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**KENYA GREEN AND RESILIENT EXPANSION OF  
ENERGY (GREEN) PROGRAM  
(P180465)**

**BATTERY ENERGY STORAGE SYSTEM (BESS)  
PROJECT**

**LABOR MANAGEMENT PROCEDURES**

**October 2023**

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## 1 OVERVIEW OF LABOR USE ON THE PROJECT

### 1.1 Project Workers Categorization

The Project workers as it relates to the applicability of the ESS2 refers to workers who will be employed or engaged under the Project, whether as a full-time, part-time, temporary, seasonal or as a migrant worker. The ESS2 categorizes Project workers into four broad categories:

1. **Direct Workers:** People employed or engaged directly by the Borrower (KenGen staff and Consultants) to work specifically in relation to the Project;
2. **Contracted Workers:** People employed or engaged by contractors (in this case workers of consultants) to perform work related to core activities of the Project, regardless of location;
3. **Primary Supply Workers:** People employed or engaged by the Project's primary suppliers of goods and materials for core Project activities; and
4. **Community Workers:** People employed or engaged in providing community labor.

The BESS Project will engage direct workers, contracted workers, and primary supply workers.

### 1.2 Number of Project Workers

The precise number of workers who will be engaged in TA implementation is unknown at this stage but estimated as shown in the table below. Most workers will be contracted by the consultants. Bidding documents to select the consultants will be prepared by KenGen in line with the Bank's provisions, including EHSS terms and conditions.

The Project Implementation Unit (PIU) will provide overall oversight on the Program, including TA activities. It will be formed with a combination of different professionals like the Project Manager, Project Engineer, Technical Officer; Monitoring and Evaluation (M&E); Environmental Specialist, Socio-Economist, Safety Officer, Procurement Specialists, Accountants, Drivers and Secretaries.

Table 1: Description of Project Workers

Category	Description	Number	Mode of engagement	Timing
<b>Direct workers</b>	KenGen employees	About 15 KenGen officers will be involved during implementation phase, comprising of Project engineers, Environment officer, safety officer, Finance Officer, legal officer, Procurement officer, Community Liaison officer, etc. - KenGen Sustainability Development Manager in liaison with the Community Relations Manager shall be responsible for the Social Safeguards aspects of the project. -During operation phase, KenGen will require a minimum team of about 10.	Fulltime	All Project phases
	Consultants	A Consortium or Consultant to conduct various technical studies.	Part-time	Design and implementation phases
<b>Contracted workers</b>	Skilled, semi-skilled and unskilled labor (Skilled labor recruited by Contractor internally/nationally; semi-skilled and	-About 50 contracted workers to be engaged during project implementation, comprising 60% semi-skilled and unskilled labor and 40% skilled labor. -During operation phase, KenGen will engage about 15 workers	Temporary	Implementation phase

Category	Description	Number	Mode of engagement	Timing
	non-skilled labor from the nearby local communities employed by the contractor)	comprising of security guards, cleaning service providers and relevant Engineers.		

This LMP will apply to all Project workers including fulltime, part-time, temporary and seasonal. The Project scope does not provide or anticipate the employment of migrant workers. Although international consultants may be recruited to offer specific services, their conditions of engagement will be as contained in their contracts and TORs, in addition to being required to comply to the Kenyan Labor Laws and the World Bank's ESS2.

## **2 ASSESSMENT OF KEY POTENTIAL LABOR RISKS**

This section describes the Project's key potential labor risks and their mitigation as shown in able 2 below.

Table 2: Key Potential Labor Risks and Mitigation Measures

Risk/Impact	Analysis (Magnitude, Extent, Timing, Likelihood, Significance)	Risk Mitigation Measures
<b>ESS2: Labor and working conditions</b>		
<p>1. Terms and conditions of employment</p>	<p>Requirement for adequate remuneration in view of the quality and quantity of work delivered, in line with the Employment Act 2007.</p> <p>In this Project no discrimination is acceptable as per the Kenya Labor Laws and ESS2.</p> <p><b>Violation of workers' rights:</b> The violation of workers' rights could occur through inadequate compensation of contracted workers, requirement to work for long working hours without consent or compensation and denial of holidays or leave requests.</p> <p>Lack of fairness in the recruitment of contractors' workers (mainly semi-skilled and non-skilled labor) resulting from Lack of formulated criteria for employment of semi-skilled workers or direct employment without involving community Liaison Officer.</p>	<p>The basic conditions of employees will be observed to avoid unnecessary conflicts during the construction work.</p> <ul style="list-style-type: none"> <li>• Project workers provided with clear and understandable terms and conditions of employment prior to engagement.</li> <li>• The Contractor shall pay contracted workers the entire amount of the wages earned by or payable to them. Payment of such wages should be made at the end of a week, or month (depending on the contractual agreement prior agreed upon) at or near the place of work. The Contractor shall also ensure that all statutory deductions are submitted without delay to appropriate government agencies e.g. Kenya Revenue Authority, NSSF, NHIF, among others.</li> <li>• No one under the age of 18 will be employed. All persons seeking employment (contractor, subcontractor) should be required to provide a national identity card.</li> <li>• Compliance with Kenya's labor laws guiding employment conditions, including wages</li> <li>• Fair employment process without discrimination as per ESS2. Equal remuneration for work of equal value irrespective of the gender, HIV/AIDs status or ethnic background.</li> <li>• Contractor to ensure there is no forced or child labour. All contractors/consultants will be screened to establish that they have no historical record of forced and child labor before contracts are signed with them.</li> <li>• Through pre-contractual due diligence, the Project will ensure that staff of all Project workers have working conditions and rights consistent with Kenya labor laws and ESS2.</li> <li>• Put in place an effective employee complaints/grievances process on labor relations.</li> <li>• Employment for semi-skilled and unskilled workers to be through the Community Liaison Office that will work in liaison with the locally constituted community employment committee.</li> <li>• Semi-skilled employment to be based on qualifications and agreed employment criteria.</li> </ul>
<p>2. Occupational health and safety related risks</p>	<p>Non-adherence to health and safety requirements by Contracted and direct workers, subjecting them to unsafe conditions, including but not limited to:</p> <ol style="list-style-type: none"> <li>1. Working at height and working without the right PPEs</li> <li>2. Risk of electrocution</li> <li>3. Working in confined spaces</li> <li>4. Poor handling of corrosive and hazardous materials related with the BESS project.</li> </ol>	<p>The following mitigation measures will be implemented to address the identified OHS risks:</p> <ul style="list-style-type: none"> <li>• Develop and implement occupational health and safety plans (OHSPs) for the Project.</li> <li>• Assure a safe working environment for all workers through complying with ESS2 requirements.</li> <li>• Provision of appropriate PPEs to all workers and enforce their usage.</li> <li>• Undertake toolbox meetings on daily basis and Job safety Analysis for risk jobs.</li> <li>• Acquire work permits for risky jobs such as such as working on confined spaces or working at height among others.</li> <li>• Induction of new workers</li> <li>• Avail adequate replenished first aid kits and ensure trained First aiders are on site</li> <li>• Engagement of on-site OSH expert during project implementation</li> </ul>

Risk/Impact	Analysis (Magnitude, Extent, Timing, Likelihood, Significance)	Risk Mitigation Measures
<b>ESS2: Labor and working conditions</b>		
	<p>5. Accidents and incidents,</p> <p>The significance of these risks is <b>High</b> if not adequately mitigated.</p>	<ul style="list-style-type: none"> <li>• Undertake Job Safety Analysis</li> <li>• Provision of appropriate PPEs, depending on nature of work.</li> <li>• Issuance of permits to work in confined areas, working at height and other risky jobs, prior to commencement of work.</li> <li>• Strictly adherence to safety and health management plan.</li> <li>• Hazardous materials related with BESS project, if any, to be appropriately handled and disposed, in line with Kenya Waste Management Regulations, 2006</li> <li>• Reporting of major accidents and incidents to relevant authorities such as Office of Directorate Occupational Health &amp; Safety (DOSHS)</li> </ul>
Nondiscrimination and equal opportunity	There is a <b>low</b> likelihood of discrimination based on gender, disability, ethnicity, sexual orientation/identity, or any other personal characteristic unrelated to inherent job requirements.	<p>The mitigation measures to be implemented will comprise the following:</p> <ol style="list-style-type: none"> <li>1. Signing of code of conduct</li> <li>2. The employment of project workers will be based on the principle of equal opportunity and fair treatment, and there will be no discrimination with respect to any aspects of the employment relationship.</li> <li>3. Decisions relating to the employment or treatment of project workers will not be made based on personal characteristics unrelated to inherent job requirements but on qualifications based on the developed and advertised job description requirements.</li> </ol>
Discrimination and exclusion of vulnerable groups and/or persons from communities who meet the requirements of the WB ESS7	Vulnerable groups of people as well as communities who meet the requirements of the World Bank ESS7 may be subject to increased risk of exclusion from employment opportunities under the project. Such vulnerable and marginalized groups include, women, female headed households, persons abled differently while those communities who meet requirements of the World Bank ESS.	The employment of project workers will be based on the principle of equal opportunity and fair treatment, and there will be no discrimination / exclusion of vulnerable individuals.
<b>ESS4: Community Health and Safety</b>		
1. GBV/SEA/SH risks	There is a potential for increased risk of sexual exploitation and abuse if project workers reside in trading centers within the communities, and increased risk of sexual harassment among project workers	<ul style="list-style-type: none"> <li>▪ Contractors to develop a code of conduct for signing by all workers with physical presence on site as well as within the project area. The code of conduct will address worker and community interactions considering risks of GBV-SEA and sexual harassment in workplaces, HIV/AIDs and other STDs resulting from population/labour influx.</li> <li>▪ Develop and implement a SEA/SH prevention and response Action Plan to prevent and manage the risks of SEA and SH in the Project.</li> <li>▪ Conduct sensitization on SEA/SH and require workers to sign a code of conduct (CoC) with key prohibitions on SEA/SH. Safe and confidential grievance channels easily accessible to all stakeholders will also be provided for all Project stakeholders. Establish and ensure early</li> </ul>

Risk/Impact	Analysis (Magnitude, Extent, Timing, Likelihood, Significance)	Risk Mitigation Measures
<b>ESS2: Labor and working conditions</b>		
		uptake of a Grievance Redress mechanism for the local community and Workers.
2. Insecurity	There is potential risk of insecurity for direct and contracted workers when they travel out of their workstations to the project site to carry out capacity building and M&E. This risk is categorized as <b>Low</b> .	<p>This risk will be mitigated by ensuring that:</p> <ul style="list-style-type: none"> <li>• Engagement of Critical Infrastructure Police Units (CIPU) to supplement local guards.</li> <li>• The safety of the direct workers will be assured through restriction of movement of project vehicles (from 6am to 6pm) and residence in secure hotels while they are on project-related assignments</li> </ul>
3. Spread of communicable diseases in communities, including HIV/AIDS	The spread of HIV and other communicable diseases. This risk is categorized as <b>moderate</b> .	<ul style="list-style-type: none"> <li>• Develop appropriate training, awareness content and implement awareness sessions for communities and workers on HIV/AIDs and other STDs, as well as GBV-SEA and sexual harassment at workplaces.</li> <li>• Support HIV/AIDS and STD awareness and education.</li> <li>• Providing health services (treatment through standard case management in on-site or community health clinic).</li> <li>• Promoting collaboration with local authorities to enhance access of workers' families and the community to public health services.</li> <li>• Liaise with relevant health agencies both at national and County level (Kilifi and Kajiado Counties) (Ministry of Health, National AIDS Control Council (NACC)), including NGOS (AHF Kenya), and CBOs (youth, men, and women groups) on awareness creation.</li> <li>• Periodic sensitization forums for workers on ethics, morals; general good behavior and the need for the project to co-exist with the neighbours.</li> <li>• Adhere to and implement the HIV and AIDS Prevention and Control Act, 2006 and the Sexual Offences Act, 2006 and its amendment 2012.</li> </ul>

## **3 BRIEF OVERVIEW OF LABOR LEGISLATION TERMS AND CONDITIONS**

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### **3.1 Legislative Framework**

#### **3.1.1 The Constitution of Kenya 2010**

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

#### **3.1.2 The Employment Act**

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

#### **3.1.3 The labour Relations Act of 2007**

The Act consolidates the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratization of trade unions and employers organizations or federations, to promote sound labor relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes. The Act provides for a collective agreement is defined in the Labour Relations. Act as "A collective bargaining process precedes this.

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

The law has different approaches to defining the categories of employees, such as: by nature, and length of the employee-engagements. The categories include casual employees (who are not engaged for a longer period than 24 hours at a time), part-time, full-time employees, piece work (where the focus is the amount of work performed irrespective of the time occupied in its performance) and employees with probationary contracts (which address the formalities and length of the probationary period). The Act also addresses the issues of the employees' nationality and origin as is the case with migrant workers (referring to those migrating to Kenya specifically for purpose of the employment) and provides the requirements to be met by migrant workers before they are employed. In addition, the Act provides for the minimum terms and conditions of employment of an employee and grounds upon which a contract may be nullified. This is intended to discourage any arrangements that seek to undermine the statutory standards.

#### **3.1.4 The Work Injury Benefits Act (WIBA)**

This act of Parliament (2007) provides for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes. It also addresses workplace safety and health and has since been amended several times. It provides compensation to employees for work-related injuries and diseases contracted in the course of their employment. The Act provides for the compensation of 'injured' employees as well as their dependents, who are adversely affected by work injuries. Part III (on Right to Compensation) addresses the entitlement and guarantee afforded in respect of compensation. This provision could

be expanded to cover infection with COVID-19 contracted while at work.

### **3.1.5 Trade Dispute Act (Cap. 234)**

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

The applicable international instruments in Kenya include:

- a. International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD);
- b. Convention on the Rights of the Child, 1990, (CRC);
- c. Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 (ICRMW);
- d. Convention on the Rights of Persons with Disabilities (CRPD)
- e. Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW).
- f. Instruments of the International Labor Organization (ILO): i. Freedom of Association and Protection of the Right to Organize (ILO Convention 87); ii. The Right to Organize and Collective Bargaining (ILO Convention 98); Forced Labor (ILO Convention 29); iii. The Abolition of Forced Labor (ILO Convention 105); iv. Minimum Age (of Employment) (ILO Convention 138); and v. Discrimination (Employment and Occupation) (ILO Convention 111).

### **3.1.6 The Industrial Court of Kenya**

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

### **3.1.7 The Environmental Management Coordination Act (EMCA) 1999**

The EMCA legal notice number 68 provides regulations concerning drinking water, water for agricultural purposes and other water uses. While legal notice number 69 through the legal notice number 121 gives the regulations on the management of all types of waste to avoid any negative impacts to people including workplaces. Additionally, EMCA 2015 gives regulation on noise and vibration control to safeguard the population and workers from injuries due to excessive noise and vibrations.

## **3.2 Institutional Framework**

### **3.2.1 World Bank/ IFC Safeguards Standards**

The Environmental Health and Safety (EHS) Guidelines are technical reference documents with general and industry-specific examples of Good International Industry Practice (GIIP). The EHS Guidelines contain the

performance levels and measures that are normally acceptable to the WB Group, and that are generally considered to be achievable in new facilities at reasonable costs by existing technology. The EHS General Guidelines remain relevant to this project and were utilised in the development of the ESMF. General guidelines that are available at [www.ifc.org/ehsguidelines](http://www.ifc.org/ehsguidelines).

The Worst Forms of Child Labor (ILO Convention 182); Equal Remuneration (ILO Convention 100); maintains that “Article 1 Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency;

Discrimination (Employment and Occupation) (ILO Convention 111) that states in one article that “Article 1 1. For the purpose of this Convention the term discrimination includes

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

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

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

They include:

**ESS2 Labor and Working Conditions:** This Standard obliges the proponent (KenGen) to develop and implement written labor management procedures applicable to the project. These procedures will set out the way in which project workers will be managed, in accordance with the requirements of national laws.

**ESS4 Environment and Social Framework on Community Health and Safety:** The Standard puts emphasis on community exposure to risks and impacts of project and includes road safety risks; risks associated with security personnel as well as addressing water-related, communicable and non-communicable diseases that can result from projects activities and have impact on project labor as well as the community; and

**IFC Performance Standard 2:** Recognizes that, the pursuit of economic growth through employment creation and income generation should be accompanied by protection of the fundamental rights of workers.

## 4 BRIEF OVERVIEW OF LABOR LEGISLATION: OCCUPATIONAL HEALTH AND SAFETY

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### a. Introduction

This section sets out the **key aspects** of the national labor legislation with regards to occupational health and safety, and how national legislation applies to the different categories of workers. The overview focuses on legislation which relates to the items set out in ESS2.

#### 4.1 Occupational Health and Safety (OHS)

The Occupational Safety and Health Act (2007) is Kenya’s codifying law governing workplace safety and health. The law provides for “the safety, health and welfare of workers and all persons lawfully present at workplaces and establishes the National Council for Occupational Safety and Health”. This law is broadly concerned with potential hazards to persons in the workplace. These concerns would likely remain the same, if there’s only one individual likely to be affected; and thus, the standards set under the Act are largely focused upon the environmental risks to persons at the workplace. Part VI (on Health-General Provisions), Part VII (on Machinery Safety), Part VIII (on Safety-General Provisions), Part IX (on Chemical Safety), Part XI (on Health, Safety and Welfare – Special Provisions) and Part XII (on Special Applications) provide for different occupational safety and health scenarios (in detail), with the intent of allowing for the management of the intended and unintended safety and health consequences that may be wrought by potential hazards. These safety and health consequences are more localized to individual workers, by virtue of their presence in the premise, than upon the wider society.

This is an Act of Parliament to provide for the safety, health and welfare of workers and all persons lawfully present at workplaces, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes. The Act has the following functions among others:

1. Secures safety and health for people legally in all workplaces by minimization of exposure of workers to hazards (gases, fumes and vapours, energies, dangerous machinery/equipment, temperatures, and biological agents) at their workplaces.
2. Prevents employment of children in workplaces where their safety and health is at risk.
3. Encourages entrepreneurs to set achievable safety targets for their enterprises.
4. 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.
5. Promotes creation of a safety culture at workplaces through education and training in occupational safety and health.

## 4.2 RESPONSIBLE STAFF

### 4.2.1 Overview

KenGen management, through the ES Focal Point for BESS and the project engineers, have the overall responsibility to oversee all aspects of the implementation of this LMP, to ensure consultant compliance. The consultant, subsequently, is responsible for management of contracted workers in accordance with contract specific Labour Management Plans, implementation of which will be supervised monthly or at shorter intervals as defined by specific Plans. In addition, the consultant will be required to adhere to the national Labor Laws and to comply with ESS2 and World Bank EHS guidelines. The detailed approach is described in the following sections:

*Table 3: Responsibility for Implementation of LMP Aspects*

No.	Aspect	Responsibility
1.	Occupational Health and Safety	KenGen quality and safety shall act as the safety representative ensures the day-to-day compliance with specified safety measures and records of any incidents. Where a minor incident(s) occurs, they will be reflected in the quarterly reports to the World Bank, major issues including SEA/SH and fatalities are flagged to the World Bank within 24 hours of occurrence.
2.	Labour and Working Conditions	KenGen community relations division will keep records in accordance with specifications set out in this LMP. They will review records against actuals at a minimum monthly and can require immediate remedial actions if warranted. A summary of issues and remedial actions will be included in quarterly reports to the World Bank.
3.	Worker Grievances	KenGen procedures currently in place will remain for Project staff. Consultants will be required to present a worker grievance redress mechanism which responds to the requirements in this LMP. The PIU will keep abreast of resolutions and reflect in quarterly reports to the World Bank.

## 4.3 POLICIES AND PROCEDURES

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

- Discrimination and Exclusion of VMGs and Vulnerable/Disadvantaged Groups,
- Labor Disputes over Terms and Conditions of Employment,
- Forced labor,
- Child labor,

- Occupational Health and Safety,
- Sexual exploitation abuse (SEA) and Sexual Harassment (SH).

#### **4.4 AGE OF EMPLOYMENT**

The Labor Laws of Kenya have set the employment age as 18 years and above, which is the age at which an individual is allowed to acquire the national identification document (ID Card or Passport). All consultants/contractors will be expected to comply with this law. Verification of the age of employees shall be undertaken prior to the engagement of labour and documented. The National Identification Card (ID) or Passport will be used as the indicative age verification means. For Vulnerable and Marginalized Groups/Indigenous Peoples (VMGs/IPs) who may not have ID cards and/or passports, a verification by a recognized local leader such as a Chief, will suffice to engage him/her. Consultants and their contracted staff must be above 18 years besides the qualifications prescribed in the TOR. (i) Above 18 years (ii) have a national identity card, (iii) undergo medical checkup with the Ministry of Health, and, (iv) have a Certificate of Good Conduct.

## **5 TERMS AND CONDITIONS**

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### **5.1 Wages**

ILO standards deal with the issue of wage protection: Protection of Wages Convention (No. 95) and Recommendation (No. 85). They also deal with protection of workers' claims in case of their employer's bankruptcy or judicial liquidation: Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173) and Recommendation (No. 180). Where there is a current national minimum wage, this wage can be used as a standard. However, high inflation may mean that the rate is out of date. In this case, the rate agreed in the relevant collective agreement should be applied. If there is no such agreement, the rate used by a similar company known for good practice may be an alternative reference point. The Contractor will ensure that Wages are paid in cash, not in kind, in accordance with ILO Conventions (ILO conventions C131–Minimum Wage Fixing Convention; C95- Protection of Wages Convention 1949); the contractor will further display notices to inform workers about their contract condition in accordance with C94 -Labour Clauses on Public Contracts.

The Contractor will determine Wages in accordance with the Employment Act & Labour Relations Act that provides for the establishment of minimum wages advisory boards and wage councils for the regulation of the remuneration and conditions of employment and employees. The Consultant Firms shall not demand or accept from workers any cash payments or presents of any kind in return for admitting them to employment or for any other reasons connected with the terms and conditions of employment.

No deductions other than those prescribed in labor laws shall be made hereunder or any other law or collective labour agreement shall be made from worker`s remuneration, except for repayment of advances received from the employer and evidenced in writing.

### **5.2 Minimum Wages**

The Contractor will establish rates of wages and observe conditions equitable to those established for the trade or industry where the work is carried out. In the absence of trade or industry-established rates of wages or conditions of labour, shall pay rates of wages and observe conditions of labour which are equitable to the general level of wages and conditions observed by other employers engaged in trades or industries similar to the project.

### **5.3 Timeliness of Payment**

The project will pay employees promptly and regularly at the customary intervals and ensure that all employees are paid in full.

### **5.4 Working Hours and leave entitlement.**

The Contractor will employ both salary and non-salary staff. The provisions below apply mainly to non-salary staff being paid on an hourly basis.

The Constitution of Kenya specifies the working week. Overtime should be paid above this rate according to the national legal formula. Regulations should ensure that the use of task-based/piecework do not lead to self-exploitation and workers having to spend longer hours than specified in the legislation (ILO conventions C14–Weekly Rest (Industry) 1921, C1-Hours of Work (Industry) 1919, also C47).

The Contractor`s staff especially the female shall be entitled, on presentation of a medical certificate indicating the expected date, to 90-days maternity leave while male workers shall be entitled for paternity leave of 14 days with pay.

All workers shall be entitled to sick leave and annual leave as provided for in the employment act 2007.

## **6 GRIEVANCE MECHANISM**

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The objective of Grievance Redress Mechanism (GRM) is to provide a mechanism through which contracted workers including direct workers (KenGen employees under the project) and contracted workers (consultant/contractor employees) can air labor related grievances, complaints and concerns. The labor related issues can range from salaries, wages, discrimination, sexual harassment, stopping staff from joining labor unions, among others. We have separate GRM for KenGen staff and contracted workers, as detailed below.

### **6.1 GRM for KenGen Staff**

Grievances arising from KenGen employees involved in the implementation of BESS project will be handled as per KenGen`s GRM Policy and procedure. The Company is committed to ensuring fair treatment of all employees when dealing with grievances with a view to addressing concerns in the best manner possible.

In handling grievances, the Company shall be guided by the following principles;

- a) Fairness in regard to treatment and hearing,
- b) Right of appeal,
- c) Right to channel grievances,
- d) Confidentiality,
- e) Prompt action,
- f) Involvement of all parties

### **KenGen Grievance Process**

- i. The aggrieved KenGen employee reports the grievance to the immediate supervisor. In case the grievance involves the immediate supervisor, then the aggrieved reports to the head of Division.
- ii. The immediate supervisor or Head of Division shall carefully consider any submission made to him and endeavour to settle the matter or refer the case to the Head of Division or head of Department 9 as the case may be) for appropriate action.
- iii. If the employee is not satisfied with the proposed decision, the grievance is escalated to the General Manager, Corporate Services (GM-CS) who escalates to the Managing Director & CEO in case the GM-CS is not able to resolve.
- iv. In case the grievance is on sexual harassment involving immediate supervisor, it is reported to HoD Human Resource and if who handles it in a confidential manner, and if confirmed, disciplinary is actions taken. In case the sexual harassment is from HODs or MD & CEO, the aggrieved will report the incident directly to a member of the Board or the Chairperson of the Board, who will institute confidential investigations and if confirmed, disciplinary measures are instituted against the perpetrator.
- v. In handling appeals arising from grievances or the grievances dropped in a suggestion box, the officer responsible for the suggestion box shall record the details of the grievances in a grievance recording form and forward to the Head of Division who after considering the nature of the grievance, shall at his/her discretion; directly deal with the matter or channel to the Head of Human Resource for further investigation on the complaint.
- vi. Upon receipt of the investigation report, the Head of Human Resource shall prepare a written response to the aggrieved employee giving the reason for the decision.
- vii. Where an offence has been found to have occurred, the necessary disciplinary procedure shall be taken against the concerned party.
- viii. Where the aggrieved party is dissatisfied with the decision made, he/she shall be accorded the right to appeal to the Managing Director & CEO/Board of Directors.

## 6.2 GRM for Contractor's Workers

Contractor(s) who will be engaged for the project will provide their grievance procedure as a requirement for tender, which at a minimum should comply with the Kenya labor Law and ESS2. The Contractor prior to commencement of works is made to sign a commitment declaration on labor rights. The contracted workers are required to abide by the employment agreement and code of conduct prepared by the Contractor. The contractor's worker's grievance redress mechanism will consist of the following procedures and steps:

- i. The contractor will have a clearly written and accessible workers grievance mechanism which, as necessary, should be in languages that can be understood by all workers, including foreign workers if appropriate.
- ii. The GM will clearly spell out the procedures and steps for receiving, registering, and acknowledging the receipt of a grievance, as well as the resolution process and timeframe.
- iii. The GM will allow opportunity for workers to escalate grievances to KenGen, the World Bank and to Labor Courts if a worker is unsatisfied with the contractor level resolution.
- iv. Workers will be sensitized about the existence of the mechanism, how to access it, resolution process, time frame and the opportunity to escalate it to KenGen, the World Bank or the Labor Court if a worker is unsatisfied with the contractor mechanism resolution.
- v. If escalated to KenGen, the grievance from the contracted workers will be received, acknowledged, and registered at KenGen Community Liaison Office (CLO)/Social Safeguards Office. The CLO in liaison with the Community Relations Manager will forward the issue to the relevant KenGen office or engage the Contractor through the Project Engineer and Engineering consultant. In case the issue remains unresolved, it is escalated to the Stakeholder Coordination Committee (SCC), which acts as GRM Committee.
- vi. The Stakeholder Coordination Committee (SCC) has various sub-committees, including a sub-committee on Employment, Economic Opportunities, Safety Health & Environment (SHE). The Project Engineer is a member of the SCC. If the issue is related to employment, it is handled by the employment sub-committee.
- vii. Issues that cannot be solved by SCC and its sub-committees are escalated to the PIU team leader, the KenGen MD & CEO, who consults with the Board.
- viii. Mediation and court of labor are the highest levels for dispute resolution, in case all the available options are exhausted.
- ix. Depending on the scale of the project, the contracted workers may decide to form a trade union on labor relation, and agree on Collective Bargaining Agreements setting out the terms and conditions of service for the workers. Any trade dispute that arises concerning any aspect of the contractor/workers relationship shall be resolved as provided for in the Labor Relations Act.

For the BESS project, formation of a trade union by contracted workers is not anticipated, noting the low level of workers to be engaged.

The process of labour GRM is indicated under Figure 1 below, where workers can raise complaints for redress either through the site foreman, workers specific grievance committee or have liberty to raise the grievances directly to KenGen's designated grievance management focal point or the World Bank.. The grievances are registered in the grievance logbook and brought to the attention of the of the Contractor's grievance redress office or KenGen's Project Implementation Team (PIT) which are the first and second levels of resolving grievances. The arranges for a meeting to review the complaints and provides feedback to the complainant within 15 working days from date of receipt. The spirit is to resolve the issue at the earliest possible, but if the issue is not resolved, it is escalated to the labour office. In case the complainant is not satisfied, there is option for Alternative Dispute Resolution (ADR), and the complainant has the liberty to escalate the issue to court.



Figure 1: Contractor's procedure for grievance redress

### 6.3 Handling GBV/SEA/SH

The Contractor will be required to develop a code of conduct, sensitize the workers on the code of conduct for their understanding and have it signed by the workers in languages that are understandable to them. A SEA/SH redress mechanism shall be established for handling GBV/SEA/SH as described below.

- i. Grievances on GBV/SEA/SH involving direct workers will be reported to immediate supervisor. However, in case the grievance involves the immediate supervisor, it will be reported to HoD Human Resource who handles it in a confidential manner. In case the sexual harassment is from HODs or MD & CEO, the

aggrieved will report the incident directly to a member of the Board or the Chairperson of the Board, who will institute confidential investigations and if confirmed, disciplinary measures are instituted against the perpetrator.

- ii. Grievances on GBV/SEA/SH involving contracted workers shall be reported to the immediate supervisor or grievance committee member established bby the contractor for this purpose, maintaining confidentiality. The grievance committee will investigate where necessary and if it is confirmed that a sexual offence occurred, disciplinary measures will be instituted.
- x. A SEA/SH may require help to deal with the incident. The SEA/SH survivors will be treated with utmost confidentiality, with all actions related to them being survivor centric. To this end, project workers and community members neighboring the project site will be sensitized on the available survivor service providers (referral pathways) and how to access services from the same. These include appropriate health facilities with units for SEA/SH survivors, police facilities with gender/GBV desks, entities that offer psycho-social support, GBV legal service entities, and safe house.

## **7 CONTRACTOR MANAGEMENT**

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The Project Environmental and Social Commitment Plan (ESCP) requires KenGen to ensure that relevant environmental and social requirements are included in the terms of reference and tender documents for consultants (including codes of conduct, coordination, monitoring reports, and grievance management mechanisms); and include provisions for non-compliance. KenGen will ensure that the consultants comply with the ESHS specifications of their respective contracts, including SEA/SH aspects.

## **8 COMMUNITY WORKERS**

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The BESS Project will not engage community workers as defined by ESS2 to implement any aspect of the Project.

## **9 PRIMARY SUPPLY WORKERS**

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The BESS Project will engage primary suppliers as defined by ESS2 to support the delivery of the Project.

KenGen and the Contractor will undertake due diligence to ascertain that the primary supply chain does not engage in child labour or forced labour. In case it is confirmed that the the primary supply chain is involved in child labour or forced labour, appropriate remedial measures will be taken. Where remedy is not possible, KenGen and contractor will shift the project's primary supply chain to suppliers that can demonstrate that they are complying with this LMP.