

Environmental and Social Data Sheet

Overview

Project Name: IHS KENYA ENERGY EFFICIENT HOUSING
Project Number: 2019-0915
Country: Kenya
Project Description: Equity fund developing energy efficient affordable housing in Kenya

EIA required: yes

Project included in Carbon Footprint Exercise: no

(details for projects included are provided in section: "EIB Carbon Footprint Exercise")

Environmental and Social Assessment

Background

The proposed operation concerns an equity investment in the IHS Kenya Green Housing SCSp SICAV-RAIF (the "Fund"), an investment fund targeting to invest in energy efficiency ("EE") affordable housing projects in Kenya. The Fund will focus its investments exclusively in Kenya.

The project will be developed only in the urban areas of Kenya, mainly in the Greater Nairobi Metropolitan Area (GNMA). Nevertheless, where the opportunity presents itself, the Fund will assess other opportunities in large cities such as Kisumu and Mombasa. Housing units will be made available to the population mainly by rental or rent-to-own schemes.

All housing units funded by the EIB will be certified using IFC "Excellence in Design for Greater Efficiencies" (EDGE) standard, in line with 2019 EIB Energy Lending Policy. To achieve the EDGE standard, a building must demonstrate a 20% reduction in energy consumption, water use and embodied energy of materials as compared to the baseline.

Environmental Assessment

In Kenya, the EIA process is guided by the Environmental Management and Coordination Act (EMCA), 1999, amended in 2015, as well as the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2009. As per local regulation, changes in land use including the establishment of new housing estate developments exceeding one hundred housing units would require an EIA and each single project would have between 200-500 units. The Fund manager will ensure that every EIA study carried out for EIB eligible projects are aligned to EIB E&S Standards.

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All housing units funded by EIB will be certified using IFC EDGE standard. Therefore the housing units to be developed will include measures to reduce energy and water consumption, such as measures to increase thermal comfort (or reduce virtual cooling or heating demand), energy efficient lighting, renewable energies for generation of water heaters for residential use and low flow faucets and showerheads, elements which are usually not to be found in buildings of similar standards. IFC EDGE certification will be provided to the Bank.

The project is expected therefore to have an overall environmental positive impact. Positive environmental impacts will be related to the reduction of energy and water consumption at household level during operation, which would lead in turn to the reduction of GHG emissions. This in turn will also translate in lower operation costs for the tenants.

Negative environmental impacts during construction are likely to be (i) air and noise pollution (ii) increased vibration from construction and traffic activities as well as (ii) waste management issues, sourced from construction activities as well as from household activities. Adequate mitigation measures will be considered together with the enforcement of best construction practices. The residual impact of the investments targeted by the Fund are reversible and acceptable when appropriate mitigation measures are implemented.

The Fund manager has responsibility of maintenance for the units being rented out. However, the Fund will provide information on EE activities and equipment to increase awareness and ensure proper use of the EE and water savings measures.

Social Assessment

Involuntary Resettlement

Currently there are two sets of policy documents guiding land use and transactions in Kenya. These include the National Land Policy 2009 and National Land Use Policy 2017. The National Land Policy 2009 is due for review. It is however unlikely that the NLC will make proposals that significantly deviate from the current National Land Policy.

All land in Kenya is bought and sold under leasehold arrangements. The Fund will therefore access all necessary land on a long-term, (i.e. 99 years) leasehold basis. There is a risk of developing properties built on land with so-called 'involuntary resettlement legacy issues.' In other words, projects may be developed on land from which government agencies or developers may have removed communities, squatters or encroachers, pastoralists, etc. without adequate compensation and/or livelihood restoration and/or via forced evictions, all of which could result in reputational damage, litigations, complaints, or social unrest in general.

As stated in EIB Standard 6 on Involuntary Resettlement: People eligible to compensation and/or livelihood restoration may: (i) have formal legal rights to the land/structure they occupy; (ii) not have formal legal rights to land, but have a claim to land that is recognised or recognisable under the national laws (e.g. ancestral, traditional lands); (iii) be dependent on the impacted land for their livelihood by way of customary access to natural resources; (iv) have no recognisable legal right or claim to the land or structure they occupy; and/or (v) be economically displaced persons who face loss of assets or access to assets.

Given the set-up of project development as described above and related EIB requirements, the project may become prone to unforeseen legacy issues with regard to involuntary resettlement and/or forced evictions.

Rights and Interests of Vulnerable Groups

Rent regulations: Long-term rentals usually last for one to two years. If the landlord or the tenant decides to terminate before the contract's expiration, a notice must be served three months prior to vacancy. The landlord can seize the tenant's possessions if the tenant is

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unable to pay rent, under the Distress for Rent Act (Cap 293). The tenant must pay within 14 days or else the things will be auctioned to compensate the landlord.

Under the law, only the courts can order an eviction of tenants, but in practice, property owners carry out evictions themselves, due to lack of any other forum for hearing disputes. Landlord and tenant disputes can be heard by Rent Restriction Tribunals, but the cost of bringing cases to the tribunal discourages their use. Another problem is the backlog of cases in the tribunals. The lack of a proper forum for hearing disputes works in favour of landlords. Some landlord and tenant disputes are mediated through community based organizations or the office of the Provincial Administration; but agreements here are not binding. Finally, the state or county governments generally in practice are not obliged to provide shelter to evictees, nor does the state have the capacity to provide such amenities to people/families affected.

As stated in EIB Standard 6 on Involuntary Resettlement: 'forced evictions' shall not take place, as these constitute violations of a range of internationally recognised human rights, including the right to adequate housing. In rare cases when they do, evictions must be carried out lawfully, only in exceptional circumstances and in full accordance with relevant international human rights and humanitarian law.

As stated in EIB Standard 7 on Right and Interests of Vulnerable People: 'vulnerable individuals and groups' are usually exposed to several risks and adverse impacts at once and are more sensitive to those risks and impacts, having been subject to pre-existing discrimination and inequalities, which renders them weaker for coping with those risks and recovering from those impacts. As a result, they risk being disproportionately affected by project-related risks and adverse impacts.

Given the Kenyan rent regulations as described above and related EIB requirements, the project may set the stage for an increased risk for vulnerable tenants.

Labour Standards

As all of the housing development projects will entail a construction phase, all of the regular labour risks that typically play a role in construction phases will need to be assessed and managed. These include guaranteeing the entire workforce (from contractor and its subcontractors) access to the fundamental labour rights, as well as to conducive working conditions, such as sector-based remuneration, decent working hours and overtime arrangements, provision of social insurance and transparent labour contracts.

For suggested mitigating measures, please refer to the last three bullet points in the next section.

Occupational and Community Health and Safety

The construction sector is particularly prone to occupational safety and health risks. Particular attention needs to be paid to adequate worker induction training, especially of supervisors, on-the-job training of lowly skilled workers, and addressing safety and health issues in daily toolbox talks, effective permit-to-work systems, root cause analysis of incidents and accidents, etc.

In terms of community health and safety, the main issues are the typical construction related nuisances, such as air/noise pollution and vibrations, waste (substantial in construction) and increase in traffic. All of these issues are particularly more impactful in densely populated urban settings. Waste management must include inside-the-fence waste stream management, as well as outside-the-fence waste disposal and recycling options. Increase in traffic (materials, equipment and commuter busses) will need to be managed by traffic route analysis (avoidance of sensitive areas such as schools, market places, etc.), driver safety training, environmental specs for means of transport, and where necessary, traffic awareness campaigns for communities and neighbourhoods.

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In order to adequately manage these labour and health/safety risks and impacts as described above, the Fund will ensure that in contracts with developers/contractors, the compliance with Kenyan legislation and with EIB Standard 8 on Labour Standards and EIB Standard 9 on Occupational and Public Health, Safety and Security is prescribed.

As the Fund will be owning the assets, it will need to demonstrate the effectiveness of its Contractor Management System, i.e. describing oversight/ monitoring arrangements from the side of the Fund and performance/ reporting requirements for the contractor (and flow down of these requirements to subcontractors), in compliance with Kenyan legislation and with EIB Standards 8 and 9.

Finally, the ESIA's that are carried out for each individual housing development, will need to adequately address all relevant E&S issues that are considered the responsibility of the developer/ contractor in the resulting E(S)MPs, in compliance with Kenyan legislation and with EIB Standards 8 and 9.

Public Consultation and Stakeholder Engagement

Consultation carried out under the EIA process or equivalent

According to current national regulations, an EIA process must in all cases include public consultation and general stakeholder engagement. Independent consultants undertake these activities for any third party developer. The results are then submitted to NEMA (National Environment Management Authority) for approval. (NEMA has a list of accredited consultants for developers to use).

The Fund Manager will be requested to present each EIA report to the EIB, as well as to provide a copy of the public consultation records and the Authority decision.

Consultation related to nature assessment, resettlement action plan, indigenous peoples plan, etc.

There is a risk of developing properties built on land with so-called 'legacy issues.' These may include past lack of public consultation, disclosure of information and overall stakeholder engagement, all of which could result in reputational damage, litigations, complaints, or social unrest in general.

Meetings with project-affected people and civil society organisations, public administrations, etc.

Training sessions for new tenants in relation to energy, water and waste management:

- The green features of the apartments are promoted to prospective tenants and is used as a marketing initiative. This is where the tenant is first made aware of the energy saving features of the specific apartment. EDGE induction training would be incorporated and leasing managers for IHS property management would be given a manual and process with which to induct new tenants.*
- When the utility service providers initiate annual price increases, communications are sent to tenants to remind them of basic ways in which they can reduce their utility consumption, and the utility metering business are also used to communicate saving techniques to clients.*

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Other Environmental and Social Aspects

Summary of E&S management arrangements

Due diligence has shown that the promoter has a generic E&S management system for the overall fund and it is foreseen the need for a more dedicated E&S expertise giving the identified environmental and social risks in the Kenyan context.

The Fund has an ESG policy statement and a generic ESMS. Though the EIB Environmental and Social (E&S) Standards are mentioned, these have not been operationalized in either document.

EIB had the ESMS reviewed by an independent consultant, who concluded that it was only partially compliant with certain EIB E&S standards, notably: Standards 1 – Assessment and Management of E&S Risks and Impacts, 3 - Biodiversity and Ecosystems, 5 - Cultural Heritage, 6 - Involuntary Resettlement, and 7 - Rights and Interests of Vulnerable Groups.

In addition, the ESMS would need a revision in order to fully integrate all the dimensions of biodiversity - particularly with regard to ecosystem services, and be more sensitive to climate change issues and human rights – particularly with regard to the grievance mechanism, stakeholder engagement and disclosure of E&S information, and vulnerable groups.

Finally, the Social and Environmental Due Diligence (SEDD) template, the Grievance Mechanism Policy Suggestion (template is lacking), and the Quarterly Monitoring Report template (all attachments to the ESMS), are not adequate in terms of addressing the requirement as reflected in the EIB E&S Standards.

Should one of the housing developments require the establishment of a worker camp, then specific environmental and social requirements are triggered under the EIB Standards. In that case the Fund Manager is expected to notify the EIB immediately.

Specific E&S monitoring arrangements: identification of any E&S performance indicators

The Fund will enter into a Development Management Agreement with design and supervision consultants, who will be responsible for overseeing project development. Relevant E&S requirements will have to be integrated into this agreement.

Conclusions and Recommendations

The Fund Manager will be required to ensure compliance of the investments with the EIB Excluded and Restricted Lists of activities, the EIB core E&S requirements to its entire portfolio as well as the E&S national laws and regulations.

The following conditions are therefore proposed:

- *The Fund Manager will commit to having all of the Fund's housing developments in Kenya comply with Kenyan environmental and social legal requirements and regulations, with any applicable international Convention, signed by Kenya and with the EIB E&S Standards.*
- *In line with EIB standards, no hazardous materials such as mercury or asbestos will be used during construction or building operation and the Promoter will ensure that all waste management is carried out in line with local and international best practices.*

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- *The Fund Manager will hire an E&S expert for the Fund's housing developments in Kenya, with demonstrated experience in the country and preferably in the social housing sector, as well as practical knowledge of Lender E&S Standards (EIB and/or IFC), to ensure compliance with EIB E&S Standards. The expert will be based in Kenya and his/her credentials will need to be validated by the Bank prior to appointment. The moment of hiring will be agreed with the Bank, to guarantee a timely deployment of the expert.*
- *In addition, the Fund Manager will revise and tailor the Fund's existing ESMS in order to: (i) fully integrate human rights issues – particularly regarding the grievance redress mechanism, stakeholder engagement, and vulnerable groups, and (ii) design a system for disclosure of E&S information that is culturally appropriate and provides information to all stakeholders.*
- *The Fund Manager will ensure that contracts with developers/ contractors and consultants, prescribe compliance with Kenyan legislation and with the EIB E&S Standards.*
- *The Fund Manager will develop a 'Contractor Management Plan' (or revise any existing plan of that nature) in compliance with Kenyan legislation and with the EIB E&S Standards.*
- *The EMPs resulting from the EIAs will need to adequately address all relevant E&S issues that are considered the responsibility of the developer/contractor, in compliance with Kenyan legislation and with the EIB E&S Standards.*
- *The Fund Manager shall provide the EIB with all EIA reports for each the Fund's housing developments in Kenya, as presented to the national authority as well as the authority's decision on each EIA report.*
- *The Fund Manager shall prepare and present to EIB a gap analysis comparing Kenyan land legislation to EIB's Standard 6 on Involuntary Resettlement and propose measures to close identified gaps.*
- *The Fund Manager will commit to identifying so-called social and environmental legacy issues for each of the Fund's housing developments in Kenya, particularly in relation to involuntary resettlement, stakeholder engagement, and use of natural resources by local communities. In case such legacy issues are identified, the Fund Manager will trace and provide evidence of past land tenure and the land acquisition process.*
- *The Fund will also need to develop an effective, transparent and easily accessible Grievance Redress Mechanism (GRM) to the satisfaction of the EIB. The revised GRM will need to be integrated in the ESMS and in reporting obligations. The GRM will be accessible to all stakeholders and interested parties.*
- *Provide full collaboration to EIB staff and/or consultant hired by the EIB, in terms of following the implementation of the first three housing development projects closely, with the objective of verifying compliance with the EIB E&S standards and establishing lessons learned.*
- *Replace the existing acronym for the IHS E&S standards, i.e. Performance Standard – PS 1, 2, etc. with one that reflects the integration of the requirements of the EIB E&S standards and communicate/clarify these changes to the developers.*



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- *Notify the EIB per immediately in case one of the housing developments requires the establishment of a worker camp.*

In view of the above findings, if all conditions are met to the satisfaction of the EIB, the operation is deemed satisfactory from an environmental and social compliance perspective.