

KENYA:

ELECTRICITY EXPANSION PROJECT (P 103037)



REPORT AND RECOMMENDATION

FEBRUARY 2, 2015

The Inspection Panel
Report and Recommendation
on
Request for Inspection

KENYA: Electricity Expansion Project (P103037)

A. Introduction

1. On October 26, 2014 the Inspection Panel received a Request for Inspection (“the Request”) regarding the Kenya: Electricity Expansion Project (Credit no. 4743-KE) (the “Project”), specifically concerning impacts from the geothermal power generation expansion component being implemented in the Greater Olkaria Geothermal Area. The Requesters are members and representatives of the Maasai community affected by Project activities. The Requesters asked the Panel to keep their identities confidential. During the Panel’s visit to the Project area in January 2015, another group of 30 community members submitted their signatures to the Panel team in support of the Request for Inspection.

2. The Panel registered the Request on November 13, 2014. The Management Response was received on December 19, 2014.

3. After Management submitted its Response, the Panel received two additional letters, which the Requesters and other Project-affected people (PAPs) had sent to the Bank in July and August 2014 respectively. The letters raise similar issues to those presented in the October Request as well as some additional issues. The Panel considers them an integral part of the Request. The Panel notes that the Management Response addresses the additional issues raised in these letters.

4. The Complaints Mechanism of the European Investment Bank (“EIB-CM”) has also received four complaints relating to the same Project and concerns as the complaints received by the Panel around the same time. In the interest of efficiency and savings, the Panel and the EIB-CM are coordinating the processing of these complaints.

5. In accordance with the Resolution¹ establishing the Inspection Panel, the purpose of this Report and Recommendation on Request for Inspection is to make a recommendation to the Board of Executive Directors as to whether the Panel should investigate the matters alleged in this Request. The Panel’s recommendation is based on its consideration of the technical eligibility of the Request and its assessment of other factors as reflected in the Resolution and the Panel’s Operating Procedures.²

¹ International Bank for Reconstruction and Development (Resolution IBRD 93-10) and International Development Association (Resolution 93-6), “The World Bank Inspection Panel”, September 22, 1993 (hereinafter “the Resolution”), para 19. Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>

² Inspection Panel Operating Procedures, April 2014.

6. This Report begins with a description of the Project (Section B), and continues with summaries of the written Request received by the Panel on October 26, 2014 as well as the letters sent in July and August 2014 (Section C) and of the Management Response (Section D). This is followed by the Panel's review (Section E). The Panel's determination of the technical eligibility of the Request, in accordance with the 1999 Clarification to the Resolution,³ is set out in Section E (1), and Section E (2 and 3) provides the Panel's observations on other factors considered in making its recommendation to the Board. The Panel's recommendation on whether an investigation of the matters alleged in the Request is warranted, is presented in Section F.

B. The Project

7. The Project is an International Development Association (IDA) Specific Investment Loan, which was approved by the Bank's Board on May 27, 2010, in an amount equivalent to US\$330 million; its closing date is September 30, 2016. The borrower is the Republic of Kenya. The Project has two development objectives: (i) to increase the capacity, efficiency, and quality of electricity supply, and (ii) to expand access to electricity in urban, peri-urban, and rural areas.

8. The Project includes four components:

Component A – Geothermal Generation. This component includes the construction of 280 MW of geothermal generation capacity in Naivasha (140 MW expansion at the existing Olkaria I power station and 140 MW in the Olkaria Domes field – Olkaria IV). The Requesters' concerns relate to this component.

Component B – Transmission. This component will extend Kenya's electricity transmission network and construct new 132/33 kV substations.

Component C – Distribution. This component will: (i) strengthen and extend electricity distribution networks in urban, peri-urban and rural areas; (ii) electrify priority loads (public facilities) in rural areas; (iii) electrify urban slums; and (iv) expand the deferred payment mechanism for electricity connection fees.

Component D – Sector Institutional Development and Operational Support. This component will support institutional development, training, Project monitoring and evaluation, and provide Project implementation support.

9. The Project is co-financed by the European Investment Bank (EIB), the French Development Agency (Agence Française de Développement, AfD), the Japan International Cooperation Agency (JICA), and Germany's Kreditanstalt fuer Wiederaufbau (KfW). According to the Project Appraisal Document (PAD), EIB, AfD, JICA and KfW have pledged about US\$800 million equivalent in co-financing for the Project.⁴

10. The Project is implemented by the following Kenyan agencies: the Ministry of Energy (MoE), which is responsible for the overall project coordination; the Kenya Electricity Generating

³ "1999 Clarification of the Board's Second Review of the Inspection Panel", April 1999 (hereinafter "the 1999 Clarification"). Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>

⁴ Project Appraisal Document (PAD): 11.

Company Ltd. (KenGen), which is the implementing agency for the Project's first component (Component A), the subject of the Requesters' concerns; the Kenya Power and Lighting Company Ltd. (KPLC); and the Rural Electrification Authority (REA).

11. Project activities are located in the Greater Olkaria Geothermal Area, about 120 kilometers northwest of Nairobi, in the Naivasha district of the Rift Valley Province. The development of the Olkaria IV power plant required the acquisition of land near the main steam production area for the plant, just outside the borders of the Hell's Gate National Park.

12. According to the Project's 2012 Resettlement Action Plan (RAP),⁵ the number of people to be resettled is based on the land take that is required for the Olkaria IV power station.⁶ The RAP states that KenGen estimates that a total of 1,461 hectares is needed for the new Olkaria IV power station and its associated infrastructure. According to the RAP, the total number of project-affected households is 335, which are distributed between four different settlements, the villages of: Culture Center; Olo Nongot; Olo Sinyat; and Olo Mayana Ndogo.

13. The Bank's policies on Involuntary Resettlement (OP/BP 4.12), Indigenous Peoples (OP/BP 4.10), Environmental Assessment (OP/BP 4.01), and Natural Habitats (OP/BP 4.04) were triggered. OP 4.10, however, was not applied to the Maasai people.⁷ According to the PAD, the Project received a Category "A" rating, which is assigned to projects that are likely to have "*significant adverse environmental impacts that are sensitive, diverse, or unprecedented.*"⁸

C. The Request

14. The following paragraphs summarize the allegations raised in the Request (Annex I).

15. The Requesters are mainly concerned with impacts related to resettlement activities. They explain that the resettlement affected their lives and instead of restoring or uplifting their livelihoods, it added impoverishment, intra-community disputes, and health concerns resulting from the stress of the situation brought about by the Project. They also state that "*contrary to their promise,*" the World Bank did not closely monitor the resettlement process.

16. **Economic Impact.** More specifically, the Requesters state that many of those who were resettled are now far away from their main sources of income (e.g. Cultural Centre villagers involved in tourism-related activities at the lower gorge). According to the Requesters, some of the affected people need to pay about 30 percent of their earnings to cover transport costs. Alternatively, they would need to leave their homes by foot around 6:00 am to arrive to their workplace (Rangerspost) before 8:00 am. Some have been forced to rent houses in Naivasha, Karagita, OCK Kamere Trading Centers and other locations. They add that this is impoverishing their families, affecting their lifestyle, and creating stress and friction in the community. They also

⁵ A draft RAP was submitted by KenGen in 2009, and was further elaborated in 2010 and 2011. According to Bank Management, the RAP was updated in 2012 to take care of natural growth cases (increase in number of households). The 2012 RAP was disclosed on July 1, 2012. Management Response: 2.

⁶ According to Management, the resettlement was undertaken to mitigate potential health impacts that were identified in the 2012 Environmental and Social Impact Assessment (ESIA). Management Response: 2.

⁷ See below paragraph 65 and 66.

⁸ PAD: 46.

add that some parents can no longer afford school fees and are avoiding their children who ask about when they will be able to go back to school.

17. **Housing and Community Life.** Additionally, the Requesters consider that their cultural belief and spirit of togetherness as "*One Community (family)*" is threatened through the introduction of other ways of life based on "*loneliness and single thinkings life*" (sic). They state that the new houses provided are empty, families sit on stone, and use cotton and cow hides as mattresses.

18. They further state that KenGen was supposed to build 164 houses, but only 150 houses were provided. According to them, this led to the exclusion of 14 families, which include the poor, orphans and widows.

19. **Cash Compensation.** The Requesters add that some households received a newly-built house and cash compensation of "*not less than Ksh. 195,000.*" They state that this is based on "*corruption, nepotism, ethnicity and religious ground.*"

20. **Threat of Retaliation.** Finally, the Requesters claim that, at an October 23, 2014 meeting, the RAP Implementation Committee (RAPIC) sought to stop the complaint process.

21. The Requesters assert that several letters were exchanged with KenGen, the World Bank, and other Project sponsors. They add that they "*kindly and sincerely request you to come and establish the truth*" relating to their concerns. In general, the earlier letters from July and August 2014 raised similar issues to those included in the October submission but added some concerns which are described below.

22. **Cultural property.** The Requesters raised issues concerning impacts on the Gorge and other sacred and cultural sites located in the Project area.

23. **Threat of Evictions.** The Requesters claim that some communities face threat of evictions because of the planned expansion of geothermal operations in the area.

24. **Suitability of resettlement site.** According to the Requesters, new drilling had started around the resettlement site, even before the resettlement program was completed, and they expressed concern about related health impacts.

D. The Management Response

25. The following section provides a summary of the Management Response to the Request (Annex II).

26. Management disagrees that the alleged adverse impacts result from the Project and notes that, in its view, the implementation of the RAP has restored the livelihoods of the project-affected people (PAP) to at least the level before resettlement, or better.⁹ Potential adverse impacts were

⁹ Management explains that the RAP also provided for sub-projects to facilitate the livelihood enhancement for the PAPs, which include a modern primary school, water for domestic use, a new health dispensary, and others.

adequately mitigated through the RAP and its implementation. Management argues that it provided close monitoring of the design and implementation of resettlement through enhanced safeguards and RAP implementation support, including through over 30 missions between October 2011 and November 2014.

27. Management notes that a Memorandum of Understanding (MoU) between KenGen and the PAPs¹⁰ was discussed and agreed upon in a transparent process. The MoU sets forth the criteria to determine who is to be included in the RAP, the criteria for the provision of housing and/or cash compensation, the condition of the housing, and the transportation need for commuting from the resettlement site. A number of potential relocation sites were considered before choosing the current location, known as RAPland,¹¹ which is approximately 2.5 km from the PAPs' original residence. The resettlement site was selected with the agreement of the PAPs, following a lengthy process of negotiation, and this is reflected in the MoU.

28. With regards to issues pertaining to the identification of affected people, Management notes that a RAP Implementation Committee (RAPIC)¹² and a project-level Grievance and Complaints Handling Mechanism allowed people to raise claims and have them reviewed and responded to where appropriate. Management states that it received a number of complaints from PAPs relating to the RAP, which were reviewed and resolved through RAPIC.¹³ It states that it is not aware of the 14 families cited in the Request that have allegedly been excluded from the RAP as neither KenGen, nor the RAPIC, the grievance mechanism or the Bank were approached by them.

29. Regarding compensation payments, Management explains that all compensation was provided on the basis of transparent criteria.¹⁴ Further, Management is not aware of any allegations of corruption, nepotism or irregular payments.

30. With respect to housing conditions, the Response indicates that the agreed resettlement package includes the provision of housing and assistance by KenGen to move furniture and assets to the new houses. The layout and spacing of houses was designed in close consultation with the PAPs and it was understood that the resettlement houses would be delivered without furniture.

31. With regards to the issue of transportation from the resettlement site to the PAPs' work places, Management is of the view that KenGen has adequately addressed this issue by providing a 60-seater bus as part of the resettlement agreement, in line with the PAPs' expressed wish. The bus was handed over in November 2014.

32. Management, however, learned that in early December, after the bus was handed over, the PAPs' welfare society's Bus Management Committee decided to lease the bus to a third party, thus preventing the PAPs from using it for their own purpose. In the meantime, two privately owned

¹⁰ The MoU is attached to the Management Response (Annex II) as Annex 3 and 4.

¹¹ The term RAPland refers to the resettlement site.

¹² According to Management, the RAPIC is composed of five representatives from each of the four villages. Two of the five representatives are women. The RAPIC also includes a youth representative and a representative of people with disabilities. Management Response: 5.

¹³ These cases are listed in the Management Response. See Management Response: 12f.

¹⁴ These criteria are listed in the Management Response. See Management Response: 14.

minibuses are providing transportation, but reportedly charge unreasonably high fares. It is not clear to Management how this decision is consistent with the originally agreed purpose for the bus.

33. Regarding the claim that children can no longer attend school, Management states that the welfare society reported no disruptions in school life as a result of relocation and no increased dropout rates.

34. Management Response also refers to evictions that took place at the Ng'ati Farm in July 2013, which are mentioned in the letter sent by Requesters on August 2014. Management argues that the Ng'ati Farm is located adjacent to Olkaria I but is not part of the Project and thus that the evictions are not linked to the Project in any way. According to Management, thirteen PAP households were caught up in the evictions; Management has expressed its concerns to the government, which had condemned these actions and provided compensation.

35. With regards to the alleged threats of retaliation, Management explains that prior to receiving the Request, it had not been made aware that PAPs were pressured in a recent RAPIC meeting not to complain. Management states that it is unable to verify the accuracy of these allegations, but takes them very seriously and has followed up with the borrower accordingly. Management also explains that it is following up with KenGen on the transportation issue and its impacts on the PAPs, and will continue to closely supervise the Project. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue its mission statement.

E. Panel Review of the Request and Management Response

36. Panel Member Jan Mattsson and Executive Secretary Dilek Barlas visited Kenya from January 10 to 17, 2015, in a joint mission with Deputy Head of Division Alfredo Abad and Officer Omar El Sabee Larrañaga of EIB-CM. During the Panel's visit, the team held meetings in both Nairobi and the Project area. They met with the Requesters, other affected community members, and Government officials of the Ministry of Energy and Petroleum and the Treasury. Further, they had meetings with representatives of KenGen and the Resettlement Action Plan Implementation Committee (RAPIC). The team also met with Bank staff in the Country Office; the representatives of EIB, JICA and AfD joined the meeting with Bank staff.

37. The Panel wishes to express its appreciation to all those mentioned above for sharing their views and exchanging information and insights with the Panel. The Panel wishes to thank the Government of Kenya and KenGen officials for meeting with the Panel team. The Panel extends its thanks to the Requesters and affected people and to the staff in the World Bank Country Office for meeting with the Panel team, discussing the issues and providing relevant information, and assisting with logistical arrangements.

38. The Panel's review is based on information presented in the Request, on the Management Response, on other documentary evidence, and on information gathered during the site visit. The following review covers the Panel's determination of the technical eligibility of the Request, according to the criteria set forth in the 1999 Clarification (subsection 1), and observations on other factors supporting the Panel's recommendation (subsection 2).

1) Determination of Technical Eligibility

39. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarifications.

40. The Panel notes that its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.

41. Criterion (a): "*The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory.*" The Request was signed by six people and an additional thirty signatures supporting the Request were given to the Panel team during the visit to the Project area in January 2015. The Panel confirms that the Requesters live in the borrower's territory and are affected by Project activities. The Panel considers this criterion as met.

42. Criterion (b): "*The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester.*" The Requesters assert that the lack of compliance with Bank Policies, particularly with regards to involuntary resettlement, has resulted in: a deterioration of livelihoods, impoverishment, intra-community disputes and health concerns due to stress. The Panel is thus satisfied that this criterion is met.

43. Criterion (c): "*The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.*" The Panel has verified that the Requesters' concerns were brought to the Bank's attention at different occasions prior to filing the Request. The Panel is satisfied that this criterion has been met.

44. Criterion (d): "*The matter is not related to procurement.*" The Panel is satisfied that the claims with respect to harm and non-compliance included in the Request for Inspection do not raise issues of procurement under the Project and hence this criterion is met.

45. Criterion (e): "*The related loan has not been closed or substantially disbursed.*" At the time of receipt of the Request, the Project was about 63.55% disbursed. The closing date for the Project is September 30, 2016. This criterion is thus met.

46. Criterion (f): "*The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request.*" The Panel confirms that it has not previously made a recommendation on the subject matter of the Request.

2) Observations Supporting the Panel's Recommendation

47. In making its recommendation to the Board, the Panel considers whether there is a plausible causal link between the Project and the harm alleged in the Request, and whether the alleged non-compliance and harm may potentially be of a serious character.

48. The Panel fully appreciates the importance of the Project that aims to meet Kenya's growing electricity demands and to reduce dependence on hydro power and fossil fuels. Members of the Maasai community resettled under the Project informed the Panel team that they understood the need for geothermal power developments in the interest of the country as a whole. They also articulated the potential of the Project for the prosperity of their community. At the same time many questioned whether adequate safeguards had been put in place to avoid or mitigate harms to their community, which has been living for generations in the lands where these developments are taking place.

49. During its visit, the team met in the Cultural Center village with around 50 Maasai community members, some of whom had relocated to the RAPland, while others said that they were left out of the resettlement process. Representatives of the community also expressed their concerns during the meeting with the RAPIC. The Panel notes that the concerns of the Requesters cover primarily the following issues: (i) land title to the resettlement site; (ii) identification of eligible PAPs; (iii) livelihood restoration measures; (iv) grievance redress mechanism and (v) identification of the Maasai as indigenous peoples. The Panel records below its preliminary observations on these alleged key issues of harm and compliance, noting that the Panel at this stage is not making a definitive assessment of the Bank's compliance with its policies and procedures, and any adverse material effect this may have caused.

50. **Land Titling.** The Requesters raise serious concerns on whether and when the affected Maasai community will be given the land title to the RAPland, noting that they agreed to relocate as long as they received title to the land. They told the Panel team that for years they felt that they were treated as squatters in their ancestral land, and therefore obtaining the title to the RAPland was essential to them and to their future generations. Their concern over the ownership of the land led them to seek compensation and resettlement as a single group (communal title) rather than as individual households. They informed the Panel team that they were promised to receive the title before resettling. The title was not provided at this time, and the PAPs were promised that it would be transferred within six months after relocation. At the time of this report, the six month had not expired but it was not yet clear when the title issue would be resolved because of a pending court case against the title owner¹⁵ involving RAPland.

¹⁵ The Requesters provided the Panel team with several documents in support of their claim that KenGen authorized geothermal activities on the Kedong ranch despite court orders restricting the use of the land. The Kedong ranch is privately owned and encompasses vast areas in the project area, including both the Olkaria IV site and the resettlement site. In a 2013 memorandum to the Chairman of the Kenya Land Commission, Maasai community representatives describe that the first court order was issued on June 30, 2010. This court order includes a temporary injunction restraining Kedong Ranch Limited from "selling, charging, disposing off and/or otherwise interfering with suit property [...] and/or evicting the plaintiffs from the said suit property pending the hearing of the application inter-partes." A court order dated February 24, 2011 reinstates the interim orders of June 30, 2010 and extends them to March 24, 2011. Other documents, which the Panel received, indicate that temporary injunctions were granted or extended in the following years. The most recent court order is dated November 26, 2014; it extends the interim orders and refers to an inter-party hearing to be held on February 5, 2015.

51. The PAD also confirms that villagers stated that they were “willing to relocate, on the condition that the formal agreement reached with KenGen on December 3, 2009 is fulfilled, particularly that prior to their agreement to the new site, they obtain title to the land, and they are provided the necessary compensation and relocation assistance.”¹⁶

52. The Requesters described their sense of insecurity and feeling that they were left in the RAPland without knowing their future. Bank and KenGen staff told the Panel team that they were committed to securing the land title for the PAPs.

53. **Identification of Eligible PAPs.** During the visit, the Panel team heard concern and noted confusion regarding the methodology used to identify different categories of PAPs and the compensation provided. During the meeting at the Cultural Center village, several community members reported stories of being excluded from the censuses or not being given a house or other compensation. Some community members stated that the 2009 census was done during the dry season when they had temporarily migrated with their animals and were thus not included in the list of PAPs. One widow told the Panel team that she was in the hospital in Naivasha to care for her dying husband and thus away from her house during the 2009 census; she was therefore not included among the PAPs. One woman told the team that she was taken away from her house and instead of a house in the RAPland, which she had expected, she was given only Ksh 2,000¹⁷ as compensation. There were also claims of evictions and loss of personal property. The confusion about different census results, which excluded some community members, was also raised during the RAPIC meeting.

54. The Panel understands that the number of houses to be built in the RAPland as a result of the 2009 census was determined to be 136. The census was repeated in 2012 and the number of houses was then increased to 164, but the census validation of 2013 reduced the number to 150. The Requesters told the Panel that the reduction from 164 to 150 left several community members without housing. They also questioned the reasons why the cut-off date was kept as 2009 and was not changed to 2012, given that the Requesters believed that the census was repeated in 2012 because of irregularities in 2009.

55. Bank and KenGen staff explained to the Panel team that the censuses and the validation were conducted to identify the PAPs, and that the results had been approved by RAPIC. According to the Management Response “*after the initial census in 2009, an update was conducted in 2012 to accommodate any natural growth cases (increase in number of families as a result of marriages). The 2013 validation was done to clarify the inconsistent cases among the already identified PAPs and not to include new cases.*” The cut-off date for eligibility of compensation was set and kept at September 16, 2009.¹⁸

56. In its Response, Management notes that the list of PAPs was determined as a result of meetings among KenGen, GIBB Africa,¹⁹ RAPIC and the Community Advisory Council (CAC), the lowest level of the Project's Grievance and Complaints Handling Mechanism (GCHM).

¹⁶ PAD: 156.

¹⁷ Equivalent of approximately 22 USD.

¹⁸ Resettlement Action Plan for Olkaria IV Power Station, July 2012.

¹⁹ Consultant conducting the censuses.

Management notes that “*during the meetings, each and every name from the four villages was read out, traced through the three censuses, discussed and classified by the CAC and RAPIC members.*” The Management Response adds that “*the outcome of 150 houses was as a result of the joint effort among the consultants, RAPIC, CAC and KenGen, with the Bank as observer. It is noteworthy that this was the list that was used in the MoU that was signed between the PAPs and KenGen summarizing the agreements reached by the two parties.*”

57. Regarding the eviction of Maasai families from their homes in Ng’ati Farm in July 2013, Management Response notes that these evictions are not in the Project area and are not linked to the Project. Management adds that 13 PAPS that were to be resettled under the project were caught up in the evictions with the result that their houses and assets were destroyed.

58. The Panel notes that while much of the discussion during its visit was focused on the allocation of houses and the final number of houses provided to land and asset owners, there were also concerns raised about the compensation to other categories of PAPs, such as tenants of houses and land.

59. **Livelihood Restoration.** The Requesters and several other PAPs described to the Panel team the challenges they are facing in restoring their livelihoods following their relocation to the RAPland. They noted that the resettlement led to a deterioration of their livelihood.

60. They noted that tourism is especially important for the PAPs that were living in the Cultural Center village, which is located near the Oljorwa gorge of the Hell's Gate National Park. Tourists visiting the National Park and the gorge could experience the way of living of a traditional Maasai community. The village has houses settled in a circular form leaving a large area in the middle where the Maasai performed dances and women sold beads. Men worked as tourist guides in the gorge. Many of the community members, especially women, explained that, although they were able to negotiate with KenGen to keep the Cultural Center, the spirit of the village is “*no longer alive*” after the relocation. They noted that due to the distance between the Cultural Center and the RAPland, which is about 14 km, and the lack of transportation, they do not have the means to sell their beads. They explained that the livelihoods of the most poor and vulnerable of the PAPs, including elderly and disabled, were severely affected. The livelihood restoration issues were also elaborated upon during the RAPIC meeting.

61. The PAPs that were allocated a house in the RAPland stated that, after having been promised a Ksh 35,000²⁰ cash allowance, in practice they had to forfeit this money to pay the cost of electricity connection to their houses in RAPland, leaving them without any cash compensation. The Requesters also expressed concern about the lack of employment opportunities offered by KenGen in the RAPland area, and that the RAP did not provide for income restoration measures. Furthermore, many requested that benefit sharing arrangements with the community from developing these geothermal power plants in their lands be considered.

62. The PAPs also complained that while they were moved to RAPland because of adverse impacts of noise and hydrogen sulphide gas from Olkaria IV geothermal power stations, a private

²⁰ Equivalent to approximately 382 USD.

company had started construction of a new geothermal power plant in an area adjacent to RAPland and they worried about health impacts in their new homes.

63. The Requesters raised several other issues relating to the implementation of the resettlement program and impacting their livelihoods. These are summarized below:

- (i) **School fees.** Several members of the PAPs, especially women, spoke about the challenges they were facing in paying for their children's education. They noted that although a new primary school was built in RAPland, the parents were required to contribute to some of the teachers' salaries and other expenses, and that some families could no longer afford to pay for schooling. The PAPs also complained about secondary school dropouts.
- (ii) **Roads.** Several PAPs mentioned the condition of the roads in the RAPland. They said that KenGen had promised to construct the main access road, as well as roads within RAPland, but, to date, this promise had not been kept and the situation of the roads adversely impacted their livelihood.
- (iii) **Water.** The PAPs stated that although the houses have rain collection tanks and there are water points in RAPland, the water supply had not been reliable since they moved.
- (iv) **Suitability of houses for disabled PAPs.** The PAPs mentioned the adverse impacts of the location and construction of houses for the disabled members of their community.
- (v) **Transportation.** The PAPs stated that they decided to lease the 60-seater bus allocated by KenGen for their transportation because they could not afford its running costs (payment for the driver, fuel and maintenance). They formed a bus committee, which planned to buy a minibus with the income from leasing the 60-seater bus. However, many PAPs, especially the poorest and vulnerable members of the community, may not benefit from this decision given that it will take time to accumulate the funds to buy the minibus. Several PAPs complained about the negative impacts of transportation costs on their livelihood.

64. In its Response, Management notes that "*the Olkaria resettlement has significantly improved social and economic wellbeing of the PAPs.*"²¹ Management notes that the RAP provided for sub-projects to facilitate livelihood enhancement for the PAPs, including a modern primary school, water for domestic use, new health dispensary, enhancing livestock health and quality, fish ponds, social hall for community meetings, accessible electricity and provision of a bus for commuting. KenGen informed the Panel that contracts with construction companies were under way to deal with road construction and adaptation of houses where the disabled lived.

65. **Grievance Redress Mechanism.** The Requesters described their difficulty in communicating grievances, particularly because of fear of retaliation for raising issues regarding the resettlement program. The Panel team heard some testimonies about retaliation, especially after complaints were made to some complaints mechanisms of Project financiers. The Project RAP

²¹ PAD: 3.

includes a description of the Grievance and Complaint Handling Mechanism (GCHM)²² but several PAPs stated that they were not aware of the existence of the GCHM. Others expressed that they lacked trust in the mechanism and therefore did not use it.

66. **Indigenous Peoples.** During the Panel's visit, the Requesters raised issues covered under the policy on indigenous peoples. Several PAPs talked about Project's impacts on their sacred and cultural sites and raised concerns about protecting their ancestral graves.

67. Management informed the Panel that the World Bank policy on Indigenous Peoples (OP 4.10) was not applied to the Project affected Maasai community, while it was triggered for other groups potentially affected by the Olkaria IV Project (Sengwer, Boni Ogiek and Waata). Management indicated that at the time of Project preparation it was determined that the Maasai did not meet the criteria of OP 4.10 to be identified as indigenous peoples, but also indicated that in 2013 this determination was reversed and OP 4.10 was thereafter being applied to the Maasai, however not for this Project.

3) Panel's Review

68. In light of the foregoing, the Panel observes that the issues of harm raised by the Requesters are plausibly linked to Project activities, and notes potential non-compliance by the Bank with applicable operational policies and procedures. The Panel also affirms that these alleged issues of harm and compliance are of a serious character.

69. Alleged harm raised by the Requesters in relation to the titling to the resettlement site land, the identification of the PAPs eligible for resettlement compensation and assistance, the livelihood restoration measures and the establishment and functioning of a grievance mechanisms may be the result of non-compliance by the Bank with the Involuntary Resettlement policy. The policy lays out the principles and procedural steps of a resettlement program, which should enable displaced persons to share in the project benefits and to improve or at least restore their livelihoods following displacement. The identification of the Maasai community as an indigenous group is an additional issue of compliance with Bank policy that may have contributed to the alleged harm raised in the Request.

70. During the visit, KenGen officials stated their intention to take remedial actions to address some of the matters raised in the Request. The Panel and the EIB-CM team were generally impressed with the sincerity and openness of the discussions with the Ministry of Energy and KenGen. KenGen expressed its desire to establish a model resettlement scheme, which would be groundbreaking in the Kenyan context and also expressed its understanding of Project impacts on the Maasai community.

71. The Panel emphasizes the importance of coordinating with EIB-CM in processing this case and conducting a joint visit to determine the eligibility of the Request. Following the visit, EIB-CM informed the Panel about the possibility of handling the same issues described in this Report,

²² 2012 RAP: section 9.2. According to Management, the Grievance and Complaints Handling Mechanism (GCHM) consists of four levels: the Community Advisory Group, which is composed of elders, the RAPIC, an independent arbiter, and the law courts. Management Response: 5.

seeking for complementarities with the Inspection Panel, and applying their problem solving function to the issues identified, including exploring ways to improve the effectiveness of the GCHM, whenever possible. The Panel also notes the importance of the right of PAPs to express their concerns without the fear of retaliation.

F. Recommendation

72. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.

73. The Panel notes that there are conflicting assertions and differing views on issues of harm and compliance with policies and procedures raised in the Request for Inspection, as evidenced by the various statements made in the Request, in the Management Response, and in the Panel's meetings with affected people, Bank staff and others.

74. In order to ascertain compliance or lack thereof with Bank policies and procedures in the design, implementation, and restructuring of the Project, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures.

75. In light of the observations noted above, the Panel recommends that an investigation be carried out on the alleged issues of harm and related non-compliance with World Bank operational policies and procedures with respect to (i) land titling, (ii) identification of PAPs, (iii) livelihood restoration measures, (iv) grievance mechanism and (v) indigenous peoples. The Panel will continue to coordinate with EIB-CM during its investigation and will report on any actions taken to address the immediate concerns raised by the Requesters.