The National Treasury & Economic Planning

The National Treasury

REPUBLIC OF KENYA

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

KENYA COVID-19 RECOVERY

SUPPORTING ACCESS TO FINANCE AND ENTERPRISE RECOVERY (SAFER) PROJECT

DRAFT ENVIRONMENT AND SOCIAL MANAGEMENT SYSTEM (ESMS)

April , 2023

Abbreviations

Acronym	Definition
AFI	Apex Financial Institution
AMFIs	Association of Micro-Finance Institutions
CBFI	Community Based Financial Institutions
CBK	Central Bank of Kenya
CGS	Credit Guarantee Scheme
CLF	Centralized Liquidity Facility
DOSH	Directorate of Occupational Safety and Health
EMCA	Environment Management and Coordination Act, 1999
ESF	Environment and Social Framework
ESS	Environmental and Social Standard
FSSP	Financial Sector Support Project
GDP	Gross Domestic Product
ILO	International Labor Organization
KBA	Kenya Bankers Association
KIBT	Kenya Institute of Business Training
KIE	Kenya Industrial Estates
KIRDI	Kenya Industrial Research and Development Institute
KNBS	Kenya National Bureau of Standards
LN	Legal Notice
MFB	Micro Finance Banks
MoITED	Ministry of Industrial Trade and Enterprise Development
MSEA	Mico and Small Enterprises Authority
MSMEs	Micro Small and Medium Enterprises
NT	National Treasury
OHS	Occupational Health and Safety
OSHA	Occupational Safety and Health Act, 2007
PCC	Project Coordination Committee
PFI	Participating Financial Institution
PFM	Public Finance Management Act

Acronym	Definition
SACCO	Savings and Credit Cooperative Society
SAFER	Supporting Access to Finance and Enterprise Recovery
SASRA	SACCO Societies Regulatory Authority
SEP	Stakeholder Engagement Plan
WHO	World Health Organization
WIBA	Work Injury Benefits Act

Contents

1 Introduction

Context of the ESMS

The National Treasury (NT) is in the process of borrowing funds from the World Bank Group (WBG) for a project known as Supporting Access to Finance and Enterprise Recovery (SAFER). This project seeks to address market failures in the provision of finance to Micro, Small and Medium Enterprises (MSMEs), that were exacerbated by the negative impact of COVID-19.

In order to access funding from the WBG for this project, the NT is required to develop and implement an Environmental and Social Management System (ESMS). An Environmental and Social Management System (ESMS) is a set of policies, procedures, tools and internal capacity to identify and manage a financial institution's exposure to the environmental and social risks of its clients/investees. An ESMS states a financial institution's commitment to environmental and social (E&S) management, explains its procedures for identifying, assessing and managing E&S risk of financial transactions, defines the decision-making process, describes the roles, responsibilities and capacity needs of staff for doing so and states the documentation and recordkeeping requirements. It also provides guidance on how to screen transactions, categorize transactions based on their environmental and social risk, conduct environmental and social due diligence and monitor the client's/investee's environmental and social performance.

Despite having a vibrant financial sector, lending to MSMEs has been declining in Kenya for the past few years on account of the interest rate cap, even though MSMEs contribute substantially to the Kenyan economy. The COVID-19 pandemic exacerbated an already bad situation and further slowed-down the growth in private sector credit. Initial research indicates that this is hitting MSMEs much more than larger firms.

The SAFER project will achieve its objectives through a mix of market instruments which will be channeled through the private sector and Government. The funds will be channeled from the NT to an apex financial institution (AFI) which will on-lend to several Participating Financial Institutions (PFIs) including Micro Finance Institutions (MFIs) and SACCOs who in turn will on-lend to MSMEs. Additionally, lines of credit will be provided using digital channels operated through commercial banks and Mobile Network Operator(s) (MNOs).

In order to fully recover from the effects of the pandemic, the SAFER project intends to provide finance to MSMEs through (i) increased access to financial services, (ii) enhanced capabilities, and (iii) support the post-COVID-19 recovery of MSMEs in Kenya. The project funds will be used to finance working capital needs for MSMEs which will include (i) salaries to employees and (ii) rent expenses among other uses. The Project will achieve its objective through a mix of market instruments, channeled via the private sector and Government.

Given that the SAFER project is financed by the World Bank Group (WBG), it is a requirement that all on-lending is done in accordance with the Environmental and Social Standards (ESSs) of the WBG. Subsequently, each FI is required to develop and maintain an ESMS that it has direct responsibility for selecting and funding subprojects.

To ensure that the NT's core function on sustainable development is achieved, this ESMS will be rolled out and implemented by the AFI and PFIs under this project. This ESMS will set the minimum standard required to be met by an AFI and PFIs in on-lending to the MSMEs under the SAFER project.

The principal E&S risk exposures that the SAFER project intends to address is issues that can lead to a range of financial, legal and reputational consequences for PFIs such as, an end user defaulting on their loan repayments due to E&S costs and liabilities or the PFI may face reputational damage resulting from association with an end user's E&S impacts.

This ESMS is based on Kenya's national framework on sustainable development as enshrined in (i) the Constitution of Kenya, 2010, (ii) national Environmental, Health and Safety (EHS) statutes and their subsidiary legislation, and (iii) international requirements such as the World Bank Group's (WBG's) Environmental and Social Standards (ESSs).

Applicable E&S Requirements for NT Lending Activities

The NT will ensure that business activities to be financed are environmentally and socially sound and will apply to its direct investments. The Applicable E&S Requirements are the following:

a. All sub-borrowers and sub-projects follow relevant E&S national and local laws and regulations (overview provided in Annex 2);

b. No financing will be provided to activities on the List of Excluded Activities[1] (see Annex 1); and

c. For sub-borrowers and sub-projects categorized as *High Risk*, in accordance with this Policy, no financing will be advanced.

Requirements for the AFI and PFIs

As a condition of eligibility to receive financing from the NT, the AFI and PFIs will develop, implement and maintain an Environmental and Social Management System (ESMS) to identify, assess, manage, and monitor E&S risks and impacts associated with business activities they finance under SAFER commensurate with the nature and magnitude of such risks and impacts. Where the PFI can demonstrate that it already has an ESMS at the time of the NT's or AFI's due diligence, it will provide adequate documented evidence to that effect.

To ensure alignment with this ESMS, AFIs and PFIs ESMS should include the following elements: (i) environmental and social policy, (ii) clearly defined E&S risk identification, assessment, and management procedures, (iii) organizational capacity and competency, (iv) monitoring and review of E&S risks of individual transactions and the portfolio, and (v) external communication mechanisms.

As part of the above elements, the AFIs and PFIs ESMS must include:

(i) An E&S risk categorization system with clearly defined risk categories;[2]

(ii) As part of their E&S policy, the AFI and PFI will state the applicable E&S requirements as follows:

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[1] List of Excluded Activities may be amended from time to time.

[2] A typical categorization system used by PFIs may consist of three risk categorizes, which correspond to high, medium, or low risk.

- All MSMEs follow relevant E&S national and local laws and regulations (overview provided in Annex 2); and,
- No financing will be provided to activities on the List of Excluded Activities[3] (section **Error! Reference source not found.**).

(iii) AFIs and PFIs ESMS will also incorporate an appropriate E&S screening process, taking into consideration provisions of section 6 of this Policy, to ensure that sub-borrowers and sub-projects financed are environmentally and socially sound.

AFIs and PFIs ESMS need to be operationalized before any transactions with the respective entity See Annex 8 for an outline of AFI and PFI ESMS.

The NT will require the AFI and PFI's to maintain labor management procedures in line with national laws and WB Environmental and Standard (ESS) 2 on Labor and Working Conditions.[4]

The PFIs will prepare and submit to the AFIs an Annual E&S Report on the implementation of its ESMS that will include information on E&S risk profile of its portfolio financed through SAFER. The PFI will promptly notify the AFI of any significant accidents or incidents associated with sub-borrowers and sub-projects to be financed.

Scope of the ESMS

This ESMS covers all activities to be undertaken by the National Treasury with respect to the SAFER project. The requirements of this ESMS shall apply to the full range of lending activities to MSMEs covered under the SAFER project.

The Apex Financial Institution (AFI) and all Participating Financial Institutions (PFIs) will be required to incorporate the requirements of this ESMS in their respective E&S criteria for on-lending to MSMEs.

Applicability of the ESMS

This ESMS will be applicable to the full range of sub-projects which will be covered under the SAFER project. The NT will apply the risk categorization procedures and the requirements of undertaking due diligence, procedures involved in loan management, monitoring and reporting of the AFI and PFIs' lending activities in keeping with the NT's E&S policy.

The application of this ESMS shall encompass sustainable banking concepts, which are increasingly recognized by the banking sector globally.

Elements and structure of the ESMS

An environmental and social management system (ESMS) is a modularized set of policies, plans and programs that provide a consistent approach to managing environmental and social issues associated with a project. As such, the requirements of an ESMS include:

[3] List of Excluded Activities may be amended from time to time.
[4]NT will analyze and leverage the synergies that may exist between World Bank Environmental and Social Standard 2 and relevant Kenyan labor laws and regulations. Kenya's labor legislation is generally modeled around the core ILO conventions.

(i) E&S Policy

(ii) Identification, assessment and management of the E&S risks and impacts

(iii) Organizational capacity and competency

(iv) External communication and Grievance Redress Mechanism

(v) Monitoring and review of E&S risks.

The ESMS is a living document that is initiated early in project preparation and is reviewed and updated throughout development and implementation of the project as the context including national law and policy change. This document may also be adjusted as the project advances, and as new stakeholders and categories of workers get involved in the various activities.

The implementation of this ESMS is a strategic and operational decision for the NT. The success of the ESMS depends on the **active and visible leadership at levels within the NT** and ensuring that workers consciously and actively participate throughout its implementation.

Leadership and worker participation is at the core of the ESMS and forms the backbone of a successful management system. Subsequently, the leadership within the NT is committed to implementing this ESMS through:

(1) Visible top management commitment, responsibilities and accountabilities embedded within the ESMS

(2) Ensuring that the AFI and all PFIs promote a culture within their respective organization to support the intended outcomes of the ESMS

(3) Regular communication with the AFI and PFIs regarding sound management and implementation of this ESMS

(4) Ensuring that the AFI, PFIs and their workers are consulted in development and implementation of the ESMS for funding activities under the SAFER project

(5) Provision of resources such as an E&S Officer focal point to maintain the ESMS

(6) Implementing processes for identification of E&S risks and opportunities and putting in place appropriate controls or enhancements based on risk evaluation, and

(7) Monitoring the implementation of the ESMS within the NT as well as in the AFI and PFIs.

2 Project description

Micro Small and Medium Enterprises (MSMEs) play a critical role in accelerating economic development, investment as well as the creation of employment opportunities in the country. According to the 2020 Economic Survey, MSMEs constitute about 98% of all business in the country, create 91% of the jobs annually and contribute 34% of the GDP. However, most of these enterprises experience limited access to credit partly because of the perceived risk by financial institutions. The situation has been worsened by the impact of COVID-19 pandemic and requires immediate interventions.

The objective of the Supporting Access to Finance and Enterprise Recovery (SAFER) project is to increase access to financial services, enhance the capabilities, and support the post Covid-19 recovery of MSMEs in Kenya. The project seeks to address market failures in the provision of finance to MSMEs, which have been exacerbated by the negative impact of COVID-19. The project contributes to the implementation of the third element of the 8-Point Economic Stimulus Program unveiled by President Kenyatta on 23rd May 2020. This element focuses on enhancing liquidity to MSMEs through provision of affordable credit in an efficient and structured manner.

Project components

1. The project has three components, namely:

   i. Innovation and Liquidity support to MSMEs through Community Based Financial Institutions and digital channels

   ii. De-risking lending to MSMEs; and

   iii. Technical assistance to build resilience

Component 1: Innovation and Liquidity support to MSMEs (US$ 55 million)

This component aims to provide liquidity support to MSMEs through regulated financial intermediaries (especially regulated retail lending financial institutions that have limited liquidity) with a focus on MSME banking, including those innovating with digital channels (hereinafter referred to as participation financial institutions (PFIs). In addition, support will target MSMEs that were previously financed but are now facing constraints in addition to those that are considered bankable but have not been able to access credit. The indicative size of loans to individual microenterprises will range between KES7,000 and KES 150,000 and for small enterprises will range between KES150,001 and KES 250,000. Tenor for microloans is expected to not exceed 18 months, and for small loans to not exceed three years. Maximum grace period of six months may apply for both micro and small loans. These aspects will be further defined in the project operations manual. This component will have two windows: window 1 (US $25million) and window 2 ($ 30 million). Window 1 will provide lines of credit to MSMEs through Savings and Credit Co-operative (SACCOs) and Micro Finance Banks through an apex institution that will wholesale the lines of credit and in line with government policies and regulation. The apex institution will be an entity, which may include a financial intermediary, identified by the National Treasury.

Window 2 under this component, which will also be managed by the apex institution, will help drive innovation targeting informal sector MSMEs by leveraging digital channels to extend offering by PFIs to micro and small firms.

Component 2: De-risking Lending to MSMEs (US$ 30 million)

This component aims to unlock lending to MSMEs during the COVID-19 crisis and beyond to support recovery and growth of enterprises. This component would ramp up support to the partial credit guarantee scheme (CGS) that has been set up by The National Treasury as an emergency COVID-19 response measure both in the interim and support the establishment and capitalization of the Credit Guarantee Company (CGC). The CGC will be established to operate according to the Principles of Public Credit Guarantee Schemes as a sustainable mechanism of de- risking MSMEs.

Component 3: Technical Assistance to Build Resilience (US$ 15 million)

This component will provide technical assistance to build resilience capacity of the MSME finance ecosystem beyond the lifecycle of SAFER. During the life of the Project, the component will support NT, CBK, SASRA and PFIs in the delivery of component 1 and 2 and ensure overall growth of the MSME lending market.

(a) Sub-component 3a: TA to NT in setting up the CGC (US$5 million).

Support to the CGC will include support to CBK to develop prudential regulations for the company. Once the CGC has been established, the project will provide support to build its operational capacity to ensure it effectively delivers its mandate.

(b) Sub-component 3b: TA to Participating Financial Institutions (PFIs) (US$ 2 million).

This sub-component will support PFIs (SACCOs, MFBs and financial intermediaries involved). The support will target strengthening of governance arrangements, risk management capacity, business models, and operational efficiency. The majority of the SACCOs and MFB, especially the smaller ones, face numerous challenges including limited staff capacity with limited funds to invest in capacity building.

(c) Sub-component 3c: Technical Assistance to financial sector regulators to strengthen the regulatory environment and enhance the financial infrastructure (US$ 6 million)

This sub-component will support follow-on TA activities related to strategic initiatives started under the Kenya Financial Sector Support Project (FSSP) that are tied to underlying structural weaknesses holding back improved financial intermediation and improvement in liquidity distribution and asset-liability management (ALM). These activities will include: the implementation of a shared digital services platform for Saccos (i.e., SACCO Central initiative by SASRA), which will also establish a mechanism for a centralized liquidity facility similar to the inter-bank market to aid liquidity distribution and asset-liability management in the SACCO sector; implementation of the informal sector micro pension scheme by NT, and; added support for the central securities depository (CSD) initiative by CBK.

(d) Sub-component 3d: This component will also support Project Management by NT (US$ 2 million)

The objective would be to provide resources for: (i) workshops and outreach to facilitate diffusion and replication of lessons and promising innovations from the project, (ii) monitoring and evaluation (M&E) analyses to ensure the implementation and sustainability of the Project's activities, (iii) develop environmental and social operational and training manuals for PFIs and

MSMEs; and (iii) project implementation support, through key functions forming part of the Project Implementation Unit (PIU).

This subcomponent will finance the design and implementation of an overall Project communications strategy, information disclosure and dissemination tools to inform stakeholders on the Project's progress and facilitate replicability of success stories. These will support the Project through a demonstration effect and contribute to mobilize added private capital and broader capacity building. Finally, this subcomponent will support the establishment of the Project Implementation Unit (PIU), which will be responsible for the day-to-day management of the project, with a multilayer implementation and oversight structure. The PIU would consist of NT staff and consultants/experts that would need to be hired to boost PIU capacity. The core PIU staff will include a Project Coordinator, a Procurement Specialist, a Project Accountant, and an M&E consultant. Since the social and environmental risks are deemed to be substantial, the PIU will also recruit a full-time environmental and social (E&S) safeguards consultant.

Project Activities

Under Component 1 the project will focus on the following activities:

- Identify an Apex Institution to channel lines of credit to MSMEs
- Work with the Apex Institution to identify appropriate SACCOs and Micro Finance Banks through which credit lines will be channeled to MSMEs
- Work with the Apex Institution to drive innovation targeting informal sector MSMEs

Under Component 2 the project will carry out activities as follows:

- Establish a Credit Guarantee Company (CGC) to operate credit guarantee schemes
- Build the systems and capacity for the CGC.

Under component 3 the project will:

- Provide Technical Assistance to the CGC to operationalize the institution to lead in robust credit guarantee schemes especially for MSMEs in Kenya
- Provide Technical Assistance to Participating Financial Institutions (PFIs)
- Provide Technical Assistance to financial sector regulators
- Support the project management at the national Treasury (NT) including developing a project communication strategy, setting up a project implementation unit (PIU) and resourcing it, among others.

During the implementation of the SAFER project, it is expected that the NT's Environment and Social Management System (ESMS) will guide the Apex Financial Institution and Participating Financial Institutions to include environmental and social criteria in the on-lending processes to MSMEs.

Functions of NT, AFI and PFIs

The institutional roles and responsibilities of the National Treasury, Apex Financial Institution and Participating Financial Institutions is given in Table 1.

Table 1:General roles and responsibilities of NT, AFI and PFIs

Stakeholder	Overview of Function / Role	E&S role
National Treasury	• Accountable for the implementation of the SAFER project and oversight. • Approval of the AFI's E&S policy framework. • Approval of funding for the Unit. • Approval of evaluation and selection criteria for Project proposals submitted for funding. • Approval of allocations to the AFI; and • Adoption of the AFI's financial/non-financial reports.	• Assign adequate and appropriate E&S Officers within the NT for providing oversight in implementing the ESMS. • Ensure that E&S issues are integrated in review and approval of process of AFI's ESMS. • Approve AFIs ESMS and monitor and review ESMS implementation.
Apex Financial Institution (AFI)	• Review of applications for funding and Financing Agreements by PFIs. • Disbursement of funding to PFIs for the SAFER project • Implementation and monitoring of funds disbursed through the SAFER Project funded by the NT and the realization of benefits.	• Ensure that the AFI ESMS aligns with requirements in NT ESMS. • Assign adequate and appropriate E&S Officers within the AFI for providing oversight in implementing the ESMS. • Carry out E&S assessment of PFI in line with AFI's ESMS requirements • Report on ESMS implementation and E&S performance of subprojects. • Review periodic and annual E&S audit reports prepared by PFIs.
Participating Financial Institution (PFI)	• Identify MSMEs that require funding from the SAFER project • Ensure that funds are not disbursed to the list of excluded	• Ensure that the PFI ESMS is aligned and consistent with the NT and AFI ESMS instruments. • Assign adequate and appropriate E&S Officers within

Stakeholder	Overview of Function / Role	E&S role
	activities (see section **Error! Reference source not found.**) • Disburse funds to eligible MSMEs under the SAFER project; • Ensure that the SAFER project funds are used for the intended purpose; • Ensuring compliance by the MSME to all regulatory and World Bank E&S requirements;	the PFIs for providing oversight in implementing their ESMS. • Assess E&S risk associated with participating MSMEs as per the ESMS requirements. • Annual E&S audit to confirm that E&S issues are integrated into decision making and that ESMS is being implemented as intended. • Report E&S incidents from the loan portfolio to AFIs

Eligibility under SAFER Project

Projects and subprojects with high or significantly high risk are not eligible for funding under the SAFER project. It will only deal with projects and subprojects of medium to low risk. The E&S risk management framework described in Chapter 5 will be used to confirm eligibility. Annex 4 of this ESMS describes project categorization, and only projects in categories B and C are eligible.

The indicative size of loans (microloans) for low risk subprojects (microenterprises) will range between KES7,000 and KES 150,000 with a tenure not exceeding 18 months. As for medium risk subprojects (small enterprises), size of loans (small loans) will range between KES150,001 and KES 250,000. Tenure for small loans to not exceed three years.

3 Legal and regulatory framework

Context of legal and regulatory framework

This ESMS shall be implemented in accordance with (i) the legal and regulatory framework in Kenya on matters concerning E&S and (ii) Good International Industry Practices (GIIP) on E&S management of project related impacts. This section outlines the framework for implementing the SAFER project in an environmentally and socially sustainable manner consistent with the Constitution of Kenya 2010, the principal E&S related statutes currently in force, the UN SDGs and the WBG's environmental and social standards.

The apex financial institution (AFI) and all participating financial institutions (PFIs) under the SAFER project shall be required to comply with the legal and regulatory framework described in Annex 2.

Additionally, and in the absence of Kenyan E&S related legislation, the projects to be financed under the SAFER project will be required to comply with applicable World Bank Environmental and Social Standards.

4 Environmental and Social Commitment

The National Treasury recognizes that global sustainability challenges, including climate change and human rights, are of critical importance and must be addressed. The National Treasury partners with clients and other stakeholders to mobilize capital at scale to help find solutions to these challenges.

To help the National Treasury to deliver long-term value for its clients, shareholders and employees, the institution employs comprehensive risk management policies that include environmental and social risk. The National Treasury's Environmental and Social Commitment Statement outlines the NT's commitment and approach to identifying and assessing environmental and social risks. This E&S Commitment Statement incorporates ongoing dialogue with internal and external stakeholders and is an evolving document that is reviewed annually and updated to reflect its strategy and key developments.

Vision and Policy Approach

The National Treasury (NT) recognizes that effective management of environmental and social (E&S) impacts associated with its operations is critical to the success of the SAFER project.

The NT will ensure sound management of environmental and social risks associated with business activities[5] to be financed under the SAFER project. Thus, the NT is committed to put in place and implement adequate measures to identify, assess and manage E&S risks and impacts associated with financing under the SAFER project through the Apex Financial Institution (AFI) and Participating Financial Institutions (PFIs).

Under SAFER, the NT will finance projects that meet requirements set in this ESMS and complementary requirements such as stakeholder engagement, grievance management, labour management and gender based violence and harassment. Complementary requirements may be triggered by sector, level of risk, lack of robust E&S policies and procedures as well as resources to manage E&S risks.

Therefore, the AFI and PFIs that on-lend to MSMEs will assume the responsibility for conducting E&S due diligence and for screening, reviewing, monitoring projects throughout the project cycle[6] in conformity with the principles and requirements embodied in the environmental and social policies of the country, including environment, social, and health and safety legal requirements, as well as requirements under the SAFER project, as applicable; and,

[5] Business activities is a general term used to mean, as appropriate, sub-borrowers (where, for example, working capital is provided to support ongoing business need of an MSME), sub-projects (where financing is provided for a specific set of activities such as expansion or existing or construction of new production facility), or – in case of lease finance – equipment and assets to be financed.

[6] In the case of the NT financing through other financial institutions, these institutions will be responsible for environmental and social due diligence, including screening.

The NT will finance projects that comply with the country's E&S laws and regulations and will ensure that certain environmentally and socially harmful activities are excluded from financing as indicated in Annex 1 : List of Excluded Activities.

SAFER E&S Commitment

5. Introduction

The National Treasury E&S Commitment provides a statement of commitment and framework from which this ESMS has been developed. The E&S Commitment will be reviewed annually to ensure that it remains aligned with national legislation, international E&S standards, and good international industry practices (GIIPs) .
The NT aims to contribute to sustainable development in Kenya and is committed to act in an environmentally sustainable, socially responsible, and ethical manner. The NT will actively manage its impacts and risks in relation to the environment, neighboring communities, employee health and safety, and contractors and sub-contractors, and will engage ethically and transparently with all stakeholders.

The NT E&S Commitment will be implemented through its Environment and Social Management System (ESMS) and is aligned to national E&S laws and regulations, and GIIPs.

The Principal Secretary (PS) at the NT is ultimately accountable for implementation of this E&S Commitment and will be rolled out to the Apex Financial Institution (AFI) and all Participating Financial Institutions (PFIs). This accountability is delegated to the Director General of the Budget, Fiscal and Economic Affairs who will be responsible for implementing this ESMS.

6. Scope of the E&S Commitment

This Commitment applies to all NT employees, the AFI and all PFIs associated with the SAFER project. Where there is no conflict with this E&S Commitment, the NT may adopt policies to meet Kenyan regulatory, lender or other stakeholder requirements.

This Commitment applies to **Investments through PFIs:** NT wholesale finance under SAFER to an AFI for on-lending to MSMEs in the form of financing through eligible PFIs and in the form of working capital through eligible commercial banks and microfinance institutions.

7. Objectives of the E&S Commitment

Through the application of this Commitment, the NT will seek to ensure that E&S due diligence and monitoring processes are designed and implemented in compliance with applicable SAFER requirements and E&S regulatory requirements in Kenya.

The primary objectives of this E&S Commitment are:

- To set out applicable E&S requirements for all business activities financed under the SAFER.
- To establish criteria and procedures for identification, assessment, and management of E&S risks and impacts to be followed by the AFI and PFIs under the SAFER.

- Fully implement and comply with national requirements for E&S risk management in Kenya, as well the NT's bilateral and multilateral lender requirements under SAFER; and,
- Promote greater transparency and accountability on E&S issues internally and externally through disclosure and reporting.

Commitment Statement

It is the policy of the National Treasury to protect the safety and health of people and the environment.

Scope

Consistent with its environmental and social values, the National Treasury will conduct its business in a socially responsible and ethical manner.

Leadership at all levels within the National Treasury will foster a culture of environmental and social excellence by assuring alignment with the articles on E&S aspects espoused in the Constitution of Kenya, 2010, national environmental and social laws and regulations, and good international industry practices. The National Treasury will operationalize this Commitment statement through an Environment and Social Management System (ESMS) to achieve and sustain excellence in all our operations.

Adherence to the NT legal and regulatory framework

The National Treasury will assess and manage risks to our employees, contractors, the public and environment within the framework of the following expectations:

- We will comply with all applicable legislation in Kenya on environmental and social management and World Bank Environmental and Social Standards;
- At a minimum, exclude all activities listed in the most current version of the World Bank Group's Exclusion List
- Measure and report on environmental and social performance at regular intervals to our stakeholders and partners

Environment and Social Management System (ESMS)

This E&S Policy will be operationalized through our ESMS which formalizes our organizational structure and practices for managing E&S risks and impacts of our lending. As a minimum, we will review this ESMS annually to reflect any changes in internal processes or standards that we apply.

Exclusion List

Annex 1 of this policy contains an exclusion list of activities that the National Treasury will not invest in. all investments will be screened against this exclusion list as part of the due diligence process outlined in our ESMS.

Environmental and social commitments

The National Treasury will:

- Ensure sustainable and efficient use of resources
- Prevent, or where this is not feasible, minimize and mitigate the release of pollutants to air, water and land

- Avoid or minimize and mitigate degradation of natural habitats, biodiversity and ecosystem services
- Promote a culture of environmental and social stewardship by employees, contractors, apex financial institution and participating financial institutions
- Provide a safe and healthy work environment for all National Treasury employees and visitors and require the same of all our partners
- Comply with the International Labor Organization's fundamental Conventions and the UN Declaration of Human Rights
- Protect neighboring communities from the impact of our lending activities and prioritize them in the distribution of project benefits such as employment and business opportunities
- Provide support to vulnerable and marginalized groups from our lending activities and, identify and manage differing impacts on women, youth and the elderly
- Avoid physical and economic displacement and where this is not possible, identify land that is the least impacting
- Identify and manage local and cultural community sensitivities through comprehensive stakeholder engagement

Engagement and Disclosure

- Ensure that the National Treasury interactions with stakeholders are inclusive and transparent
- Ensure that lending for activities is done in consultation with project affected communities
- We will develop and implement a grievance redress mechanism for resolving issues of concern to our stakeholders
- We will disclose this E&S Policy and our ESMS to our partners and stakeholders through various communication channels

Governance and Business Integrity

- The National Treasury will conduct its business dealings with honesty, integrity, fairness, diligence and respect
- The National Treasury shall conduct its activities with zero tolerance to bribery, corruption, fraud and unethical behavior

Continuous improvement

The National Treasury is committed to the principle of continual improvement of its Environmental and Social management. Subsequently, this E&S Policy and ESMS will be reviewed periodically and updated in accordance with the latest E&S statutory requirements.

E&S Policy implementation

This policy has been approved by the National Treasury is is subject to periodic reviews and updates. The Principal Secretary in the Treasury is accountable for implementation of this E&S Policy and associated ESMS. The Director General in the Directorate of Public Debt Management shall be responsible for implementation of this ESMS.

5 Environmental and social risks management

Potential E&S Risks and Impacts

Some of the potential E&S risks and impacts associated with SAFER Project are shown in the table below:

Component	Level of E&S Risk Exposure	Relevant E&S Risks/Impacts
Component 1 – Innovation & Liquidity	Medium to Low	• Labour and working condition including worker safety • Non-compliance with local and international laws • Community relations • Air and noise pollution • Water use and pollution • Reputational risk • Data protection and privacy
Component 2 – De-risking lending to MSMEs	Medium to Low	• Labour and working conditions • Potential GBVH cases • Occupational Health and Safety • Climate and disaster risks
Component 3 – Technical Assistance and Project Management	Low	• Labour and working conditions including staff safety

E&S components associated with Component 1 and 2 will be evaluated by NT, APFI and PFI during financing appraisal. A deep dive on particular topics will depend on the issues raised during screening and their severity. Aspects such as labour, occupational health and safety, climate risks, resource use and pollution will be interrogated in detail during the due diligence stage for Category B transactions.

E&S Screening

Upon receipt of an application, Loan or Credit Officers at AFIs and PFI will screen the transaction against the three main elements in the order listed below:

- Excluded sectors as per the Exclusion List in Annex 3. The Exclusion List builds upon the Exclusion List in the Environmental and Social Commitment Plan (ESCP) in order to ensure that the MSMEs, AFIS and PFIs understand with specificity and comply with the various terms mentioned in there;
- Potential environmental and social risks and impacts by requesting information on the nature and type of proposed activity, geographical location, approvals or permits from relevant authorities, environmental and social issues arising from the transaction, etc
- Risk category and rating described below.

8. Risk categorization of projects under SAFER

All financial institutions are exposed to environmental and social risks through their clients/investees. If left unmanaged, these risks can lead to a decline in the financial institution's reputational image, costly litigation or loss of revenue as shown in Figure 1. The National Treasury recognizes that environmental and social risks are inherent in on-lending by an AFI and PFIs operations. Some potential environmental and social risks may not seem significant or relevant at the time of approval of a financial transaction, but may become so during execution, as, for instance, as a result of higher regulatory standards and increased levels of enforcement. In other cases, environmental and social risks, such as spills or explosions, may seem unlikely to occur, but when they do, the environmental and social impact is potentially extremely high.

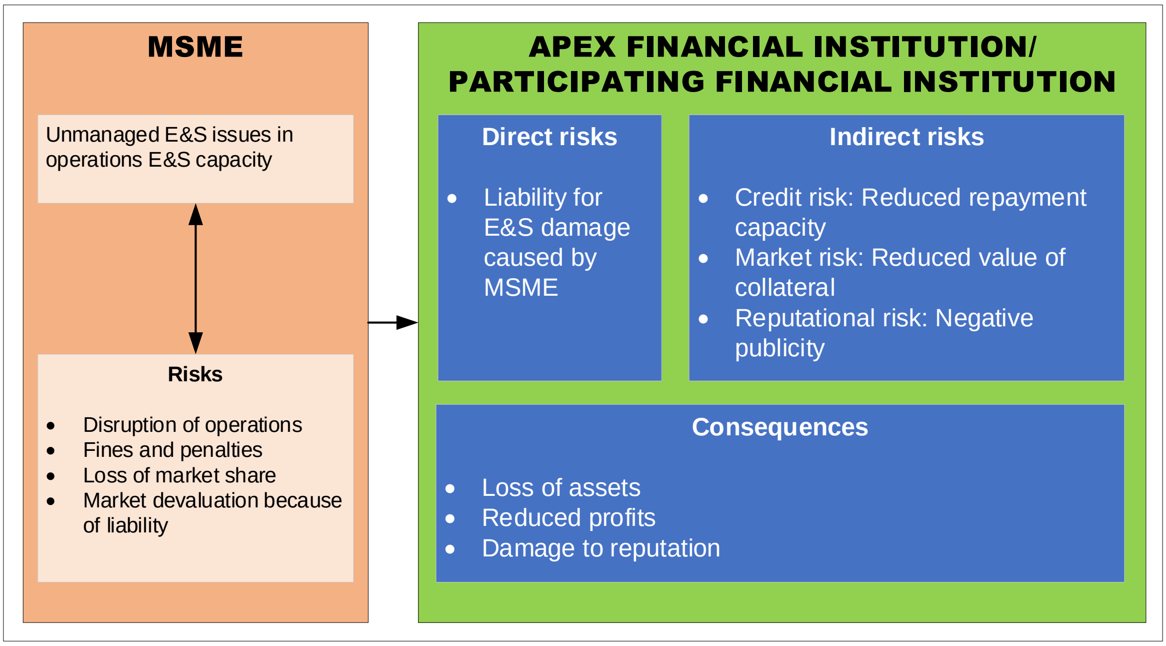

Figure 1: Typical E&S risks for an AFI or PFIs

As part of the review of E&S risks and impacts of a proposed investment, the NT will undertake a screening of potential investments or transactions against the list of excluded activities listed in Annex 1. A screening checklist will be used to screen potential investments or transactions for on-lending to MSMEs. The screening checklist is provided as a guideline for screening loan applications against the excluded activities and may be used by the AFI and PFIs in the SAFER project.

The E&S categorization will be based on the outcomes of the E&S due diligence of an MSME and will determine the resulting level of assessment and mitigation measures, as detailed in E&S Risk Management (Due Diligence), which may be amended by the NT from time to time. The categories are stated as follows:

- **Category A (high risk and substantial risk):** Business activities with potential significant adverse E&S risks and/or impacts that are diverse, irreversible, or unprecedented. High risk activities may involve significant impacts on physical, biological, ecosystem, socioeconomic, or cultural resources. Given that SMEs often lack capacity for management of such risks, proposed investments that involve certain high-risk activities are excluded from financing as per the List of Excluded Activities (see Annex 1).
- **Category B (medium risk):** Business activities with potential limited adverse E&S risks and/or impacts that are few, generally site-specific, largely reversible, and readily addressed through mitigation measures.
- **Category C (low risk):** Business activities with minimal or no adverse E&S risks and/or impacts.

In determining E&S risk categorization, AFIs will rely on outcomes of E&S screening and any further due diligence that may be required and additionally consider (a) size of the investment[7]; (b) size of the enterprise in terms of number of employees; (c) nature of business activities; (d) sector-based risks determined in line with the requirements for SPR or CPR Study or integrated ESIA Study under Kenyan laws and regulations.

9. E&S Risk Rating for PFI’s Transactions

Transactions for the purpose of financing by SAFER eligible business activities will be assigned an E&S risk rating by the AFI and the PFIs’. E&S risk rating assigned to the loan or investment will be based business activities categorised above. Loan or investment risk rating will determine the level of E&S due diligence and oversight measures.

The risk ratings are elaborated as follows:

- **RR-1 (High Risk and Substantial Risk)**: Transactions involving clients or loan applicants with business activities under Category A. These transactions are precluded from financing.
- **RR-2 (Moderate Risk)**: Typically, transactions involve clients or loan applicants with business activities under Category B. A succinct E&S due diligence will be carried using an internal E&S due diligence checklist in Annex 5. Reporting will be done as part of the annual compliance reporting.
- **RR-3 (Low Risk):** Transactions typically involve clients or loan applicants with business activities under Category C. There is no need for further action after screening. Reporting will be prepared in the event of an unusual occurrence.

[7]Size of the investments provide an additional indication of the magnitude of E&S risk exposure of the PFI (e.g. credit risk linked to potential default of a MSME due to excessive fines or business closure as a result of environmental contamination), as well as indicate the degree of leverage the PFI has to enforce compliance of MSME projects with applicable E&S requirements.

E&S Risk Management (Due Diligence)

An environmental and social due diligence (ESDD) is a record of E&S review of transactions during the appraisal process. This ensures that the loan or investment meets and will continue to meet the set E&S requirements, thereby minimizing transaction negative environmental and social impacts.

10. Category A

If a transaction is classified as High-Risk or substantial High-Risk, the applicant will be notified that the transaction is a no-go and will not be funded. There will be no further evaluation.

11. Category B

The E&S due diligence will be brief and will include the collection of relevant E&S information using a short internal checklist as part of the E&S due diligence. Additional investigations will be launched if any red flag issues emerge to ensure full compliance with E&S legislation and WB ESF requirements.

12. Category C

After E&S screening determines that the transaction is a Category C transaction, no E&S due diligence is required.

The NT recognizes that the investment activities it considers for financing through the Apex Financial Institution and PFIs have varying levels of information available at the time of due diligence.

Subsequently, given that funds provided to PFIs through SAFER are fully traceable and intended for a specified end use based on E&S clauses in the financing agreement, the AFI will determine the E&S risks its investment in relation to risks associated with the specified end use of the funds. The size, and type of investments will be considered during the evaluation.

6 Organizational capacity and competency

This section describes the roles and responsibilities of various personnel within the National Treasury in the development and implementation of this ESMS. Currently, the organogram available on the National Treasury website is shown in Figure 2. The NT is managed through six directorates namely (1) Directorate of Public Debt Management, (2) Directorate of Portfolio Management, (3) Directorate of Accounting Services & Quality Assurance, (4) Directorate of Budget, Fiscal and Economic Affairs, (5) Directorate of Administrative & Support Services and, (6) Directorate of Public Private Partnership.

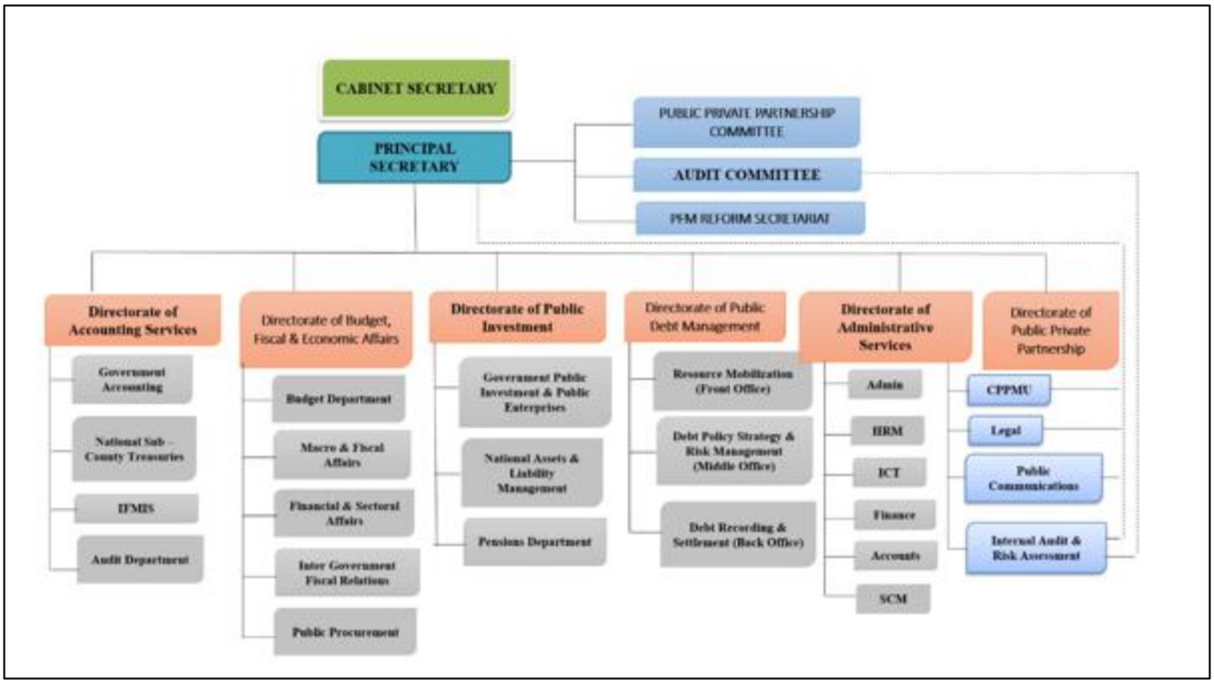

Figure 2: Current organogram of the National Treasury

The SAFER project is embedded within the Directorate of Budget, Fiscal and Monetary Affairs which is supervised by a Director General reporting to the Principal Secretary, National Treasury. Within this directorate there are five technical departments each headed by a Director namely (1) Budget Department, (2) Macro and Fiscal Affairs Department, (3) Financial and Sectoral Affairs Department, (4) Inter-Governmental Fiscal Relations, and (5) Public Procurement Department.

The functions of this directorate are given below.

(a) Formulate, implement and monitor macro-economic, fiscal and financial policies and regulations;

(b) Prepare annual Division of Revenue Bill and County Allocation of Revenue Bill; Coordinate financial and fiscal relations between the national and county governments;

(c) Analyse, monitor and evaluate bilateral and multilateral economic and financial affairs;

(d) Coordinate the preparation of the macro-fiscal framework to guide preparation and implementation of the budget;

(e) Assist county governments to develop their capacity for efficient, effective and transparent financial management.

(f) Formulate Competition and financial markets policies and regulations.

(g) Coordinate the implementation of Anti-Money laundering policies.

(h) Develop and operationalize policies to position Kenya as an International Financial Centre.

(i) Undertake National employment policy management.

(j) Develop policy and regulate carbon financing and trading.

(k) Assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with Cabinet Secretary, Devolution and Planning.

(l) Promote transparency, effective management and accountability with regard to public finances in the Public Service.

(m) Issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.

(n) Management of procurement and disposal of assets.

(o) Formulate procurement standards and policies and oversee their implementation.

(p) Coordinate preparation of budget for the national government.

(q) Undertake research to inform policy development.

Based on an analysis of the above key functions, E&S aspects of the SAFER project will be handled under this department; therefore, the E&S function should reside under this Directorate. The draft organogram for E&S integration within the NT is given in Figure 3.

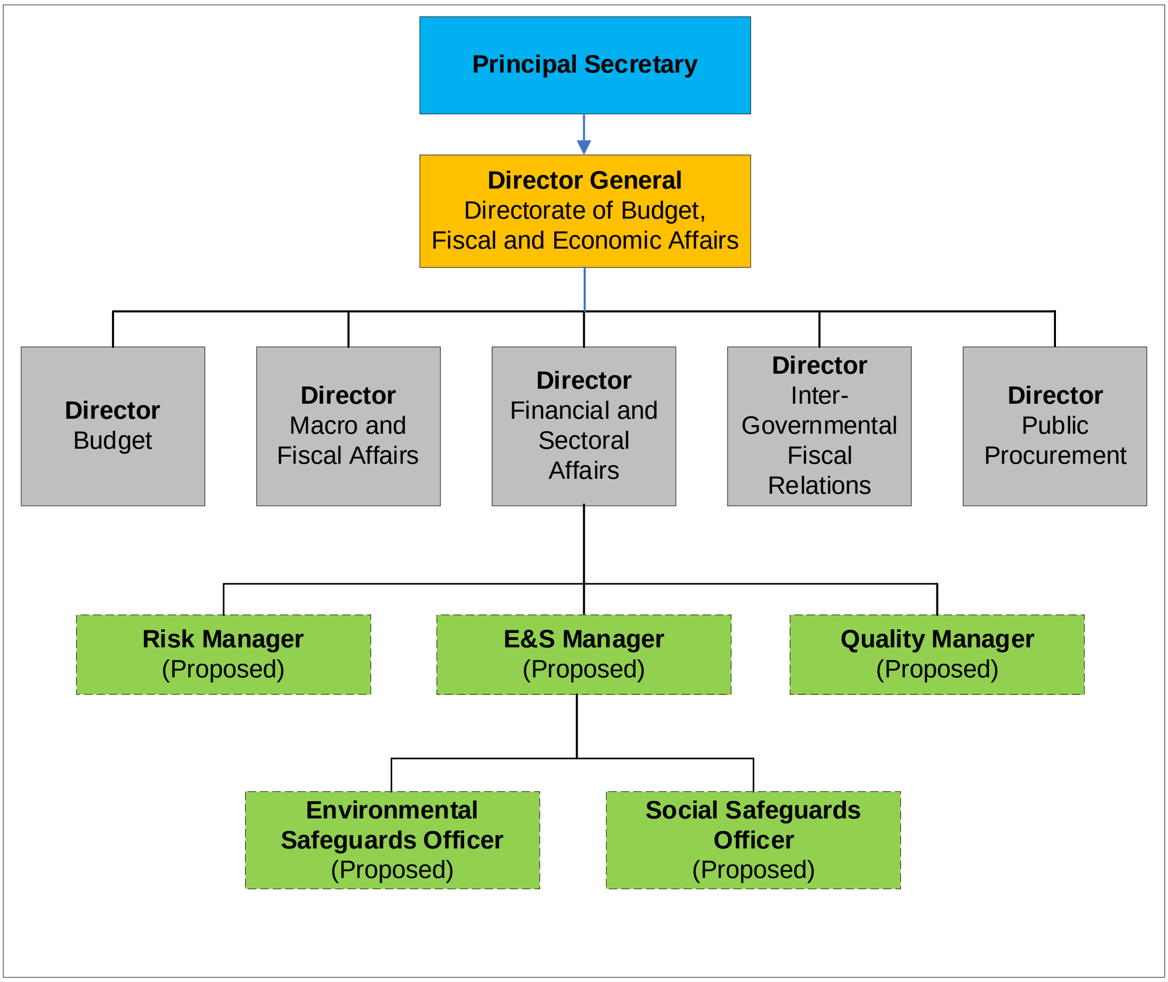

Figure 3: Draft organogram for inclusion of the E&S function in the National Treasury

E&S Roles and responsibilities

The NT is in the process of developing its competency in managing environmental and social issues in a sustainable manner. Towards this end and to oversee the implementation of this ESMS, the NT will employ (i) an Environmental and Social Manager, (ii) an Environmental Officer and (iii) a Social Safeguards Officer. The roles and responsibilities of these positions are described in Table 2.

Table 2: E&S roles and responsibilities of the NT

Position	Role
Director, Debt Policy, Strategy and Risk Management	• Commitment to the E&S Policy by establishing requirements of the NT ESMS • Ensuring that annual goals and objectives are included in the NT ESMS • Provision of adequate human and financial resources for implementation of the NT ESMS • Approval of AFIs ESMS.

Position	Role
Environmental and Social Manager	• Ensure full implementation of ESMS. • Provide annual summary statements on E&S compliance of the NT‘s loans to relevant agencies. • Be in charge of E&S Due Diligence. • Maintenance of the Register of Legal and Other Requirements. • Control of documents, forms and records required by the ESMS
Environment Safeguards Officer	• Establish a working relationship with NEMA and Ministry of Labour and Social Protection (MoLSP) to clarify procedures for NEMA's processing of MSME related inquiries; • Work together on E&S issues and aspects with respective team members in PFIs; • Coordinates with the E&S team of the AFI; • Review the E&S assessment and management plans submitted by the MSME against the E&S requirements and prepare ESDD report; • For all MSME applications, submit and coordinate the review of all E&S assessment documents and management plans with the AFI; • Undertake monitoring of projects to confirm compliance with E&S requirements and prepare monitoring reports; • Contribute to the annual E&S performance monitoring report for submission to the AFI; • Prepare TOR and supervise the work of environment consultants; • Plan and execute capacity building of MSMEs in E&S risk management.
Social Safeguards Officer	• Establish a working relationship with NEMA and Ministry of Labour and Social Protection (MoLSP); • Work together with respective team members in the line ministries and departments like the Social Development Department, Labour Department, Department of Children Services, Gender Department and the Directorate of Occupation Health and Safety; • Coordinate with the E&S team of the AFI;

Position	Role
	• Review the social assessments, gender assessments, ESIA and management plans against the E&S requirements and prepare ESDD report. • Oversees the implementation and monitoring of gender-related actions. • Screen funding requests/ proposals for social impacts, recommend E&S categorization and conduct further assessment and due diligence for the review of the proposal, as required • Reviews various social management plans (such as stakeholder engagement plan, GRMs, GBV/SEA and OHS management plans, labor management plans) and assessment reports and prepare ESDD report; • Undertake site visits, consultations with key stakeholders and project affected community; • For all projects, coordinate the review of all social assessment documents and management plans with the AFI • Undertake monitoring of MSME projects to confirm compliance with social requirements and prepare monitoring reports; • Contribute to the annual E&S performance monitoring report for submission to the AFI; • Prepare TOR and supervise the work of social consultants; • Plan and execute capacity building of MSMEs in social risk management.

It should be noted that the E&S resources mentioned above are not on board. However, NT is required to hire and deploy a qualified and experienced full time Environmental and Social officer.

13. AFIs and PFI Responsibilities

AFIs and PFIs will play a vital role in the evaluation of E&S risk and integration of E&S aspects in the lending cycles. To achieve this, AFIs and PFIs are tasked with the following responsibilities:

- Develop and maintain a fit-for-purpose environmental and social management system (ESMS) aligned to NT ESMS, local E&S legislation and WB ESS.
- Assessing E&S risks as part of risk management during loan/investment appraisal and during the lending cycle.

- Ensure that E&S considerations are taken into account at each stage of the lending or investment process.
- Ensure that each Client agreement includes appropriate environmental and social covenants. Furthermore, include E&S clauses and action plan in the legal agreements signed with clients.
- Ensure that resources for E&S management are committed at the client level where relevant.
- Monitor and report on loans or investments E&S performance.
- Prepare reports on E&S incidents/violations and ensure that all serious incidents are addressed appropriately, and risks are mitigated where possible.

E&S training and capacity building

Effective ESMS implementation requires training of all staff involved in its implementation. Apart from making staff aware of E&S policy, it also helps in building additional skills and knowledge.

The NT will establish, maintain and strengthen an organizational structure in which the E&S roles, responsibilities and authorities are clearly defined in performance contracts for implementation of this ESMS. The NT will designate specific staff members with a background in environmental and social management to support it in implementing this ESMS.

Key roles and responsibilities will be defined and communicated to the relevant personnel and to the senior leadership within the NT. The NT is committed to providing consistent leadership, commitment and accountability in achieving continuous and effective E&S performance improvement in the SAFER project.

Capacity building efforts are required at two levels, namely, (i) the NT staff; and (ii) AFI and PFI staff.

(i) NT level training

The National Treasury will ensure that job specific E&S induction and refresher training is provided to their line management and E&S functions to ensure that the ESMS is implemented.

Additionally, the NT will provide competency-based training to its E&S Officers on specific aspects of the ESMS that need to be further operationalized through internal policies and procedures.

Capacity building will be carried out on (i) Kenyan E&S related legislation (ii) WBG environmental and social standards, and (iii) how to implement an ESMS, undertaking an ESDD and E&S monitoring of the AFI activities under the SAFER project.

(ii) AFI and PFI training

The Apex Financial Institution (AFI) and Participating Financial Institutions (PFIs) will develop and implement an E&S training program relevant to the needs of the SAFER project. The training program will be developed using a recognized instructional design model such as ADDIE i.e. Analysis, Design, Development, Implementation, Evaluation.

The purpose of the E&S training program will be to impart knowledge to the executive and senior leadership team as well as the Credit Officers and, E&S Officers working in the AFI and PFIs to support their informed decision making on sustainable project finance. This will be a augmentation of the E&S related training provided by the Kenya Bankers Association (KBA) under the umbrella of Sustainable Banking and Financial Network (SBFN). The competency-based training will be provided through webinars, in-person courses, workshops and seminars.

Some of the topics that will be covered in the organizational capacity building will include:

(a) Identification, assessment and management of E&S risks and impacts;

(b) Stakeholder identification and analysis;

(c) Environmental, Social, Health and Safety (ESHS) requirements and assessment;

(d) Screening of projects submitted by MSMEs for potential E&S risks and impacts;

(e) Development of a stakeholder engagement plan (SEP) and grievance redress mechanism (GRM);

(f) Labor and working conditions;

(g) National laws and regulations on E&S as well as WBG ESSs.

(h) Detailed training on NEMA's requirements on Summary Project Report (SPR), Comprehensive Project Report (CPR) Study and Integrated Environmental and Social Impact Assessment (ESIA) Study Report

(i) E&S monitoring, reporting and follow-up.

NT shall develop environmental and social MSMEs training toolkit and training manuals to guide the capacity building process for the Apex PIEs and Retail, PFIs and MSMEs.

7 Operational Controls

Labour and Working Conditions

SAFER project has developed a labour management procedure (LMP) to be implemented by NT. AFIs and PFIs are required to assess labour and occupational health and safety (OHS) risks associated with activities of loan applicants or subprojects. AFIs and PFI should ensure loan applicants implement good labour and OHS management practices in line with the local legislation, World Bank ESS2 and international best practices such as ILO Declaration of Fundamental Principles and Rights at Work. These include but not limited to:

- Adherence to specified work hours and overtime limits.
- Prohibiting child labor and forced labor, as well as adhering to the minimum wage set by local legislation
- Providing a mechanism for submitting grievances and complaints and resolving them in a non-biased and retaliatory manner.
- Ensure a safe working environment and implement measures for identifying hazards and risks, as well as mitigating them, in accordance with the control hierarchy.

Gender Base Violence and Harassment / Sexual Exploitation Abuse and Harassment

GBVH response services include medical treatment (ideally within 72 hours of the incident), psychosocial support, provision of physical security, provision of safe spaces and legal assistance. Local resources for referral of GBVH cases for proper management include Gender Violence Recovery Centre (GVRC), National GBV hotline, Healthcare Assistance Kenya (HAK), National Referral Hospitals, etc. AFIs will develop a list of GBVH referral facilities for proper management of

AFIs and PFIs should have a point of contact for responding to GBVH incidents at various levels of the project and ensuring that they do not reoccur. Furthermore, AFIs and PFIs must address the issue of GBVH/SEAH in their sub-loan agreements.

8 Monitoring and review

Once the funding has been disbursed, the PFIs will be required to monitor implementation of the E&S management plans submitted by an MSME. The key objective of this will be to ensure that each MSME is following the E&S requirements of Kenyan laws and regulations as a minimum. Such reviews will be conducted once in a period of three months using a fit-for-purpose protocol to analyze, evaluate and report on the MSME's compliance levels with E&S related laws and regulations. Each PFI will generate a quarterly report summarizing the E&S performance of their lending portfolio and submit it to the AFI for review. In generating the quarterly report, the E&S team within each PFI will be required to sample and undertake physical inspections of some MSMEs to whom they provide financial lending.

The AFI will in turn review the summary reports issued by the PFIs to ensure that they capture the strengths and needs with respect to the E&S requirements of this ESMS. The AFI will provide feedback to the PFIs on the alignment of the MSMEs with the requirements of this ESMS and especially compliance with Kenyan E&S related laws and regulations. The AFI will conduct independent physical E&S inspections of a few MSMEs once every six months to validate that the PFIs are recording information correctly.

Review of ESMS

The National Treasury will undertake a review of this ESMS once in a period of twelve months. The purpose of this will be to evaluate the efficacy of the E&S Policy and associated ESMS to ensure that it is valid and addresses the existing and emerging E&S aspects and impacts of the SAFER project.

The Director General of the Budget, Fiscal and Economic Affairs directorate at the National Treasury will cause the review of the ESMS to be conducted by the Director –xxxxxxxxx.

In undertaking the ESMS review, the Director – xxxx will undertake the following steps:

1) Conduct an internal audit of this ESMS (using a checklist) to review and evaluate its efficacy
2) Conduct an external ESMS audit of the Apex Financial Institution and a sample of the Participating Financial Institutions to evaluate the efficacy and adequacy of their E&S procedures for the SAFER project
3) Develop a Corrective Action Plan (CAP) for implementing any findings.
4) Update the ESMS elements to ensure that it incorporates the most recent E&S needs of the SAFER project.

Reporting

Reporting of ESMS information will be conducted in two parts namely:

- Internal reporting and,
- External reporting

14. Internal reporting

The PFIs will submit their E&S monitoring reports to the AFI on a quarterly basis. These reports will be prepared by the E&S team within each PFI and approved for release to the AFI by the senior most person in the PFI. The purpose of internal reporting is to appraise the PFI management team on any emerging E&S issues or challenges in implementing the ESMS including any issues at the portfolio level.

The PFIs will create a template for their reporting and use it for reporting E&S strengths and needs of the MSMEs. E&S monitoring for projects supported by MSMEs is a key input to internal monitoring reports which will be submitted in a timely manner.

It is recommended that the internal E&S reports contain the following information:

- Number of funding applications received during the reporting period
- Number of applications rejected on account of E&S issues (such as non-compliant with the exclusion list, no-go E&S issues, etc.)
- Break up of funding applications by E&S category
- Overall E&S compliance of the portfolio with the E&S requirements
- Challenges in implementation of the ESMS
- Grievances from the community and other relevant stakeholders and their status
- External audit findings.

15. External reporting

The AFI's E&S team will sample and undertake an annual audit of some MSMEs using a protocol aligned with the requirements of the ESSs and submit a report to the World Bank no later than 30 days from the completion of site activities.

Reporting to the World Bank will be ongoing and annual. Ongoing reporting will be on the subprojects supported by the PFIs before they are supported. Any E&S instruments/ documents prepared for such subprojects will be reviewed by AFIs and PFI to ensure proper identification, assessment, management, and monitoring of the E&S risks and impacts in accordance with the process and procedures identified in the ESMS of the PFI.E&S assessments of sub-project by AFIs and PFIs will be reported to the World Bank on an ongoing basis and annually. The following steps will be implemented for each sub-project:

- Review new funding requests including E&S screening of each request;
- Develop TORs for detailed studies to be undertaken if necessary. This will be shared with the World Bank;
- The World Bank Team will be consulted on selection of the E&S Consultants;
- All E&S documents prepared, such as the feasibility study, ESIA/SIA report, EMP, LMP, Stakeholder Engagement Plan, and Community Grievance Mechanism, will be reviewed for adequacy and compliance with SAFER Project requirements by NT.

16. Documentation

The PFI will maintain documents and records which support its E&S decisions and compliance. Among other things, the documents to be maintained include (this is not an exhaustive list):

- Funding application and supporting documents
- Sectoral diagnostic studies
- All E&S assessment and management plans
- Site visit reports
- ESDD report and ESAP
- Copies of bid evaluation reports
- E&S conditions in agreements
- Subproject E&S monitoring reports
- Records of grievances and complaints
- ESMS audit reports

9 External Communication

Stakeholder Engagement

The goal of stakeholder engagement is to build and maintain positive relationships between NT and stakeholders, particularly those who will be directly impacted by the project.

Stakeholder engagement objectives are to:

- Provide stakeholders with project information at appropriate times and accessible format;
- Communicate planned project phases, developments, and changes in good time;
- Involve stakeholders in project decision-making;
- Improve stakeholders' ability to identify unexpected project impacts and communicate them for resolution; and
- Ensure that stakeholders can easily report concerns and grievances.

Management of stakeholder expectations will be undertaken in two ways:

- Reactive engagement: eliciting stakeholders involvement and sharing information in order to address issues that may be of concern prior to their arising.
- Proactive: responding to stakeholder concerns or grievances in a consistent and predetermined manner

NT have prepared Stakeholder Engagement Plans (SEPs) to guide continuous engagement with potential beneficiaries and other interested parties such as regulators, business associations, and national authorities.

Vulnerable and Marginalized Groups (VMGs)

Without proactive measures, vulnerable and marginalized groups will be excluded from SAFER project. Efforts will be made by AFI and PFI to target these groups and facilitate their equitable access to the project services.

PFI should set out outreach mechanisms and targeted efforts as part of sub-component 3b: TA to Participating Financial Institutions (PFIs) specifically having a focal point engaging with VMGs.

Communication, Disclosure and External reporting

The AFI will publish and disclose to all of its external stakeholders information on how it addresses E&S issues in its business and operations in addition to the external reporting outlined in 15,. This will take the shape the Annual Report. It is assumed that the AFI will use a framework decided upon with the World Bank to publish its annual sustainability report. Also, it will publish details about the SAFER project-supported projects on its website. A brief overview of the project, E&S instruments, and other information will be disclosed.

To ensure accountability and transparency in its operations, the PFI shall post all E&S instruments/documents for each new subproject on its website, including SPR, ESMPs, LMPs, and SEPs (where appropriate).

NT communication with the WBG

The NT will establish a process for communicating with the World Bank Group (WBG) on the SAFER ESMS. The reporting to the WBG will be an ongoing and annual process; the ongoing reporting will be on the subprojects supported by the PFIs.

Any E&S instruments/documents prepared by MSMEs under the SAFER project will be reviewed by the PFIs to ensure proper identification, assessment, management, and monitoring of the E&S risks and impacts in accordance with the process and procedures identified in the respective PFI's ESMS. The following steps will be implemented for each project:

- Inform the AFI of new funding requests being considered with E&S categorization of each request;
- Submit the TORs for various studies to the AFI for review and comments;
- The AFI will be consulted on selection of the E&S Consultants (where required);
- All E&S documents such as the feasibility study, ESIA report, ESMP, LMP, Stakeholder Engagement Plan, Community Grievance Mechanism will be shared with the AFI for review, approval and disclosure.

In addition to the reporting on each project, the PFI will submit an annual E&S monitoring report to the AFI to confirm ongoing compliance of projects in accordance with applicable Kenyan E&S requirements.

The reporting format is presented in Annex xx**.** The report will be reviewed by the AFI and NT before it is submitted to the World Bank.

10Annexes

Annex	Title
Annex 1	List of Excluded Activities
Annex 2	Legal and Regulatory Framework
Annex 3	Project screening checklist
Annex 4	Rating of High, Medium and Low business activities
Annex 5	FI E&S Due Diligence Questionnaire
Annex 6	FI E&S Monitoring Report Template
Annex 7	E&S Action Plan template
Annex 8	AFI and PFI ESMS Outline

Annex 1: List of excluded activities

NT Exclusion List below build upon the Exclusion List in the ESCP to ensure that the MSMEs, AFIs and PFIs understand with specificity and comply with the various terms mentioned in exclusion list

The following list of activities shall be ineligible for financing under the SAFER Project:

1) Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB's, wildlife or products regulated under CITES.

2) Production or trade in weapons and munitions[8].

3) Production or trade in alcoholic beverages (excluding beer and wine)[1]

4) Production or trade in tobacco[1].

5) Gambling, casinos and equivalent enterprises[1].

6) Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where IFC considers the radioactive source to be trivial and/or adequately shielded.

7) Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

8) Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.

9) Production or activities involving harmful or exploitative forms of forced labor[9]/harmful child labor[10].

10) Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals. Hazardous chemicals include gasoline, kerosene, and other petroleum products.

11) Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.

12) Any activities resulting or anticipated to result in permanent or temporary physical or economic displacement.

13) Any activities involving adverse impacts on biodiversity conservation and sustainable management of living natural resources.

14) Any activities that have adverse impacts on cultural heritage as defined under ESS 8.

15) Drift net fishing in the marine environment using nets in excess of 2.5 km in length.

[8] This does not apply to project sponsors who are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to a project sponsor's primary operations.

[9] Forced labor means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

[10] Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.

16) Purchase of logging equipment for use in cutting forests.

17) Production or trade in pharmaceuticals subject to international phase outs or bans.

18) Fishing in the marine environment using electric shocks and explosive materials.

19) Any activities that would curtail workers fundamental rights. These would include: (i) freedom of association and the effective recognition of the right to collective bargaining; (ii) prohibition of all forms of forced or compulsory labor; (iii) prohibition of child labor, including without limitation the prohibition of persons under 18 from working in hazardous conditions (which includes construction activities), persons under 18 from working at night, and that persons under 18 be found fit to work via medical examinations; (iv) elimination of discrimination in respect of employment and occupation, where discrimination is defined as any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national extraction, or social origin.

20) Commercial logging operations in primary tropical moist forests

21) Production or trade in products containing Polychlorinated biphenyls (PCBs).

22) Production or trade in ozone depleting substances subject to international phase out.

23) Production or storage or packaging of inflammable material.

24) Production or trade or use or storage of dyeing chemicals and dye intermediaries

25) Any activities requiring industrial production processes requiring regulatory clearances from Pollution Control Boards

Annex 2: Legal and Regulatory Framework

National Legal and Regulatory Framework

This annex outlines and highlights the relevant institutional and legal as well as policy framework in Kenya which may have a direct bearing on the subprojects to be supported by SAFER.

1. Constitution of Kenya, 2010

This is the supreme law of Kenya for protection of environment and sustainable development is enshrined in the Constitution of Kenya. Sections 69 and 70 of Kenya's Constitution has identified National Obligations in respect of the environment and enforcement of environmental rights. The Constitution guarantees every person in Kenya the right to clean and healthy environment and assigns a duty to them to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

It places an obligation on the state to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits. Further, the state is obligated to establish systems of environmental impact assessment, environmental audit and monitoring of the environment.

Section 70 provides for enforcement of environmental rights. It gives a person the right to approach the court for redress and legal remedy if any person feels that her right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened.

The court have the rights to prevent, stop or discontinue any act or omission that is harmful to the environment. They can compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or to provide compensation.

It is noteworthy that for purpose seeking legal remedies, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.

Essentially, the new Constitution has embraced and provided further anchorage to the spirit and letter of EMCA 1999 and EMCA (amendment) Act, 2015 whose requirements for environmental protection and management have largely informed Sections 69 through to 71 of this document. In Section 72 however, the new constitution allows for enactment of laws towards enforcement of any new provisions of the Supreme Law.

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

The Kenyan Constitution (2010) states that every person is equal before the law and has the right to equal protection and equal benefit of the law. It describes equality as the full and equal enjoyment of all rights and fundamental freedoms. This article entrenches the right to equal opportunities in political, economic, cultural, and social spheres. Prohibits discrimination on all grounds and also requires the state to employ affirmative action measures to address historical injustices that are responsible for the marginalization of some interest groups. It requires that persons with disabilities should form at least 5% of every elective or appointed body. It recognizes the rights of youth, minorities, and marginalized groups and elderly persons11 to participate in all spheres of life including political, social, and economic spheres. It sets the minimum gender quarter to not more than Two-Thirds of either gender on representation in elective and appointive positions. Article 21 (3) requires all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. Article 27 (1 and 4) prohibits discrimination based on age. Article 55 entitles and guarantees youth the opportunities to participate in political, social, economic, and other spheres of life, the right to access employment, the right to protection from harmful cultural practices and exploitation, and the right to access relevant education and eventual employment. Youth are defined in Article 260 as persons who have attained the age of 18 years but have not passed the age of 35 years.

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

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

2. Environment Policy, 2014

The aim of the Environment Policy (Sessional Paper No.10 of 2014) is to ensure that environmental concerns are part of the national planning and management processes; and that guidelines are provided for environmentally sound development. The policy has seven broad goals under which guiding principles are mainstreamed to achieve conservation and management of the natural resources (forest ecosystems, arid and semi-arid lands ecosystems, etc. that have wildlife resources, water resources, grazing lands, minerals, soils therein). Some of the principles outlined in the policy include the right to a clean and healthy environment, ecosystem approach, total economic value, sustainable resource use, equity, public participation, precautionary principle, the polluter pays principle, international cooperation, community empowerment, benefit-sharing, and good governance.

The policy promotes the use of ESIA as an innovative environmental and social management tool. It also calls for the Government of Kenya (GoK) to ensure that all significant development projects are subjected to ESIA and regular audits. The ESIA/ESMP Reports and Studies (that

[11] Article 57(a), Constitution of Kenya

will be subjected to regular audits) will be prepared to promote sustainable development as envisaged in the policy.

3. Environment Management and Coordination Act (No. 8 of 1999), EMCA (amendment) Act 2015, Cap 387

This is an Act of Parliament providing for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental thereto. This Act is divided into 13 Parts, covering main areas of environmental concern as follows: Preliminary (I); General principles (II); Administration (III); Environmental planning (IV); Protection and Conservation of the Environment (V), Environmental impact assessments (EIA), audits and monitoring (VI); Environmental audit and monitoring (VII); Environmental quality standards (VIII); Environmental Restoration orders, Environmental Easements (IX); Inspection, analysis and records (IX); Inspection Analysis and Records (X); International Treaties,

Conventions and Agreements (XI) National Environment Tribunal (XII); Environmental Offences (XIII). The Act provides for the setting up of the various ESIA Regulations and Guidelines which are described in the table below:

Principal Statute/ Regulations	Brief description
Environmental (Impact Assessment and Audit) Regulations 2003	The Environmental (Impact Assessment and Audit) Regulations 2003 basically lists the guidelines of undertaking, submission and approval of the ESIA reports.
Environmental Management and Co-ordination (Waste Management) Regulations 2006	These Regulations apply to all categories of waste as provided in the Regulations including industrial wastes; hazardous and toxic wastes; pesticides and toxic substances; biomedical wastes; and radio-active substances.
Environmental Management and Coordination, (Water Quality) Regulations 2006	These Regulations apply to drinking water, water used for agricultural purposes, water used for recreational purposes, water used for fisheries and wildlife and water used for any other purposes. This includes the protection of sources of water for domestic use; water for industrial use and effluent discharge; and water for agricultural use. These Regulations outline: 1. Quality standards for sources of domestic water; 2. Quality monitoring for sources of domestic water; 3. Standards for effluent discharge into the environment; 4. Monitoring guide for discharge into the environment; 5. Standards for effluent discharge into public sewers; 6. Monitoring for discharge of treated effluent into the environment.

Principal Statute/ Regulations	Brief description
Environmental Management and Coordination, Conservation of Biological Diversity (BD) Regulations 2006	These Regulations apply to conservation of biodiversity which includes conservation of threatened species, inventory and monitoring of biodiversity and protection of environmentally significant areas, access to genetic resources, benefit sharing and offences and penalties.
Environmental Management and Coordination (Wetlands, Riverbanks, Lake Shores and Sea Shore Management) Regulations 2009	These regulations provide for the protection and management of wetlands, riverbanks, lakeshores and sea shore management and detail guidelines on the same.
Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009	These regulations prohibit making or causing any loud, unreasonable, unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort, repose, health or safety of others and the environment. It also prohibits the contractor from excessive vibrations which annoy, disturb, injure or endanger the comfort, repose, health or safety of others and the environment or excessive vibrations which exceed 0.5 centimetres per second beyond any source property boundary or 30 metres from any moving source. Under the regulation the Contractor will be required to undertake daily monitoring of the noise levels within the Project area during construction period to maintain compliance.
Occupational Health and Safety Act, 2007	This is an Act of Parliament to provide for the safety, health and welfare of workers and all persons lawfully present at workplaces, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes. The Act has the following functions among others: • Secures safety and health for people legally in all workplaces by minimization of exposure of workers to hazards (gases, fumes & vapours, energies, dangerous machinery/equipment, temperatures, and biological agents) at their workplaces. • Prevents employment of children in workplaces where their safety and health is at risk. • Encourages entrepreneurs to set achievable safety targets for their enterprises.

Principal Statute/ Regulations	Brief description
	- Promotes reporting of work-place accidents, dangerous occurrences and ill health with a view to finding out their causes and preventing of similar occurrences in future. - Promotes creation of a safety culture at workplaces through education and training in occupational safety and health. Failure to comply with the OSHA, 2007 attracts penalties. The Occupational Safety and Health Act (OSHA) 2007 repealed the Factories and Other Places of Work Act. Anything done under the provisions of the Factories and Other Places of Work Act including subsidiary legislation issued before the commencement of the OSHA 2007 shall be deemed to have been done under the provisions of this Act. The Factories and Other Places of Work Act had over the years passed several subsidiary rules and regulations for effective implementation of the Act. All shall, as long as it is not inconsistent with OSHA 2007 remain in force until repealed or revoked by subsidiary legislation under the provisions of OSHA 2007 and shall for all purposes be deemed to have been made under this Act. These regulations include: - The Factories (Cellulose Solutions) Rules 1957; - The Factories (Wood Working Machinery) Rules 1959; - The Factories (Dock) Rules 1962; - The Factories (Eye Protection) Rules 1978; - The Factories (Electric Power) (Special) Rules 1978; - The Factories (Building Operations and Works of Engineering Construction) Rules 1984; - The Factories and Other Places of Work (Health & Safety Committees) Rules 2004; - The Factories and Other Places of Work (Medical Examination) Rules 2005; - The Factories and Other Places of Work (Noise Prevention and Control) Rules 2005; - The Factories and Other Places of Work (Fire Risk Reduction) Rules 2007; - The Factories and Other Places of Work (Hazardous Substances) Rules 2007. The scope of OSHA 2007 has been expanded to cover all workplaces including offices, schools, academic institutions and

Principal Statute/ Regulations	Brief description
	plantations. It establishes codes of practices to be approved and issued by the Director, Directorate of Occupational Health and Safety (DOHS) for practical guidance of the various provisions of the Act. Other parameters within the Act relevant to the project include: 1. Duties of employers, owners or occupiers of workplace; 2. Establishment of safety and health committees; 3. Annual safety and health audit of workplaces; 4. Safety and Health obligations for persons who may come to premises for work and are not employees of that particular workplace; 5. Reporting of any accident, dangerous occurrence or occupational poisoning caused in the workplace to the area Occupational Health and Safety Office. These incidents should be entered in the General Register. In case of fatal accident information to the area Safety and Health Office should be within 24 hrs. and a written notice to the same within 7 days; 6. The duties of manufactures, designers, importers and suppliers to ensure that all articles and substances for use at workplace are safe and will not cause injury to health and the environment; 7. Duties of self-employed persons; 8. Duties of employed persons; 9. Prohibition of interference or misuse of any appliance, convenience or any other facility provided to secure Safety, Health and Welfare at work by any person (occupier, self-employed person or employed); 10. The administration of the Act is the responsibility of a Director and other appointed and gazetted officials (Occupational Health and Safety Officers); 11. The registration of all workplaces by the Director Directorate of Occupational Health and Safety (DOHS) forming the basis of his work statistics; 12. Machinery safety to include: • Safe use of machinery, plant and equipment; • Prime makers and transmission machines; • The maintenance, construction of fencing safeguards;

Principal Statute/ Regulations	Brief description
	• The statutory requirements of various machines, plants and equipment (hoists and lifts, chains and ropes, cranes, steam receivers and containers, air receivers, cylinders for compressed liquefied and dissolved gases and refrigeration plants). 13. Chemical safety including: (i) Handling, transportation and disposal of chemicals and other hazardous substances; (ii) Importance of Materials Safety Data Sheets (MSDS); (iii) Labelling and marking of chemical substances; (iv) Classification of hazardous chemicals and substances; (v) Establishment and adoption of exposure limits on hazardous substances in a workplace; (vi) Control of air pollution, noise and vibrations; (vii) Redeployment on medical advice.
The Work Injury Benefits Act (2007)	Provides for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes. The Act applies to all employees including employees employed by the Government, other than the armed forces, in the same way, and to the same extent as if the Government were a private employer. An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act and entitled to the benefits provided under this Act. The workplace wellness programs include mental health, HIV/AIDs, and communicable diseases. This Act provides for compensation to employees for work-related injuries and diseases contracted in the course of their employment and for connected purposes. In the event of injury, during the implementation of the projects under the program, the employer/contractor will be required to compensate workers under the Act. The contractor must, therefore, obtain and maintain relevant insurance policies in respect of this liability.
The Water Act 2016	Water in Kenya is owned by the Government, subject to any right of the user, legally acquired. The control and right to use water is exercised by the Minister administering the Act, and such use can only be acquired under the provisions of the Act. The Minister is also vested with the duty to promote investigations, conserve and properly use water throughout Kenya. Water permits may be acquired for a range of purposes, including the provision and employment of water for the development of power and other

Principal Statute/ Regulations	Brief description
	uses. These regulations will relate to abstraction and use of water from rivers.
The Water Resources Management Rules (2007)	These Rules apply to all water resources and water bodies in Kenya, including all lakes, water courses, streams and rivers, whether perennial or seasonal, aquifers, and shall include coastal channels leading to territorial waters. The Water Resources Management Rules empower Water Resources Management Authority (WRMA) to impose management controls on land use falling under riparian land. It also enables any person with a complaint related to any matter covered by these rules to the appropriate office in WRMA. The rules also elaborate on the following: • Mechanisms for appeal; • Public notification: • Public consultation; • Orders on compliance; • Protection of the integrity of the water resources monitoring network; • Water Resource User Associations; • Water Resource Database; • Approval of activities listed in the fifth schedule of Water Act 2002; Authorization and permitting; • Wetlands; • Allocation of water for irrigation; • Prior right to water for storage; • Dams; • Groundwater development and its regulation; • Control of water pollution and effluent discharge; • Water works; • Water use charges on permitted water use; • Conservation of riparian land and catchment areas; • Catchment management strategies; • Protected areas and ground water conservation areas; Establishment and protection of reserve water;

Principal Statute/ Regulations	Brief description
	• Miscellaneous provisions which include provisions on: (i) Qualifications to practice as a water resource professional; (ii) Qualifications for a registered contractor; (iii) Recognized water quality laboratories; (iv) Emergency orders; (v) Penalties for offences; (vi) Revocation of rules under Cap 372. Part IX: Conservation of Riparian and Catchment Areas of the Rules, Section 116(5) states "Unless otherwise determined by a water resources inspector, the riparian land adjacent to the ocean is defined as a minimum of two metres vertical height or thirty metres horizontal distance from the high watermark, whichever is less". Section 118 (1) of the Rules state "No person shall undertake the activities listed in the Sixth Schedule on riparian land unless authorised by the Authority in consultation with other relevant stakeholders". Part A of the Sixth Schedule: Protection and Conservation of Riparian and Catchment Areas of the Rules provide activities proscribed on riparian land as: 1) Tillage or cultivation; 2) Clearing of indigenous trees or vegetation; 3) Building of permanent structures; 4) Disposal of any form of waste within the riparian land; 5) Excavation of soil or development of quarries; 6) Planting of exotic species that may have adverse effect to the water resource; 7) Or any other activity that in the opinion of the Authority and other relevant stakeholders may degrade the watercourse.
Public Health Act	The Public Health Act provides for the protection of human health through prevention and guarding against introduction of infectious diseases into Kenya from outside, to promote public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within Kenya, to advice

Principal Statute/ Regulations	Brief description
	and direct local authorities in regard to matters affecting the public health to promote or carry out researches and investigations in connection with the prevention or treatment of human diseases. This Act provides the impetus for a healthy environment and gives regulations to waste management, pollution and human health. The Public Health Act regulates activities detrimental to human health. The owner(s) of the premises responsible for environmental nuisances such as noise and emissions, at levels that can affect human health, are liable to prosecution under this act. An environmental nuisance is defined in the act as one that causes danger, discomfort or annoyance to the local inhabitants or which is hazardous to human health. This Act controls the activities of the project with regard to human health and ensures that the health of the surrounding community is not jeopardized by the activities of the project such as water development.
Physical Planning Act	This Act provides for the preparation and implementation of physical development plans for connected purposes. It establishes the responsibility for the physical planning at various levels of Government in order to remove uncertainty regarding the responsibility for regional planning. A key provision of the Act is the requirement for Environmental Impact Assessment (ESIA). This legislation is relevant to the implementation and siting of sewerage plants in pilot urban centres as identified in the project document. The Act calls for public participation in the preparation of plans and requires that in preparation of plans proper consideration be given to the potential for socio-economic development needs of the population, the existing planning and future transport needs, the physical factors which may influence orderly development in general and urbanization in particular, and the possible influence of future development upon natural environment.
The Land Act 2012	It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

Principal Statute/ Regulations	Brief description
The Trust Land Act (CAP 288)	The constitution vests all land which is not registered under any act of parliament under the ownership of local authorities as trust land. Section 117 of the Constitution of Kenya provides that the Trust Lands Act may empower a county council to set apart an area of trust land vested in that county council for use and occupation by a public body or authority for public purposes, or by any person for a purpose likely to benefit the persons. The Act state that while giving due considerations to the rights and obligations of landowners, there shall be compensation whenever a materials site, diversion or realignment results into relocation of settlement or any change of user whatsoever of privately owned land parcels.
Antiquities and Monuments Act, Cap 215 of 1983	This Act aims to preserve Kenya's national heritage. Section-2 defines an antiquity as any moveable object other than a book or document made or imported into Kenya before 1895. Human, faunal or floral remains in Kenya dating to before the benchmark date of 1895 are also deemed to be antiquities. Both the National Museums of Kenya and the Kenya Cultural Centre have been established in part to discharge this Act.
The Lakes and Rivers Act Chapter 409 Laws of Kenya	This Act provides for protection of river, lakes and associated flora and fauna. The provisions of this Act may be applied in the management of the project.
The Employment Act, 2007	This Act declares and defines the fundamental rights of employees; minimum terms and conditions of employment; to provide basic conditions of employment of employees; and to regulate the employment of children, among other rights. Key sections of the Act elaborate on the employment relationship; protection of wages; rights and duties in employment; termination and dismissal and protection of children, among others. This Act will guide the management of workers, especially during the construction period.
HIV and AIDS Prevention and Control Act 2011	The object and purpose of this Act is to (a) promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS; (b) extend to every person suspected or known to be infected with HIV and AIDS full protection of his human rights and civil liberties by (i) prohibiting compulsory HIV testing save as provided in this Act; (ii) guaranteeing the right to privacy of the individual; (iii) outlawing discrimination in all its forms and subtleties against persons with or persons perceived or suspected of having HIV and AIDS; (iv) ensuring the provision of basic health care and social services for persons infected with HIV and AIDS; (c) promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV

Principal Statute/ Regulations	Brief description
	transmission; and (d) positively address and seek to eradicate conditions that aggravate the spread of HIV infection. Section 7 of the Act focuses on HIV and AIDS education in the workplace and states that (1) The Government shall ensure the provision of basic information and instruction on HIV and AIDS prevention and control to (a) employees of all Government Ministries, Departments, authorities and other agencies; and (b) employees of private and informal sectors. (2) The information provided under this section shall cover issues such as confidentiality in the work-place and attitudes towards infected employees and workers.
Sexual Offences Act 2006	An Act of Parliament that makes provision about sexual offences, aims at prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes. Section 15, 17 and 18 below are mainly focused on sexual offenses on minor (children). Under Section 15 it is an offence for Any person who - (a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show; (b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show; (c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means; (d) takes advantage of his influence over, or his relationship to a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show; (e) threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show; (f) intentionally or knowingly owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offence under this law Under Section 17 it is an offence for Any person who - (a) intentionally causes or incites another person to become a prostitute; and (b) intentionally controls any of the activities of another person relating to that persons prostitution; and does so for or in expectation of gain for him or herself or a third person, is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years or to a fine of five hundred thousand shillings or to both.

Principal Statute/ Regulations	Brief description
	Under Section 18 it is an offence for Any person who - (1) Any person who intentionally or knowingly arranges or facilitates travel within or across the borders of Kenya by another person and either - (a) intends to do anything to or in respect of the person during or after the journey in any part of the world, which if done will involve the commission of an offence under this Act; or (b) believes that another person is likely to do something to or in respect of the other person during or after the journey in any part of the world, which if done will involve the commission of an offence under this Act, is guilty of an offence of trafficking for sexual exploitation. (2) A person guilty of an offence under this section is liable upon conviction, to imprisonment for a term of not less than fifteen years or to a fine of not less than two million shillings or to both.
Child Rights Act	This Act of Parliament makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. It also makes provision for the administration of children's institutions, 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.
Labour Relations Act 2012	An Act of Parliament to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratisation of trade unions and employers organisations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes. This Act in Section II Part 6 provides for freedom of employees to associate; section 7 provides for protection of rights of employees; Part 9 provides for adjudication of disputes and Part 10 provides for protection of the employees to hold strikes and lock outs.
The Persons with Disability Act (2003)	The Persons with Disabilities Act outlines the following entitlements: (1) a legitimate expectation of being able to enjoy accessibility and mobility.12 (2) a legitimate expectation of being able to access public buildings (that must now be adapted to suit needs of PWDs); and (3) a legitimate expectation of being able to access public service vehicles (that must now be adapted to

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

Principal Statute/ Regulations	Brief description
	suit needs of PWDs). The Act further elaborates on these entitlements in its regulations, tilted the Persons with Disabilities (Access to Employment, Services, and Facilities) Regulations, 2009 in the various regulations on Access to Employment, Services, and Facilities (in Part III of the regulations). The Act places a mandate upon State actors, to take 'affirmative actions' measures in favour of protection of the health rights of persons with a disability whose impairment 'often' predisposes them to be on the receiving end of less than advantageous societal-regard, socio-economic opportunities, and exemplary healthcare services; hence their health outcomes could be markedly different from the wider society.
Vulnerable and Marginalized Groups	Kenyan Constitution Article 260 of the constitution defines "marginalized community" to include a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole. Article 10 recognizes the participation of the people, protection of the marginalized, and sustainable development as national values and principles of governance. It also recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. Article 27 (1) & (4) of the CoK, 2010 provides for equality in the 'treatment' of people; it prohibits discrimination based on race, ethnic or social origin, colour, religion, belief, culture, dress, language or birth. Whilst projects should be neutral on the issue of ethnicity; they occasionally run the social risk of impacting different ethnic communities differently where such projects traverse different ethnic communities and there is a perception or an effect of the dominance of benefits being enjoyed by some groups at the expense of others. Social inclusion based on ethnicity is also discussed in Article 21 (3), which requires the State to address the needs of vulnerable groups within society, including members of particular ethnic, religious or cultural communities.
National Gender and Equality Commission Act (2011)	Under Article 59 of the Kenyan Constitution that established the National Gender and Equality Commission (NGEC). Section 8 describes the role of NGEC to coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the government on all aspects thereof. Further, to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws and administrative regulations in all public and private institutions.

Principal Statute/ Regulations	Brief description
Social Assistance Act (No. 24 of 2013)	The Social Assistance Act is implemented through the Social Development Department in the Ministry of Labour and Social Protection, the Social Assistance Unit deals with orphans and vulnerable children, poor elderly persons, unemployed persons, persons disabled by acute chronic illnesses, widows, and widowers, persons with disabilities and any other persons who would be considered vulnerable. The type of assistance provided includes emergency assistance for a period not exceeding one-month, short term assistance for less than four consecutive months, long term assistance for a period of four or more consecutive months or special assistance. The Social assistance programmes are intended to: (a) assist in the development of individual, family and community capacity to become self-sufficient; (b) increase the ability of persons in need to assume greater responsibility for themselves; (c) lessen dependence by the people on public financial assistance; (d) provide support services to allow persons who may otherwise be in need to avoid dependence on public financial assistance, and (d) lessen remove or prevent the causes and effects of poverty.
Access to Information Act (No. 31 of 2016)	Kenyan citizen has a right to information and disclosure of information by public entities. Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, the local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.
Public Participation	Public participation in Kenya is considered a crucial pillar of the Kenyan Constitution. Article 1(2) all sovereign power belongs to the people of Kenya. The people may exercise their sovereignty directly through their elected representatives. Article 10 (2) a, b and c states that the national value and principles of governance include transparency and accountability. Article 61 gives the public, individuals or a group a say in matters of land including acquisition, management, transfer, disposal or ownership or private, public and/or community land. Article 69 (1) the State should encourage public participation in the management, protection, and conservation of the environment. Communities have the right to manage their affairs and to further their development. Article 196 (1) county assembly should (a) openly conduct its business, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees. Article 196 (2) a county assembly may not exclude the public, or any media, from any sitting, unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

Principal Statute/ Regulations	Brief description
National Land Commission Act (2012) on Land Acquisition	The act establishes the National Land Commission to manage public land and carry out the compulsory acquisition of land for specified public purposes. Involuntary resettlement, if left unmitigated, normally gives rise to severe economic, social, and environmental risks. People face impoverishment when their productive assets or income sources are lost, and social networks are weakened. Some of the impacts of resettlement, if not mitigated, include landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, educational loss, loss of access to common property, and social displacement.
The Valuers Act 532 (2002)	The act establishes the valuers registration board, which has the responsibility of regulating the activities and conduct of registered valuers following the provision of the act.
Environment and Land Court Act, (2011)	This act establishes Environment and Land Court, a court with the status of the high court, which shall facilitate the just, expeditious, proportionate, and accessible resolution of disputes related to land and environment, including compulsory land acquisition, land tenure, titles, boundaries, compensation, valuations, rates, land use, and environmental planning.
Community Land Act (2016)	Provides for allocation, management, and administration of community land. Establishes Land Allocation Committees and Community Land Board. County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held. The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land. Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition. Any such monies shall be deposited in a special interest-earning account by the county government. Any land which has been used communally, for a public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.
Kenya Constitution on Compulsory Land Acquisition	The Constitution of Kenya, 2010, protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except under law. Article 40(3) states: *"The State shall not deprive a person of property of any description, or of any interest in, or right over, the property of any description, unless the deprivation"* –

Principal Statute/ Regulations	Brief description
	a) Results from the acquisition of land or an interest in land or a conversion of an interest in land, or title to land, following Chapter Five; or *b) Is for a public purpose or in the public interest and is carried out following this Constitution and any Act of Parliament that –* *(i) Requires prompt payment in full, of just compensation to the person; and* *(ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.* The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act, 2012 designates the NLC as the institution empowered to compulsorily acquire land. Article 40 of the Constitution provides that the state may deprive owners of the property only if the deprivation is "for a public purpose or in the public interest," but neither the Constitution nor any law provides an exclusive list of permissible public purposes or interests. The state's exercise of this power is left at the discretion of NLC and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to the court.
Land Act (2012)	The Land Act is Kenya's framework legislation regulating the compulsory acquisition of land (i.e. land, houses, easements, etc.). The Act provides for sustainable administration and management of land and land-based resources including compulsory acquisition. The Act is based on the 2010 Constitution that recognizes the rights of the landowner and the necessity for fair and just compensation. Under the current Constitution, the LA 2012 empowers the NLC (under the guidance of Cabinet Secretary for Lands) to exercise the power of compulsory acquisition on behalf of the State
Land Laws (Amendment) Act (2016)	This Act amends the laws relating to the land to align them with the Constitution, to give effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes. The Act has repealed sections of the following Acts: Land Registration Act, 2012, Land Act, 2012 and National Land Commission Act, 2012. At the implementation stage, the project will adhere to land requirements under the Act especially where land take is necessary from private owners.

While the EMCA supersedes all other environmental legislation, numerous other laws and regulations in addition to those described above may influence the various aspects and activities of the subprojects, which include the following among others:

(i) Trade Licence Act, Cap 497;

(ii) Penal Code Cap 63 (rev. 1985);

(iii) Standards Act, Chapter 496 (1974);

(iv) Building Code (1968);

(v) Work Injury and Benefits Act (2007);

(vi) Food, Drugs and Chemical Substances Act, Cap 254 (rev 1992);

(vii) Use of Poisonous Substances Act, Cap 247(rev. 1983);

(viii) Transport Licensing Board Act (Cap. 404).

(ix) National Gender and Equality Commission Act 2011

4. Relevant Sector Policies

In addition to the regulations listed in the previous section, there are a few sector specific policies that may be relevant to SAFER. These are:

4.1. National Policy on Environment and Development Sessional Paper No. 6 of 1999

Currently, a far-reaching initiative towards an elaborate national environmental policy is contained in the Sessional Paper No. 6 of 1999 on Environment and Development. It advocates for the integration of environmental concerns into the national planning and management processes and provides guidelines for environmentally sustainable development.

4.2. The National Environmental Sanitation and Hygiene Policy-July 2007

The National Environmental Sanitation and Hygiene Policy is devoted to environmental sanitation and hygiene in Kenya as a major contribution to the dignity, health, welfare, social well-being, and prosperity of all Kenyan residents.

4.3. Forest Policy 2005

The goal of this Policy is to enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services. The specific objectives of this policy are to:

- Contribute to poverty reduction, employment creation and improvement of livelihoods through sustainable use, conservation and management of forests and trees.
- Contribute to sustainable land use through soil, water and biodiversity conservation, and tree planting through the sustainable management of forests and trees.
- Promote the participation of the private sector, communities and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure the sustainability of the forest sector.
- Promote farm forestry to produce timber, wood fuel and other forest products.
- Promote dry land forestry to produce wood fuel and to supply wood and non-wood forest products.
- Promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies.
- Promote forest research, training and education to ensure a vibrant forest sector.

4.4. Wildlife Policy 2007

The goal of this Policy is to provide a framework for conserving, in perpetuity, Kenya's rich diversity of species, habitats and ecosystems for the wellbeing of its people and the global community. The objectives and priorities are to:

- Conserve Kenya's wildlife resources as a national heritage.
- Provide legal and institutional framework for wildlife conservation and management throughout the country.
- Conserve and maintain viable and representative wildlife populations in Kenya.
- Develop protocols methodologies and tools for effective assessment and monitoring of wildlife conservation and management throughout the country.
- Promote partnerships, incentives and benefit sharing to enhance wildlife conservation and management.
- Promote positive attitudes towards wildlife and wildlife conservation and management.

4.5. Eviction Guidelines (2010)

According to the Eviction Guidelines drafted by Ministry of Lands (2010), the Government shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their potential extremely negative impact on a wide range of international recognised human rights. Any eviction must be warranted by law, reasonable in the circumstances, proportionate and can only be carried out in accordance with the Guidelines and international human rights and humanitarian law.

The Government shall ensure that exceptions to the prohibition on forced evictions such as the 'interest of society' or 'public interest' should be read restrictively, so as to again ensure that evictions only occur in exceptional circumstances.

Where eviction is considered to be justified it should be carried out in strict compliance with the following procedures: -

a) Appropriate notice given to the affected individual or groups clearly stating the modalities, day and time of the eviction.

b) Consultations with the affected individual or group on the proposed eviction modalities and resettlement plans.

c) Holding of public hearing with affected persons and other stakeholders to provide an opportunity to discuss alternative proposals for resettlement.

d) Provide opportunity for the parties to seek legal redress where there is a stalemate or dispute.

e) The eviction notice should contain a detailed justification for the decision, among others be in a language that is understood by all individuals concerned; include the full details of the proposed alternative; and where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions

Section 4.95 on Alternative land and housing states that the Government shall ensure that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The Government shall, where those affected are unable to provide for themselves, take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

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 a community forest, grazing areas or shrines”), government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas.

Customary Land Tenure

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

Public Tenure

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

Community Land

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

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

Freehold Tenure

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

Leasehold Tenure

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

The Process of Land Acquisition in Kenya

Proof that Compulsory Possession is for Public Good

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

Respective Government Agency or Cabinet must seek Approval of NLC

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

Inspection of Land to be acquired

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

Publication of Notice of Intention to acquire

Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette and County Gazette.*[13] It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar. The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body. NLC will, therefore, be required to make a comprehensive notice that includes a description of the land, public purpose for which the land is acquired, and the acquiring public body. The Land Registrar shall then make an entry in the master register on the intention to acquire as the office responsible for survey, at both national and County level, geo-references the land intended for acquisition.

Serve the Notice of Inquiry

Thirty days after the publication of the Notice of Intention to Acquire, the NLC then schedules a hearing for a public inquiry. NLC must publish notice of this hearing in the *Kenya Gazette and County gazette 15 days before the inquiry meeting* and serve the notice on every person

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

interested in the land to be acquired. Such notice must instruct those interested in the land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.

Holding of a Public Hearing

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

Valuation of the Land

Part III of the Land Act 2012, section 113 (2a) states that "the Commission shall determine the value of conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the persons interested in the land have or have not appeared at the inquiry." This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae stipulated that it will develop. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

Matters to be considered in determining Compensation:

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

Award of Compensation

Under the Land Act 2012 section 117, the State may award a grant of land in lieu of monetary compensation ("land for land"), upon agreement, and provided the value of the land awarded does not exceed the value of the monetary compensation that would have been allowable. The law stipulates that any dispossessed person shall be awarded the market value of the land. The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the National Land Commission (NLC) has determined the amount of compensation, the NLC prepares and serves a written award of compensation to each legitimate claimant.[14] 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.[15] LA, Section 115 further stipulates that

[14] *Land Act,* 115
[15] *Land Act,* 115

an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney's fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

Payment of Compensation

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[16] before a notice of acquisition is issued. Section 119 provides a supplementary condition and states that if the size of the land is greater than the size of land in respect of which the award has been made, then NLC shall compensate for excess size "as soon as practicable."[17] 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.[18]

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.

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 the land, the commission shall ensure payment of just compensation in full. When this has been done, NLC removes the ownership of private land from the register of private ownership and the land is vested in the national or County Government as public land free from any encumbrances.

Temporary Possession

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

Opportunity for Appeal

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

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

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[16] *Land Act,* This language reflects the language of the Kenya Constitution, 1963.
[17] *Land Act,* 119
[18] *Land Act 115*.

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

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

5. Institutions relevant to E&S Regulations

This section provides information on the institutions that are relevant E&S regulations in Kenya.

5.1. Environmental Assessment Administrative/Institutional framework

There are over 20 institutions and departments, which deal with environmental issues in Kenya. Some of the key institutions include the Ministry of Environment and Mineral Resources (MEMR), Kenya Forest Services (KFS), Kenya Wildlife Service (KWS), National Museums of Kenya (NMK), National Environment Management Authority (NEMA), Ministry of Environment Natural Resources (MEWNR), Ministry of Water and Irrigation (MoWI), Water Resources Management Authority (WRMA) and the public universities, among other organisations. There are also local and international NGOs involved in environmental issues in Kenya. In 2001, the Government established specific administrative structures to implement the EMCA. The main administrative structures are described in the following sections.

5.1.1. The National Environment Management Authority

The responsibility of the National Environmental Management Authority (NEMA) is 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.

In addition to NEMA, the Act provides for the establishment and enforcement of environmental quality standards to be set by a technical committee of NEMA known as the Standards and Enforcement Review Committee (SERC) which will govern the discharge limits to the environment by the proposed project.

5.1.2. County Environmental Committees

The County Environmental Committees also contribute to decentralised environmental management and enable the participation of local communities. These environmental committees consist of the following:

(i) Representatives from all the ministries;

(ii) Representatives from local authorities within the province/district;

(iii) Two farmers / pastoral representatives;

(iv) Two representatives from NGOs involved in environmental management in the province/district;

(v) A representative of each regional development authority in the province/district.

5.1.3. Public Complaints Committee on Environment

The Public Complaints Committee (PCC) is established under Section 31 of EMCA. The PCC is concerned with the investigation of complaints relating to environmental damage and degradation generally. The PCC has powers to investigate complaints against any person or even against NEMA or on its own motion investigate any suspected case of environmental degradation. The PCC is required by law to submit reports of its findings and recommendations to NEC. The law however is weak in that it does not provide PCC with the mandate to see its recommendations carried through. Further, NEC is not specifically required to do anything with regard to the reports submitted by the PCC and will often note and adopt the same without any further follow up action. So far the PCC has experienced challenges such as failure to honour summons, hostility between parties, hostility directed at PCC investigators, lack of understanding of EMCA and abdication of duty by Lead Agencies.

5.1.4. Standards and Enforcement Review Committee

The Standards and Enforcement Review Committee (SERC) is a committee of NEMA and is established under Section 70 of EMCA. This is a technical Committee responsible for formulation of environmental standards, methods of analysis, inspection, monitoring and technical advice on necessary mitigation measures.

They members of SERC consist of representatives of various relevant government ministries and parastatals that are Lead Agencies as well as those responsible for matters such as economic planning and national development, finance, labour, public works, law and law enforcement, etc. Other members are drawn from public universities, and other government institutions.

5.1.5. National Environmental Tribunal (NET)

The NET is established under Section 125 of EMCA for the purpose of hearing appeals from administrative decisions by organs responsible for enforcement of environmental standards. An appeal may be lodged by a project proponent upon denial of an EIA licence or by a local community upon the grant of an EIA licence to a project proponent. NEMA may also refer any matter that involves a point of law or is of unusual importance or complexity to NET for direction. The proceedings of NET are not as stringent as those in a court of law and NET shall not be bound by the rules of evidence as set out in the Evidence Act. Upon the making of an award, NET's mandate ends there as it does not have the power to enforce its awards. EMCA provides that any person aggrieved by a decision or award of NET may within 30 days appeal to the High Court.

5.1.6. Environment and Land Court

The Kenya Constitution establishes Environment and Land Court. Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavour to encourage application of alternative dispute resolution 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 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:

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

Parties will pay fees as determined by Land and Environment or the court may choose to waive them completely or in part on grounds of financial hardship.

5.1.7. Directorate of Occupational Safety and Health Services (DOSHS

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

5.2. Institutional Responsibilities with respect to Social Issues

The constitution provides for a number of institutions to address issues of vulnerable and marginalised groups including grievance redress mechanisms. Key constitutional mechanisms for redress of issues related to marginalization include the (a) Commission on Administrative Justice - Office of the Ombudsman; (b) National Land Commission; and (c) Committee on Revenue Allocation.

5.2.1. The Commission on Administrative Justice (CAJ) – Office of the Ombudsman

Kenya has a formal Feedback and Complaints Handling Mechanism. The Commission is the national/constitutional stakeholder instrument for grievance redress. Its mandate is to receive and address complaints against public officers and public institutions to improve service delivery. Three types of complaints can be made to the office of the Ombudsman including: (i) Citizen against State/public officers and institutions; (ii) Public officers against fellow public officers; and, (iii) Public institutions against other public institutions. Table 2 below provides the steps and process for feedback and complaints redress by the Ombudsman.

5.2.2. The National Land Commission

The National Land Commission (NLC) is an independent commission tasked with registering land transfers, resolving land disputes and addressing historical land injustices. NLC is tasked with facilitating and increasing access to fair and equitable mechanisms for resolving land and natural resource based disputes and conflicts.

National Land Commission Act, 2012 specifies the role of NLC as:

- To identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;

- Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and
- Acquire land for public purposes
- Solve land disputes and deal with historical land injustices
- Share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or
- May require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

5.2.3. County Land Management Boards (CLMB)

County Land Management Boards are established by the NLC in consultation and cooperation with the national and county governments. Among the 3 and not more than seven members of the CLMB appointed by the NLC there shall be a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the county governor. The Boards' mandates cover the processing of applications for allocation of land, change and extension of user, subdivision of public land and renewal of leases. They may also perform any other functions assigned by the NLC.

5.2.4. The Commission on Revenue Allocation (CRA)

CRA is the CoK, 2010's mechanism for bringing the marginalized communities and regions of Kenya into the country's mainstream development agenda. The mandate of CRA includes to: (i) Recommend on equitable sharing of revenues between National and County Governments and among Counties; (ii) Recommend on financing and financial management of County Governments; and to (iii) Determine, publish and regularly review a policy which sets out the criteria by which to identify the marginalized areas. The constitution has further established the Equalization Fund as the instrument with which CRA it to achieve its mandate. The objective of the equalization fund is to eradicate marginalization and other forms of economic inequalities in Kenya and to bring all groups into mainstream development within 20 years from the date of promulgation of the CoK, 2010. There is clear overlap between the counties designated as marginalized by the CRA and the location of marginalized groups.

5.2.5. National Gender Equality Commission

National Gender Equality Commission is a constitutional Commission established by an Act of Parliament in August 2011, as a successor commission to the Kenya National Human Rights and Equality Commission pursuant to Article 59 of the Constitution. NGEC derives its mandate from Articles 27, 43, and Chapter Fifteen of the Constitution; and section 8 of NGEC Act (Cap. 15) of 2011, with the objectives of promoting gender equality and freedom from discrimination. The over-arching goal for NGEC is to contribute to the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalized communities

5.2.6. Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. The Commission plays two key broad mandates;

- It acts as a watchdog over the Government in the area of human rights.
- Provides key leadership in moving the country towards a human rights state.

The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor the compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya.

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

The Department of social development derives its mandate form Executive Order No. 1 of 2018 that includes: community mobilization, family promotion and protection, community development policy, registration of self-help groups, implementation of the Social Protection Policy, policies and programs for persons with disabilities, policies, and programs for older persons, national volunteerism policy, vocational training and rehabilitation of persons with disabilities. Focuses on the empowerment of families and communities for sustainable social development towards improving their livelihoods.

5.2.8. National Council for Persons with Disabilities (NCPD)

Oversight of all matters concerning persons with disability with the statutory responsibility for facilitation of disability mainstreaming programmes, formulating and developing measures and policies designed to achieve equal opportunities for PWDs, cooperating with the government during the National Census to ensure that accurate figures of PWDs are obtained; issuing orders requiring the adjustment of buildings that are unfriendly for use by PWDs, recommending measures to prevent discrimination against PWDs, encouraging and securing the rehabilitation of PWDs within their communities and social environment, registering persons with disabilities and institutions and organizations giving services to PWDs and raising public awareness on disability.

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

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

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

This department has the sectoral oversight and management, of all matters concerning children, policies on children and social development, management of statutory children's institutions, and children's welfare and penal protection. The Department of Children Services, the National Council for Children Services and the Child Welfare Society of Kenya are the three structures with the functions of overseeing Children Services Welfare and Protection. The Child Welfare Society of Kenya (CWSK) is a state corporation for the care, protection, welfare, and adoption of children. It is the National Adoption Society for Kenya and the

National Emergency Response, Welfare, and Rescue Organization for children. The Agency was established and gazetted in 1955 as an approved society and the Adoption Society for Kenya in 1969. Whilst its functions largely focus upon children faced with adverse societal risks/ills, it is the proper placement agency for an affected child, whilst a social risk is being managed.

5.2.11. Child Welfare Society of Kenya

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

5.2.12. The State Department of Public Service and Youth in the Ministry of Public Service' Youth and Gender

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

5.2.13. National Cohesion and Integration Commission (NCIC)

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

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

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

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

The department has the statutory oversight and management of all matters concerning the traditionally marginalized regions (include the Arid and Semi-Arid Lands) (ASAL). ASAL policy, coordination of planning and development for and semi-arid lands, implementation of special programs for the development of arid and semi-arid areas, implementation of arid and semi-arid programs, coordinating research for sustainable arid and semi-arid land resource management, development and livelihoods, promotion of livestock development, marketing and value addition of resources within arid and semi-arid areas, enhancing livelihoods resilience of pastoral and agro-pastoral communities, coordinating responses against drought and desertification and peace-building and conflict management within arid and semi-arid areas.

5.2.16. National Disaster Management Authority

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

5.3. Autonomous and Semi-Autonomous Government Agencies (SAGA) Related to the Project

5.3.1. Roads Sub-Sector

Between 2006 and 2008 through the Roads Act 2006 and Energy Act 2007, six SAGAs were created as part of the reform agenda for the sector.

- The Kenya National Highways Authority (KeNHA): is responsible for the development and maintenance of class A, B and C roads. KeNHA will also advise the Minister responsible for Roads on technical issues such as standards, axle load and research development. KeNHA will also create regions of operations countrywide;
- The Kenya Rural Roads Authority (KeRRA): is responsible for all rural and small town roads of Class D and below including Forest Roads, Special Purpose Roads and Unclassified Roads currently under county councils and town councils. KeRRA will also manage funds allocated to Constituencies;
- Kenya Urban Roads Authority (KURA): is responsible for management and maintenance of all roads within cities and major municipalities. Local Authorities will remain major stakeholders in prioritizing road works to be implemented by KURA;
- The Kenya Wildlife Service (KWS) is a roads agency responsible for roads in National Parks and Game Reserves as well as access roads allocated to KWS by Ministry of Roads;
- The Kenya Roads Board established by Kenya Roads Board Act 1999: is responsible for funding maintenance of all roads including approval of maintenance work programmes, technical and financial audits of works funded by the Board.

5.3.2. Transport Sub-Sector

- Kenya Civil Aviation Authority (KCAA) is responsible for regulation of the aviation industry and ensuring air safety navigation in the country;
- Kenya Airports Authority (KAA) manages the most important and fastest transport link to the outside world. The Authority ensures that there are adequate efficient and safe airports in Kenya.
- Kenya Ports Authority (KPA) manages the ports, along the coastline that provides the expansive hinterland of mainland Kenya, Rwanda, Burundi, Sudan and Uganda with cheap transport link to the outside world.
- Kenya Ferry Services (KFS) provides free ferry services to the public across the Likoni and Mtongwe channels on the Indian Ocean.

- Kenya National Shipping Line (KNSL) was established with the objective of transportation of bulky cargo as a recommendation adopted at an international forum on shipping development
- Kenya Railways Corporation (KRC) provides rail services that are essential for transportation of commodities to and from the port of Mombasa in addition to providing commuter and passenger services.
- Kenya Maritime Authority (KMA) responsible to regulate and co-ordinate activities in the Maritime industry

5.3.3. Energy Sub-Sector

- Kenya Power and Lighting Company Limited (KPLC) – is responsible for electricity transmission and distribution;
- Energy Regulatory Commission (ERC) regulates the entire energy sector and protects interest of stakeholders; Rural Electrification Authority (REA) is responsible for accelerating rural electrification at a pace consistent with government policy.
- Energy Tribunal arbitrates disputes between ERC and aggrieved stakeholders in the energy sub-sector.
- Kenya Pipeline Company (KPC): operates the oil pipeline system for the transportation and storage of petroleum products;
- National Oil Corporation of Kenya (National Oil): is responsible for petroleum exploration and fuel marketing;
- Kenya Electricity Generating Company (KenGen) is the main electricity generating company, accounting for 87% of the total installed capacity;
- Kenya Petroleum Refineries Ltd (KPRL) is responsible for crude oil refining in the country.
- Geothermal Development Company (GDC) is responsible for development of geothermal resources.
- Kenya Electricity Transmission Company (KETRACO) is responsible for construction and operation of power transmission lines.

5.3.4. Water Sub-Sector

- Water Resources Management Authority (WRMA): The overall mandate of WRMA is to protect and conserve water resources. Water resources for purposes of the Water Act include lakes, ponds, swamps, streams, marshes, watercourses or anybody of flowing or standing water both below and above the ground. The functions of the WRMA include planning, management, protection and conservation of water resources.
- Water Services Regulatory Board (WASREB): The functions of the WASREB include the issuance of licences to Water Service Boards and to approve service provision agreements concluded between Water Service Boards and Water Service Providers. The Water Service The WASREB is responsible for ensuring that water services and supply are efficient and meet expectations of consumers through regulation and monitoring of Water Service Boards and Water Service Providers.
- Water Services Trust Fund (WSTF): The main objective of the WSTF is to assist in financing capital costs of providing services to communities without adequate water and

sanitation services. The WSTF focuses on reaching those areas that are underserved or not served at all such as informal settlements, the priority being given to poor and disadvantaged groups.

- Water Appeals Board (WASREB): The Water Appeals Board can hear and determine appeals arising from the decision of the Minster of Water and Irrigation, the WASREB and the Water Resources Management Authority (WRMA) with respect to the issuance of permits or licensees under the Water Act.

- Water Services Boards (WSB): The WSBs are responsible for the provision of water and sewerage services within their areas of coverage and are licensed by the WASREB. The WSBs are also responsible for contracting Water Services Providers (WSPs) for the provision of water services. There are currently eight (8) established WSBs namely: Athi Water Services Board, Tana Water Services Board, Coast Water Services Board, Lake Victoria South Water Services Board, Lake Victoria North Water Services Board, Northern Water Services Board, Rift Valley Water Services Board and Tanathi Water Services Board.

Annex 3: Project screening checklist

Environmental and Social Aspects Screening Checklist		
Borrower Name:		**Location:**
Loan Amount (US$) and Purpose:		
Industry Sector:	**Brief Borrower Description:**	
Completed by: **Date:**	**Reviewed by:** **Date:**	
Category ☐ **Low Risk** ☐ **Medium Risk** ☐ **High/Substantial Risk (*do not proceed*)** **Rationale (please summarise the reasons for the category selected):**		
Compliance with the Applicable Requirements — Check all that apply:		
Exclusion List Activities Yes ☐ No ☐ (*if there are exclusion list activities identified do not proceed*) **National regulatory requirements Yes ☐ No ☐** ☐ **Environmental, health and safety permits granted: (____)** ☐ **Injuries and fatalities have occurred:** **(how and when: ____________________________________)** ☐ **Labour-related fines:** **(when and why: ______________________________________)** ☐ **Environmental incidents and fines:** **(when and why: ______________________________________)**		

Site(s)—Check all that apply:
☐ **Non-urban/undeveloped land** ☐ **Proximity to river/stream/pond/lake** ☐ **Proximity to protected area (e.g. forest/endangered species)/ecologically sensitive area (e.g., river/protected areas)** ☐ **Proximity to culturally sensitive/indigenous area**

Environmental Issues – Check all that apply:	
Air emissions ☐ **Boilers** ☐ **Generators** ☐ **Vehicles and equipment** ☐ **Furnaces and incinerators** ☐ **Welding and soldering** ☐ **On-site burning** ☐ **Use of solvents** ☐ **Use of fumigation** ☐ **Use of exhaust ventilation**	*Wastewater* ☐ Wastewater discharged to: ______________________________ ☐ Oil separators ☐ Cleaning operations ☐ Cleaning operations ☐ Spraying operations ☐ Separation tanks or filters ☐ Foul sewers and septic tanks ☐ De-watering/water pump out ☐ Water treatment units
Solid waste ☐ **Waste generated** ☐ **Types of waste:** ______________________________ ______________________________ ☐ **Hazardous waste (e.g., waste oils, pesticide washings, solvents, clinical waste, asbestos) Waste disposed to** ______________________________	*Hazardous chemicals, fuels, and pesticides* ☐ On-site chemicals or fuels storage ☐ Protective measures against leaks/spills ☐ Signs of leaks/spills ☐ Protective measures against rain ☐ Signs of corrosion on tanks/containers ☐ Secured storage areas against theft ☐ On-site spill clean- up equipment ☐ Training on proper handling of chemicals and fuels ☐ Pesticide use and management

Resource use	*Nuisance*
☐ **Main Materials used:** ______________________________________ ______________________________________ ☐ **Use of renewable natural resources** ☐ **Use of tools and equipment** ☐ **Water source:** _________________ ☐ **Energy source:** ________________	☐ Dust ☐ Noise ☐ Odours ☐ Fumes ☐ Vibration ☐ Traffic congestion
Based on the above are there any issues (e.g. poor practices, hazardous conditions, non-compliance with local requirements etc.)? If so, please describe:	

Community Interactions — Check all that apply:
☐ **No designated person in charge of responding to questions from the community** ☐ **No procedures for managing community complaints** ☐ **Use of security personnel**
Based on the above are there any issues (e.g. community complaints, problems with the community and security personnel, etc.)? If so, please describe:
Social issues – Check all that apply:
☐ **Land acquisition required (do not proceed)** ☐ **Displacement/resettlement of local settlements (do not proceed)** ☐ **Impact on local settlements/livelihood (do not proceed)** ☐ **Impact on indigenous peoples (do not proceed)** ☐ **Complaints from neighbours/communities** ☐ **On or adjacent to site of cultural/archaeological importance (do not proceed)** **Based on the above please briefly describe any issues:**

Labour issues —Check all that apply:
□ No Personal Protective Equipment provided (e.g., safety goggles/hard hat/protective glove) □ Inadequate employee health and safety measures (e.g. fall prevention/ventilation) □ Inadequate working conditions (e.g., air quality/lighting/confined spaces/on-site hygiene) □ Inadequate terms of employment (e.g., working hours/rest breaks/time off/overtime pay) □ Unequal employment opportunities (e.g., discrimination against gender/ethnic group/age) □ Payment below minimum wage □ Employees below minimum age □ Child or forced labour (do not proceed) □ No process for employees to voice complaints □ No recognition of employee organizations/labour unions **Comments (any issues identified):**
Additional comments
Please provide further details (e.g. number of persons affected due to E&S gaps identified, types of emissions, hazardous substances found, etc.) for better clarity of the E&S condition at the investee company and attach any supporting documents where applicable. **Comments:**
Actions to be taken (include in the loan agreement)

The following actions are to be taken to address gaps against NEMA and DOSH requirement (in case of exclusion list issues the loan should not proceed). Note gaps to be addressed should be put into the E&S Action Plan (see Annex 7 of this ESMS):			
Ref. No.	**Action Description AND Related Standards/Requirement**	**Completion Indicator**	**Due Date** **(DD/MM/YYYY or defined number of days linked to an event e.g. after loan disbursement)**

Annex 4: Rating of High, Medium and Low business activities

This document is intended to provide guidance on the categorization of sub-borrowers. Whilst this guide provides an overview to the characteristics and some examples of each category, categorisation should be considered on a case-by-case basis factors such as location, environmental & social context, scale, and magnitude of impacts need to be considered. High-risk sub-projects are not eligible under the Project.

Category	Definition	Example Activities
High Risk	High Risk means any business activity which is likely to have significant adverse environmental impacts that are sensitive, diverse or unprecedented, and which includes, for the avoidance of doubt, activities involving (a) involuntary resettlement, (b) risk of adverse impacts on indigenous peoples, (c) significant risks to or impacts on the environment, community health and safety, biodiversity, cultural heritage, or (d) significant occupational health and safety risks (risk of serious injury or fatality to workers).	• Activities that require an Integrated ESIA Study in Kenya in accordance with LN 31 of 2019: Amendment of the Second Schedule of EMCA, 1999 categorizing high-risk projects**.**
Medium Risk	Moderate Risk means any business activity that has potentially limited adverse environmental or social risks and/or impacts that are few, generally site-specific, largely reversible, and readily addressed through mitigation measures. Impacts are often site-specific without likelihood of impacts beyond the activity's footprint and routine safety precautions are expected to be sufficient to prevent accidents.	• Acquisition of new transportation equipment (automobiles, trucks, other specialised equipment, and replacement parts); • Small-scale processing of agricultural produce e.g., rice. • Building of small warehouses or renovation of existing physical premises on the land fully owned by the MSMEs. • Acquisition of assets such as industrial machines, medium sized tools and equipment.
Low Risk	Low Risk means any business activity having minimal risks and impacts on human populations and/or the environment with few or no adverse risks and impacts and issues.	• Office based activities such as marketing, consultancy, etc. • Working capital needs (loans for payment of salaries, marketing costs, audit and accounting costs); • Acquisition of communications equipment (phone and fax

Category	Definition	Example Activities
		equipment, computers, printers, servers, software, other hardware, etc.); • Purchase of construction materials for shops selling construction material, • Purchase of feed stock, and feed mixer machine; • Acquisition of fixed small assets (refrigerators, replacement parts, etc.), small tools and equipment etc.). • All types of retail outlets (except those dealing in hazardous or toxic chemicals, flammable materials); and • Restaurants and other food premises.

Annex 5: E&S Due Diligence Checklist

1. Nature of the client's business:

- name, location (city/town and region)
- industry sector, product manufactured, capacity, no of employees
- Main markets (domestic/export (specify countries)

2. Key indicators of Issues to look at

  - Housekeeping in the work areas
  - Evidence of liquid and solid wastes in the workplace
  - High levels of noise (intermittent or continuous)
  - Strong smell's/irritants
  - Access, fire risk
  - Handling of wastes
  - Whether hazardous or not (check with client)
  - Disposal mechanism
  - Wastewater and effluents
  - Treatment
  - Presence of toxic/hazardous materials
  - Disposal
  - Air emissions from stacks (chimneys)

Social and labour issues

- Labour and working conditions and ability to have representation (contract types, work hours, overtime, remuneration-minimum wage, OHS hazards, etc)
- Relations with local communities, disclosure and transparency
- Records of problems, complaints and protests from local communities

3. Environmental Regulatory Compliance and Liability

- Is the Company in possession of all required EHS permits and approvals?
- Has the company paid excess charges or fines/penalties for non-compliance with HSE regulations and standards in the last two years? (please attach copies of most recent inspection report)
- Is the company exposed to potentially significant HSE liabilities, such as those arising from land / groundwater contamination, related to the
- company's past or ongoing operations? If yes, specify magnitude
- Has the company had any significant accidents or incidents in the last two
- years (e.g. oil spills, fires) involving deaths or multiple serious injuries and/or significant environmental damage?

4. Social issues and community relations

5. In the event that the company is not materially in compliance with HSE regulations and standards, or if there are potentially significant HSE liabilities, please describe further actions required by the authorities and/or planned by the company to address these issues satisfactorily, and to achieve regulatory compliance.

Annex 6: FI E&S Monitoring Report Template

Name of Organization			
Completed by (name):			
Completed by (name):			
Position in organisation:		Date:	

Portfolio Information (Financed by SAFER Project)

Report Covering Period:	
From:	**To:**

For the reporting period, please provide the following information about your portfolio:

Product line	Description	Total exposure outstanding for most recent FY year end (in US$)	Average loan or transaction size (in US$)
Microfinance	[Definition]		
SME Loans			

Exposure by Industry Sectors

Please provide an indicative % of portfolio that these sectors represent of the total portfolio.

Industrial Sector	Outstanding exposure (in US$)	% of portfolio
Animal Production		
Apparel		
Chemicals		
Collective Investment Vehicles		
Common Carriers		
Construction and Real Estate		
Consumer Goods		
Crop Production		

Industrial Sector	Outstanding exposure (in US$)	% of portfolio
Electrical Equipment, Appliances and Components		
Fabric Mills		
Fabricated Metal Product Manufacturing		
Finance & Insurance		
Finishing (Dyeing, Printing, Finishing, etc.)		
Fishing		
Food & Beverages		
Forestry		
Furniture and Related Products		
Integrated Textile Operation (Spinning, Weaving/Knitting, but no Garment)		
Internet Projects		
Leather and Allied Products		
Machinery and Other Industrial		
Non-metallic Mineral Product Manufacturing		
Oil, Gas and Mining		
Plastics & Rubber		
Primary Metals		
Printing & Publishing		
Pulp & Paper		
Spinning (Yarn, Including Integrated with Fiber Production)		
Telecommunications		
Textiles - Others		
Transport Service		
Transportation Equipment		
Utilities		
Warehousing & Storage		
Wholesale and Retail Trade covering any of the following. Gasoline stations, dry cleaners, printing, large auto and truck fleets,		

Industrial Sector	Outstanding exposure (in US$)	% of portfolio
photographic film processing and any operations involving the use of any chemical or biological wastes or materials		
Wood Products		
Total		

Exclusion List Exposures (Type of Activity)	Outstanding Exposure in US$	Name of Company*	Loan Due Date

ESMS Processes	*Yes/No*	
Have there been any updates to the ESMS or procedure?		If yes, please provide a copy of the updated procedure and reasons for the same.
Has Senior management signed off on the changes?		If yes, please provide a copy of the same.
Were any transactions rejected on an account of the exclusion list?		If yes, please provide details.
Were there any difficulties and/or constraints related to the implementation of the E&S procedures?		If yes, please provide details.
Were there any material environmental and social issues associated with borrowers during the reporting period in particular?		If yes, please provide details.
Supervision and monitoring	*Yes/No*	
Have you supervised the performance of your loans?		If yes, please describe how you do this and the extent of coverage of your portfolio.
Did you conduct client site visits?		If yes, please describe the process including any environmental and social issues considered.

Safety, Social and Community Issues	Yes/No	
Have there been any worker accidents, injuries on the job?		If yes, please provide details.
Have there been any grievances against any borrower?		
Has there been any media coverage on a borrower?		

Annex 7: E&S Action Plan Template

E&S Action Plan #	WB Environmental & Social Standard	Action Description AND Related Standards/Requirement	Completion Indicator	Due Date (DD/MM/YYYY or defined number of days linked to an event)
1	*ESS1: Assessment and Management of Environmental and Social Risks and Impacts*	*e.g. Obtain a water abstraction license for the groundwater abstraction well that is planned as part of the new development to meet e.g. Water Use Regulations.*	*Water abstraction license obtained*	***30 days prior to drilling of the well***
2	*ESS2: Labour and Working Conditions*	*e.g. Ensure that all workers have written contracts that explain their rights and obligations and have had these contracts explained to them this should be in line with Labour Code.*	*Contracts signed by all workers*	***Within 90 days after the loan receipt.***
3.	*ESS3: Resource Efficiency and Pollution Prevention and Management*	*e.g., Carry out stack emission measurements for the boilers and furnaces*	*Stack Emission Report*	***Within 6 months after*** *loan disbursement.*
4	***ESS4: Community Health and Safety***	***Carry out water spraying on unpaved earth roads to minimise dust nuisance and health impact on local communities.***	***Zero dust related Complaints***	*1* ***months after 1st disbursement.***

Annex 8: AFI & PFI ESMS Outline

Table of Contents

Acronyms

Definitions

INTRODUCTION

Briefly introduces the ES Management system (ESMS) in relation to the FI context.

ESMS OVERVIEW

Purpose

Describes what the ESMS aims to achieve.

Scope and Applicability

Defines the boundaries of the ESMS. This will need to detail 1) whether the ESMS only applies to a specific credit/product line of the FI's portfolio such as retail transactions and 2) when the ESMS comes into effect (especially if some procedures are not going to be applied retrospectively). It should also cover the E&S requirements based on the sector, project size, product type, loan size and tenure amongst other factors. This section also discusses how the ESMS would work in instances where the FI co-finances with other FIs.

Structure

Provides a short overview and graphical illustration of the key components making up the ESMS. Each component will be described in the subsequent sections of the document. This graphical illustration should make clear reference to the broader Credit Risks review process of the FI to reflect the integration of the various stages of E&S DD into the credit approval process and key functions or Departments involved.

E&S POLICY, STANDARDS AND COMMITMENTS

E&S Policies and Principles

Describes E&S policies and principles adopted by the Bank. These are commonly based off internationally accepted E&S standards and norms and form the cornerstone of the ESMS and will be communicated with relevant stakeholders. Other policies that may be read in conjunction with the E&S policy are referenced here – for example Climate Change Policy, HR Policies, etc.

Describes E&S policies and principles adopted by the FI. Commitment to E&S

Outlines any procedural commitments the bank makes to achieve sound E&S management and ensure internal E&S objectives are met. For example, incorporation of E&S into credit approvals processes and decision-making adoption of specific exclusions, disclosure of E&S performance information, etc.

Applicable E&S Standards

Outlines the applicable internationally and nationally accepted E&S standards and guidelines that the FI and its clients will be required to adopt.

E&S Strategic Focus (e.g. Green / Climate Finance)

Should the FI have ambitious strategies / approaches around specific E&S mandates, this section would elaborate on elements of this strategic focus including key objectives, frameworks adopted (e.g. task force on climate-related financial disclosures, EU taxonomy, green bond principles, etc.), approach, etc.

E&S CREDIT PROCEDURES

E&S Screening

Credit's Go / No Go Assessment

This generally refers to the FI's Exclusion List.

Credit's E&S Categorisation and E&S Due Diligence Scoping

This generally takes the form of a matrix with types of credit showing horizontally and client's sectors showing vertically. The intersection is an E&S risk level (high, medium, low) for the credit application.

Information request to Clients around E&S Management

E&S information is typically requested along with other general information requested from clients, including legal and financial information. The FI may choose to develop a bouquet of documents required from the client to provide efficiency and consistency in its information request requirements.

E&S Due Diligence

Internal ESDD

Details when and how the FI will conduct ESDD through its internal resources. This will be for transactions with lower E&S risks as well as some medium E&S risk transactions, depending on the in-house capacity.

External ESDD

Details when and how the FI will conduct ESDD through potentially external experts/consultants and in what instances. This will be for transactions in sectors with relatively higher E&S risks as well as in cases where there are restrictions on physical site visits.

E&S Action Plan

Details how the FI will define ESAPs as a result of findings from the ESDD process and its contents including timelines that are in line with the specific provisions of the credit being provided (agreement, first disbursement, etc.), responsibility, and deliverables required as evidence of completion.

E&S Appraisal and Validation

E&S Review during Credit Committee

Details the format of E&S information to be shared with the Credit Committee and how this will inform the credit approval process.

E&S Conditions into Loan Agreements / Facility Agreement

This includes standard E&S clauses for E&S compliance, notification of major accidents, E&S reporting and ESAP implementation. This may not be a one-size-fits-all type approach, with more clauses being included to credit lines with higher E&S risks.

E&S Monitoring & Reporting

ESAP Monitoring

Provides information on the frequency and process of monitoring Client's implementation of agreed ESAP.

E&S Key Performance Indicator (KPI) Monitoring

Describes measurable indicators to reflect various E&S indicators in the FIs ESMS and serves as a means to track performance against them. This may include number of transactions approved, ESDD's undertaken, ESAP implementation objectives met, number of employees trained on FI's ESMS etc.

E&S Incident Reporting

Details the instance in which FI requires clients to provide reports on E&S incidents and format of the report. The FI may also develop a template to share with clients.

Annual E&S Reporting

Describes the FI's approach to annual E&S monitoring both to internal and external stakeholders.

E&S Visits and Interviews

Details how and when site visits and interviews should be conducted as part of monitoring activities for transactions with different E&S risks.

ESMS Process Summary

Provides a graphical illustration of the E&S Risk Management process described in the previous sections.

E&S Organisational Structure

Outlines specific E&S roles and responsibilities for relevant personnel both internally and externally to successfully implement the ESMS. Ideally an organogram describing the E&S governance structure, reporting lines and the group the function sits in may also provide a clearer description of the E&S function in the FI. This section should also include internal and external training programs planned to ensure staff has sufficient capacity to implement a robust E&S risk management process.

OTHER FI E&S-Related19 PROCEDURES

Labour and Working Conditions

[19][19] These may be managed by other aspects of the FI's business such as Human Resources, Facility Management, Operational Risk Management etc.

Internal Grievance Management

Emergency Preparedness and Response

TRAINING AND CAPACITY BUILDING

Outlines the FI's commitment to training and building the capacity of its employees to support the successful implementation of the ESMS. This should include general training plans across the FI both during employee induction and more targeted trainings for key stakeholders in the implementation of the ESMS.

STAKEHOLDER ENGAGEMENT ON E&S MATTERS

Outlines the importance of proactive on-going dialogue, information sharing and interactions between the FI and its internal and external stakeholders in order to achieve E&S objectives. The section describes specific internal and external communication mechanisms set up for the FI to share E&S information and receive E&S-related grievances from stakeholders affected by projects financed by the FI.

PERIODIC ESMS REVIEW

Discusses triggers in the FI system that may result in the review of its ESMS. Factors to be considered include: a periodic timeframe, emerging trends in the industry and progress in the implementation of the existing ESMS. The periodic review should include instances when an internal and external audit of the FI's ESMS will be required.

ANNEXURES – List of Tools to support ESMS Implementation

Annex 1: Environmental and Social Policy

Annex 2: Exclusion List

Annex 3: E&S Screening Procedure

Annex 4: E&S Screening Checklist

Annex 5: Example Sector and E&S Risk Categorisation List

Annex 6: External E&S Due Diligence Terms of Reference

Annex 7: E&S Due Diligence Assessment Questionnaire - Relationship Manager

Annex 8: E&S Due Diligence Evaluation Questionnaire – Client

Annex 9: Example of Sectorial E&S Guidelines

Annex 10: Environmental and Social Action Plan Template

Annex 11: Credit Committee E&S Information Memo

Annex 12: Credit Committee E&S Appraisal and Validation Procedure

Annex 13: E&S Credit Agreement Procedure

Annex 14: E&S Client Site Visit Report Template

Annex 15: Annual E&S Monitoring Report Template

Annex 16: E&S Incident Reporting Procedure

Annex 17: E&S Incident Reporting Form

Annex 18: E&S Incident Register

Annex 19: E&S Roles and Responsibilities Procedure

Annex 20: E&S Grievance Management Procedure

Annex 21: Grievance Form

Annex 22: Grievance Register

Annex 23: Example E&S Training Plan Template

Annex 24: Example ESMS Training Materials

Annex 25: E&S Periodic Review and Internal Audit Procedure

Glossary

Term	Definition
Contingent Liability	Obligations that arise from a particular discrete but uncertain future event (i.e. one that may or may not occur) that is outside the control of the Government.
E&S Action Plan	A plan of action acceptable to the subprojects to achieve compliance with the PFF's E&S reference framework.
E&S Consultant	is the external agencies to be engaged by the PFF to undertake E&S Due diligence of subprojects.
E&S Due Diligence	An assessment and analysis of E&S risks and opportunities associated with a subproject being considered for financing to ensure that such risks would not present a potential liability to the PFI.
EHS Guidelines	World Bank Group Environmental Health and Safety Guidelines.
Environmental and Social Management Framework (ESMF)	Refers to an instrument that examines the risks and impacts of the SAFER project, and those risks and impacts cannot be determined until the program or sub-project details have been identified. The ESMF sets out the principles, rules, guidelines, and procedures to assess the E&S risks and impacts.
Environmental and Social Management System (ESMS)	The ESMS is the set of policies, procedures, tools and internal capacity to identify and manage the E&S risks posed by the subprojects.
E&S Policy	Means E&S Policy of the AFI and PFIs articulating its commitment E&S risk management and sustainable development.
ESIA	The process of identifying, predicting, evaluating mitigating the E&S impacts.
E&S Reference Framework	E&S reference framework defines the E&S compliance requirements for subprojects supported under the SAFER. These requirements include: (i) Exclusion List (Annex 1); (ii) relevant environmental and social national and local laws and regulations of Kenya (Annex 2), and (iv) the World Bank Environmental and Social Standards and the World Bank Group EHS Guidelines
Eligibility	Eligibility refers to the right to obtain funding from the PFIs through satisfaction of the appropriate conditions as defined in the ESMS.
Exclusion List	Any business or activity listed on the Exclusion List presented in **Error! Reference source not found.**.
Government	The Government of Kenya.
Grievance Mechanism	A mechanism to address affected communities' concerns and complaints.

Term	Definition
Project	The design, construction, development or operation of a new infrastructure, asset or facility or the rehabilitation, modernization, expansion, operation or management of an existing Infrastructure, asset or facility.
Subproject	is a project or activity financed by the PFF under the IFPPP project.
World Bank Performance Standards	World Bank Environmental and Social Standards (ESS) are guideline designed to support Borrowers' environmental and social (E&S) risk management. They builds upon the International Finance Corporation's (IFC) Performance Standards (PS) 1 to 8 that was last updated in 2012