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INVENTORY OF POLICY INTERVENTIONS – KENYA

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POWER AFRICA TRANSACTIONS AND REFORMS
PROGRAM (PATRP)

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INVENTORY OF POLICY INTERVENTIONS – KENYA

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

The following draft report falls within the Policy Work Order (WO-17-US-03) of Power Africa/PATRP (PATRP Objective 4b).

This draft report was primarily generated by reviewing and analyzing published material on Kenya’s energy sector, a non-exhaustive list of which is included in the References section. In addition, the report draws upon, and incorporates the collective expertise provided by PATRP’s in-country team and other technical advisory staff. In particular, the insights provided by the in-country team have ensured that any policy interventions that we have proposed are focused on removing barriers to advancing actual or prospective Power Africa transactions.

In its current draft form, this report represents a working document that will be shared, and discussed further, with USAID. Therefore, any policy interventions included herein are preliminary in nature. Upon further direction by USAID, our recommended policy interventions can be augmented and verified by means of in-country due diligence assessments.

This draft report was submitted for review to the Activity Manager leading the Power Africa Policy Work Order on 15 October 2015.

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ACRONYMS

Acronym	Definition
AFD	Agence Française de Développement
BTG	Beyond the Grid
DFI	Development Finance Institution
ERB	Electricity Regulatory Board
ERC	Energy Regulatory Commission
EAPP	Eastern Africa Power Pool
FiT	Feed in Tariff
GDC	Geothermal Development Company
GoK	Government of Kenya
GWh	Gigawatts per hour
IDA	International Development Agency
IEA	Institute of Economic Affairs
IFC	International Finance Corporation
IPP	Independent Power Producer
KEEP	Kenya Electricity Expansion Project
KenInvest	Kenya Investment Authority
KenGen	Kenya Electricity Generating Company
KEPSA	Kenya Private Sector Alliance
KETRACO	Kenya Electricity Transmission Company
KNEB	Kenya Nuclear Electricity Board
KPLC	Kenya Power and Lighting Company
kV	Kilovolt
LCPDP	Least Cost Power Development Plan
MIGA	Multi-Lateral Investment Guarantee Agency
MoEP	Ministry of Energy and Petroleum
MVA	Mega Volt Amp
MW	Megawatt
NCCRS	National Climate Change Response Strategy
OPIC	Overseas Private Investment Corporation
PATRP	Power Africa Transactions and Reforms Program
PPA	Power Purchase Agreement
PPP	Public Private Partnership
REA	Rural Electrification Authority
REP	Renewable Energy Program
RFP	Request for Proposal

Acronym	Definition
RISE	Readiness for Investment in Sustainable Energy
SE4ALL	Sustainable Energy for All
SOGA	System Operation Gap Analysis
SREP	Scaling-Up Renewable Energy Program
USAID	United States Agency for International Development
WIAP	Women in African Power Network

EXECUTIVE SUMMARY

Kenya has been a leader in Africa in facilitating private investment in independent power producers, including clean technologies such as geothermal and wind energy. It has also made significant progress, in recent years, in increasing access to electricity. Yet challenges abound. Earlier progress in power sector planning and the timely initiation of well-designed competitive tenders for new power need to be re-invigorated. Earlier lessons on running effective competitive tenders for thermal power stations need to be extended to geothermal and other renewable energy sources such as wind, solar and biomass energy. And the new constitution has given new powers to county governments that need to be reconciled with national imperatives in expanding investment in new power generation capacity and access to electricity.

Kenya's Vision 2030 lays out a set of ambitious goals to increase the levels of energy access and security within Kenya. The Draft National Energy and Petroleum Policy 2015 serves as the overarching policy for all the energy sub-sectors. The overall objective of the afore-mentioned energy policy is to ensure an affordable, competitive, sustainable and reliable supply of energy to meet national development needs at least cost, while protecting the environment. Included in this policy is a comprehensive section on rural electrification and renewable energy. Broadly the required policy and regulatory framework is in place, although there are gaps and opportunities for further policy interventions and technical assistance.

Significant opportunity exists within the Kenyan power sector for extending renewable energy and increasing access to electricity for communities. It is clear that several targeted interventions to assist the Government of Kenya would have far reaching impacts on the attractiveness of the sector to investors. Clarity of roles and responsibilities between national and local government, integrated energy planning and the establishment of a competitive bidding process for projects will create a platform for increasing access, changing the share of energy mix and accelerating private participation. In addition, there needs to be clarity, transparency and consistency in the fundamental agreements supporting projects, this includes the Letter of Support and power purchase agreement (PPA). And finally, it is critical that the Government of Kenya (GoK) is transparent about the reserve margin¹. The major recommended interventions are:

- Assisting the GoK to develop integrated energy planning capacity – this will make demand requirements transparent and assist with more effective target setting.
- Assistance in setting up the systems, processes and capacity for competitive energy bidding. This will provide investors with clarity on the nature and types of projects, provide competitive tariffs and decrease investor risks.

This report provides an overview of Kenya's electricity sector and institutions as well as an analysis of gaps. It further proposes recommendations on possible improvements to the current policies, laws, regulatory framework, power sector development plans, procurement framework and processes, electrification targets, and gender equity. These recommendations are summarized in Table 1 below.

¹ Currently, the supply and demand balance is not being reported. If projected demand and supply is determined and reported in an objective fashion, it could be better managed without policymakers and parastatals being penalized for not achieving unrealistic Presidential goals.

TABLE 1: RECOMMENDED POLICY INTERVENTIONS					
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity					
Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) <i>*Prioritized by Impact*</i>	Effect of Intervention	Technical Assistance Required
Energy policies	Failure to promulgate the National Energy and Petroleum Policy, creates policy and regulatory uncertainty for investment	Strong, transparent legal and regulatory frameworks	Inform the GoK of the impact that this delay is having on investment in the energy sector GoK Parliament to approve and issue a complete national policy	Align energy sector with national development goals and Constitution, further promoting renewable energy development and private investment	None, but high-level engagement with GoK to highlight the impacts of delays on investment
Energy laws	Incongruent legal and regulatory framework with provisions of the Constitution	Strong, transparent legal and regulatory frameworks	Align the current policy, legal and regulatory framework within the energy sector to the provisions of the Constitution Provide technical support to GoK to address, and provide a demarcation of roles between the national and county governments as far as the energy sector is concerned	Legal and regulatory framework will be aligned with the spirit and provisions of the Constitution, which reduces the regulatory risk to projects Avoid uncertainty and/or overlap of responsibilities, causing delays and risks to projects	Provide technical assistance in identifying the gaps in the law and how best to align them with the Constitution Provide consultative role to GoK and Ministry of Energy and Petroleum (MoEP) for the assessment of roles to be carried out

TABLE 1: RECOMMENDED POLICY INTERVENTIONS					
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity					
Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) *Prioritized by Impact*	Effect of Intervention	Technical Assistance Required
Energy laws	Fragmented legal and regulatory framework causing projects to stall in construction phase	Strong, transparent legal and regulatory frameworks	Develop a community support template to advise lenders on how to engage with the community upfront in project development	Avoiding the potential stalling of projects at construction phase, after they have reached financial close as a result of communities taking legal action and going to court ²	Develop the community support template and implementation plan
Energy regulatory framework and tariffs	A significant licensing gap exists for projects smaller than 1 MW in the regulatory framework	Strong, transparent legal and regulatory frameworks Increased clean energy share	Provide assistance to the GoK in creating a regulatory framework to support growth in projects smaller than 1 MW	Address small-scale projects access to the grid Assist by making recommendations on the licensing process for small-scale projects Provide opportunities for small-scale self-generation projects	Provide technical support to the regulator for the licensing of small-scale systems Provide technical assistance on grid access rules for small-scale generators

² All too often, power and other infrastructure projects in the country are embroiled in litigation. On linear development projects (e.g. roads, pipelines, transmission lines) it involves compensation issues and land ownership issues. On all projects, bad political actors are playing a role whether it is to enhance their political standing or for other reasons. Having a consultative process could reduce the number of suits and it could help the courts to make decisions more quickly but this will not solve the problem. A legal analysis with due consideration of the rights bestowed to the people under the new Constitution is required.

TABLE 1: RECOMMENDED POLICY INTERVENTIONS					
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity					
Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) <i>*Prioritized by Impact*</i>	Effect of Intervention	Technical Assistance Required
Energy regulatory framework and tariffs	Implementation of the revised Grid Code (the Grid Code has recently been revised to cater for intermittent renewable energy; incorporation of international best practice and compliance with the Eastern Africa Power Pool (EAPP) code)	Strong, transparent legal and regulatory frameworks Increased clean energy share	Assist the Energy Regulatory Commission (ERC) with regulatory impact analysis and implementation of the revised Grid Code to attract more private investment	Provide opportunities for renewable energy generation projects, thereby attracting more private sector investment	Provide technical support to ERC on regulatory impact analysis and implementation of the revised Grid Code
Energy regulatory framework and tariffs	Inadequate regulatory framework to deal with standardizing power purchase agreements (PPAs) ³	Strong, transparent legal and regulatory frameworks Increased clean energy share	Bridge the gap between the interests of private investors, the regulator, the off-taker and the MoEP in the creation of financeable standardized PPAs for different renewable energy technologies	A standardized PPA will reduce the amount of time to finance projects by several months	Provide assistance and advice to the MoEP on developing standardized PPAs that can result in financeable projects. A team of industry experts comprised of international lawyers, investment bankers etc. should be constituted to provide this assistance

³ Kenya Power currently has a standardized PPA but it is not financeable. A committee was established in the early part of 2015 which included Kenya Power, the ERC, the MoEP and industry representatives to produce a financeable PPA, but no agreement was reached.

TABLE 1: RECOMMENDED POLICY INTERVENTIONS

To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity

Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) *Prioritized by Impact*	Effect of Intervention	Technical Assistance Required
Energy regulatory framework and tariffs	Risks associated with the current feed-in tariff (FIT) projects, due to the intent to replace the FIT policy with a competitive bid process	<p>Strong, transparent legal and regulatory frameworks</p> <p>Increased clean energy share</p>	Review the impact that the changing policy will have on current projects and methods to mitigate the project risk. Consider retaining FiTs for small renewable energy projects	Decrease project risks	Provide technical assistance to the GoK in understanding the impact the changing policy will have on current projects and advise them on possible risk mitigations
Power sector development plans/integrated resource plans/generation master plans	<p>Inadequate capacity to carry out integrated energy planning</p> <p>Lack of sufficient public and stakeholder engagement on power sector planning</p>	<p>Sound, strategic and integrated power sector planning</p> <p>Increased clean energy share</p> <p>Strong regional power pools</p>	<p>Provide assistance, training and support to implement effective demand-side and supply-side modelling</p> <p>Develop and implement a comprehensive public and stakeholder consultation process as an integral part of power sector planning</p>	<p>Shortens the regulatory processes</p> <p>Increased community commitment to energy decisions</p> <p>Provides long-term outlook for investors</p> <p>Allows for grassroots participation in energy planning</p> <p>Will reduce frivolous law suits</p>	<p>Provide technical assistance in the form of training and support to implement effective demand- and supply side modelling capabilities within ERC</p> <p>Assist ERC in the development of a comprehensive public and stakeholder consultation framework and implementation plan</p>

TABLE 1: RECOMMENDED POLICY INTERVENTIONS					
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Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) <i>*Prioritized by Impact*</i>	Effect of Intervention	Technical Assistance Required
Power sector development plans/integrated resource plans/generation master plans	Inadequate capacity at the Geothermal Development Company (GDC) to effectively develop and tender for geothermal power projects	Sound, strategic and integrated power sector planning Increased clean energy share	Develop sustainable capacity within GDC to develop and tender for geothermal projects	Increase geothermal development Decrease project risk	Provide technical assistance to GDC (or KenGen if mandated) and ERC to effectively develop and tender for geothermal projects
Power generation procurement framework and processes	Issuance of an adequate and comprehensive Letter of Support for new generation projects	Increased clean energy share	Provide guidance to the MoEP, the National Treasury, ERC and Kenya Power on the importance of an adequate Letter of Support towards the financing of new generation projects	Expedite the financial closure of projects	Transaction advisors to provide support to the GoK towards understanding the full implications of not having an adequate Letter of Support, including possible assistance with drafting the Letter

TABLE 1: RECOMMENDED POLICY INTERVENTIONS					
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity					
Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) <i>*Prioritized by Impact*</i>	Effect of Intervention	Technical Assistance Required
Power generation procurement framework and processes	Lack of competitive procurement framework to unlock full clean energy potential	Clear and transparent procurement processes Increased clean energy share	Assist with the establishment of a competitive tendering framework for clean energy including wind, solar and biomass	Generate more clean energy projects to meet growing demand for energy Has the potential to decrease the costs of energy supply at a rapid rate	Provide technical assistance to the GoK in its pursuit of a competitive bid framework for clean energy projects ⁴ Design a competitive tendering framework and supporting RFP package including standardized PPA and other commercial contracts
Electrification targets, planning and execution (for grid and off-grid)	Lack of integrated planning with regard to rural electrification means that project developers cannot determine the expected demand for power in rural areas	Universal electricity access, achieved through the strategic use of on-grid, off-grid, and small-scale solutions	By addressing long term demand outlook, the GoK can provide better rural electrification targets. This would then be an important component of integrated energy planning by Kenya Power, GoK and the Renewable Energy Authority (REA)	Improve planning and demand modelling with the sector. This will ensure better target setting and attainment of electrification goals, avoiding parallel and uncoordinated activities Improve rural electrification	Provide technical assistance to the GoK in long-term energy planning. This includes demand side and supply side modelling Assistance to ERC on the licensing and grid access

⁴ Mott McDonald is currently assisting MoEP in this regard. PATRP will be assisting the MoEP by providing insight on appropriate renewable energy tariffs for Kenya.

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Area of Focus	Barriers	Associated Principles	Recommended Intervention(s) <i>*Prioritized by Impact*</i>	Effect of Intervention	Technical Assistance Required
					protocols for small-scale and off grid generators
Electrification targets, planning and execution (for grid and off-grid)	High transaction costs for rural electrification projects which translate into higher tariffs for consumers	Strong, transparent legal and regulatory frameworks	GoK and MoEP to assess the extent to which costs can be reduced and also the potential for alternative pricing models in rural areas	Promote private investment and increase rural electrification	Provide technical assistance in the assessment of costs related to rural electrification projects and how to minimize them, and assess alternative pricing models for rural areas
Gender equality and female empowerment	Insufficient capacity to implement gender-sensitive policy provisions and exclusion of women's voices in energy planning	Gender equality and female empowerment	Gender mainstreaming capacity building; promotion of women's participation in energy planning through public consultation process	Gender integration in the implementation of energy policy as well as increased women's participation in the sector	Gender mainstreaming workshop and resources, and promotion of women in the sector through Women in African Power Network (WIAP)

1. PROFILE OF KENYA'S ENERGY SECTOR

1.1. GENERATION CAPACITY AND MIX

In 2014, Kenya's installed capacity amounted to 1882 MW with 496 MW (or 26%) generated from IPPs. As indicated in Table 2, hydropower accounts for 43%, thermal (diesel) for 33%, geothermal 19% and the balance is biomass, wind and solar.

TABLE 2: KENYA'S INSTALLED CAPACITY			
Plant	Technology	Installed Capacity (MW)	Total Installed Capacity (MW)
KenGen			1337
Tana	Hydro	20	
Kamburu	Hydro	94.2	
Gitaru	Hydro	225	
Kindaruma	Hydro	72	
Masinga	Hydro	40	
Kiambere	Hydro	168	
Turkwel	Hydro	106	
Sondu Miriu	Hydro	60	
Sangoro	Hydro	21	
Small Hydros	Hydro	13.7	
Kipevu I Diesel	Thermal	73.55	
Kipevu III Diesel	Thermal	120	
Fiat - Nairobi South	Thermal	0	
Embakasi Gas Turbines	Thermal	54	
Garissa & Lamu	Thermal	8.7	
Olkaria I	Geothermal	45	
Olkaria II	Geothermal	105	
Eburru Hill	Geothermal	2.5	
OW37 Olkaria Wellhead	Geothermal	5	
OW43 Olkaria Wellhead	Geothermal	12.8	
OW914 Olkaria Wellhead	Geothermal	12.8	
Olkaria IV	Geothermal	73	
Ngong	Wind	5.1	
IPPs			496
Imenti Tea Factory hydro	Hydro	0.3	
Gikira hydro	Hydro	0.514	
Iberafrica I&II Power	Thermal	108.5	
Tsavo Power	Thermal	74	
Thika Power	Thermal	87	
OrPower 4 – Geothermal I, II & III	Geothermal	110	

Plant	Technology	Installed Capacity (MW)	Total Installed Capacity (MW)
Rabai Power	Thermal	90	
Mumias – Cogeneration	Biomass	26	
Rural Electrification Program (REP)			19.3
Government of Kenya (Rural Electrification Program)	Thermal	18	
Government of Kenya (Rural Electrification Program)	Wind	0.6	
Government of Kenya (Rural Electrification Program)	Solar	0.7	
Emergency Power Producers (EPP)			30
Aggreko energy to Kenyan Market		30	
Total Installed Capacity (MW)			1882

Sources: Kenya Power (2014), KenGen (2014), Power Africa, “Investment Brief for the Electricity Sector in Kenya,” 2015.

1.2. ELECTRICITY ACCESS LEVEL AND TARGETS

Official data and targets for electricity access levels in Kenya are often contradictory, with various official publications providing different figures. Table 3 summarizes the figures from three recent official documents, as well as World Bank indicators. These differences may stem from disagreement regarding how “urban” and “rural” areas are defined, or what constitutes “access” (i.e., actual connectivity vs. availability of local distribution infrastructure).

Year	Access Indicator	% of Population
2012 (historic)	Overall access:	23%
	Urban access:	58%
	Rural access:	6.7%
2014 (current)	Overall access:	32%
	Urban access:	40%
	Rural access:	10%
2022 (target)	Overall access:	65%
2030 (target)	Overall access:	100%

Sources: World Bank Indicators Database, (Sustainable Energy for all, Global Tracking Framework, 2013), (National Energy and Petroleum Policy Draft, 2015), (Draft Internal PATRP BTG Country Assessment - Kenya, 2015), (Annual Report and Financial Statements Financial Year Ended 30 June 2014, 2014)

Ultimately, access rates are increasing. While reported access levels are inconsistent, the Draft National Energy and Petroleum Policy is likely a reliable benchmark, clarifying that while distribution infrastructure covers 63% of the population, connectivity remains at around 32%.

Access targets are similarly inconsistent. In addition to the targets presented above, Kenya’s Vision 2030, which was initiated in 2008, envisaged 65% access by 2022 and 100% by 2030. The fact that access targets change over time should be expected, as there is a need to revise targets in

acknowledgement of actual progress towards goals, as well as changing development priorities. The recent publications presented above state more ambitious targets than those laid out in Vision 2030, despite the fact that all indications point to an actual rate of increase far lower than required to meet those targets.⁵

It should be noted that much of the Rural Electrification Authority's (REA) focus has been on electrifying major public facilities such as schools, health centers and trading centers. This effort had achieved a 90% electrification rate at such facilities by the end of 2013.⁶

Expanding off-grid access is coordinated between Kenya Power and the REA. There are currently 16 off-grid diesel power stations operated by Kenya Power with a total capacity of 16.8 MW, with an additional 4.75 MW installed over the course of 2014. Kenya Power also has plans to integrate solar and wind energy into existing diesel systems, which will result in an additional 10.2 MW of solar and 0.6 MW of wind energy.⁷ KenGen also owns two mini-grids, Garissa and Lamu.

Increased access to rural electrification in Kenya will depend on the availability of finance to cover capital and operating costs for the generation, transmission and distribution of electricity, which are higher than in urban areas. Moreover, the high connection costs coupled with low consumption of electricity and low incomes among rural households are further obstacles to the electrification of these households.

1.3. POWER MARKET STRUCTURE, INCLUDING IPP PARTICIPATION

Following the enactment of the Electric Power Act, No. 11 of 1997, Kenya's power subsector was unbundled into a separate generation company – the Kenya Electricity Generating Company (KenGen) and a separate transmission and distribution company - Kenya Power and Lighting Company (now branded as Kenya Power). The sector is regulated by the Energy Regulatory Commission (ERC).

In 2008, the Government of Kenya (GoK) formed Kenya Electricity Transmission Company (KETRACO) to take care of new transmission infrastructure while Kenya Power would still operate the existing transmission lines⁸. The Geothermal Development Company (GDC) was set up to develop geothermal energy sources.

Independent Power Producers (IPPs) are permitted in the power market.

⁵ Draft Internal PATRP BTG Country Assessment - Kenya, 2015

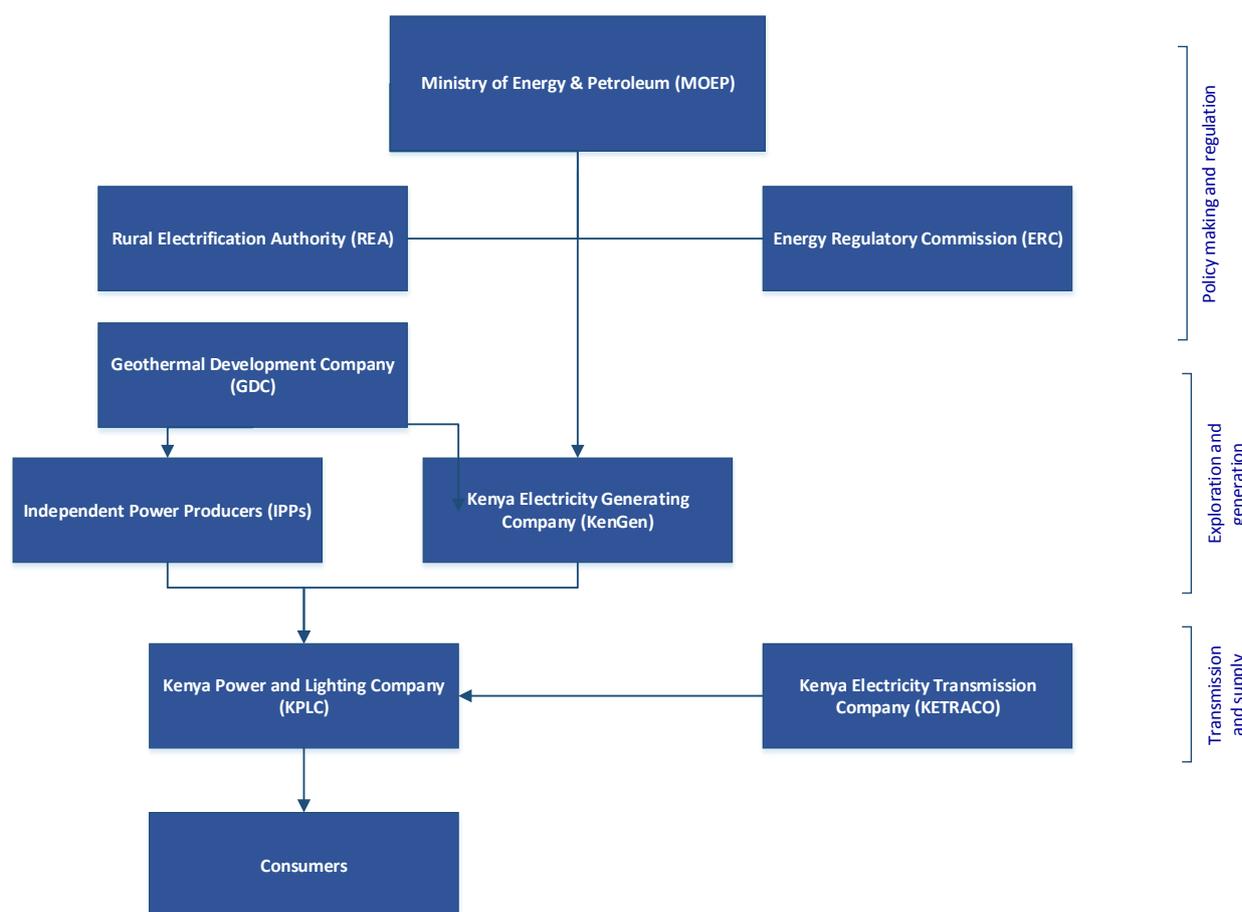
⁶ Investment Prospectus 2013-2016, 2013

⁷ The Kenya Power and Lighting Company Limited *Annual Report and Financial Statements 2013/2014*

⁸ Energy Act 2006.

Figure 1 below shows the structure of Kenya’s electricity sector:

FIGURE 1: STRUCTURE OF KENYAN ELECTRICITY SECTOR



Source: Eberhard, A. and Nawaal Gratwick, K., 2007.

1.4. KEY SECTOR INSTITUTIONS AND MANDATES

The following section describes the most important institutions in the country’s energy sector:

Ministry of Energy and Petroleum (MoEP)

MoEP is responsible for formulating the sector policies and setting a vision for all sector players. The Renewable Energy Department falls under the MoEP; it is responsible for leading the development of renewable energy and energy efficiency through research and planning, development of standards and regulations, compliance and enforcement.

Energy Regulatory Commission (ERC)

The enactment of the new Energy Act in 2006 resulted in the Electricity Regulatory Board (ERB) being transformed into the Energy Regulatory Commission (ERC). The ERC serves as the independent energy regulatory authority; it is responsible for regulating the entire energy sector. This includes licensing, setting and reviewing tariffs, development of indicative energy plans, monitoring and enforcement of sector regulations, dispute settlement, and approval of power purchase and network service contracts.

Energy Tribunal

The independent legal entity for dispute arbitration in the energy sector was established by the Energy Act of 2006 and replaced the previous appeal process which, was vested with the MoEP.

Rural Electrification Authority (REA)

REA was established in terms of the Energy Act No. 12 of 2006. The REA is charged with implementing the Rural Electrification Program by constructing and commissioning mini-grids as well as on-grid rural electrification, which it then hands over to Kenya Power for operation and maintenance through service-level agreements. The Authority reports to the MoEP. According to the Draft National Energy and Petroleum Policy 2015, the GoK, through Kenya Power and REA, had extended electricity supply to 23,167 out of the existing 25,873 public facilities⁹ in the country in 2014.¹⁰ As of September 2015, 20,262 out of 22,364 primary schools had been electrified.¹¹

The Kenya Electricity Generating Company (KenGen)

Since the establishment of KenGen in 1996, the company has taken over management of all public power electricity generating facilities. KenGen sells the bulk of its electricity to Kenya Power. KenGen accounts for about 74% of Kenya's installed capacity.

Kenya Power and Lighting Company (Kenya Power)

Kenya Power is responsible for electricity transmission and all distribution systems in Kenya. Kenya Power is the only licensed off-taker for bulk power purchase in the power market and buys its power from KenGen and the eight existing IPPs.

IPPs

The liberalization of power generation in 1996 allowed for IPP participation in the electricity market. Current players include:

- OrPower 4 – Geothermal I, II & III
- Mumias Cogen (IPP)
- Imenti Tea Factory hydro
- Gikira hydro,
- Iberafrica I&II Power
- Tsavo Power
- Thika Power
- Rabai Power

Geothermal Development Company (GDC)

GDC was incorporated in 2008 in order to speed up the development of geothermal resources in Kenya. It is fully owned by the GoK. The GDC is governed by the operation of the State Corporations Act of 2012. GDC runs competitive tenders for power companies to exploit proven geothermal resources.

Kenya Electricity Transmission Company (KETRACO)

KETRACO is wholly government owned; its mandate is to plan, design, construct, own, operate and maintain new high-voltage (132 kV and above) electricity transmission infrastructure that will form

⁹ Public facilities include: Trading Center's, Primary Schools, Public Secondary Schools and Health Centers

¹⁰ The GoK, Final Draft National Energy and Petroleum Policy, 2015.

¹¹ Summary of Electrification Status of Primary Schools, Sept 7, 2015.

the backbone of the National Transmission Grid and regional inter-connections. It is expected that this will also facilitate the evolution of an open-access-system in the country. In practice, Kenya Power continues to operate the transmission system.

1.5. STATE OF THE UTILITY

Kenya Power is a partially privately owned company, with 51% being owned by the GoK. For this reason, it is viewed as a state-owned enterprise and is therefore subject to the provisions of the State Corporations Act of 2012. Kenya Power is also a publically listed company on the Nairobi Securities Exchange, with 49% of the company owned by various shareholders. Kenya Power is the single buyer and sole distribution company for all power produced in the country. As such, it is the source of all the revenues of KenGen and all the existing and future IPPs. The private sector presence in electricity generation is fully supported by take-or-pay PPAs signed with Kenya Power. Maintaining cost recovery retail tariffs is critical for the short- and long-term financial sustainability of Kenya Power and the power producers (including KenGen and all IPPs).

Kenya Power's track record of contracting eight commercially viable IPP projects without any payment default broadly confirms the company's credit worthiness. However, there are challenges. For example, during the tender process of the three recent IPPs – Thika, Gulf and Triumph - it became clear to Kenya Power that it would not be able to attract investors unless it offered significant credit enhancement such as sovereign guarantees. The GoK, however, was constrained in its ability to provide sovereign guarantees due to its limited fiscal space and tight debt ceiling agreed with the International Monetary Fund (IMF). Kenya Power, in turn, found it difficult to continue offering the security packages that it had provided under the PPAs with previous IPPs. Those security packages had become financially onerous as they required full cash collateral thus impacting Kenya Power's ability to direct resources for its operating needs and its investment program.

As a response, a credit enhancement package consisting of IDA Guarantees to backstop ongoing payment obligations of Kenya Power under the PPAs and MIGA Insurance to cover termination payments was put together for these projects. Consequently, all three of these latest IPPs attracted long-term commercial financing.

Kenya Power recorded a 54.5% increase in profit before tax, a 9.9% increase in sales and a 30.6% increase in electricity revenue for the financial year end 2014. An increase in sales is credited to a growth in customers and investment in system reinforcement and maintenance during the year, which greatly reduced the number and duration of outages. Electricity sales are expected to continue to grow rapidly in the short term, boosted by the projected additional generation capacity.¹²

During the period 2005 to 2012, Kenya Power went on a drive to reduce total electricity losses; it achieved a 20% decrease during this time. By 2014, Kenya Power's total system losses¹³ decreased further by 0.4%: to 17.8% from 18.2% in 2013.¹⁴

¹² The Kenya Power and Lighting Company Limited Annual Report and Financial Statements 2013/2014.

¹³ System losses comprise technical and non-technical losses.

¹⁴ The Kenya Power and Lighting Company Limited Annual Report and Financial Statements 2013/2014

2. KENYA'S ENERGY POLICY FRAMEWORK

Until recently, Kenya's policy framework was governed by the Sessional Paper No. 4 on Energy. However, with the adoption of the long term development strategy (Vision 2030), the energy policy needed to be updated to align with these developmental goals. The Draft National Energy and Petroleum Policy of 2015 was consequently developed with the objective to ensure adequate, quality, cost effective and affordable energy through indigenous resources while protecting the environment, further encouraging wider adoption and use of renewable energy technologies to enhance their role in the country's energy supply matrix. The Least Cost Power Development Plan (LCPDP) serves as the implementation plan for delivering the power sector targets outlined in Vision 2030 and the Energy Act, 2006 provides the regulatory framework for the sector. This makes the LCDP a significant instrument in driving the expansion of renewable energy projects and private sector participation.

2.1. ENERGY POLICIES

The Kenya Vision 2030 document serves as the economic strategy for the period 2009-2030, aiming to transform Kenya into a middle-income economy providing a high quality of life to its citizens. Energy is seen as a key sector for achieving the plan and it is within that framework that the GoK continues to develop the energy sector in accordance with meeting these national development goals.

Guided by its Vision of "affordable, quality energy for all Kenyans" and its Mission "to facilitate provision of clean, sustainable, affordable, reliable and secure energy services at least cost while protecting the environment," the MoEP aims contribute towards the achievement of Kenya Vision 2030 by:

- enhancing power generation capacity,
- increasing access to electricity,
- developing new and renewable sources of energy,
- ensuring the security of fossil fuel resources, and
- capacity building within the energy sector.¹⁵

The Draft National Energy and Petroleum Policy 2015 provides that the GoK formulate and implement a national electrification strategy to accelerate connections with a view to achieving universal access to electricity by 2020.

The capacity for effective policy development exists in Kenya, but the pace and sense of urgency are not always in line with the perceived importance of the undertaking. This can be seen with the delay in the approval of the Draft National Energy and Petroleum Policy 2015 by Parliament.

¹⁵ The Government of Kenya (GoK), Kenya Vision 2030 - A Globally Competitive and Prosperous Kenya, 2007.

Although existing policies governing the power sector have generally covered most of the areas needed to support investment in cleaner power generation and widened access to electricity, there are still challenges and policy gaps, including actions that are still pending to directly address regulatory uncertainty.

Regulatory uncertainty is a risk factor for sponsors. Policymakers need to ensure that systems are clear and transparent so as to reduce sponsor risk, which will result in a lower cost of capital and thus a lower cost of electricity.

2.2. ENERGY LAWS

In 2010, the Constitution of Kenya was enacted, which provided for a two-tier government structure: national and county governments. The functions of energy policy, including electricity and gas reticulation, and energy regulation, are assigned to the national level of government, while planning and development, including for electricity and gas reticulation and energy regulation, were assigned to the county governments. This will be further promoted when the Draft National Energy and Petroleum Policy is promulgated. The policy does not clarify the roles of the two-tiers of government creating confusion for both structures of government.

The principal pieces of legislation in the energy sector are:

- **The Energy Act No. 12 of 2006:** The Act came into force in July 2007, repealing the Electric Power Act of 1997. The Energy Act sought to amend and consolidate the laws relating to energy, and provide for the establishment, powers and functions of ERC, the Energy Tribunal and the Rural Electrification Authority.
- **The Geothermal Resources Act No. 12 of 1982:** The Act controls the exploitation and use of geothermal resources and vests the resources with the GoK.

Despite the GoK's significant legal steps to make improvements to the regulatory and institutional framework, it is still facing a number of challenges that include:

- Minor alignment issues regarding the policy, legal and regulatory framework within the energy sector and the provisions of the Constitution. For instance, while the requirements for appointment to the Energy Tribunal stipulates that a person should have fifteen years' experience in law, the Energy Act of 2006 stipulates that the Chairman and the Vice Chairman should be appointed from among persons qualified to serve as judges of the High Court. The Constitution requires that for a person to qualify for appointment as a judge of the High Court he or she should have ten years' experience.
- Fragmented legal and regulatory framework caused by devolution leading to uncertainty and/or overlap of roles and responsibilities. With new renewable energy projects, project risk may be increased due to local politicians using the decision making power to foment opposition against projects to promote parochial interests.

2.3. ENERGY REGULATORY FRAMEWORK AND TARIFFS

The ERC has powers to license IPPs and power utilities, to set tariffs and technical standards and in dispute resolution.

2.3.1. Licensing

In Kenya, generation, transmission, distribution, supply, import and export of electricity can only be carried out by parties with a license or permit¹⁶ provided by the ERC. The ERC framework does not make provision for participation for systems less than 1 MW, creating a limitation for private sector participation. Also, generation plants with capacities bigger than 500 kW are limited to being hooked to the national grid, therefore locking out a number of smaller plants.

2.3.2. Technical Regulation

The primary technical regulatory document is the Kenya Electricity Grid Code of 2008, which collates the majority of the technical regulations covering the generation, transmission, distribution and supply of electrical energy.

The Grid Code's primary objective is to establish the technical rules that ensure open access to the electricity grid while ensuring that safety and quality are not compromised. The Grid Management Support Program, which included the System Operation Gap Analysis (SOGA), provides technical assistance to address the key challenges of integrating intermittent renewable energy into the national grid. Prioritization of the gaps identified in the SOGA are essential for variable energy sources in the short term.

2.3.3. Dispute Resolution

The Energy Tribunal was set up to arbitrate disputes in the sector. The Tribunal can rule not only on procedural but also on substantive matters relating to tariff structures and levels.

2.3.4. Tariff Setting

Kenya Power's tariff structure is set in accordance with the principles set out by the ERC.¹⁷ The underlying tariff methodology for the determination of Kenya Power's retail electricity tariffs is the revenue-requirement formulation.¹⁸

Generation tariffs drive the power purchase costs, which are the most important cost in retail electricity tariffs. PPAs are structured to include capacity charges, energy charges, fuel pass-through costs, and the applicable inflation index.

- **Capacity and the energy charges:** There are fixed and variable costs allowed for electricity generating companies. With regard to IPPs, it can be assumed that these charges are competitive if procured through a competitive bidding process. The benchmarking with local and international markets that these costs undergo provides further reassurance of their competitiveness.
- **Pass-through costs:** For thermal generators that primarily use diesel or heavy fuel oil, fuel costs represent an important component of their variable costs. In Kenya, IPPs tend not to carry the risk that this cost represents; instead the risk is borne by consumers via a cost pass-through regime that is calculated on a monthly basis by Kenya Power.

¹⁶ Where "permit" means an authorization granted to a person to engage in the generation or distribution of electrical energy of a capacity that does not exceed 3,000 kW.

¹⁷ Eberhard, A and Nawaal Gratwick, K., 2007.

¹⁸ Revenue Requirement Formula: Required Revenues = Expenses + (Rate Base x Rate of Return), where **Rate Base** is investment in facilities, equipment and other equipment used to provide service, **Rate of Return** is the return earned, or allowed to be earned, on the utility's rate base and Expenses include operating expenses, operation & maintenance and administrative & general.

- **Inflation indexing:** Generation tariffs are subject to escalation at the prevailing rate of inflation. However, in order to incentivize cost containment, escalation is calculated less an efficiency factor (in the fashion of the RPI-X regulatory philosophy¹⁹). This approach is also applicable to Kenya Power tariffs.

Transmission and distribution tariffs (Kenya Power’s retail electricity tariffs) are reviewed every three years. They include power purchase costs, operations and maintenance, technical and commercial losses.

- Power purchase costs have been discussed above.
- Operations and maintenance costs are set at a base value and are capped for each period with cost escalation being subject to an efficiency factor similar to the RPI-X regulation.
- Total system losses are capped in the tariff at low levels as a means of cost containment as this aids in increased revenue.

The ERC has affirmed the concept of cost-reflective tariffs. The ERC also permits off-grid and mini-grid operators to charge cost-reflective electricity tariffs to customers.

ERC established the renewable energy feed-in tariff (FiT) policy in 2009 covering wind, biomass and small hydro for capacities of up to 50 MW, 40 MW and 10 MW, respectively. This was further revised in 2012 to include additional renewable energy technologies, including geothermal, biogas and solar. In addition, the revised policy extended the period of the PPAs from 15 to 20 years and increased the fixed tariffs per kilowatt-hour for pre-existing wind and biomass under the FiT.

The second revision of the policy introduced:

- Standardized PPA templates to be used as a basis for negotiations
- Guidelines for connecting small-scale renewables to the grid to be used when undertaking grid connection studies that all developers are required to perform
- Revised implementation guidelines to include a standardized application form and progress reporting and monitoring frameworks
- Introduced escalation of specified percentages of the tariffs. Before that, the tariffs used to be fixed for the entire tenure of the PPA
- Increased FiT levels for wind and biogas.

FiT values for renewable projects less than 10 MW are shown in Table 4, FiTs for projects larger than 10 MW are shown in Table 5.

TABLE 4: FEED-IN TARIFFS FOR RENEWABLE ENERGY PROJECTS LESS THAN 10MW				
Energy Source	Capacity (MW)	Std. FiT (USD/kWh)	% Escalable portion of tariff	Max. capacity (MW)
Wind	0.5 - 10	0.11	12%	10
Hydro	0.5	0.105	8%	10
	10	0.0825		
Biomass	0.5 - 10	0.10	15%	10

¹⁹ Regulation to prevent abuse of market power in cases of natural monopoly or high-entry barriers, aims to stimulate cost reduction as well as prevent high price cost margins.

Biogas	0.2 - 10	0.10	15%	10
Solar (grid)	0.5 - 10	0.12	8%	10
Solar (off-grid)	0.5 - 10	0.20	8%	10

Source: International Energy Agency, 2012

TABLE 5: FEED-IN TARIFFS FOR RENEWABLE ENERGY PROJECTS GREATER THAN 10MW				
Energy Source	Capacity (MW)	Std. FiT (USD/kWh)	% Escalable portion of tariff	Max. capacity (MW)
Wind	10.1 - 50	0.11	12%	500
Geothermal	35 - 70	0.088	20% for first 12 years and 15% after	500
Biomass	10.1 - 40	0.10	15%	200
Hydro	10.1 - 20	0.0825	15%	200
Solar (grid)	10.1 - 40	0.12	8%	100

Source: International Energy Agency, 2012

An evaluation of the FiT policy in Kenya shows that the regulatory framework promotes investment in renewable power projects. At the same time, these regulatory elements include unfavorable features that lead to high transaction costs and uncertainty:

- The current implementation of a FiT differs from international norms for a FiT. The Kenyan FiT is a maximum tariff, not a guaranteed tariff, where the tariff is subject to negotiations with Kenya Power and the investor. This impedes project planning and profitability since future revenues are subject to uncertainty. This is due to Kenya Power not being entitled to recover all of the FiT costs from the final consumer. Instead, it can recover only 70%²⁰ as directed by the ERC, making the case for it to negotiate the tariff and to avoid projects that lead to significant profit reduction.
- A complex process²¹ needs to be followed for approval of a renewable energy project. This requires strong institutional and regulatory capacity to manage, placing an administrative burden on the regulator.
- Under FiT policy, the off-taker is required to guarantee priority purchase, transmission and distribution of all electricity supplied by small renewable energy projects with an installed capacity of up to 10 MW. In projects where installed capacity exceeds 10 MW, these projects are subject to negotiated PPAs. At present, PPAs are made on a bespoke basis, with each project having to negotiate their terms of service, increasing the amount of time between the start of the project and its initial proposals.
- The FiT policy has made considerable gains in encouraging investment security for renewable energy generators and streamlining the process to establish an IPP. However, the continued energy deficit means that there needs to be an ardent pursuit of policy methods that will increase installed generation capacity at a reasonable cost.

²⁰ Meyer-Renschhausen, M., 2013.

²¹ First, a letter of interest must be submitted and approved. Once it is approved, a detailed proposal must be submitted. Investors whose expressions of interest are approved will be required to carry out detailed feasibility studies including environmental and social impact assessments, and submit detailed proposals. Detailed proposals should be considered as the business plans of the investors and should therefore be presented in a bankable format.

2.4. POWER SECTOR DEVELOPMENT PLANS/INTEGRATED RESOURCE PLANS/GENERATION MASTER PLANS

In terms of law, the ERC has the responsibility for electricity planning. It chairs the Least Cost Power Development Planning Committee. The committee is responsible for preparing and updating the LCPDP, which is updated biennially. The current plan covers the period 2013-2033, with updated assumptions, new technologies as well as market dynamics that may impact future power expansion plans.

The update of the current plan was undertaken by the Least Cost Power Development Planning Committee which comprises representatives from ERC, Kenya Power, KenGen, KETRACO, REA, GDC, the Ministry of Energy, the Ministry of State for Planning, Kenya's National Bureau of Statistics, Kenya Nuclear Electricity Board (KNEB), Kenya Vision 2030 Delivery Secretariat, Kenya Investment Authority (KenInvest) and the Kenya Private Sector Alliance (KEPSA). The update was carried out with technical assistance from the French Development Agency (AFD).²²

Committed new generation investments between 2013 and 2017 are estimated at 2,693 MW, as shown Table 6.

Implementing Agency	Capacity MW	Time Lines
IPPs	1391 MW	2013-2017
KenGen	658.4 MW	2014-2017
GDC	590 MW	2014-2017

Source: GoK, Updated Least Cost Power Development Plan, Study Period: 2013-2033, 2013

Peak demand by 2030 is forecast to be 14,446 MW.

The LCPDP incorporates a range of options including geothermal, coal, natural gas, nuclear and wind.

Using the LCPDP, a transmission system plan was developed for the period 2013 to 2033. The transmission development plan indicates the need to develop approximately 11,231 km of new lines (18,173 circuits) by 2033 at an approximated present value cost of USD 3.55 billion.

With capacity planned to expand to 5,530 MW by 2030,²³ the GoK created the GDC to allay the risks with exploration and drilling in order to encourage private investment in geothermal generation. This, however, has not materialized as envisaged. Despite a number of power tenders, no wells have yet been transferred to the private sector and while some private investors have a PPA, they have not received a license and are thus not being given entrance into the market.²⁴ The GDC's role was to unlock the potential for geothermal development, the reality is that the GDC has inadequate capacity to develop geothermal power projects, therefore limiting and stalling geothermal exploration.

²² GoK, Updated Least Cost Power Development Plan, Study Period: 2013-2033, 2013.

²³ Ibid.

²⁴ Production of a Market Study in Order to Strengthen Economic Cooperation in the Energy Sector, Triple, 2014.

The Draft Energy and Petroleum Policy highlights the challenges to power sector development plans/integrated resource plans/generation master plans, which include:

- Inadequate structures and systems in place for integrated planning and monitoring the implementation of planned projects
- Lack of renewable energy master plans
- Inadequate capacity to carry out energy planning
- Lack of planning committees for the renewable energy subsectors.

2.5. POWER GENERATION PROCUREMENT FRAMEWORK AND PROCESSES

Prior to the Public Private Partnerships (PPP) Act, No. 27 of 2013, Kenya's Public Procurement and Disposal Act, 2006, governed procurement by government and state corporations. Kenya Power developed capacity to run effective competitive tenders for thermal IPPs. This capacity has been somewhat eroded and along with the problems experienced by the GDC (noted above) there are some existing challenges in Kenya with regard to running competitive procurement for new power.

The new PPP Act establishes a legal framework for carrying out PPPs in Kenya; it applies to every contract for financing, construction, operation, equipping or maintenance of a project as well as for the provision of public services undertaken as a public private partnership. Section 61 of the Act stipulates that all projects must be procured by competitive bidding with the exception of privately initiated proposals. The exceptions are summarized below:

- If there is an urgent need for continuity
- If the costs relating to the intellectual property in relation to the project design are substantial
- If there exists only one person capable of undertaking the project
- If there exists any of the circumstance as the Cabinet Secretary may prescribe.

New renewable energy generating capacity is procured from IPPs through the FiT policy (below a specified MW size) as well as through competitive tendering for larger projects.

The most common complaints regarding the procurement process are related to:

- Difficulties in obtaining letters of support to limit political risk. Without the letter there is significant risk placed on the sponsor and on the financial closure of the project. The increased risk leads to less increased private investment in cleaner energy.
- The requirement that all PPAs need to be separately negotiated leads to fewer agreements being concluded, causing delays in project financial closure. A standardized PPA for each power technology would facilitate procurement processes.
- Section 61 of the PPP Act stipulates that all projects must be procured by competitive bidding with the exception of privately initiated proposals, this provision seems to undermine the requirement for competitive tenders completely.

2.6. ELECTRIFICATION TARGETS, PLANNING AND EXECUTION (FOR GRID AND OFF-GRID)

The GoK's plan for rural electrification began in 1973 with the establishment of the Rural Electrification Program (REP), with the objective of providing electricity supply to areas that were not considered economically feasible by the utility. The REP was initially implemented by Kenya Power until 2007 when the REA was established. The REA was mandated with accelerating rural electrification and managing the REP Fund.

The LCPDP includes a strategic plan for adequate transmission and distribution systems to ensure generated electricity can reach the consumers efficiently. In 2014, there were 24 on-going distribution projects within Kenya Power; 9 in the Nairobi Region, 2 in the Coast Region, 8 in the West Region, and 5 in the Mount Kenya Region, with the aim of refurbishing the power distribution network to enhance system reliability, improve service delivery and secure revenue under the Boresha Umeme Project.²⁵

Along with the LCPDP, Kenya's approach to electrification is guided by the Rural Electrification Master Plan of 2009. This plan relies on both grid extension and off-grid solutions, such as 150 kW PV mini-grids, to establish 1.5 million new connections over a ten-year period ending in 2018.²⁶ The plan identifies and prioritizes public facilities for electrification, including sites slated for mini-grid development.

Despite the successful electrification of public facilities in rural areas, neighboring households largely remain unconnected. A study commissioned by the MoEP in 2014 determined that Kenya has one of the highest connection charges, leading to a depressed connection rate.

The GoK plans to achieve 70% electricity access by 2020 which seems ambitious as does Kenya Power's aim to connect one million customers during the financial year 2014/2015.²⁷

There are several barriers and gaps that are likely to hinder the plans for achieving these targets, namely:

- Inadequate planning and execution as well as a lack of coordination of activities by Kenya Power and REA
- High transaction costs for rural electrification projects
- Low participation rate of IPPs in transmission and distribution due to delays in PPAs being obtained.²⁸ The delay in obtaining PPAs leads to uncertainty about the investment for private sector players.

²⁵ The Boresha Umeme Project is a power initiative in Homa Bay County to mitigate power blackouts experienced in the county. It aims to reduce the delay caused by the blackouts in industrialization and processing activities.

²⁶ RISE Survey data; <<http://rise.worldbank.org/data/exploreeconomies/kenya/2014/energy-access>>

²⁷ Amount based on figures provided in Kenya Electricity Generating Company Limited, *Annual Report & Financial Statements, 2014*

²⁸ Production of a Market Study in order to Strengthen Economic Cooperation in the Energy Sector, Triple, 2014.

3. KENYA'S POLICIES AND LAWS FROM A GENDER EQUALITY AND FEMALE EMPOWERMENT PERSPECTIVE

A comprehensive analysis of the energy-related legal and policy framework in Kenya is beyond the scope of this section. A few selected provisions from key policies are highlighted and some gaps are noted, which may be relevant for Power Africa when planning interventions concerning legal and policy reform.

Kenya's guiding development plan is the Vision 2030. The importance of gender mainstreaming in energy planning should be understood within this broad framework. Three key pillars are identified in Vision 2030, through which the vision will be achieved: political, economic, and social. The social pillar gives priority to equity in power and resource distribution between men and women. According to the Vision 2030, gender mainstreaming is to be introduced in all government policies, plans and programs.

The Final Draft National Energy and Petroleum Policy of Kenya (2015) includes a section on gender, youth and persons with special needs. In this section, the policy recognizes the link between access to clean and reliable energy and gender equality. It outlines four policies and strategies with respect to gender, youth, and persons with special needs:

- Government compliance with Section 27(8) of the Constitution, which refers to the implementation of the principle that not more than two-thirds of the members of elective or appointive bodies are to be of the same gender.
- Gender mainstreaming in energy and petroleum policy formation, planning, production, distribution and use.
- Public education and awareness on the benefits of using clean and modern services of energy.
- Measures to make clean and modern energy services affordable and accessible.

The focus of the section of the policy on gender is on energy access, but there are no measures indicated to ensure women's participation in the sector. The grouping of women together with youths and persons with special needs perpetuates stereotypes of women as vulnerable and disempowered.

Gender was not mainstreamed into other relevant sections of the policy. For example, in Section 9.6 concerning data collection, management and dissemination, the policy does not acknowledge the need for sex-disaggregated data to inform targeted policy interventions.

The Energy Bill 2015 provides that appointments under the Act shall reflect gender balance. It is not explicitly clear if this refers to a 50% quota, but it is unlikely to be interpreted as such given its ambiguity.

4. DONOR ASSISTANCE TO KENYA

One of the leading agencies supporting developments in the Kenyan energy sector is the French agency for development – Agence Française de Développement (AFD). It supports several initiatives including:

- Conversion of diesel generators into hybrid generators (wind, solar, biomass,) and construction of new generators and associated mini-grids in rural areas
- Scaling up of a pilot revolving fund to enhance connectivity in Kenya, complemented by a compact fluorescent lamp distribution component
- Support to the Geothermal Development Company and funding of a national master plan
- Credit line to commercial banks to promote renewable energy and energy efficiency projects in the agri-business and hostelry sectors.

Another donor project is the Kenya Electricity Expansion Project (KEEP) funded by World Bank. It has two development objectives: 1) Increase the capacity, efficiency, and quality of electricity supply and 2) expand access to electricity in urban, peri-urban, and rural areas. There are currently 5 sub-projects under KEEP listed below, which will all conclude in September 2016:

- The USD 132 million World Bank-International Development Agency (IDA) funded project began in 2010 with one of its main aims being the expansion of electricity access in the country. Out of the total amount, USD 77.03 million was allocated for 24 company projects including 2x23 MVA 66/11kV substations and lines in Githunguri, Dagoretti, Lukenya, Banana, Rironi, Lower Kabete, Villa Franca and Uplands in Nairobi Region, and a new 1x7.5 MVA 33/11 kV substation and lines in Magumu.
- Construction of a 2X23 MVA 132/33 kV substation at Jomvu and a 7.5 MVA 33/11 kV substation at Mishomoroni at the Coast
- Construction of eight new 7.5 MVA 33/11 kV substations in Kibos, Ahero, Chepseon, Elgon View, Majengo, Maseno, Kabarak University and Kipsaraman in the West Region. Five new substations and lines are under construction in the Mount Kenya Region: 2x7.5 MVA 33/11 kV substations in Gatundu and Kangema, a 1x23 MVA 66/11 kV substation at JKUAT University, as well as substations in Mwea (7.5 MVA 33/11kV), and Tala (23 MVA 66/11 kV).

Other USD 20.12 million projects funded by the World Bank's International Finance Corporation (IFC) include a 15 MVA 132/33 kV substation at Maungu in the Coast Region; 2x23 MVA 66/11 kV GIS Mamlaka Substation in the Nairobi Region, and 7.5 MVA 33/11 kV Bahati Substation in Nakuru.

In 2015, The World Bank Group's Board of Executive Directors approved a total of USD 457.5 million for the Kenya Electricity Modernization Project. The amount includes an International Development Association (IDA) credit of USD 250 million, an IDA guarantee of USD 200 million and a USD 7.5 million grant from the Strategic Climate Fund-Scaling up Renewable Energy Program. The IDA guarantee will enhance KPLC's credit quality and enable it to raise about USD 500 million of new commercial debt with lower interest rates and longer tenors to replace existing debt that is placing a heavy burden on the company.²⁹

²⁹ The World Bank News: <http://www.worldbank.org/en/news/press-release/2015/03/31/world-bank-kenya-scale-up-electricity-access-strengthen-kplc-finances-service-delivery>

5. RECOMMENDED POLICY INTERVENTIONS FOR INCREASING INVESTMENT AND ACCESS

Vision 2030 laid out a set of ambitious goals to increase the levels of energy access and security within Kenya. However, in spite of the significant strides taken to increase installed capacity, the current growth in electricity demand exceeds the available supply.

This section provides some recommendations on possible improvements to the current policies, laws, regulatory framework, power sector development plans, procurement framework and processes, electrification targets, and gender equity.

5.1. ENERGY POLICIES

A high-priority is to approve/enact the Draft Energy and Petroleum Policy. The new energy policy will align the energy sector with national development goals as well as the provisions of the Constitution. To date, the failure to promulgate this policy has created policy and regulatory uncertainty for investment. The GoK should be made aware of the impact that this delay is having on investment in the energy sector.

5.2. ENERGY LAWS

There is a need to align the current policy, legal and regulatory framework within the energy sector to the provisions of the Constitution in order to address incongruent legal and regulatory issues with provisions of the Constitution.

Legislation should be reviewed to determine the need for amendments and/or new laws, to address the project risks associated with the two-tier government structures in particular demarcation of roles between the national and county governments as far as the energy sector is concerned. This will serve to lower the project risk and hurdle rates for sponsors, allowing for more robust and easily financed projects.

A potential intervention for decreasing questionable litigation for projects would be the development of a community support template. The template should advise lenders on how to engage with the community upfront in project development so projects do not stall in the construction phase after they have reached financial close as a result of communities taking legal action.

5.3. ENERGY REGULATORY FRAMEWORK AND TARIFFS

A significant licensing gap exists for projects smaller than 1 MW in the regulatory framework. Assistance should be provided to assist the GoK in creating a regulatory framework to support

growth in projects smaller than 1 MW. Experience has shown that a majority of off-grid and mini-grid projects are small-scale renewable projects. This intervention will address small-scale project access to the grid.

The Grid Code review has been completed to cater for intermittent renewable energy, incorporation of international best practice and alignment with the EAPP Grid Code. The gazetting and implementation of the revised Grid Code should be expedited to attract more private sector investment.

At present, PPAs are concluded on a bespoke basis, with each project having to negotiate their terms of service. Kenya is currently undergoing a process to standardize PPAs. However, in order for a PPA to work, it needs to be financeable, and currently there is a difference of opinion between the private sector and the off-taker/regulator/MoEP as to what constitutes a financeable PPA. Focused action should be taken to determine ways to bridge the gap between the interest of private investors, the regulator, the off-taker and the MoEP.

As the GoK starts to develop a competitive tendering framework for renewable energy projects, clarity should be provided on whether a feed-in tariff system will still apply to smaller projects.

5.4. POWER SECTOR DEVELOPMENT PLANS/INTEGRATED RESOURCE PLANS/GENERATION MASTER PLANS

Technical assistance, training and support should be provided for implementing effective demand-side and supply-side modeling. Furthermore, a comprehensive approach to public and stakeholder consultation should be implemented. Some of the benefits include:

- Shortening the regulatory processes
- Increasing community commitment to energy decisions
- Provides long-term outlook for investors
- Allows for grassroots participation in energy planning.

With Kenya's reliance on geothermal energy to meet growing demand and GDC's inadequate capacity to develop geothermal power projects, attention needs to be paid on strengthening GDC's capacity and strategy for the development of geothermal power.

It is also critical that the GoK is transparent about the reserve margin. Currently, the supply and demand balance is not being reported. If projected demand and supply is determined and reported in an objective fashion, it could be better managed without policymakers and parastatals being penalized for not achieving unrealistic Presidential goals.

5.5. POWER GENERATION PROCUREMENT FRAMEWORK AND PROCESSES

As discussed above, work has started on standardizing PPAs within the energy sector. An action item to streamline this process would be to provide guidance on the issue of financeable PPAs for all stakeholders (investors, regulator and the MoEP).

Further intervention is required around government letters of support and appropriate credit enhancement and risk mitigation measures to enhance long-term financing possibilities for IPPs.

The risks associated with the current FiT projects, due to the intent to replace the FiT policy with a competitive bid process, need to be addressed. It is recommended that a review be conducted of the impact that the changing policy will have on current projects and methods to mitigate project risk.

Competitive bidding processes have shown remarkable successes, especially recently in South Africa. Kenya is currently reviewing its FiT in light of the successes of the South African renewable energy competitive procurement process. Section 61 of the PPP Act stipulates that all projects must be procured by competitive bidding with the exception of privately initiated proposals, this provision seems to undermine the requirement for competitive tenders completely. Therefore, support should be provided to the GoK drawing on among others South Africa's and Uganda's experience on how to run effective tenders or auctions for renewable energy projects, including well designed RFP documentation and standard contracts. This assistance could include consideration of the establishment of an IPP Unit to drive implementation of competitive procurements. The additional benefits include skills and systems development. Further assistance should be provided on addressing Section 61 of the PPP Act.

With the enhancement of long-term energy planning capacity, further assistance should be provided to the regulator to develop a long-term energy pricing model.

5.6. ELECTRIFICATION TARGETS, PLANNING AND EXECUTION (FOR GRID AND OFF-GRID)

Rural electrification should be prioritized within the integrated energy planning process, by Kenya Power, GoK and REA.

The GoK needs to address the high transaction costs for rural electrification projects which translate into higher tariffs for consumers. There is a need to assess the extent to which costs can be reduced and also to assess the potential for alternative pricing models in rural areas.

As mentioned above, the ERC's efficiency in the PPA process should be increased so as to raise the participation rate of IPPs.

5.7. GENDER EQUALITY AND FEMALE EMPOWERMENT

Gender integration in the implementation of energy policy should be increased, as should women's participation in the sector, through gender mainstreaming capacity building and the promotion of women's participation in energy planning. This can be achieved through the public consultation process proposed.

6. RECOMMENDED TECHNICAL ASSISTANCE FOR INCREASING INVESTMENT AND ACCESS

TABLE 7: RECOMMENDED TECHNICAL ASSISTANCE			
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widened Access to Electricity			
Policy Intervention	Technical Assistance	Active Donors in this Space	Donor(s) Recommended to Provide Support
Failure to promulgate the National Energy and Petroleum Policy, creating policy and regulatory uncertainty for investment	None, but high-level engagement with GoK to highlight the impacts of delays in investment	None that we are aware of	USAID
Incongruent legal and regulatory framework with provisions of the Constitution	Provide technical assistance in identifying the gaps in the law and how best to align them to the Constitution Provide consultative role to GoK and Ministry of Energy and Petroleum (MoEP) for the assessment of roles to be carried out	None that we are aware of	USAID
Fragmented legal and regulatory framework causing projects to stall in construction phase	Develop a community support template to advise lenders on how to engage with the community upfront in project development	Unknown	USAID
Implementation of the revised Grid Code	Assist the ERC with regulatory impact analysis and implementation of the revised Grid Code to attract more private investment	USAID, through Power Africa	USAID
Inadequate regulatory framework to deal with standardizing PPAs	Provide assistance and advice to the MoEP on developing standardized PPAs that can result in financeable projects	KEPSA USAID, through Power Africa	USAID

TABLE 7: RECOMMENDED TECHNICAL ASSISTANCE			
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widened Access to Electricity			
Policy Intervention	Technical Assistance	Active Donors in this Space	Donor(s) Recommended to Provide Support
Risks associated with the current FIT projects, due to the intent to replace the FIT policy with a competitive bid process	Provide technical assistance to the GoK in understanding the impact the changing policy will have on current projects and advise them on possible risk mitigations	None that we are aware of	USAID
Inadequate capacity to carry out integrated energy planning	Provide technical assistance in the form of training and support to implement effective demand-side and supply side modelling capabilities within the ERC Assist in the development of a comprehensive public and stakeholder consultation framework	None that we are aware of	USAID
GDC's inadequate capacity to develop geothermal power projects	Develop sustainable capacity within GDC to develop and fund geothermal projects	USAID, through Power Africa	USAID
Inadequate procurement framework and processes for new generation projects	Transaction advisors to provide support to the GoK to understand the full implications of not having a Letter of Support towards ensuring the financial close of projects	USAID, through Power Africa	Power Africa DFI partners
Assist with the establishment of a competitive tendering framework for clean energy	Provide technical assistance to the GoK in its pursuit of a competitive bid framework for clean energy projects Design a competitive tendering framework and supporting RFP package including standardized PPA and other commercial contracts	USAID, through Power Africa	USAID
Lack of integrated planning with regard to rural electrification means that project developers cannot determine the expected demand for power in rural areas	Provide technical assistance to the GoK in long-term energy modelling (demand and supply side) Assistance on the licensing and grid access protocols for small-scale generators and off grid generators to the ERC	None that we are aware of	USAID

TABLE 7: RECOMMENDED TECHNICAL ASSISTANCE			
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widened Access to Electricity			
Policy Intervention	Technical Assistance	Active Donors in this Space	Donor(s) Recommended to Provide Support
High transaction costs for rural electrification projects which translate into higher tariffs for consumers	Provide technical assistance in the assessment of costs related to rural electrification projects and how to minimize them, and assess alternative pricing models for rural areas	None that we are aware of	USAID
Insufficient capacity to implement gender sensitive policy provisions and exclusion of women’s voices in energy planning	Gender mainstreaming workshop and resources, and promotion of women in the energy sector through the Women in African Power Network (WIAP)	None that we are aware of	USAID

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APPENDIX A: RECOMMENDED POLICY INTERVENTIONS FOR TRANSACTIONS

Kenya has a single-buyer model. New generating capacity is procured from IPPs through a feed-in tariff (FiT) program and through tendering for certain projects. As a result, there are many projects in the pipeline in Kenya. Most of the projects are being undertaken by smaller companies that must seek development financing, which delays the overall development process. However, there are three key reasons related to policy that prevent projects from reaching financial close more quickly:

- There is no standardized PPA. This results in each project having to negotiate a bespoke PPA.
- To facilitate the financing of projects, a letter of support is required from the GoK that protects projects from political risk. Although the letter is not a guarantee, it is treated as such. A project that has recently involved the terms of the letter has highlighted the obligations incurred by the GoK under the letter. This has caused parties in the GoK to oppose its issuance. This opposition slows the process.
- GDC has institutional issues and does not have the capability of financially supporting its obligations.

In addition to the above, projects face significant risk subsequent to financial close. The Constitution enacted in 2010 and implemented in 2013 has devolved powers from the central government to the local governments. This has increased political risk to projects under construction as local politicians foment opposition against the projects to promote their parochial interests, leading to court injunctions and delays in construction.

TABLE 8: RECOMMENDED POLICY INTERVENTIONS BASED ON CURRENT TRANSACTIONS		
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity		
Policy and Regulatory Barriers to Transaction(s)	Recommended Intervention(s) and Effects	Technical Assistance Provided/Needed
Bespoke PPAs	<p>Create a standardized PPA. The Kenya Private Sector Alliance (KEPSA) is leading an effort to produce standardized PPAs in cooperation with IPPs, Kenya Power and the ERC. There are several differences between KEPSA and IPPs on the one hand and ERC and Kenya Power on the other hand with respect to what is a financeable. These differences have been highlighted to the MoEP, which will decide what to include.</p> <p>A standardized PPA will reduce the amount of time to finance by several months.</p>	<p>Consider providing third-party advice to the MoEP to assist it in understanding what PPA terms result in a financeable agreement.</p>
Issuance of a Letter of Support	<p>Accelerating the issuance of a letter is difficult as it involves the MoEP, the National Treasury, ERC, and Kenya Power.</p> <p>Key policymakers understand the need for the letter for projects to obtain financing. Power Africa is concerned that the GoK will “water-down” the letter. This can only be addressed if and when it happens.</p> <p>The effect of the failure of the GoK to issue the letter or if it issues a watered-down letter will be that no projects get financed.</p>	<p>Transaction advisor to reach out to key individuals involved in the letter to explain its importance.</p> <p>Prepare to engage key GoK officials if the letter is watered-down and projects are not financed. DFI partners could potentially be enlisted to undertake this activity.</p>
GDC Inadequacies	<p>Power Africa is seeking to overcome GDC problems in two ways: 1) providing support to produce a joint development agreement for GDC’s Baringo Silali project, which would allow GDC to procure a development partner on a commercial basis, and 2) withdrawing support for GDC and providing significant additional support to KenGen.</p>	<p>Establish a partnership with KenGen to help it develop 1.3 GW of electric power over the next five years. This would involve providing a transaction team to include: 1) team lead & financial advisor, 2) transaction specialist, 3) legal specialist, and 4) geothermal advisor/power engineer.</p>

**TABLE 8: RECOMMENDED POLICY INTERVENTIONS BASED ON CURRENT TRANSACTIONS
To Enable or Increase Private Sector Investment in Cleaner Power Generation and Widen Access to Electricity**

Policy and Regulatory Barriers to Transaction(s)	Recommended Intervention(s) and Effects	Technical Assistance Provided/Needed
Devolution Risk	<p>There are two interventions that could mitigate this risk: 1) prepare a community support template program to provide a guide to project developers on state-of-the-art community engagement specific to Kenya, 2) enact legislation that creates hurdles to prevent parties from filing frivolous lawsuits.</p> <p>With respect to the first point, lenders can use the template as a checklist for their due-diligence, shortening the process. The second point should lower the risk and thus the hurdle rates for sponsors, allowing less robust projects to be more easily financed.</p>	<p>A community support program has been proposed by PATRP. It is being evaluated by USAID/Kenya.</p> <p>Transaction advisor to work with the mission and KEPSA to explore legislative alternatives to prevent frivolous lawsuits. Legal assistance may be required.</p>

TABLE 9: RECOMMENDED POLICY INTERVENTIONS BASED ON CURRENT TRANSACTIONS

Transaction	Policy and Regulatory Barriers	Recommended Intervention(s) and Effects	Technical Assistance Provided/Needed
Kinangop Wind	Devolution risk	Encourage developer to use community support template when it is produced.	<p>PATRP has identified a program to undertake the production of a community support template.</p> <p>Expedite the exploration of legislative alternatives to prevent frivolous lawsuits. Legal assistance may be required.</p>
Kipeto Wind	Issuance of a letter of support	Transaction advisor to reach out to key individuals involved in the letter to explain its importance.	Prepare to engage key GoK officials if the letter is watered-down and projects are not financed. DFI partners could potentially be enlisted to undertake this activity.

TABLE 9: RECOMMENDED POLICY INTERVENTIONS BASED ON CURRENT TRANSACTIONS			
Transaction	Policy and Regulatory Barriers	Recommended Intervention(s) and Effects	Technical Assistance Provided/Needed
Akiira Geothermal	Issuance of a letter of support	Transaction advisor to reach out to key individuals involved in the letter to explain its importance.	Prepare to engage key GoK officials if the letter is watered-down and projects are not financed. DFI partners could potentially be enlisted to undertake this activity.
Cummins Baringo Biomass	The policy issue with this project and subsequent Cummins biomass projects is not generic: FIT escalation does not match costs	PATRP has already advocated on behalf of Cummins for an escalation adjustment for follow-on projects. PATRP will continue to do so.	PATRP and USAID are working with Cummins and OPIC to structure Cummins Baringo such that it can obtain OPIC financing. With proper escalation, subsequent projects should not need intervention.
Rumuruti Solar	Bespoke PPAs	A standardized PPA is too late for this project. If PATRP can facilitate the creation of a financeable standardized PPA, it will not be approved by the time that this bespoke PPA is finalized.	Expedite the standardization of PPAs in any event.
	Issuance of a letter of support	Transaction advisor to reach out to key individuals involved in the letter to explain its importance.	Prepare to engage key GoK officials if the letter is watered-down and projects are not financed. DFI partners could potentially be enlisted to undertake this activity.

TABLE 9: RECOMMENDED POLICY INTERVENTIONS BASED ON CURRENT TRANSACTIONS			
Transaction	Policy and Regulatory Barriers	Recommended Intervention(s) and Effects	Technical Assistance Provided/Needed
Longonot Geothermal	Bespoke PPAs	A standardized PPA is too late for this project. If PATRP can facilitate the creation of a financeable standardized PPA, it will not be approved by the time that this bespoke PPA is finalized.	Expedite the standardization of PPAs in any event.
	Issuance of a letter of support	Transaction advisor to reach out to key individuals involved in the letter to explain its importance.	Prepare to engage key GoK officials if the letter is watered-down and project are not financed. DFI partners could potentially be enlisted to undertake this activity.
	Devolution risk	Developer has not produced a stakeholder engagement plan that would be one of the documents specified as needed in a community support program template. Encourage developer to use community support template when it is produced.	PATRP has identified a program to undertake the production of a community support template. Expedite the exploration of legislative alternatives to prevent frivolous lawsuits. Legal assistance may be required.