. The institutions however, work independently of each other, resulting in uncoordinated efforts at E&S risk management.

69. **There is a high potential for narrow application of E&S risk management systems.** Due to the multiplicity of policy, regulatory and legislative frameworks and their uncoordinated application, implementing agenciestend to be keen in applying the legal requirements of regulatory authorities such as NEMA and DOSH which must give permits and licenses for all civil works projects. In this regard, the ESSA found that KPLC has a strong relationship with NEMA and DOSH, but no relations with, e.g., the National Gender and Equality Commission or the department of social services.

70. There are no harmonized rates for paying for crops and trees among the MDAs, including the energy sector agencies. Currently, MDAs, including the energy sector agencies lack a harmonized compensation rates for trees and crops, which is partly attributable to the unharmonized rates between the mandated authorities (Ministry of Agriculture – MoA - and Kenya Forest Service - KFS). These compensation rates do not reflect the current market prices for the various types of crops and trees. In the energy sector, KETRACO has initiated a process, in consultation with MoA and KFS, to review compensations rates for trees and crops that may be destroyed during wayleave acquisition, to bring it to par with the prevailing market rates.

71. **The Directorate of Occupational Safety and Health Services (DOSHS) is a department in the Ministry of Labour and Social Protection (MoLSP).** DOSHS administers the Occupational Safety and 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 18 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 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.

72. DOSHS transitioned from a Factories Inspectorate in 2007 following the repeal of the Factories and other places of work Act 1990 and the enactment of 2007. This evolution resulted to the expansion of DOSHS mandate to other places of work beyond factories and industries which were either not covered or were covered by different legislation which in turn was implemented by different agencies. In 2012, the government passed the National Occupational Safety and Health Policy. The National OSH policy (Article 3.3) states that the government will establish an authority which will be the apex institution responsible for all OSH issues in the country. The proposed authority will aim to manage and coordinate OSH issues in the areas of prevention of accidents, incidences, occupational diseases, compensation, rehabilitation of the injured persons together with research and training in the country.

73. Currently, there are ongoing discussions and efforts to review and update OSHA 2007, which is necessitated by the need to: (i) align it to the Constitution, 2010 and the National Occupational Safety and Health Policy, 2012; (ii) improve Kenya's ability to ratify ILO conventions and recommendations; (iii) have a robust safety and health information management system that promotes prompt notification, reporting, analysing and investigation of occupational accidents to prevent recurrence; and (iv) develop an institutional framework by establishment of an agency that will efficiently inculcate a safety culture in workplaces and address all issues on prevention of work-related injuries, prompt investigation of accidents, compensation and rehabilitation of injured workers.

74. **DOSHS as a Department, which remains under the Ministry of Labour, does not have the authority and resources to implement and enforce the law in workplaces that fall under the jurisdiction of other Ministries (e.g., Ministry of Mines).** DOSHS has the responsibility to register all workplaces in the country yet do not have the autonomous independent authority and matching human and material resources to fulfil this obligation. As a result of this and other factors, only about 15,000 of the workplaces in the country's 144,000 registered companies are registered by DOSHS as workplaces. The total number of workplaces is likely to be significantly higher since many companies have several workplaces as branches, franchises, and outlets around the country: take a case of a Banking institutions that may have several branches across the country, or a telecommunication service provider, yet only have one registration.

75. **In addition to hindering the government's ability to enforce worker health and safety protections for more than 90 percent of the country's workplaces, this inability to register workplaces implies a significant loss of government revenue.** If DOSHS could register all workplaces, it would raise nearly USD 11.7mn per year just from registration fees (ten times current

revenues from all sources). This would easily pay for the additional staff needed and other DOSHS's operational costs.

76. 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 social contributing scheme.

77. Further, the 2012 National Occupational Safety and Health Policy needs to be updated to cover global emerging types of work hazards. These include work in the renewable energy sectors, remote working etc. Lastly, the country does not have adequate data on occupational health and safety incidents. Without such data, it is hard to determine the level of effort to deploy tomanaging the OHS issue, nor which sectors or types of incidents may require particular attention. These four critical gaps are areas of improvement that the program could strengthen in one way or the other either directly or indirectly. The above notwithstanding, the PforR provides an opportunity for DOSHS to jointly collaborate with KPLC undersection II of OSHA 2007 to support KPLC in undertakingboth routine and annual OHS inspections and audits of its operations and site to ensure a safety culture is maintained throughout

78. **The country has no single legally recognized regulatory, coordinating or oversightinstitution such as NEMA, for the management of social risks and impacts in civil works projects**. Consequently, there is no mandatory requirement or oversight for the inclusion of social risks management strategies into instruments such as EIA. Where financing institutions such as the World Bank require these to be included, the approval lies with NEMA which has neither the mandate nor the capacity or qualified personnel for the review of social risks aspects of the ESIA.

79. **Requirements for stakeholder engagement plans, grievance management plans, SEA-SH prevention and response plansor the inclusion of IPs and vulnerable individuals and groups into project activities, are externally driven.**In the case of World bank financed projects, these remain in the PIUs of the respective implementing agencieswith no overall responsibilities for them at the corporate level. For example, KPLC does not, as a matter of practice require their contractors to have SEPs, SEA-SH or Labour management strategies. The assumption is that, because these are legislative requirements, contractors and sub-contractors would adhere to them without oversight.Stakeholder engagement under the Last Mile Connectivity project, for example, is a one of public informational meeting. If the people at the meeting responds that they like the proposed project and are supportive of it, the response is taken as a community consent, and many times, private individuals have found electricity infrastructure in their land, including the home, without their prior consent as required by the Energy Act, 2019.

### 9.1.2 Conclusions in relation to the energy sector

80. **The Energy sector has six key public institutions** which, according to their respective mandates, should have various levels of ESHS risk management and ensure environmental and social sustainability in the sector's infrastructure development. The Ministry of Energyis the policy making body with oversight and coordination responsibility for all public and private energy sector actors. Its key mandate is to manage the energy sector in Kenya and to generates policies that are designed to ensure the country exploits all potential power sources including hydropower development, geothermal exploration and development, rural electrification, promotion of renewable energy, and energy regulation, security, and conservation.

81. **The Energy sector policy acknowledges that challenges exist in the distribution of energy.**Despite the acknowledgement,implementation of Energy sector Act remains weak. The policy attributes this to a number of factors including: (i) the absence of regulations to help streamline the implementation of the Act, (ii) inadequate coordination among the energy sector

actors (KPLC, REREC, Ketraco, GDC and KenGen), andinadequate oversight at all sector levels to enforce adherence to the E&S laws. Among the E&S challenges identified by the policy are: (i)encroachment of way-leaves trace; (ii) the scattered nature of homes in rural areas, (iii) systemic challenges related the lengthy way-leaves acquisition process; (iv) absence of a comprehensive and fair compensation mechanism; absence of a national Resettlement Action Plan Framework; and inadequate health, safety, environmental and quality laws to regulate energy projects.

82. **Inadequate financial and human resources allocation for ESHS risk management.** Most Kenyan institutions responsible for civil works projects, the energy sector agencies included, are usually ill equipped in terms of human and financial resources allocation. While there will be at least some environmental staff, social aspects are not only understaffed, but usually 'hidden' in the environment section/department, and having to report on social risks of a project to environmental professional with little understanding of the social dimensions of the risks. Similarly, there is a general underrating of the cost of ESHS risk management activities including stakeholder engagement, grievances management, community level E&S training activities, OHS equipment purchase, etc. Due this, ESHS risk management activities are not prioritized in the budgeting process or are underbudgeted. This problem is compounded at KPLC by the fact that the SHE department, which has responsibility for safety, health, and environmental risk management, does not sit in the budget committee. The situation is worse for social, which would otherwise be represented in the budgeting process by environmentalists.

83. **The ministry exercises it mandate through five key institutions including**: (i) EPRA which is the regulatory authority for the energy sector in Kenya, (ii) GDC which is tasked with developing steam fields and selling geothermal steam for electricity generation to KenGen and private investors; (iii) KenGen, which is tasked to develop, and operate power generation capacity and generate electricity from all potential power sources including hydropower, geothermal, thermal and wind, (iv) Ketraco which is mandated to plan, design, construct, own, operate and maintain high voltage national electricity transmission lines and regional power interconnectors; (v) KPLC which is theoff-taker of all generated electricity anddistributor and supplier of electricity across the country and also implements electrification programs on behalf of the government, and, (vi) REREC, which has the responsibility of implementing rural electrification projectsand managing the Rural Electrification Programme Fund (that has been established under section 143 of the Energy Act).

84. Based on their mandates, the ESSA analysed the ESHS risk management capacity (systems and structures) of three of the key energy sector institutions, Ketraco, KPLC and KenGen, with a deeper focus on KPLC, being the implementing agency for the PforR phase of the GREEN Program.

### 9.1.3 Conclusions regardingKPLC Internal System and capacity for ESHS Risk Management

85. **System for Land and Wayleave Acquisition and Compensation**. KPLC relies on the Land Act, 2012, (as amended in 2019), the Energy Act, and KPLC's own Land and Right of Way policy to guide the corporation on matters of land and wayleave acquisition, especially on matters of compensation. Both Acts provide for just and fair compensation for acquired spaces. The Energy Act requires that livelihoods are not affected and should be compensated for, if affected. The Energy Act safeguards the safety of the energy sector infrastructure and people, and forbids encroachment of the wayleave trace (right of way). The Act is however silent on compensation for encroachers despite providing for compensation for affected livelihoods, and has also not given guidance on how to secure the wayleave trace.

86. **In line with the requirements of the Land and Energy Acts, KPLC has developed internal frameworks for the management of ESHS risks of its operations, in particular, E&S risks related to Land and Wayleave acquisition**. These frameworks include: (i) KPLC Lands and Right of Way Policy; (ii) KPLC Property Damage Assessment and Compensation Procedure; (iii)

KPLC Wayleave Acquisition Procedure; (iv) KPLC Standard Wayleaves Agreement Form; (v) KPLC Non-Standard Wayleaves Agreement Form. Chapter 3 of the KPLC policy deals with Wayleave acquisition. The opening statement of chapter 3 item (i) states that*: "The Wayleaves function is custodian of the processes in Acquisition of maps, Rights of way (Wayleaves) acquisition, Public approvals, property damage compensation, sorting out Wayleaves infringements & encroachments and resolving Wayleaves related complaints & disputes";* Chapter 3 item (iv) states that *"Assessment and compensation of property damage shall be processed before a scheme that involves extension of infrastructure is commissioned and capitalized";* while Section 3.2 of the policy prescribes the roles and responsibilities of various Functions for compensation approval. The other sections of the policy in which compensation is discussed are sections 3.3.3(a) which mandates the Function Head to report all property damaged during project implementation, for assessment and compensation, and 3.3.3 (d) which mandates the Function Head to confirm that property damage compensation has been carried out before commissioning schemes in DCS. Similarly, the KPLC Property Damage Assessment and Compensation Procedure prescribes guidelines for executing major tasks/activities involved in property damage assessment and payments.

87. **The provisions of the KPLC's Lands and Right of Way Policy and the KPLC Property Damage Assessment and Compensation Procedure are materially consistent with the PforR Core Principles**. They are also consistent with the legal frameworks of the country (such as the Constitution of Kenya, 2010, Land Act, 2012 (as amended in 2019), the National Energy Policy, 2018, the Energy Act, 2019, and the Wayleave Acquisition Act Revised Edition, 2010 (1989)), in so far as they provide for compensation for damages to property, including structures, trees, and crops. However, section 3.4 of the KPLC Lands and Right of Way Policy states in subsection 3.4.1.1(xviii) that "The Function (assumed to be Head of Wayleaves Department) in liaison with both governmental and non-governmental agencies, shall proactively participate in planning, conceptualization, and implementation of proposed schemes/projects/plans to ensure the company needs of Wayleaves corridors are captured through land allocations/donations, grants etc", which is a contradiction of the country's legal requirements which expressly provide for compensation.

88. **The introduction of the concept of "…land allocation/donation, grants etc." at the end of the KPLC policy document in relation to "government and non-governmental agencies"** is assumed to refer to allocation, donation, or grant of land by government and non-governmental organizations, but not private individuals. This however is not explained as such inthe KPLC policy document.In practice the ESSA found that KPLC compensates for wayleave, but inconsistently, depending on availability of budget. If it has nocompensation budget, KPLC resorts to seeking land donation consent.

89. **KPLC has legally binding Wayleave Agreement Forms for acquisition of wayleave through grant/donation.** For MV and LV wayleave KPLC and REREC normally request for land donations from private landowners, and the ones who agree to the donation have to sign a legally binding "Standard Wayleaves Agreement Form, or Non-Standard Wayleaves Agreement Form, each of which imposes restrictions on the use of such land. For KPLC, such land is donated "in consideration of the first and final payment to the landowner of the sum of One Kenya Shilling (receipt acknowledged)".In practice however, the ESSA found instances when KPLC has paid compensation for MV and LV lines, and instances when it has not, while REREC insists on not paying at all. This has resulted in complaints where in one area/community, a person receives payment for wayleave acquisition by KPLC and the other does not receive payment either by KPLC or by REREC. The situation has led to great delays in the implementation of the KOSAP (implemented by both KPLC and REREC), and the off-grid subcomponent of KEMP (implemented by REREC). In both cases, the implementing agencies prepared RPF but did not implement it, siting their own internal policies. For KPLC, this is neither in its internal frameworks or the country's laws (apart from a mention of grant/donation in the KPLC Land and Wayleave policy, but without elaboration or articulation of the country's legislative framework on which it is anchored). This is contrary to the PforRCore Principle No 4, which requires that even if an ESHS practice is unwritten, it should be consistent with the law, and should be for the benefit of project affected persons.

90. **There is no definition of situations in which the Wayleave Agreement Forms are applicable.** Neither the Agreement Forms nor the KPLC Lands and Right of Way Policy, the Property Damage Assessment and Compensation Procedure, or the Wayleave Acquisition Procedure has defined the situations or types of lines to which the Agreement Forms are applicable. This has resulted in confusion and complaints in cases where in one area/community, a person has received payment for wayleave acquisition paid by KPLC and the other has not received payment either by KPLC or by REREC. It has led to great delays in the implementation of the KOSAP (implemented by both KPLC and REREC), and the off-grid subcomponent of KEMP (implemented by REREC). In both cases, the implementing agencies prepared RPF but refused to implement it, siting their own internal policies.

91. **KPLC's frameworks related to compensation for wayleave is applied inconsistently**. The ESSA found instances where compensation is paid by KPLC for 33kv and 11kv lines in line with KPLC Lands and Right of Way Policy, the Property Damage Assessment and Compensation Procedure, and the Wayleave Acquisition Procedure. The ESSA also found instances where compensation is not paid for these lines, contrary to the requirements of these internal KPLC frameworks. Details of the reviewed country policies, legislative, regulatory, and institutional frameworks for the management of ESHS effects, including KPLC's internal system related to land and wayleaves acquisition and compensation are presented in Table 3 of this report.

92. **System for Labour and SEA/SH Management.** On Labour risks and Sexual Harassment management, KPLC is guided by the provisions of the Employment Act, 2007 (as amended in 2022). This law prohibits all forms of discrimination in employment, forced labour and sexual harassment, and promotes equal opportunities for employment. The law requires any employer with more than 20 employees to have a SH policy and acknowledges that employment contracts can be oral or written. It obligates employers to inform employees of their rights, including rights to collective bargaining agreements. The law is inward-looking however, and puts emphasis on workplace SH, but does not cater for SEA of community members by organizational or contractor employees. Hence, there is a requirement for implementing agencies, including KPLC, to prepare and enforce internal guidelines against which to hold their contractors and subcontractors to account, instead of assuming that the contractors and subcontractors will follow the law.

93. **Systems for Stakeholder Engagement, Grievance Management and Information Disclosurein Projects**. Both KPLC and REREC have no policies for stakeholder engagement, grievance management or information disclosure. They also do not have Focal Point for stakeholder engagement and grievances management. While grievance redress mechanisms (GRM) are prepared for, especially World Bank financed projects, and grievance redress committees (GRCs) are established at the community level during project preparation, these have largely remained on paper, with the result that full project information is not disclosed to stakeholders in comprehensive and consistent manner. It is only since 2021 that under the KEMP project, KPLC has been able to prepare and operationalize stakeholder engagement plans (SEPs) and GRMs. REREC still does not have these, and at KPLC, these are yet to be escalated for corporation-wide application.

94. **Social risk management is the least priority in the KPLC (and other energy sector agencies, except KETRACO).**In the scenarios where budget is allocated for corporate priorities, pushed by activity mandate owners, SRM is usually the greatest casualty. It is the most understaffed and under-financed. In the case of KPLC, the SHE department has three sections – Safety, Health, (Occupational Health, and Public Safety), and Environment. The social is 'hidden' under the environment section and it is unclear if there is a budget line for undertakingsocial risks management activities such as stakeholder engagement, grievances management, SEA/SH management, community sensitization to name but a few, and how the departments in charge of these aspects at the various stages of a project cycle coordinates with SHE department on these issues. Please note that the ESSA team was informed that the key responsibilities of the two social specialist in the SHE department are ESIA and RAP preparation, and responses to grievances where applicable

95. **KPLC has developed a Human Resources Policy Manual.**Based on the Employment, 2007 (as amended in 2022) and on the Public Officers Code of Conduct at the workplace, KPLC has

developed a Human Resources Policy and Procedures Manual which includes provisions on SH at the corporation level. The Manual will be launched in January 2023. However, like the Employment Act, the KPLC manual is also inward looking and does not extend its provisions on SH to KPLC contractors and subcontractors. If GBV management (which should include SEA-SH) is the responsibility of HR, then HR could decide to include provisions on these in its HR manual at the appropriate section (and subject contractor and subcontractor employees to the same standards as its own staff), or prepare separate guidelines on which to hold contractor and subcontractor staff to account.

96. Likewise, at the corporate level, KPLC neither attaches ESMPs to bidding documents/contracts, nor requires its contractors to prepare and enforce labour management and SH law. The assumption is that, because the law applies to all employers, all employers and their employees should be aware about the law, and should be able to apply it, or have recourse to labour dispute resolution as prescribed by the labour law.

97. **Responsibility for ESHSrisk management at KPLC (and at REREC) is scattered across many departments.**For example, stakeholder engagement responsibility at KPLC falls in three departments while SH (SEA is assumed)is domiciled in the HR Division. This exacerbated by the fact that there is little orinadequate collaboration and synergy amongst key agencies with mandate for ESHS risk management and programimplementation. For example, while a social specialist is in the SHE department and would normally be responsible for social risk management, especially in externally financed projects, incidents grievances related to SEA-SH would normally be referred to the HR Division. The result would be delayed response to grievances or inadequate responses.

98. **There is little effort at institutionalization of ESHS management best practices.**In addition, there is no single Division or Department with responsibility for all aspects of E&S risk management. Consequently, no single person at KPLC can authoritatively articulate the overall KPLC policy or strategy for E&S risk management. Instead, for the various aspects of E&S risk management, the ESSA team was referred to various people in different Divisions and Departments for consultation. Likewise, there is no institutional repository at KPLC for the E&S risk management frameworks, including the ones that were reviewed as part of the ESSAprocess. Examples of good practice ESHS processes include practices such as those acquired while implementing externally financed projects (e.g., the PIU concept, the SEP, GRM, LMP etc) etc. Currently, these belong to the PIU and are little known at the corporate level. Moreover, while externally financed projects would require instruments such as ESMP to be part of the bidding and contract documents, the same is not applied to other projects implemented by the same agency, making it a challenge to institutionalize such requirements.

99. The other factors that encumber the effective implementation of Kenya's ESHS system include but are not limited to the following:

- Limited domestication and application of the ESHS system at the County level impeding effective management of ESHS effects,
- Weak compliance monitoring and reporting, consequently presenting a risk of fidelity of implementation of ESHS mitigation measures,
- Limited familiarity with thecountry's ESHS system and processes including mitigation measures among MDA staff and even within KPLC,
- Inconsistent application and limited mainstreaming of ESHS in development project across MDAs,
- Gaps in the written ESHS system in areas such as social risk screening and management, specific framework for management of IPs, among others,
- Inadequate documentation, disclosure, and application of GRM among MDAs,
- Gaps in the documentation and application of land management frameworks (e.g.,delays in undertaking searches to confirm land ownership, delayed registration of community land, varied rates applied for compensation for destruction of crops, trees and loss/devaluation of land acquired for wayleave, inconsistent engagement of NLC,(some MDAs, especially the Energy sector agencies, prefer to undertake land

acquisition on their own, despite the NLC being the legal custodian of this docket), areall potential triggers of grievances, social conflicts, loss of livelihood, and, court cases with negative consequences on overall program implementation.

### 9.1.4. Conclusions on Structures for ESHS Risk Management at KPLC, REREC and KETRACO ESHS Risk Management in Practice at KPLC and REREC

100. **Currently, externally financed projects at KPLC have clear and well-structured project teams**[7], with the World Bank advocating for the establishment of a project implementation unit (PIU) for the projects it finances. The PIU is required to bring together experts for all aspects of the project including ESHS experts. The staff in the PIUs still report technically to their line managers /divisions for guidance. On one hand,this arrangement works well, provided the project work gets done, but it becomes problematic at times, especially when there are competing work priorities between project work and departmental work, both requiring the attention of the PIU staff member. Experience has shown that in such cases, the staff would usually prioritize departmental work over externally financed project work. At the corporate level, Government of Kenya (GoK) and some externally financed projects have not PIU arrangement. In practice, corporate level ESHS risk management in KPLC projects have fragmented E&S teams who do not work in a coordinated or synergistic way (due to fear of crossing responsibility boundaries and stepping on each other's toes). In this regard, despite the requirement for a PIU with a dedicated PIU Manager/Coordinator for some of the externally financed projects, the practice is that departmental or section heads are brough together to attend to the financier's requirements. However, due to the corporate hierarchical order and the 'fear of stepping on each other's toes', the PIU team members are not necessarily answerable to the designated PIU manager/coordinator. Instead, the PIU members (including the PIU Manager), remain answerable to their departmental heads, and are expected to prioritize departmental work over and above the specific project work. Consequently, there is little attention to the rigorous requirements for E&S risk management by some of the external financiers, especially the World Bank.

101. **The Safety, Health, and Environment (SHE) Department at KPLC.** Responsibility for safety, health, and environmental risks management is assigned to the SHE department, headed by the SHE Manager. The department has three sections/units – safety, health, and environment - each headed by a Section Head. The key mandate of the SHE department is to ensure compliance with the EMCA/NEMA requirements, including EIA and environmental audits, to identify environmental risks of projects. The Environment Section (headed by an environmentalist) also has responsibility for social risk management (SRM), although this is not the department's core mandate. The SHE Department is currently housed in the HR Division. Previously, it has been housed under the Office of MD, before it moved to the Network Management Division. It has no representation in the regional and county offices. As such, regional offices programs and active work fronts do not receive timely EHS advisory and support. EHS supervision and compliance enforcement is reactiveto when there are OHS issues of concern or a sever incident warrantying OHS department's attention. KPLC need to decentralize the SHE department to regional offices to ensure oversite of regional work programs for OHS compliance.

102. **Social Risk Management is neither a Section nor Department**. Both KPLC and REREC have no dedicated department or section/unit with responsibility for SRM in their structures. At KPLC, there are two socio-economists who are attached to the Environment Section/Unit of the SHE department while at REREC, there is no social staff. The two socio-economists at KPLC are headquarters-based with no support for SRM work in the regions/counties.

103. **KPLC's Enterprise Risk Management (ERM) Department.**KPLC has the Enterprise Risk Management Department which looks at enterprise risks for KPLC across board, including

[7] The well-structuredness is more or less at the superficial level, at least to 'fight fires' in case of externally (especially World Bank) financed projects

infrastructure and financial risks. Environmental and social risks are however, currently not considered as part of the corporation's enterprise risks. Nevertheless, in carrying out its corporate risk identification work, the ERM staff have 'stumbled upon' some E&S risks (this is not their core mandate), which they pass on to the appropriate department for action.

104. ***ESHS Risk Management at KTRACO.*** The three energy sector agencies with responsibility for electricity transmission and distribution are KETRACO, KPLC and RREREC. Among them, KETRACO is comparatively better organized and well-structured for ESHS risk management. Due to KETRACO's E&S risk management challenges experienced from World Bank financed projects such as KEEP and EEHP as well as from GoK and other externally financed projects, and in response to the challenges in wayleave acquisition identified in the national Energy Policy, KETRACO underwent an organizational restructuring in 2020/2021 with the aim of mainstreaming E&S risk management in its organizational structure. Consequently, KETRACO's Directorate of Project Development Services headed by a director) now has two key departments with one department dedicated to ESHS risk management. They include the Department of Planning and Design, and the Department of Wayleaves Acquisition. The Wayleaves Acquisition Department has four key Divisions, each headed by a manager. They include the Social, Environment, Survey, and Valuation Divisions. This now brings all key ESHS management functions under one department. The Social Division of the Wayleaves Acquisition Department currently has a total of 13 Social Safeguards Officers at various function levels, including the Division Head, while the Environment Division has nine (9) environmental Officers, also including the Division Head. With this arrangement, if adequately financed and equipped, the E&S Divisions Managers of KETRACO feel they would be well placed to effectively manage all ESHS risks of KETRACO implemented projects, regardless of the financing source because they are able to bring their colleagues in Finance and legal Divisions to support them in their work, especially community engagement, wayleave acquisition and grievances management.

### 9.1.5 Conclusions on financing for ESHS risk management activities by KPLC

105. ***KPLC has a Budgeting and* Planning Committee** that articulates the strategic activities of the company within any financial year, and which allocates budget lines according to company priority actions. The head of department in charge of a function (budget holder) proposes a budget for each activity that the department intends to undertake in the financial year, and presents it to the Planning Committee. The Planning Committee is composed of General Managers in charge of the Division, the MD and the Board's Finance and Risk committee. After deliberations, the Planning Committee presents the overall company budget to the full Board, for a budget conference. From the Board, the KPLC budget is presented to the Ministry of Energy which in turn presents it to the National Treasury. At any of these budget stages, an increase or reduction of the budget can be proposed.

106. **Budget allocationis based on corporate priorities**. At the planning and budgeting stage, all design and construction costs are budgeted under specific projects. For example, at the project design stage, there would be budget lines for e.g., land and wayleave acquisition for compensation for land, substations, and wayleave for 66kV lines and above, and for incidents such as fatalities and injuries. Projects also have contingency budget lines which project managers may tap into, in case of need. Due competing priorities, 33kV and 11kV lines are not prioritised for allocation of compensation budget lines. Consequently, compensation for wayleave acquisition for these lines are sometimes not paid.

107. **Budget lines for safety, health, and environment (SHE) is mostly reserved for environmental audits, inspections, and other legally/mandatory requirements**. The SHE Department is however not represented at the budget/planning committee and the department is therefore unable to defend its proposed budget lines, with the result that it is sometimes greatly underfunded. With no specific department for social risk management (SRM), there is usually no budget lines at the corporate level for SRM activities such as Stakeholder Engagement, Grievance

Management (GM), SEA-SH prevention and response, inclusion of VMGs, information disclosure and community/stakeholder sensitization, among others.

108. **There is generally inadequate planning of ESHS activities** in terms of things that should be anticipated and included in the budget, or, failure to quantify budget requirements properly and adequately, leading to implementation delays when money is required for non-existent budget lines. This is because the E&S mandate holders are either unable to take the changing E&S fundamentals into account when budgeting (e.g., by taking lessons learnt from previous experiences into account) or budgeting for things that will not be implemented. This situation compounds the E&S mandate holders ability to meet E&S budget requirements due to liquidity challenges of their budget lines.

## 9.2 Recommendations for the Program Action Plan

109. The ESSA has clearly identified gaps in the ESHS risk management by KPLC (and RERC) in particular, and by the energy and other infrastructure sector agencies in general. For KPLC, it is urgent that the gaps are addressed to enable KPLC implement the GREEN Program effectively, using the country and its own internal systems. To achieve the required level of capacity enhancing measures for ESHS risk management in the entire Program cycle, KPLC (and REREC) should institute the following quick win corporationwide measures to enable the corporation(s)to attain the required level of efficiency and effectiveness in the management of ESHS risks of infrastructure projects implemented by the two agencies. These Program Action Plan recommendations are meant for application by KPLC to all its projects, regardless of the financing source, and not just to the proposed PforR Program.

*Table 10: Program Action Plan for Enhancing KPLC'sCapacity to Manage ESHS risk*

| No | Action | OVI and Time Frame |
|---|---|---|
| ***1.*** | ***Develop and enforce a corporationwide ESHS risk management Policy, Procedures, Guidelines, and Processes that are aligned to the World Bank's six PforR Core Principles, the country's legal frameworks, the Good International Industry Practice (GIIP, and ISO certification requirements, to guide KPLC in its ESHS risk management work*** | • A Board approved ESHS management policy, procedures, regulations, guidelines, and processes for the management of all social and environmental risks (items (a) and (b) of Action 1), including risks related to wayleave acquisition and compensation for encroachers, are in place within one and a half (1.5) years of the PforR effectiveness date<br>• Differentiated treatment of VMGs, and vulnerable households and individuals are clearly spelt out in the approved policy, procedures, regulations, and guidelines<br>• Requirement for adequate and qualified ESHS personnel and adequate financing for all ESHS risk management activities are included as a condition in the Program Financing Agreement |
| | Sub-activities leading to the achievement of this Action includes developing a corporationwide ESHS Policy, Procedures, Guidelines, and Processes for:<br><br>(a) Social Risk Management, including:<br>• Management of risks that are related to land and wayleave acquisition and compensation, including compensation for assets and livelihoods of wayleave trace encroachers who may be required to vacate their livelihood activities being undertaken on the wayleave trace<br>• Risks that are related to stakeholder engagement and exclusion of vulnerable groups (see footnote3),<br>• Labour management related risks,<br>• Management of risks related to Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH) prevention and response by KPLC and their contractors and subcontractors<br>• Grievances/complaints/disputes management by KPLC and their contractors and subcontractors<br>• Differentiated targeting of VMGs and Vulnerable Households and individuals (see footnote 3), including measures to cushion these groups from electricity tariffs that may potentially increase to proportions beyond the affordability means of the VMGs and poor households and individuals<br>(b) Environmental Risk Management, including:<br>• Assessment and management of Environmental Social Health and Safety (ESHS) Risks and Impacts<br>• Community and workers occupational health and safety and working conditions<br>• Efficient utilization of environmental resource, pollution | |

| No | Action | OVI and Time Frame |
|---|---|---|
| | prevention and management<br>• Biodiversity conservation and sustainable management of living natural resources<br>• Management of cultural heritage and chance finds<br>(c) Fort the effective management of ESHS risks of the Program, the policy should clearly stipulate how the ESHS activities will be financed, and the critical need to make the finances for ESHS activities available in a timely manner.<br>(d) Notes to support KPLC in developing a sustainable ESHS management policy, procedures, guidelines, and processes. As a precursor to the development of the policy, procedures, guidelines and processes for the management of ESHS risks and impacts of KPLC projects and programs, review the current KPLC (and as applicable, REREC's) policy and procedures for Land and Wayleave Acquisition and Compensation (including compensation of encroachers), with a view to aligning them with the requirements of the country's legal provisions, the World Bank's Core PforR Principles, as well as the international best practices relating to land and wayleave acquisition and compensation, and the ISO certification requirements. (For KPLC, the documents to be reviewed and enhanced include the KPLC Lands and Right of Way Policy; KPLC Property Damage Assessment and Compensation Procedure; and KPLC Wayleave Acquisition Procedure). For ease of reference, it would be helpful if these documents are presented in one comprehensive document.<br>(e) In line with the National Energy Policy which requires the energy sector institutions to safeguard peoples livelihoods, ensure compensation for affected livelihoods of wayleave trace encroachers are factored into the Wayleave management policy provisions and make it a policy requirement to factor the same in wayleave management budget lines<br>(f) Consider the devaluation of land values that are not placed under easement, but on which restrictions are imposed, and make it a policy requirement to provide budget lines for their compensation<br>(g) Consolidate and document the policy, procedures, guidelines and processes for land and wayleave acquisition in one document for ease of reference, storage, and retrieval<br>(h) Make it a policy requirement to include ESHS risk management aspects at the onset of project activities by involving ESHS specialists in project design, implementation, and monitoring, and to carry out environmental and social risk assessments and compliance monitoring in line with the country's laws and international best practices as well as KPLC's environmental and social policies, procedures, guidelines and processes.<br>(i) The ESHS policy should clearly describe the key ESHS risks (based on experiences by the energy sector institutions such as KETRACO, KenGen, GDC, REREC and KPLC itself (many of the risks and challenges have been identified by the National Energy Policy)<br>(j) Leverage experiences by other energy sector institutions (such as KETRACO, REREC, KenGen, and GDC) to enable KPLC develop and enforce corporationwide policies, procedures and processes for project related grievances management, stakeholder engagement, SEA-SH Prevention and Response, and Labour Risk Management<br>(k) Make it a mandatory policy requirement for KPLC (and REREC) contractors and subcontractors to prepare and enforce their own Stakeholder Engagement, Grievance Management, SEA-SH Prevention and Response, and Labour Risk Management Plans, in line with KPLC's provisions on the same (as established under this PforR operation). As part of an effective e stakeholder engagement and grievances management, including management of expectations:<br>• The KPLC policy, Procedures and processes should encourage the establishment of linkages with relevant | |

| No | Action | OVI and Time Frame |
|---|---|---|
| | government ministries, departments, agencies (MDAs) and CSOs responsible for stakeholder engagement and grievances management (e.g., the Social Risk Management Unit, the Ombudsman and other such agencies) and task them with responsibilities such as sensitization of communities, contractors, and sub-contractors, on their respective (MDAs and CSOs) roles and responsibilities with the aim of encouraging communities and project workers to turn to them for grievances resolution in case of need.<br>(l) As part of the review process, ensure clarity on how and for what purpose KPLC will apply the use of the Grant/Donation Forms. These should not be applied to land/wayleave acquisition in relation to private or community land/wayleave for KPLC implemented projects, including the GREEN Program and all World Bank financed projects. | |
| ***2.*** | **Establish an implementation arrangement for ESHS risk management at KPLC that is in line with the corporationwide ESHS management policies, procedures, guidelines, and processes (as established in Action 1 above)**<br>Sub-activities for the achievement of Action 2 include, but are not limited to:<br><br>a. As a precursor to this activity, undertake an **'As Is'** analysis of KPLC's current implementation arrangements for each ESHS factor outlined in Action 1(a) and 1(b) above, including ESHS management structure, domiciling of the ESHS management function, qualifications of the ESHS mandate holder, ESHS staffing and financing of each ESHS factor outlined in Action 1(a) and 1(b) above. This will enable KPLC to clearly understand the current challenges related to the implementation of ESHS risk management and to ensure implementation arrangements are able to effectively achieve the World Bank's Core PforR principles and the country's requirements for E&S management.<br>b. Establish a clear, visible, and efficient ESHS risk management Department/Division by consolidating ESHS management functions that are currently in different Divisions/Departments to bring about coherence and efficiency in ESHS risk management. The Department/Division should have:<br>a. clearly defined functions, responsibilities, and qualified leadership for social aspects of ESHS (see 1(a) above), and for environmental aspects of ESHS (see 1(b) above),<br>b. clear reporting line for ESHS Department/Division Mandate Holder,<br>c. qualified and adequate social and environment personnel with clear reporting line within the ESHS Department/Division, and,<br>d. adequate financing and equipment for each activity of the ESHS Department/Division.<br>e. Ensure consultations and inclusion of all key stakeholders in the implementation of the GREEN Program, as recommended by stakeholders in section 6.3.3.<br>*Note: While implementing Action 2, KPLC (and REREC) can learn and borrow lessons from KETRACO which now has a division each for environment and for social risk management, and from COMESA's Trade and Development Bank (TDB) which is a private development Bank.* | A clearly defined and visible ESHS Department/Division that is adequately resourced is in place within one and a half (1.5) yearsof the PforR Program effectiveness date |
| ***3.*** | ***Build the Capacity of KPLC (and as appropriate other sector agency staff including REREC) on ESHS risks and impacts management***<br><br>a. Through an independent consultant or KPLC staff who is familiar with ESF requirement, undertake a Training Needs Assessment (TNA) for the PIU staff responsible for ESHS risk management, including the PIU Coordinator/Manager, and management level | • TNA and Training Plan are in place by end of year 2 of Program effectiveness<br>• KPLC ESHS staff have adequate knowledge and skills about ESHS risks and impacts in projects, and are able to |

| No | Action | OVI and Time Frame |
|---|---|---|
| | decision makers with responsibility for E&S decisions.<br>b. Based on the results of the TNA, prepare an E&S risk management Training Plan and institute a training and sensitization program, complete with training a Manual and training modules - for all KPLC ESHS staff (at the national and regional/county levels) to train them on the ESF requirements, the new KPLC ESHS policies procedures, and processes (including for SEA-SH), to ensure their uniform application at all levels and as relevant, other provisions of this PAP<br>c. Undertake a rapid ESHS induction training for all management level KPLC staff with ESHS decision-making mandate regardless of department or core mandate, both to raise the profile of the importance of ESHS risk management at corporate level, and also to facilitate recruitment of ESHS champions across the corporation<br>d. Implement the ESHS training for the relevant staff in line with the training Plan<br>e. Make ESHS risk management a corporationwide cross-cutting issue and recruit ESHS champions to spearhead its uptake across board (at both national and regional/county levels).<br>a. *KPLC can learn lessons on this from the COMESA Trade and Development Bank (TDB).*<br>f. For the effective implementation of project related stakeholder engagement, grievance management, SEA-SH prevention and response, and labour risk management, establish linkages, synergies, and collaboration platforms with other MDAs and CSOs with mandates on these issues, and involve them in the development of the instruments. Also, ensure adequate financing for these activities<br>g. Undertake an awareness creation program on timelines and roles/responsibilities of electricity service providers (especially KPLC), to enable potential beneficiaries clearly understand who, at KPLC to go to for what kindly of service/help, including for project related grievances<br>h. Institute measures, including sensitization to protect poor VMGs and vulnerable households from unscrupulous contractors or other individuals (who may either seek to benefit from Ready Boards meant for these poor people or who seek to take away their meters in the pretext that they are KPLC staff), thus preventing the poor from accessing project benefits. Also, establish clear criteria for identifying the poor VMGs and other vulnerable households to prevent elite capture, especially of the Ready Boards | institute appropriate mitigation measures for avoiding, reducing, offsetting, or compensating for the risks and impacts, by first half of year 3 of the PforR Program effectiveness |

## 9.3 Recommendations for Strengthening Country Systems

110. Due to the many systemiccapacity gaps in ESHS risk management in Kenya's energy sector, the following sixactions are recommended to be spearheaded by the Ministry of Energy in collaboration with other infrastructure sector agencies.

1. The Ministry of energy should spearhead an energy sector-wide efforts to develop and harmonize ESHS policies, procedures, processes and guidelines for ensuring the sustainability of ESHS risk management in in the country's energy sector. This should include spearheading the implementation of the National Energy Policy requirements for a legal and regulatory framework on encroachmenttrespass on energy infrastructure, and for a National Resettlement Action Plan Framework for energy project(while considering the Energy Act's requirements on destruction of livelihoods).
2. In collaboration with KETRACO, MoA, KFS and other infrastructure development agencies, the ministry should facilitate the completion of efforts by KETRACO in reviewing compensation rates for trees and crops to reflect current market rates in order to ensure harmonized rates for the same in the country
3. The Ministry of Energy should **s**upport the development of regulations to operationalize the Energy Act, including uniform and consistent compensation for land and wayleave acquisition

4. The Ministry of Energy should rally other state agencies such as the Ministry of Lands, NLC, the energy sector institutions and institutions responsible for infrastructure development such as KeNHA, to support the operationalization of the CoK, 2010, requirements for the registration of community lands as well as other efforts aimed at ensuring harmony and sustainability of ESHS issues in the country
5. The Ministry or Energy should support the land sector institutions and other institutions with interest on land (Ministry of Lands and Physical Planning, National Land Commission, Ministry of Transport and Roads, and KeNHA, among others), to review the provisions on compensation for land, to include compensation of encroachers for their assets (structures, trees, crops)– but not for land.

   *This is necessary because the Land Act, 2012, like the Energy Act, 2019, and other legal frameworks related to land, do not envisage compensation of encroachers on public land or right of way, including wayleave trace encroachers. Instead, the law requires that encroachers are only given adequate notice to vacate, following which the applicable channels for their eviction are activated.*
6. The Ministry or Energy should support the Directorate of Occupational Safety and Health Services (DOSHS) with the ongoing OHS reforms and leverage on their mandate and presence to supervise and enforce OHS compliancein their various programs.

# Annexes

## Annex 2 (a): List of Stakeholders who Provided Feedback on the Draft ESSA Report

| No | Feedback Provider | Designation | Organization |
|---|---|---|---|
| 1. | Betty Sungura-Nyabuto | CEO | National Gender Equality Commission (NGEC) |
| 2. | DancunNyanjuiNdungú | Ag. Chief Human Resource Officer, Human Resource Services | KPLC |
| 3. | Frank GitumaKiganka | Land Adjudication and Settlement Officer, | Ministry of Lands and Physical Planning |
| 4. | Wycliffe SimwaBusaka | | State Department of ASALs & Regional Development |
| 5. | Galgallo Dida | Sub-County Social Development Officer, State Department of Social Protection and Senior Citizen's Affairs, Department for Social Protection | Machakos County |
| 6. | TofficKNalianya | Labour Officer | Trans Nzoia County |
| 7. | Amos Abong | Labour Inspector | Trans Nzoia County |
| 8. | Cypriano Rotuno | DOSHS | Tranz-Nzoia County |
| 9. | David Onyango | DSDO | Homa Bay County |
| 10. | Cosmas Mutoro | DOSHS | Kisumu County |
| 11. | Martin Osena | MoLPP | Vihiga |

## Annex (2b): The Unedited Stakeholder Feedback on the Draft ESSA Report

In response to the need for stakeholder consultations on the draft ESSA Report, the E&S team shared the draft report with stakeholders on February 28, 2023, with a request that they should provide feedback by March 10, 2023 (i.e., within two weeks). A total of 11 stakeholders from the national and county levels provided feedbackreport.Below is their unedited feedback. A consolidated summary of the feedback is included in the main body of the report.

1. **Feedback from the National Gender Equality Commission (NGEC)**

**INTRODUCTION**

**A. Overall comments**

The report is extensive and aligns well with the principles of equality and freedom from discrimination. The Commission notes the involvement of diverse communities including vulnerable populations. We acknowledge the Bank's commitment to ensuring the realization of provisions in specific legal and policy frameworks during the program implementation including the National Policy on Prevention and Response to Gender-Based Violence, 2014, the National Policy on Gender and Development, 2019, the Persons with Disability Act, 2003 and the National Gender and Equality Commission Act, 2011 among others. The Commission will be keen on overseeing the implementation of the program and adherence to the Bank's commitments in relation to our legal and policy frameworks.

**B. Specific Proposal**

a) Program beneficiaries:

**Proposals**

1. There is a need to define the vulnerable groups (this is likely to be misinterpreted)
2. Include special target for those populations in remote and hard-to-reach areas

3. Engagement with these communities is also critical since their likely to be beneficial
4. Programme to encompass other special interest groups (SIG)[8] target groups, especially Persons with Disabilities
5. Perceived Barriers and recommended mitigation measures: On Mitigation measures, include building awareness of the uses and benefits of green energy since most vulnerable populations have limited awareness and knowledge of green energy

**C. Other proposals**

1. Consultation with marginalized communities, including those in remote and vast areas, is necessary.
2. The program should include PWDs and Youth.
3. There are challenges with KPLC meters, which limit access.
4. Limited knowledge of the use and benefits of green energy should be addressed.

**2. Feedback from the Human Resource Services, KPLC**

Dear Beatrice,
I have only identified one review,
Please change Labour Act to Employment Act

78. **KPLC has developed a Human Resources Policy Manual.** Based on the Labour Act, 2007 (as amended in 2022) and on the Public Officers Code of Conduct at the workplace, KPLC has developed a Human Resources Policy and Procedures Manual which includes provisions on SH at the corporation level. The Manual will be launched in January 2023. However, like the Labour Act, the KPLC manual is also inward looking and does not extend its provisions on SH to KPLCs contractors and subcontractors. If GBV management (which should include SEA-SH) is the responsibility of HR, then HR could decide to include provisions on these in its HR manual at the appropriate section (and subject contractor and subcontractor employees to the same standards as its own staff), or prepare separate guidelines on which to hold contractor and subcontractor staff to account.


**NyanjuiNdungú| Ag. Chief Human Resource Officer**
**Human Resource Services**, Kenya Power & Lighting Co LTD

**3. Feedback from Frank Gituma: Land Adjudication and Settlement Officer, MoLPP**

Good morning;
Hope this finds you well,
Let me share my thoughts here with you.
Transmission lines by either KPLC, KETRACO KenGen or pipeline for crude oil and gases; requires a route(wayleave) that should be acquired, surveyed and mapped as per existing laws. The land tenure in place should be able to support full implementation of the program.
Community Land Act 2019 (CLA) requires that the land be registered under community name first. Compensation and fund transfers policies should be put in place. The intent to acquire these wayleaves should be rolled by either Cabinet Secretary in charge of Lands or County Executive Committee Member (CECM) in charge of lands in respective counties to National Land Commission, Valuation, Planning before the onset of the project.

Physical Planning plans that are GIS based should be prepared under the provision of Physical and Land Use Planning Act (PLUPA). Good planning of our urban area will ensure good collection and drainage of rainwater, waste collection and disposal together with easy access to the property.
Resettlement policies should be well formulated noting that a good percentage of Kenyan land in Northern Kenya is under community and a home to many refugees and IDPs.
There is a need for civic education, training and capacity building for all stakeholders.

[8] SIGs include Persons with Disabilities, Older Members of Society, Marginalized and minority groups

Regards.
Frank Gituma

## 4. Feedback from the Principle Physical Planner, MoLPP, Vihiga County

Basically, the ESSA Report has captured the most fundamental issues discussed with a range of stakeholders vis-à-vis the generation, distribution, and consumption of electricity. Participants' views drawn from all sectors of life has been addressed. Of particular interest has been how meticulously views touching on physical planning and land use have been documented, especially matters touching on land tenure, road network accessibility, encroachment on road reserves, rights of way (easements and wayleaves) and compensation inter alia. All the above factors are so important in the generation, distribution, and consumption of electricity. Needless to mention, are the uncoordinated Policies, Acts, Laws, and Regulations regarding the seamless management of distribution of electricity. Most issues you enquired about have been highlighted and a way forward conceived thereto, except for a few areas. Unless if it escaped my eyeshot.

One, the lack of an integrated work plan amongst the various players (i.e. water, roads, telecommunication, sewerage etc.) in service delivery has not come out clearly. As a result of this, we might witness so many cases of incessant re-routing of lines, disconnections, and disruptions, and even loss of life, hence a burden to the already meagre resources available.

Besides land use, there's a systemic administration weakness within the Kenya Power Company regarding certification for new domestic electricity connections. During the early 2000s, it was mandatory that for any new connection to take place, the Kenya Power personnel would visit the site and conduct an inspection for both the premises and the itinerary for the service line. Indeed after satisfactory inspection, a completion certificate was issued to the client. This was important as it used to check the safety issues raised in chapter 5.3.1 (of the ESSA report). Currently, all work has been left in the hands of contractors, some of whom are incompetent or compromised. No wonder it's not easy telling between genuine and competent technicians from rogue or persons masquerading as Kenya Power agents!

Principal Physical Planner,
Vihiga County.

## 5. Feedback from Wycliffe SimwaBusaka: State Department of ASALs & Regional Development

**COMMENTS ON GREEN AND RESILIENT EXPANSION OF ENERGY** PROGRAM-ENVIRONMENTAL AND SOCIAL SYSTEM

*Assessment E2.2 Environment, Health and Safety risks and impacts*: In this area, the report correctly notes that there may be lack of trained and accredited technicians but fails to state the exact risks involved; the use of **unqualified personnel** and sometimes '**do it yourself'** – **DIY** principle which poses the greatest risk to the potential **'beneficiaries'**. I propose this is exclusively mentioned.

There is no mention of possible corruption in the compensation process. History (and I'm not a prophet of doom) has shown that real beneficiaries have been short-changed, parallel bank accounts opened, land sold last minute to take advantage of the Vulnerable populations

In the sampling of the 16 counties, the sample was biased against the ASAL counties given that 80% of the country is ASAL and also given that the ASAL is the most disadvantaged in terms of access to not only Electricity but other infrastructural project/programmes. This may result in further perpetuating marginalization. It is important to note that the State Department for ASALs was among

those sampled but don't appear on the list and instead classified as 'others'. Luckily it appears in the national forum list.
On the regulator for Social Risk, the report clearly says there is no regulator. It should be clear that even areas where a regulator exists, there is a predecessor MDA which played a midwifery role. It is the State Department for Social Protection and Senior Citizens' Affairs to do this. It may be important to note that lack of funding for this state Department may be to blame for this. I will not blame KPLC for having **a one off public informational meeting** and calling it a stakeholder engagement **in this regard. National public participation/stakeholder engagement frameworks may be of help here.**

On project development objective, it is envisaged that WB intends to help KPLC have financial stability. Much as this is a welcome move, the company needs more than just that. It needs to rebrand. Kenyans have little faith in it. Some few months ago, the national government multi agency team was dispatched to Kenya power for this very reason. In fact the door to door visit for verification and mapping purposes was even started by NYS. A few year back, KPLC itself thought of rebranding and indeed it did. Or didn't it? They changed from KPLC to Kenya Power. In the ESSA report, incidentally, it is still KPLC! So, in order to endear itself to the public and '*sanitize'* itself, a rebrand may be necessary. I hope is contained in the 'KPLC turnaround strategy' in Result Area 1.
On the project beneficiaries, no express mention is made of opening up of hitherto unserved areas with electricity such as the ASALs which will open new markets, new business ventures like kinyozi, phone charging, posho mills etc. This should be mainstreamed and locals educated to take them up as this will most likely be taken up by others not from the disadvantaged areas.
I hope this will add value to the project as we plan to move forward together.

Thank you
Wycliffe SimwaBusaka, Deputy Director, Research and Partnerships, State Department of ASALs & Regional Development (+254725355615)

6. **Feedback from Sub-County Social Development Office, Department for Social Protection**

Greetings, thank you for sharing the draft. My input would be on this two issues:

Stakeholder holder engagement is key for the success of any project. There is need to analyze stakeholders by impact and influence.Mitchell *et al*; 1997 notes the types of stakeholders be it dormant, discretionary, demanding, dominant, dangerous, dependent, definitive, non-stakeholders. What categories do those engaged in the draft fall in and what is there impact and influence in regard to Mendelow stakeholder framework *(Johnson and Scholes, 1999*). Could there be other key groups that were missed out?
Potential consequences of data and information mismanagement is not addressed in the draft.

7. **Feedback from Labour Officer, Trans Nzoia County**

Under Labour issues the training is paramount and as well as adherence to sexual harassment policy and the limitation of discrimination whatsoever during program implementation.

8. **Feedback from Labour Inspector, Trans Nzoia**

In line with labour and employment provisions. There is need to have clearly defined jobs through communication process. This can be achieved through engagement of local communities in recruitment and selection procedures, proper grievance handling process.

Skills development program should be fully prioritised and implemented for a motivated and productive workforce in regard to sexual harassment policy, discrimination in employment. Health and safety at the workplace, and,liaising with the County labour office in addressing labour complaints/ disputes that may arise in the course of the project so as to avert strikes.

Amos AbongApeeny, Labour Inspector, Trans-Nzoia Labour Office, Kitale.

### 9. Feedback from DOSHS, Trans Nzoia

Issues Captured under OSHA are Accurate and Adequate. Other Requirements if needs arise will be relayed to the contractors on site.

### 10. Feedback from DSDO, Homa-Bay County

Gender based violence is a globally prevalent phenomenon with health and dire human rights violations and implications. It knows no social, economic, class or cultural confinement. It occurs in families, schools, workplaces, social structures, and communities across the world. Sexual and Gender based violence (SGBV) is the most devastating form of gender inequality. More than one third of the women in the world have experienced some form of gender-based violence. The impacts of such violence extend far beyond the individual survivors, affecting households and communities, and spanning across generations. Sexual and Gender based Violence is widely recognized as a development constraint as revealed by the World Bank report (2013-2018). World Health report on violence and health discloses that Women and girls, and to a lower degree men and boys, directly experience the impact of some form of gender-based violence. The Report further reveals that women are disproportionately affected by SGBV, and this is evident by the fact that violence initiated by wives was only a fraction of the level of violence initiated by husbands. According to the World Health Organization (WHO), 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. The effects of violence experienced by women, such as intimate partner violence (IPV), are felt at the individual, family, and community levels. Consequences of violence include increased risk for suicide, alcohol abuse, as well as negative impacts on human development outcomes.

The unequal system of patriarchy governs various aspects of Kenyan society. SGBV is commonly an act of patriarchy. It is perpetrated by persons who wish to exercise power and control over their survivors. These perpetrators can be anyone, from family members, intimate partners, acquaintances, strangers or institutions (Pypers, E. 2020).

Government of Kenya is committed towards eliminating gender inequalities. The Constitution 2010 is a progressive document which has made it possible for development of policy and legislative frameworks on comprehensive prevention, protection, response, and management of SGBV. The Constitution promotes equality for all persons while prohibiting all forms of discrimination and calls for protection of all persons by the respective agencies. Commitment to addressing SGBV has accelerated faster in policy documents than in implementation of the said policy to the grass root levels of society. Further to this, there is a complete disconnect between the envisioned legislation, the experiences of the survivors and implementation through practical operations of the laws within different sectors. The devotion to fight all forms of SGBV calls for enhanced multi-sectorial and well-coordinated approach within relevant structures and agencies. It is on the same premise that the County government of Homa Bay through the department of Gender and Social Services and SGBV Technical Working Group has initiated a guiding framework aimed at eradicating SGBV in the County through a Multi Sectorial Approach in intervention and programming

### 11. Feedback from Cosmas Mutoro, DOSHS, Kisumu County

The report has adequately covered issues of concern under OSH. It is highly recommended for adoption. However, the observation comment on DOSHS weaknesses page 91/142 bullet #4 need to be stated accurately.1) DOSHS has staff adequately prepared to carry out safety audits of KPLC works and installations. 2) DOSHS has provision in OSHA, 2007, section 11 that approves competent professionals/safety and health advisors (delegated authority) who carry out safety audits of works and installations (and submit reports to DOSHS) for monitoring and compliance. What is needed in energy projects is project component on technical collaboration with DOSHS to improve staff capacity because of the ever-changing technology (hence new risks) in the electric power sector.

C.MUTORO, DOSHS, KISUMU

## Annex 3: 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, publicsafety, 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 are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the NLC of documents of title to the land. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide 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 endeavor 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.