

**106658-XK**

# **REPUBLIC OF KOSOVO**

**Kosovo Power Project (Proposed, P118287) and Second  
Additional Financing for Energy Sector Clean-up and Land  
Reclamation Project (P131539)**

## **INVESTIGATION REPORT**



**Sept 12, 2016**

## **Acknowledgements**

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## Abbreviations and Acronyms

CLRP-AF	Clean-up and Land Reclamation Project – Additional Financing
CLRP-SAF	Clean-up and Land Reclamation Project – Second Additional Financing
CSOs	Civil Society Organizations
DIDR	Development-Induced Displacement and Resettlement
EAR	European Agency for Reconstruction
ESIA	Environmental and Social Impact Assessment
ESTAP	Energy Sector Technical Assistance Project
EU	European Union
FIQ	Forum for Civic Initiatives
GoK	Government of Kosovo
GWh	Gigawatt-hour(s)
ICMM	Independent Commission for Mines and Minerals
IELD	Initiative for Environment and Local Development
IFC	International Finance Corporation
IFI	International Financial Institution
IMF	International Monetary Fund
KEK	Korporata Energjetike e Kosovës
KFOR	NATO-led Kosovo Force
KOSID	Kosovo Civil Society Consortium for Sustainable Development
KPP	Kosovo Power Project (a proposed, World Bank, partial risk guarantee operation that includes the KRPP)
KRPP	Kosovo e Re Power Plant (also referred to as Kosovo C or New Power Plant)
KWh	Kilowatt-hour(s)
LOM	Life of Mine
LPTAP	Lignite Power Technical Assistance Project
MED	Ministry of Economic Development
MESP	Ministry of Environment and Spatial Planning
MIDR	Mining-Induced Displacement and Resettlement
MIGA	Multilateral Investment Guarantee Agency
MMP	Main Mining Plan
Mt/a	Million tons per annum
MW	Megawatt
MWh	Megawatt-hour(s)
NATO	North Atlantic Treaty Organization
NMFDP	(Draft) New Mining Field Development Plan
OP/BP	Operational Policy/Bank Procedure
PID	Project Information Document
PISG	Provisional Institutions of Self Government
PRG	Partial Risk Guarantee
PSIA	Poverty and Social Impact Assessment
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SESA	Strategic Environmental and Social Assessment
SFDCC	Strategic Framework for Development and Climate Change
SMELT	Stepwise Mining Expansion and Land Take
TA	Technical Assistance
ToR	Terms of Reference
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID	United States Agency for International Development
US\$	United States Dollar
WBG	World Bank Group

## Table of Contents

Acknowledgements.....	i
Abbreviations and Acronyms.....	ii
Executive Summary.....	v
Chapter 1: Introduction .....	1
A. Overview of the Panel Process .....	1
B. Issues Raised in the Request for Inspection .....	2
C. Summary of the Management Response .....	4
D. Design and Focus of the Investigation.....	4
E. World Bank Policies.....	5
Chapter 2: Context of the Panel Investigation.....	6
A. Country and Sector Context .....	6
B. The World Bank’s Engagement in Kosovo’s Energy Sector .....	7
C. Engagement of Other Actors in Kosovo’s Energy Sector .....	15
D. Mine Planning and Mining-Induced Displacement and Resettlement.....	16
(i) Overview .....	16
(ii) Mining-Induced Displacement and Resettlement .....	16
(iii) Introduction to Mine Planning Processes .....	17
(iv) Summary of Relevant Mine Planning Documents .....	18
(v) The World Bank’s Role in the Mining Sector .....	21
(vi) Recent Developments.....	23
Chapter 3: The Zone of Special Economic Interest.....	24
A. Introduction .....	24
B. Requesters’ Claims.....	24
C. Management Response .....	24
D. Bank Policy Requirements .....	25
E. Panel Analysis and Findings .....	25
Chapter 4: The Hade Emergency Evacuation.....	31
A. Introduction .....	31
B. Requesters’ Claims.....	31
C. Management Response .....	32
D. Bank Policy Requirements .....	33
E. Panel Analysis and Findings .....	33
Chapter 5: The Resettlement Policy Framework .....	39
A. Introduction .....	39

B. Requesters' Claims.....	39
C. Management Response .....	39
D. Bank Policy Requirements .....	40
E. Panel Analysis and Findings .....	41
Chapter 6: The Shala Resettlement .....	45
A. Introduction .....	45
B. Requesters' Claims.....	45
C. Management Response .....	46
D. Bank Policy Requirements .....	47
E. Panel Analysis and Findings .....	47
Chapter 7: Concluding Observations .....	54
A. Introduction .....	54
B. Harm .....	54
C. World Bank Involvement in Kosovo's Energy Sector Over a 15-year Period.....	55
D. Looking Ahead .....	56
Annex 1: Table of Findings .....	57
Annex 2: ESIA Commitments Noted in Management Response .....	59
Annex 3: Biographies .....	61
Annex 4: About the Panel .....	63
Annex 5: Map IBRD No. 34711 - Location of mining fields, power plants and affected villages.....	64

## Executive Summary

### Background

1. This Report (the “Report”) responds to a complaint (the “Request”) regarding resettlement and land issues related to World Bank (the “Bank”) operations in Kosovo, including the proposed Kosovo Power Project (the “KPP”). The Inspection Panel (the “Panel”) received the Request on June 12, 2015, from residents of Hade Village, New Shkabaj resettlement site and Obiliq Municipality, and from Civil Society Organizations (“CSOs”) based in Kosovo.

### Context

2. Since 2001 – a period of 15 years – the Bank has emerged as a prominent advisor to Kosovo Governments and a continuing supporter of Kosovo’s energy sector. Its role has evolved over time from conducting a stocktaking exercise of the energy sector in the immediate post-conflict years, to developing a framework for private sector investment, to capacity development and environmental cleanup, and ultimately to financing the Environmental and Social Impact Assessment (ESIA) for the proposed KPP through a Partial Risk Guarantee (“PRG”). The proposed KPP includes the construction of a new, coal-fired, power plant – the Kosovo e Re Power Plant (“KRPP”) – the technical parameters of which are under discussion as of submission of this Report.

3. The conditions surrounding the Bank’s involvement in the energy sector have been extraordinarily challenging. Continued supply of electricity has been essential for social and economic reasons, including for heating during the cold, winter months, and to build Kosovo’s economy and create jobs; it has also been an important factor in maintaining political stability during critical times, both before and after Kosovo’s declaration of independence in 2008. The challenges have extended to shortcomings in institutional capacity and the legal framework, technologically out-dated mining and power-generating facilities, and insufficient financial resources for maintenance and new investment. The Bank, along with USAID, EU, and others, have recommended – and the Government has decided to pursue – privatization and other measures to bring in investments and international best practice to secure electricity supply based on Kosovo’s lignite resources.

### Request for Inspection and Management Response

4. The Requesters claim they have been harmed by the Bank’s technical assistance to Kosovo and preparation for KPP, and have asked the Inspection Panel to investigate these matters. Specific allegations include:

- **Loss of Land, Livelihoods, and Wellbeing.** The Requesters claim they have suffered and will suffer loss of land, livelihoods, and wellbeing as a result of the Bank’s non-compliance with its own policies in its technical assistance to prepare a framework “*designed to forcefully resettle us to make way for a Bank financed New Coal Power Plant.*” They contend that part of their community has been forcefully displaced under a non-compliant Resettlement Action Plan (“RAP”) and, over the course of more than a decade, has suffered impoverishment, homelessness, food insecurity, landlessness, unemployment, and stress.

- **Restrictions on Economic Development.** The Requesters also say the Bank, under its technical assistance program, “*encouraged or assisted*” the Government of Kosovo (GoK) to designate a Zone of Special Economic Interest (the “Zone”) to prepare for the proposed, new power plant. The Requesters state that within this Zone they are effectively “*left in limbo*,” that Zone regulations limit their lives and livelihoods without compensation or restoration efforts, and without meaningful or timely notification and participation.
- **Financial Burden.** The Requesters add that, by failing to incorporate the objectives of the Bank’s Involuntary Resettlement Policy and by not providing “*sufficient investment resources*” to meet these objectives, the cost of the new power plant is kept low at the expense of community members.

5. In its response (the “Response”) Bank Management explains that no Bank-supported project in Kosovo’s mining and energy sector has required resettlement. Management strongly disagrees with the allegation that the harm claimed in the Request results from the Bank’s technical advice or is likely to result from the proposed, new power plant. Notwithstanding, Management agrees that past resettlement practices in Kosovo predating the Bank’s engagement have had adverse impacts on the affected population. They explain that the Bank supports the Government’s efforts to address environmental legacies from power-generation and mining, and helps enhance the Government’s capacity to improve resettlement practices. The Bank supported both the preparation of a Resettlement Policy Framework (“RPF”) to govern mining-related resettlement, and the first application of this RPF to the RAP of the Shala neighborhood of Hade Village. According to the Response, Government capacity has improved significantly but Management recognizes that continued improvement can be made during future implementation.

## **Panel Observations Regarding Harm**

6. The Panel believes the complaints from members of Hade Village deal with real and often severe harm caused by the operation of the Sibovc Southwest Mine (lignite) in their immediate vicinity, as well as by actual or planned mine expansion. Significantly, since 2004 Hade has been divided into three parts thereby inflicting recognized harm on the community as a whole and on the three sub-groups of its population thus created: those evacuated in 2004/05, those affected by the Shala involuntary resettlement in 2012, and those remaining behind uncertain about their future. Clearly the disruption of a community in this manner over a protracted period does not reflect good practice under international standards or relevant Bank Policies.

7. A total of 158 households with 664 people were subjected to emergency evacuation in 2004/05 affecting houses deemed at risk of collapse from landslides due to past, inadequate mining practices in their immediate proximity. This included a group of 30 households forcefully evicted by the authorities at the time. While these households received compensation, neither an independent assessment of their levels of compensation nor any systematic monitoring of their situation has been undertaken, to the Panel’s knowledge, by any institution. The Panel met with a group of people from 45 households who, 11 years later, were still living in rental properties originally intended to be temporary. Others have been dispersed to different places. All 158 households were offered land in the New Shkabaj resettlement area; it appears 103 of 113 plot deeds have been issued, but so far only one family has constructed a house. A legal case initiated by community members regarding compensation was rejected by Kosovo’s Supreme Court.

8. The resettlement of 63 households with 320 people and land acquisition from 30 non-residential land-owners in the Shala neighborhood of Hade Village was carried out in 2012. This was done under a RAP financed by the Lignite Power Technical Assistance Project (LPTAP) and its monitoring was financed under the Clean-up and Land Reclamation Project - Second Additional Financing (CLRP-SAF). At the time of the Panel's visit 52 households had obtained land titles in New Shkabaj, 21 houses were under construction, and 12 households had moved in. The Panel heard that resettlement had been mired by delays and that some of the problems, such as blockage of sewage pipes, remained problematic. Residents also told the Panel they had expected the site to have more infrastructure and facilities – such as paved roads, a school, a health center, a cemetery, and a market – in place. The authorities on the other hand argued that the completion of such facilities had not been promised up front, and was to happen in a phased manner as New Shkabaj's population grew with the arrival of additional households that needed resettlement as the mine expanded.

9. The remaining population of Hade, with 97 households and 214 people, as well as people from other villages in two categories – (i) those expected to be resettled in the next 30 years (according to a recent, as yet unofficial, estimate of some 1,460 people), and (ii) others from a group of 55,000 people who live in the Zone – are allegedly suffering harm due to zoning restrictions. Because of the zoning restrictions these groups have not been granted construction permits for additions to their houses or for new house construction. They claim the market value of their property has diminished and they are *de facto* unable to sell their property. The lives of these people are in limbo which is, without doubt, taking a heavy toll. In addition many of them suffer environmental consequences from the mine, such as dust and noise.

10. Harm has extended beyond Hade Village to all residents of the New Mining Field area subject to the restrictions of the Zone. Households have been adversely affected since 2004 with no reprieve to date, with the exception of the Shala community.

11. The Panel's Investigation findings deal with harm or potential harm in relation to (i) the Zone, (ii) the Hade emergency evacuation, (iii) the RPF, and (iv) the Shala RAP.

## **The Zone**

12. The Panel notes the Zone was originally established by the UNMIK administration in 2004 with no involvement of the Bank. An expansion of the Zone was decided by the GoK in March 2009 and approved by the Kosovo Assembly in 2011. Two Bank-financed reports – the Strategic Environmental and Social Assessment (SESA) and the Draft New Mining Field Development Plan (NMFDP) – were prepared as inputs to the 2011 Spatial Plan.

13. The commonly held view of the Panel's experts and people interviewed is that the Zone is not in line with international practice. The Zone was established without due consultation and its size far exceeds the requirements of the current operation or planned expansion of the mine and the power plants. The Panel notes these decisions were taken independently by the Government and go beyond what had been recommended in the two Bank-financed studies. The Panel therefore finds the Bank is not responsible for the harm caused.

14. At the same time, given the Bank's prominent role as sector advisor to the Government and the serious harm caused by the 2004 and 2009 zoning decisions, the Panel considers it reasonable to question why the Bank did not recommend subsequent adjustments to the Zone.



Such recommendations would likely have reduced the harm caused to many households. The Panel understands the Bank will be assessing the social impact of the Zone in the ESIA for the proposed KPP. Though the ESIA has been significantly delayed, it is expected to suggest appropriate remedies to these longstanding, serious, and therefore still urgent legacy issues.

### **The Hade Emergency Evacuation**

15. The Panel finds the Bank had no role in the decision-making process for, or the implementation of, the emergency and forced evacuations in 2004/05 and therefore is not responsible for the resulting harm. While a visiting Bank mission in 2004 (before the evacuation) and another in 2005 (after completion of the evacuation) met with relevant authorities, the Bank's role was limited to providing advice on the compensation process, information flow, and participation of affected households in decision making along the lines of international practices in similar situations

16. The Panel notes that successive Bank missions from 2004-2013 documented the status of households evacuated from Hade, confirming that their situation remained of concern to the Bank over the years. The Panel notes, however, that despite being aware and concerned, the Bank provided no specific, mitigation-related advice. Looking ahead, the Panel draws attention to Management's statement, in response to the emergency displacement, that the ESIA under preparation for the proposed KPP will treat the mine as a related activity and will examine relevant issues.

### **The Resettlement Policy Framework**

17. The Bank-financed LPTAP prepared two key resettlement instruments – the RPF and the Shala RAP – but OP/BP 4.12 on Involuntary Resettlement was not triggered as the applicable Bank Policy. Since the RPF and RAP have major social impacts, both resettlement instruments needed to be prepared in compliance with the Bank's Resettlement Policy. The Panel therefore finds Management in non-compliance by failing to apply OP/BP 4.12 to the LPTAP.

18. The Panel finds the RPF developed under the LPTAP was the appropriate instrument to respond to Mining-Induced Displacement and Resettlement (MIDR) of the type experienced in Kosovo, in compliance with Bank policy.

19. The Panel finds Management in non-compliance with OP/BP 4.12 on Involuntary Resettlement as the RPF did not include principles and methods for the valuation of assets of affected people living under the restrictions of the Zone in the New Mining Field.

20. The Panel recognizes the commitment in the Response to update the RPF based on identified shortcomings and to reflect changed conditions. The Panel expects the proposed, updated RPF will examine resettlement impacts in the context of Zone restrictions.

## **The Shala Resettlement Action Plan**

21. The Panel finds Management in non-compliance for failing to apply OP/BP 4.12 and for the Shala RAP's ambiguity regarding institutional arrangements and the absence of a detailed resettlement schedule. The Panel believes these oversights contributed to the significant delays experienced during this resettlement. Community members remained in temporary housing for a prolonged period which caused harm by creating uncertainty about their future and disruption in their lives.

22. The Panel also notes as a shortcoming of the Shala RAP the inattention paid to livelihood strategies for all affected households, including the most vulnerable and poorest, especially given this RAP is intended as a model for future resettlement in the New Mining Field. The Livelihood Restoration and Community Development Program anticipated in the RAP was not developed in subsequent years. The Panel notes the importance of the recommendation of the Final Completion Report of the Shala RAP that employment opportunities should be complemented with other livelihood support activities in future resettlement events.

23. The Panel finds the monitoring and supervision after the Bank's re-engagement with the resettlement process under the CLRP-SAF in compliance with OP/BP 4.12. However, bearing in mind the capacity constraints of the implementing agency and the Borrower, the lengthy delay in contracting a firm to monitor the Shala RAP implementation may have compromised the Bank's ability to recommend solutions to the Government at a critical stage. Earlier monitoring could have helped reduce delays and supported essential work on livelihood enhancement programs, community development, and grievance redress during the onset of the resettlement process.

## **Concluding Observations**

24. This Report concludes with a discussion about the prominent role the Bank has played over the past 15 years in supporting the evolution of Kosovo's energy and lignite mining sectors. This should be seen against the extraordinarily challenging conditions faced by the Bank and other actors during this period. The Panel duly notes the many contributions by the Bank in the form of essential inputs to Kosovo's energy strategy and improved institutional capacity to deal with environmental and social aspects of mining operations.

25. At the same time the Panel has identified areas where more could have been done to deal with issues of harm in line with Bank Policy and expertise. This raises questions about when the Bank decides to assume responsibilities associated with its prominent role in a sector and when it opts to be a bystander, and about why at times the Bank has chosen to advise subsequent Governments in Kosovo with regard to the prevention and redress of harm, and at other times it has not. In other words, sometimes the Bank deemed it prudent to be part of managing such risks and on other occasions it opted against getting involved. This Investigation has shown that the Bank's considerable expertise has not been used comprehensively, consistently, or to its fullest potential when it comes to the energy and mining sectors in Kosovo.

## Chapter 1: Introduction

### A. Overview of the Panel Process

1. On June 12, 2015, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) signed by citizens representing Shkabaj, Hade Village, and Obiliq Municipality (the “Requesters”) and three Civil Society Organizations based in Kosovo – the Initiative for Environment and Local Development, the Forum for Civic Initiatives (FIQ), and the Kosovo Civil Society Consortium for Sustainable Development (KOSID). The signatories to the Request designated Ms. Dajana Berisha of FIQ as their representative.

2. The Requesters raised concerns about resettlement and other mining-related impacts on their communities in relation to Bank-supported operations, including the proposed Kosovo Power Project (KPP). (Section B below summarizes the issues raised.)

3. The Panel registered the Request on June 30, 2015. In August 2015, after receipt of the Management Response, Panel Member Zeinab Bashir Elbakri, Executive Secretary Dilek Barlas, and Senior Operations Officer Serge Selwan visited Kosovo to determine the eligibility of the Request. The Report and Recommendation<sup>1</sup> of the Panel was submitted to the Board on September 2, 2015, recommending an Investigation. The Board of Executive Directors approved this recommendation on September 17, 2015.

4. The proposed KPP had been the subject of a previous Request for Inspection in March 2012. The Panel deemed the Request eligible but did not recommend an Investigation as the KPP was in an early preparation stage and there were no other active Bank operations relevant to the concerns raised that could be reviewed by the Panel.<sup>2</sup> The current Request presented new evidence and circumstances not known at the time of the earlier Request and was therefore deemed eligible for Investigation.<sup>3</sup>

5. During January 18-22, 2016, a Panel team led by Panel Member Jan Mattsson and including Senior Operations Officer Mishka Zaman and Operations Officer Birgit Kuba conducted the Investigation visit. They were joined by Catherine Macdonald, an expert in the social aspects of mining operations, and Robin Dean, an expert in coalmine planning and management. Panel Chairman Gonzalo Castro de la Mata participated in part of the Investigation visit. The team held meetings with the Requesters, other affected community members, Government officials of the Ministry of Finance, the Ministry of Economic Development, and the Ministry of Environment and Spatial Planning, representatives of the Korporata Energjetike e Kosovës (KEK), and officials of Obiliq Municipality. The Inspection Panel team also met with Bank staff and representatives of the European Union, the United States Agency for International Development, the Kosovo Independent Commission for Mines and Minerals, and Kosovar CSOs.

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<sup>1</sup> Inspection Panel Report and Recommendation, September 2, 2015. Available at:

<http://ewebapps.worldbank.org/apps/ip/PanelCases/103-Inspection%20Panel%20Report%20and%20Recommendation.pdf> (accessed February 17, 2016).

<sup>2</sup> The Resettlement Policy Framework and the Resettlement Action Plan for the Shala neighborhood was prepared with financing from the closed LPTAP. At the time of the earlier Request the Bank had not approved the CLRP-SAF, which includes the Bank’s responsibility to monitor RAP implementation.

<sup>3</sup> [http://ewebapps.worldbank.org/apps/ip/PanelCases/78-Eligibility%20Report%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/78-Eligibility%20Report%20(English).pdf) (accessed April 6, 2016)

6. When the Investigation mission took place the Final Completion Report of the Shala RAP, financed under the CLRP-SAF, was expected in a few weeks.<sup>4</sup> The draft ESIA for the proposed KPP was also expected within a few months. The Panel is grateful that non-attributable drafts of these reports were made available to it. Delays in the availability of final reports caused a corresponding delay in the finalization of this Report. The Final Completion Report was received on August 25, 2016 and is reflected in this Investigation Report.<sup>5</sup> The Draft ESIA was not publicly available and is therefore excluded from the Panel's analysis herein.

## **B. Issues Raised in the Request for Inspection**

7. The Request alleges harm resulted from the Bank's technical assistance to Kosovo as follows:

- **Loss of Land, Livelihoods and Wellbeing.** The Requesters claim they have suffered and will suffer loss of land, livelihoods, and wellbeing due to the Bank's non-compliance with its own policies in its technical assistance to prepare a framework "*designed to forcefully resettle us to make way for a Bank financed New Coal Power Plant.*" The Request contends that by designing and implementing the resettlement of the Shala neighborhood of Hade, the Bank "*has exacerbated the social risks*" to their communities, and that the proposed KPP is moving ahead "*without incorporating full involuntary resettlement planning and financial due diligence that should have accompanied a large scale involuntary resettlement.*" The Requesters argue a part of their community has been forcefully displaced under a non-compliant RAP and, over the course of a decade, displacement has caused huge uncertainty as their community suffered impoverishment, homelessness, food insecurity, landlessness, unemployment, and stress.
- **Restrictions on Economic Development.** The Requesters say the Bank, under its technical assistance program, "*encouraged or assisted*" the GoK to designate a Zone of Special Economic Interest (the "Zone") to prepare for the proposed KPP. The Requesters believe their rights to economic and land development have been "*left in limbo*" within this Zone, and that creating the Zone was tantamount to taking their land and limiting their lives and livelihoods, without compensation or restoration efforts and without due process, meaningful and timely notification, or their participation. The Requesters argue the enactment of this Zone lacked an impact assessment, adequate planning, measures to avoid or mitigate impacts, and financial resources. They claim the zoning effectively depopulated the area by compelling people to move away to accommodate their growing families or sustain their livelihoods. They believe this zoning is part of a process of forced displacement, which is in non-compliance with the Bank's Involuntary Resettlement Policy.

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<sup>4</sup> The Management Response explains that the Final Completion Report (2011-2016) was expected to be publicly disclosed during the last quarter of 2015. It further reads that an update to the Final Completion Report could be prepared by the newly extended closing date of the CLRP-SAF at the end of February 2016 if more people decided to move to the resettlement site by that time. Management Response, p. 11.

<sup>5</sup> Final Completion Report (2011-2016), Resettlement Action Plan, Shala Neighborhood of Hade Village, Kosovo, prepared for Clean-Up and Land Reclamation Project – Second Additional Finance Monitoring Unit, Ministry of Environment and Spatial Planning, rePlan Inc., July 2016.

- **Financial Burden.** The Requesters add that by failing to incorporate the objectives of the Involuntary Resettlement Policy, and by failing to provide sufficient investment resources to meet these objectives, the cost of the proposed KPP has been kept low at the expense of Kosovo’s “ratepayers.” They offer the example of the on-going Shala displacement in which, according to them, the objectives of the Involuntary Resettlement policy have not been properly financed. They fear that, as was the case with Shala, the economic and social burdens of the proposed KPP will fall on the backs of their community.



Figure 1: Panel Team meeting affected people in Hade

8. The Request includes as an Annex a 2014 report titled “*Does the Kosovo Power Project’s proposed Forced Displacement of Kosovars comply with International Involuntary Resettlement Standards?*” written by involuntary resettlement expert Professor Theodore Downing<sup>6</sup>. This Annex argues that households are being forcefully displaced through a strategy of incremental expansion, which the author calls *The Stepwise Mining Expansion and Land Take* (or SMELT) *Strategy*. It says this strategy slowly “amputates” parts of settlements, a few houses or a neighborhood at a time. It moves mining operations near settlements, sometimes within a few hundred meters. It claims such a strategy favors mining interests over development by spreading investment costs for land acquisition throughout the lifespan of the mining field, and allows the mining company to justify forced displacement in the interest of public safety and health, “a resolution to a problem that the mine created in the first place.”

9. The Annex further argues that the Bank, by financing technical assistance for a legal, policy and institutional structure, helped the GoK build an “*unstable scaffolding*” for involuntary resettlement. It further states that the Government and the Bank used the wrong resettlement instrument, failed to incorporate the primary objectives of international involuntary resettlement policies, overestimated institutional capacities, grossly underestimated the cost of resettlement, and thus planted the seeds for future civil conflict.

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<sup>6</sup> Referred to in the Management Response as the Downing Report. This Investigation Report refers to it as the Annex to the Request.

### C. Summary of the Management Response

10. The Management Response replies that although past resettlement practices in Kosovo predating the Bank's engagement have adversely impacted the population, no Bank-supported project in Kosovo's mining and energy sector has required resettlement. Management explains that the Bank supports Government efforts to address environmental legacies from power-generation and mining, and helps enhance Government capacity to improve resettlement. Therefore the Bank supported preparation of a RPF to address mining-related resettlement, and the RPF was first applied to the resettlement of the Shala neighborhood of Hade Village. According to the Response the Government's resettlement practice has improved significantly, but Management also recognizes that further improvements can be made during future implementation.

11. Management strongly disagrees that the harm claimed in the Request resulted from its technical advice or will likely arise from the proposed KPP. Management argues that, on the contrary, the Bank's technical assistance operations have mitigated adverse impacts by helping improve resettlement policies and practices. Should the Bank support the KPP in the future, relevant Bank policies would be applied to avoid or mitigate adverse impacts. According to Management, the Requesters erroneously claim that current and future mining activities are exclusively related to the proposed KPP. Management explains the Bank has yet to decide whether to support the KPP, and lignite mining will continue with or without the proposed new power plant due to demand from the two existing plants – Kosovo A and B.

12. The Response further argues the Request inaccurately links building restrictions resulting from establishment of the Zone to the proposed KPP. According to Management the Zone is part of broader Government zoning decisions on phased, lignite mining in the New Mining Field which will supply Kosovo A and B regardless of the KRPP. It adds that the Bank financed no technical assistance related to the Zone.<sup>7</sup>

13. Management explains that a comprehensive ESIA is currently being undertaken to inform the Bank's decision-making for the proposed KPP. Management says that, should the Bank decide to support the proposed KPP, the mine supplying KRPP would be considered a "*related activity*."<sup>8</sup>

14. The Response concludes that, since Management disagrees with the allegations of harm stemming from policy noncompliance, no action to bring the projects into compliance are necessary. Nevertheless, since Management recognizes the hardships communities in the New Mining Field face due to inadequate mine planning by the Government, Management is supporting capacity building for land acquisition and resettlement.

### D. Design and Focus of the Investigation

15. The Inspection Panel published an Investigation Plan on November 9, 2015, which outlined the design and focus of the Investigation and summarized the key issues it would address.<sup>9</sup>

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<sup>7</sup> Management Response, para 56, p. 17.

<sup>8</sup> Ibid., para 58, p. 17.

<sup>9</sup> Inspection Panel Investigation Plan, November 9, 2015. Available at: <http://ewebapps.worldbank.org/apps/ip/PanelCases/103-Investigation%20Plan.pdf> (accessed February 17, 2016).

16. In line with its mandate and operating procedures, the Panel examined whether a violation of the Bank's policies and procedures in the design, appraisal, and implementation of its projects may have contributed to the harm alleged in the Request. The Panel further considered whether any steps and actions were taken by Bank Management during the course of the Investigation to address the harm, and whether these actions met Bank Policy requirements.

17. The Investigation specifically focused on three groups of people who allege they suffered harm in relation to Bank-financed projects: (i) Hade community members and others affected by the Zone; (ii) former residents of Hade Village evacuated from their houses in 2004/05, and (iii) former residents of the Shala neighborhood of Hade Village who are subject to resettlement under the Shala Resettlement Action Plan.

18. This Report includes the following chapters: Chapter 1 (this chapter) introduces the Panel process, the Request for Inspection, and the Management Response and explains the design and focus of the Investigation; Chapter 2 describes the context of the Panel's investigation, including the country context and the roles of the World Bank and other actors in the energy sector; it also provides an overview of Mining-Induced Displacement and Resettlement, summarizes relevant, mine planning documents, and discusses the World Bank's engagement in the sector. The following chapters provide the Panel's analysis of harm and policy compliance in chronological order: Chapter 3 discusses the Zone; Chapter 4, the Hade Emergency Evacuation; Chapter 5, the Resettlement Policy Framework, and Chapter 6, the Shala Resettlement. Chapter 7 presents the Panel's conclusions.

## **E. World Bank Policies**

19. The Panel considered OP/BP 4.12 on Involuntary Resettlement as the Bank Policy most relevant to this Investigation. OP/BP 4.12 recognizes the severe harm that resettlement can impose on people and communities and states as its main objective that involuntary resettlement should be avoided or minimized whenever feasible and all viable, alternative project designs should be explored. The Policy also establishes two other objectives: (i) that resettlement activities be conceived as sustainable development programs, in which displaced persons share in project benefits and are meaningfully consulted, and (ii) that displaced persons be assisted in their efforts to improve their livelihoods or at least restore them to pre-displacement levels. In order to address the impacts of resettlement, OP/BP 4.12 requires the Borrower to prepare a resettlement plan or policy framework to guide the resettlement process, which includes measures to ensure that displaced persons are (i) informed of their options and rights; (ii) consulted on resettlement alternatives, and (iii) provided compensation at full replacement cost.



## Chapter 2: Context of the Panel Investigation

### A. Country and Sector Context

20. Kosovo emerged from conflict in 1999 as a province of Serbia, and UN Security Council Resolution 1244 (1999) called for its “*substantial autonomy and meaningful self-administration*.”<sup>10</sup> The United Nations Interim Administration Mission in Kosovo (UNMIK) served as the country’s transitional administration during the following years, and the NATO-led peacekeeping Kosovo Force (KFOR) was responsible for providing a secure environment. The Kosovo Transitional Council was established in 1999 to provide Kosovo’s political parties with a forum for informing UNMIK decisions and to help prepare for the first phase of self-administration. In May 2001 UNMIK adopted the Constitutional Framework for Provisional Self-Government, establishing the Provisional Institutions of Self-government (PISG) that included the President of Kosovo, the Assembly, and the Government. While the PISG had significant responsibility for governing Kosovo, the UN Secretary-General remained the final, legal authority.<sup>11</sup>

21. In February 2008 Kosovo declared its independence and its Constitution took effect in June 2008. In October 2008 the UN General Assembly sought an advisory opinion from the International Court of Justice on the legality of Kosovo’s declaration of independence, which the Court, in 2010, found consistent with international law. By May 2016 Kosovo had been recognized by 111 United Nations member states and 23 European Union members.<sup>12</sup> Although international recognition has steadily increased, Kosovo is not yet a member of the United Nations. Kosovo joined the International Monetary Fund and the World Bank Group in June 2009. In October 2015 the European Union signed a Stabilization and Association Agreement with Kosovo, marking a milestone on the country’s path towards European integration.

22. Kosovo is landlocked with a current population of approximately 1.8 million. It is among the poorest areas in Europe, with about one-third of its citizens living below the poverty line. While Kosovo recorded positive growth rates every year during the global financial crisis (2008-2012), it continues to struggle with high unemployment and poverty.<sup>13</sup>

23. Energy demand in Kosovo has grown rapidly, with actual energy consumption and peak demand rising more than 90 percent between 2000 and 2010.<sup>14</sup> The 2011 World Bank Power Supply Options Study predicted this demand will increase by 4.6 percent a year to about 8,800 GWh by 2020. Most of Kosovo’s domestic electricity generation comes from two unreliable, lignite-fired power plants – 50-year-old Kosovo A and 30-year-old Kosovo B – which together have a net operating capacity of about 900-950 MW. Both plants operate inefficiently and well below their installed capacity. The shortfall between supply and demand must be met by expensive electricity imports, costing some €45 million in 2012. Regulated energy prices in Kosovo are not cost-reflective. Household tariffs are estimated to be 20-30 percent below cost recovery levels (the wholesale tariff was €0.0302/kWh while the average, end-use tariff was €0.058/kWh in 2014).<sup>15</sup>

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<sup>10</sup> Transitional Support Strategy 1999-2001, World Bank, p. 4.

<sup>11</sup> Ibid, pp. 1-2.

<sup>12</sup> <http://www.mfa-ks.net/?page=2,224> (accessed September 7, 2016)

<sup>13</sup> Country Partnership Strategy 2012-2015, World Bank, pp. 2-3.

<sup>14</sup> Ibid., p. 10.

<sup>15</sup> Kosovo Energy Efficiency and Renewable Energy Project (May 2014), PAD, pp. 1-3.



24. The serious energy supply limitations in the country require frequent load-shedding (power cuts) which deprive people of light, space-heating, refrigeration, and cooking fuel, thereby affecting their health, access to education, and overall quality of life.<sup>16</sup> According to the 2014 Doing Business Report, unreliable electricity supply is among the key constraints facing businesses in Kosovo. Frequent power cuts are major obstacles to daily operations and discourage investment in new equipment and business expansion, which in turn affects job creation and investments.<sup>17</sup>

## **B. The World Bank's Engagement in Kosovo's Energy Sector**

25. The energy sector has been a central pillar of Bank engagement in Kosovo since the end of the conflict in 1999. During this period the Bank established itself as a leading energy sector advisor to a succession of Kosovo governments. Actors such as USAID, the European Union, and several national entities have worked alongside the Bank on energy in Kosovo, focusing on different aspects.<sup>18</sup> The Bank's role evolved over time, from conducting a stocktaking exercise of the energy sector in the immediate post-conflict years, to developing a framework for private sector investment, to various capacity development initiatives, and ultimately to financing the ESIA for the proposed KPP and considering support for the new power plant through a Partial Risk Guarantee (PRG). A more detailed description of the Bank's involvement in Kosovo's energy sector over the years is provided below.<sup>19</sup>



*Figure 2: Kosovo B Power Plant*

26. Overall the Panel notes that while there have been many Bank activities over the years which, by the very nature of projects, may appear fragmented, the Bank has displayed remarkable consistency and continuity despite changing local and international conditions, and turnover of Bank staff. While there were certain course corrections due to incorrect assumptions or fluctuating conditions, the key principles of reliance on coal for Kosovo's

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<sup>16</sup> Country Partnership Strategy 2012-2015, p. 10.

<sup>17</sup> Ibid., p. 22.

<sup>18</sup> For more information on the engagement of other stakeholders in Kosovo's energy sector, please see Section C in this chapter.

<sup>19</sup> See also Table 1: Timeline of the World Bank's Engagement in Kosovo's Energy Sector provided in this chapter.

energy needs in the short- to medium-term, and the need to privatize the sector in order to raise financial resources and to bring in international best practices, were developed early on. It is therefore of interest to review with the benefit of hindsight what the Bank focused on and how these choices may relate to the alleged harm. This question is especially relevant given the prominent role of the Bank in the mining and energy sectors.

### 1999-2005: Sector Mapping, Capacity Building, and Regional Integration

27. Immediately after the conflict urgent works to safeguard the power supply, including for the coming winters, were a key concern. The two coal-fired, power plants had suffered from lack of maintenance over the previous decade, and adequate staffing and management was unavailable.<sup>20</sup> The 1999 Transitional Support Strategy explained that the Bank's strategy at that time was limited due to the scarcity of special, non-regular, financial resources to support a non-member; also, a large financing role was expected of other donors, such as the European Commission. The Bank believed it could maximize its impact by using its comparative advantage in policy advice, institution building, and aid coordination.

28. The Bank's active engagement in Kosovo started when the first Energy Sector Technical Assistance Project (ESTAP) was approved in 2001 to support long-term, strategic energy decisions through a study mapping the energy sector and a strategy for lignite mine development up to 2015. In 2003 ESTAP-II was approved to help Kosovo develop capacity for regional power exchange, optimize utilization of existing generation capacity, and develop a framework for private sector investment.

**Box 1: ESTAP** (US\$2.5 million equivalent), 04/2001-12/2002

Objective: Assist in the development of satisfactory long-term plans for the economically efficient reconstruction, rehabilitation, and restructuring of the power, lignite, district heating, and petroleum sectors and development of a natural gas sector.

Output relevant for investigation: 13-module energy sector study.

29. The 2004 Transitional Support Strategy identified the unreliable electricity supply as the main obstacle to growth. Dilapidated infrastructure, large technical and other losses, poor billing and collection, overstaffing, low productivity, and inefficient labor practices were among the main issues. The Strategy mentioned that firms reported an average of 90 days per year with power outages.<sup>21</sup> A later study showed the average outages in 2002 were six hours per day, which then decreased to four hours per day in 2005.<sup>22</sup>

**Box 2: ESTAP-II** (US\$1.5 million equivalent), 06/2003-05/2005

Objective: (i) developing capacity for a commercially sustainable exchange of power with the regional system, and optimizing utilization of existing generation capacity through economic dispatch, and (ii) developing a framework for attracting private sector investment in the energy sector.

Components: (i) *Regional Interconnection Component:* Detailed feasibility report for 400 kV connection between Kosovo B and Kashar (Albania) and assistance in developing optimal terms of exchange of power; (ii) *Dispatch Center Project Component:* Preparation of a bankable project for financing a dispatch center; (iii) *Private Sector Participation Policy Component:* Framework for private investment in the energy sector.

<sup>20</sup> Transitional Support Strategy for Kosovo, September 16, 1999, p. 7.

<sup>21</sup> Transitional Support Strategy for Kosovo, April 13, 2004, pp. 8 and 10.

<sup>22</sup> Interim Strategy Note for Kosovo for 2006-2007, March 30, 2006, pp. 3-4.

Table 1: Timeline of the World Bank's Engagement in Kosovo's Energy Sector																		
Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
WB Strategy	<b>Transitional Support Strategy (TSS) 1999-01</b>			<b>TSS 2002-03</b>		<b>TSS 2004-05</b>		<b>Interim Strat. Note (ISN) 2006-07</b>		<b>ISN 2008-09</b>		<b>ISN 2010-11</b>		<b>Country Partnership Strategy (CPS) 2012-15</b>				
	Assist Kosovo's reconstruction and recovery effort;  WB comparative advantage in policy advice, institution building and aid coordination			UNMIK asked WB to help put the energy sector on a more sustainable path; follow up on sector study (ESTAP 1+2)		Build capacity, restructure energy/mining sector, help regional integration (ESTAP 3)		LPTAP, CLRP : develop framework for private sector participation		Seeking private sector investment for new plant/mine		2009 : Government and WB sector strategy; WB to help attract private investor; privatization of Kosovo B and KEK		Proposed Partial Risk Guarantee;  New Renewables Project; CLRP SAF to build government. monitoring capacity				
WB-financed Projects			<b>ESTAP-I:</b> 04/2001 -12/2002		<b>ESTAP-II:</b> 06/2003 - 05/2005		<b>ESTAP-III:</b> 03/2005 - 06/2008											
			Study to map energy sector		Build capacity for regional exchange, better utilization through economic dispatch, develop framework for private sector investors		Transmission/System Operator; Tariff Framework, Mining Sector Strategy, Mining Sector Community Participation Plan, Mining Sector SME Capacity Development											
								<b>LPTAP:</b> 10/2006 - 12/2012 Sector Policy, Legal, Regulatory and Safeguards Advice; Mine and Power Plant Analyses; Capacity Building; Transaction Advisor for proposed New Mine/Plant										
								<b>CLRP:</b> 06/2006 - 12/2010; <b>AF 1</b> : 06/2007; <b>AF 2</b> : 05/2013; Closing date extended to 12/2014; then 02/2016 Enable KEK to free land for community development, remove Kosovo A ash dump; build capacity for clean-up & environmentally good practice mining <b>AF 1</b> : same objectives, more funds <b>AF 2</b> : Cleanup of Kosovo A's Gasification Site & Environmental Monitoring and Mgmt. (Air, Soil, Water Monitoring, KPP ESIA, monitoring of Shala RAP implementation, int'l ESIA and RAP Panel of Experts, Low carbon growth energy strategy)							<b>KPP : Concept Note: 01/2011; PID: 07/2011</b>			
WB-financed Outputs				09/2002: Energy Sector Study (ESTAP 1)						05/2008: SESA (LPTAP)  12/2008: Final Draft NMFD (LPTAP)	03/2009: RPF (LPTAP)		12/2011: Shala RAP (LPTAP)  12/2011: Options Study (LPTAP)		02/2013: Shala RAP update (CLRP-SAF)  09/2014: Shala Monitoring Report 2 (CLRP-SAF)	04/2014: Shala Monitoring Report 1 (CLRP-SAF)		07/2016: Shala Resettlement Completion Report  KPP ESIA (CLRP-SAF) – forthcoming
Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016

30. Kosovo was also described as one of the most polluted areas in Europe.<sup>23</sup> On this subject a Bank report from 2012 detailing the human and financial costs of pollution in Kosovo observed that every year “(a)ir pollution is estimated to cause 835 premature deaths, 310 new cases of chronic bronchitis, 600 hospital admissions and 11,600 emergency visits.” The estimated, total damage cost of air pollution was at least €37 million and as much as €158 million per year.<sup>24</sup>

31. The 2004 Transitional Support Strategy recognized capacity building of the new Kosovo institutions as a key, crosscutting theme of all interventions. With respect to the Bank’s approach and the limitations of its engagement in Kosovo, the Strategy explained that “(g)iven uncertainties surrounding the resolution of final status issues, a series of relatively short Transition Support Strategies have guided Bank engagement and allowed the program to be regularly tailored to meet changing needs. While financial support has not been insubstantial, constraints on lending mean that the Bank has not assumed the burden share it might have in other situations.”<sup>25</sup>

32. The 2004 Transitional Support Strategy also highlighted that, due to its rich lignite resources, Kosovo had the potential to become a major energy exporter. Through ESTAP-III, approved in 2005, the Bank supported Kosovo’s regional integration in the Southeast Europe Regional Electricity Market.

**Box 3: ESTAP III** (US\$2.5 million equivalent), 03/2005-06/2008

**Objective:** (i) Support Kosovo’s integration with the regional energy market through assistance with implementation of its immediate obligations under the Athens Memorandum; (ii) develop a policy framework, guidelines, and institutional capacity for the utilization of Kosovo’s mineral resources.

**Components:** (i) Energy Sector Component: Transmission and System Operator, Tariff Framework; (ii) Mining Sector Component: Mining Sector Strategy, Mining Sector Community Participation and Development Plan, Mining Sector SME Capacity Development.

33. The Bank’s Strategy explained that this TA would prepare the way for competing in the regional electricity market. It also said the work on the mining sector would be closely coordinated with the IFC, which anticipated exploring opportunities should privatization proceed. The strategy further stated staff would explore coordinated activities with the Global Environment Facility regarding the considerable environmental legacies.<sup>26</sup>

34. The 2004 Strategy document concluded by observing that inherently sensitive issues, such as reform of the mining and energy sectors, represented a high-risk-high-reward approach; the “World Bank’s global knowledge base gives it a comparative advantage in engaging in complex and sensitive areas, but this will require a greater tolerance of risk as well as the careful development of interventions in order to manage risk.”<sup>27</sup>

<sup>23</sup> Transitional Support Strategy for Kosovo, April 13, 2004, p. 10.

<sup>24</sup> World Bank (2012): Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, p. 10.

<sup>25</sup> Transitional Support Strategy for Kosovo, April 13, 2004, p. 11.

<sup>26</sup> Ibid., April 13, 2004, pp. 18-19.

<sup>27</sup> Ibid., p. 22.

**Box 4: LPTAP** (US\$8.5 million equivalent), 10/2006-12/2012

**AF 1, 2007** (US\$2 million equivalent)

**AF 2, 2011** (dropped)

Objective: (a) to help the PISG strengthen the enabling policy, legal and regulatory frameworks conducive to new investments in the energy sector; and (b) to assist the PISG to attract qualified private investors to develop lignite mines and build new capacity for lignite thermal power generation guided by high standards of environmental and social sustainability.

Components: (i) Sector Policy, Legal, Regulatory and Safeguards Advice; (ii) Mine and Power Plant Analyses; (iii) Capacity Building; (iv) Transaction Advisor

Outputs relevant for Investigation: RPF, RAP, Strategic Environmental and Social Assessment (SESA), Draft New Mining Field Development Plan (NMFDP), Energy Options Study.

## 2006-2011: Development of an Enabling Framework for Private Sector Participation

35. The 2006 Interim Strategy Note re-emphasized that energy and mining were key to Kosovo's growth and that there was potential to attract strategic, foreign investors both for export and to satisfy domestic needs. The major constraint was lack of institutional capacity. The Strategy explained consensus had emerged between the donors and the Government on how to promote the responsible development of Kosovo's energy sector. The future of the sector rested on private sector involvement and required policies and a regulatory framework; assistance was needed to attract qualified, strategic investors; energy bill collections had to be improved and non-technical losses reduced, and near-term donor support was necessary to ensure continued operation of existing plants.<sup>28</sup>



*Figure 3: Kosovo B Power Plant*

36. The Bank's focus during this period was to assist the Government in developing a framework for private sector participation through the LPTAP, which was approved in 2006. This included a policy, legal, and regulatory framework for land acquisition and resettlement, and the institutional structure and capacity for implementing a broader sector strategy. In

<sup>28</sup> Interim Strategy Note for Kosovo for 2006-2007, March 30, 2006, pp. 18-19.

interviews with the Panel, Bank staff explained that the LPTAP was helping prepare the KRPP for financing by providing transaction advisors and by advising the Government on related environmental and social issues.

37. At that time the Bank also provided support for addressing environmental legacy issues through the CLRP.

**Box 5: CLRP** (US\$5.3 million equivalent), 06/2006-02/2016

**AF, 2007** (US\$4.6 million equivalent)

Objective: (a) Address environmental legacy issues related to open dumping of ashes on land; (b) enable KEK to free land for community development purposes currently taken by overburden materials and enable KEK to remove Kosovo A ash dump, and (c) build capacity in KEK for continued cleanup and environmentally good practice mining operations.

Components: (i) Preparation of the Mirash Open Pit Mine for Ash Management; (ii) Relocation of Kosovo A Ash Dumps to the Mirash Open Pit Mine; (iii) Reclamation of Overburden Dump Areas, and (iv) Project Management.

38. The 2006 Interim Strategy recognized its success depended on timely and positive investor response; the strategy could prove unsuccessful if the private sector was unwilling to invest due to general risk aversion in post-conflict settings, the status of Kosovo, concern about the readiness of the business and regulatory environments, or a specific lack of interest in investing in the global power sector. Four factors, however, would bolster investor interest and confidence: (i) final resolution of Kosovo's political status, (ii) implementation of EU standards, (iii) World Bank Group support in the bidding process, and (iv) early, informed dialogue with potential investors, including IFC and other IFIs.<sup>29</sup>

39. The 2008 Interim Strategy Note explained that the Government, with Bank support, was actively seeking private sector investment for the new mine and the associated, new, clean-technology power plant.<sup>30</sup> In 2007 the LPTAP received additional financing to cover the full, actual cost of transaction advisors, legal and regulatory advisors, and social and environmental safeguards advisors for the new plant and mine transaction. At that time four consortia of international companies deemed reputable by the Bank were prequalified as bidders for the investment. The CLRP also received additional financing to include cleanup of the gasification plant.<sup>31</sup>

40. The 2010 Interim Strategy Note, the first after Kosovo's declaration of independence in February 2008 and the country's membership in the World Bank Group and IMF in June 2009, outlined a strategy for Kosovo's domestic energy development. This five-pronged strategy included (i) phased closure of Kosovo A by the end of 2015; (ii) rehabilitation of Kosovo B to comply with EU environmental standards and privatization of that plant with support from USAID; (iii) immediate development, through private participation, of the Sibovc Southwest Mine (lignite) and a state-of-the-art power plant; (iv) privatization of KEK Distribution, and (v) development of the country's limited hydropower resources through Public Private Partnerships.<sup>32</sup>

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<sup>29</sup> Ibid., p. 23.

<sup>30</sup> Interim Strategy Note for Kosovo for 2008, November 9, 2007, p. 7.

<sup>31</sup> Ibid., pp. 10-11.

<sup>32</sup> Interim Strategy Note for Kosovo for 2010-2011, December 28, 2009, pp. 24-25.



41. The Bank, in cooperation with the European Commission and USAID, was to support the strategy by helping attract private investors for development of the new plant and the Sibovc Field, and by assisting privatization efforts related to Kosovo B and KEK Distribution. MIGA was to provide partial risk guarantees to bidders on the new plant and the Sibovc Field, Kosovo B privatization, and/or KEK Distribution privatization. PRGs offered by IDA for strategy implementation were to amount to US\$38 million. IFC was to serve as transaction advisors for KEK Distribution and would coordinate with the Bank and MIGA to attract strategic investors. The Strategy envisioned a new 500 MW plant that – together with the rehabilitation of Kosovo B and the development of full hydropower potential – would by end-2015 replace Kosovo A, imports of about 500 GW from the regional grid, and about 150 MW in small diesel generation backup supply.<sup>33</sup>



*Figure 4: Panel Team meeting with Mayor of Obiliq Municipality*

42. In 2011 the Concept Note and Project Information Document (PID) for the Kosovo Power Project, through which IDA would support the new power plant with a PRG, were prepared.

### **2012-2016: Focus on the New Power Plant**

43. The 2012 Country Partnership Strategy explained that energy consumption and peak demand grew by more than 90% between 2000 and 2010. The Strategy also described the updated, multi-pronged approach of the Government, which included (i) closing Kosovo A by 2017 and replacing it with a new, privately operated, 600 MW power plant – the KRPP or Kosovo C, and associated Sibovc Southwest Mine (lignite); (ii) attracting private investment to rehabilitate and upgrade Kosovo B; (iii) privatizing electricity distribution to reduce technical and commercial losses; (iv) stepping up payment enforcement and raising tariffs to levels consistent with full cost recovery; (v) addressing environmental legacy issues; (vi) investing greater resources in energy efficiency, and (vii) maximizing the use of renewable energy. The findings of the Bank's 2011 Options Study supported this strategy and concluded

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<sup>33</sup> Ibid., pp. 25-26.

the lowest-cost approach to meeting the baseload and peak demand was a mix of thermal and renewable energy<sup>34</sup>.

**Box 6: Proposed KPP**

Concept Stage PID (07/2011): The Bank would provide a Partial Risk Guarantee (PRG) for a proposed KPP to help replace Kosovo A with a rehabilitated, existing power plant (Kosovo B), the construction of a new plant (KRPP), and the development of a mine to meet the fuel needs of these plants. The rehabilitation of Kosovo B and the development of the mine were excluded from the proposed KPP in early 2014.

44. The 2012 Country Partnership Strategy explained that the Government asked the World Bank Group (WBG) to provide support, including a PRG to bidders for the new power plant, the Sibovc lignite field, and the rehabilitation of Kosovo B. The WBG adopted the Strategic Framework for Development and Climate Change (SFDCC) in 2008, which outlined criteria on the basis of which the WBG could support coal-based, power-generation projects.<sup>35</sup> The Bank appointed a panel of external experts to assess whether potential support for the KRPP and its associated Sibovc mine would be consistent with this Framework. The expert panel report, issued in January 2012, concluded that the proposed KRPP/Sibovc project complied with the six criteria of the SFDCC.<sup>36</sup> Given this conclusion, it was decided that “*WBG credit-enhancement support (including the PRG) would be offered on a non-binding, in principle basis (...) to pre-qualified bidders on the proposed project.*”<sup>37</sup> The document said the final decision was subject to compliance with all WBG requirements and the PRG would amount to approximately US\$58 million. A Poverty and Social Impact Assessment (PSIA) would be conducted to determine ways to mitigate the effects of higher tariffs on the poor.<sup>38</sup> The 2012 Strategy recognized that turmoil in financial markets, especially in Europe, could make power project financing difficult to obtain, but believed the availability of WBG guarantees should help mitigate this risk.<sup>39</sup>

**Box 7: CLRP Second Additional Financing** (US\$3.9 million equivalent), 05/2013-2/2016

Revised Objective: Section (c) modified to state: (c) support KEK and MESP to implement continued clean-up operations and environmental good practices in the mining and energy sector.

New Key Components: (F) Environmental Monitoring and Management – (iii) the ESIA for the proposed KRPP; (iv) Monitoring of the implementation of the RAP for the Shala neighborhood of Hade village; and (v) international ESIA and RAP Panel of Experts.

Outputs relevant for investigation: Shala RAP implementation Completion Report (*forthcoming*) and ESIA for proposed KRPP (*forthcoming*).

<sup>34</sup> Country Partnership Strategy for Kosovo for 2012-2015, May 1, 2012, p. 10. This mix of thermal and renewable energy would include a 300 MW hydropower plant and at least 60 MW from small hydropower plants, a preliminary estimate of 395 MW in wind, biomass, and biogas-fired power generation, upgrading Kosovo B, and constructing a new 600-MW coal power plant.

<sup>35</sup> These criteria are (i) a demonstrated developmental impact of the project including improving overall energy security, reducing power shortage, or access for the poor; (ii) assistance provided to identify and prepare low-carbon projects; (iii) optimized energy sources, looking at the possibility of meeting the country's needs through energy efficiency (both supply and demand) and conservation; (iv) full consideration of viable alternatives to the least cost (including environmental externalities) options, and when additional financing from donors for their incremental cost is not available; (v) design of coal projects to use the best appropriate available technology to allow for high efficiency and, therefore, lower GHG emissions intensity, and (vi) development of an approach to incorporate environmental externalities in project analysis.

<sup>36</sup> Country Partnership Strategy for Kosovo for 2012-2015, para 60, p. 23.

<sup>37</sup> Ibid., para 61, p. 24.

<sup>38</sup> Ibid., pp. 23-24.

<sup>39</sup> Ibid., p. 32.



45. The 2012 Strategy also introduced an Additional Financing to the CLRP (CLRP-AF) to build the Government's environmental and social impact monitoring capacity, provide additional cleanup at existing sites, and prepare an Energy Efficiency and Renewables project to improve energy efficiency and increase energy production from renewable sources.<sup>40</sup>

**Box 8: Energy Efficiency and Renewables Project** (US\$31 million equivalent), 6/2014-9/2020

Objective: (a) Reduce energy consumption and fossil fuel use in public buildings through energy efficiency and renewable energy investments and (b) Enhance the policy and regulatory environment for renewable energy and energy efficiency.

Components: Energy Efficiency and Renewable Energy Investments in Public Buildings, and Policy and Regulatory Support for Renewable Energy and Energy Efficiency.

46. According to Management, since it was decided in 2014 that the Sibovc mine would remain in public hands, the Bank and Government discussed a possible, Bank-financed Environmentally and Socially Sustainable Mining Project which could include (i) development of New Shkabaj public infrastructure to prepare another 400-600 plots for the resettlement needs of the next 10-15 years, as well as capacity building, planning, and monitoring of mining-related resettlement; (ii) economic growth and community development in Obiliq, and (iii) restoration of the depleted Bardh and Mirash Mines. According to the Management Response, the Government has not formally requested such a project.<sup>41</sup>

## **2016: The Current Status of the Kosovo Power Project**

47. In December 2015 the GoK signed a Memorandum of Understanding (MOU) with Contour Global, a US company, to build the KRPP.<sup>42</sup> As of publication of this Report no final decision had been taken regarding the technical specifics of the power plant or the Bank's potential support through the proposed PRG. The Panel understands the size of the proposed KRPP was reduced substantially from 2,000 MW to 600 MW and that sizing of the plant remains under discussion as of publication of this Report. Management has informed the Panel that the lack of agreement on technology and related sizing of the KRPP has delayed finalization of the ESIA.

## **C. Engagement of Other Actors in Kosovo's Energy Sector**

48. The Government – with the involvement of the WBG, the EU, USAID, and others – developed a strategy for domestic energy development in 2009.<sup>43</sup> The WBG, EU, and USAID

<sup>40</sup> Country Partnership Strategy for Kosovo for 2012-2015, para 77, p. 29.

<sup>41</sup> Management Response, p. 20.

<sup>42</sup> "Memorandum of Understanding is signed between the Ministry of Economic Development and American Investor Contour Global," December 18, 2015, Ministry of Economic Development website, [http://mzhe-ks.net/en/news/memorandum-of-understanding-is-signed-between-the-ministry-of-economic-development-and-american-investor-contour-global#.V4\\_qqU3fOPx](http://mzhe-ks.net/en/news/memorandum-of-understanding-is-signed-between-the-ministry-of-economic-development-and-american-investor-contour-global#.V4_qqU3fOPx). "Kosovo Says US Firm Will Build Power Plant," Balkan Insight, <http://www.balkaninsight.com/en/article/us-company-to-construct-kosovo-new-power-plant-11-11-2015>

<sup>43</sup> As mentioned earlier this five-pronged strategy included (i) the phased closure of Kosovo A by the end of 2015; (ii) the rehabilitation of Kosovo B to comply with EU environmental standards and the privatization of that plant with support from USAID; (iii) the immediate development, through private participation, of the Sibovc Southwest Mine (lignite) and a state-of-the-art power plant; (iv) the privatization of KEK Distribution, and (v) the development of the country's limited hydropower resources through PPPs.

supported this strategy by helping attract private investors for development of the new plant and mining field, and by supporting privatization efforts for KEK distribution and Kosovo B.

49. USAID's involvement, through its five-year, REPOWER-KOSOVO project, which started in October 2014, included regulatory assistance, support for clean energy, efforts to unbundle KEK distribution for privatization, feasibility studies for Kosovo B, and a financing strategy for its rehabilitation. USAID also worked extensively on mine stabilization, but did not support mine development. After an explosion at the Kosovo A power plant in 2015 USAID brought in experts to assess the situation. USAID is currently not providing technical assistance for the KRPP.<sup>44</sup>

50. The European Agency for Reconstruction (EAR) has also been a key player in Kosovo's energy sector. EAR funded two feasibility studies and three mining plans (discussed below) for development of the Sibovc Mine and rehabilitation of the Kosovo A power plant. It also financed environmental studies, institutional measures, and a feasibility study for the rehabilitation of Kosovo B1's electrostatic precipitator.<sup>45</sup> The EU supported KEK in reducing losses, engaging an external management company, and restructuring before privatization. The EU also provided financing for mine equipment.<sup>46</sup>

## **D. Mine Planning and Mining-Induced Displacement and Resettlement**

### **(i) Overview**

51. This section introduces the field of Mining-Induced Displacement and Resettlement (MIDR) and provides an outline of Kosovo's lignite mine planning processes through the years by introducing the key mine planning documents. It further discusses resettlement planning in the context of mine expansion, with particular attention to Hade Village.

### **(ii) Mining-Induced Displacement and Resettlement**

52. Mining-Induced Displacement and Resettlement is increasingly recognized as a distinctive subsection of the field of Development-Induced Displacement and Resettlement (DIDR).<sup>47</sup> The main characteristics that distinguish MIDR from other forms of DIDR, such as relocation caused by construction of dams, bridges, hydropower plants, and highways, are (i) a mining development is not a one-off construction project, but is built and developed over stages as the area of ore exploitation expands; (ii) once established, a mining development is not a steady-state entity requiring only maintenance and management to keep it operating, but rather is a dynamic system, generating revenue as it extracts more ore and disturbs more ground, with prices dependent upon market and other forces; (iii) it is common for mines to supplement their geological knowledge through exploration in parallel with the advancement of mining, so information about the ore body and forward mine planning are likely to change as knowledge increases;<sup>48</sup> (iv) financing for capital expenditure on mine expansion is typically

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<sup>44</sup> IPN meeting with USAID on January 21, 2016. Also see: <https://www.usaid.gov/news-information/fact-sheets/repower-kosovo> (accessed May 20, 2016)

<sup>45</sup> LPTAP Project Appraisal Document, p. 21.

<sup>46</sup> IPN meeting with EU on January 22, 2016.

<sup>47</sup> J.R. Owen and D. Kemp, "Mining-Induced Displacement and Resettlement: A Critical Appraisal." *Journal of Cleaner Production*, vol. 87, 2015, pp. 478-488.

<sup>48</sup> G. Banks, "Little by Little, Inch by Inch: Project Expansion Assessments in the Papua New Guinea Mining Industry," *Resources Policy*, vol. 38, 2013, p. 690.

obtained incrementally, so land for mining may also be similarly acquired, and (v) changes of ownership and management are common in the sector and can lead to changes in mine plans.

53. All these factors raise the likelihood that mining projects will revise their development plans several times during the life of a mine, and this may also affect resettlement plans.<sup>49</sup> Many of these MIDR-specific characteristics correspond with the situation described in this Request, as discussed below.

### **(iii) Introduction to Mine Planning Processes**

54. In many countries, including Kosovo, the government owns underground minerals but not necessarily the land parcels above it. After a mining company wins a bid for the exploration of a land parcel and concludes its assessment, which can be an extensive process, it develops a mining plan which forms the basis for a mining exploitation license.<sup>50</sup> Such licenses can be for any duration, but typically remain valid for up to 40 years. They generally include conditions for mining company acquisition of land and resettlement of affected communities. In Kosovo, mining licenses are granted for approximately 10 years and are linked to a defined area for which a mining plan and expropriation certificate exist.

55. After receiving a mining exploitation license the company develops a mining plan for the license area, which is called a Life of Mine (LOM) Plan. Typically a LOM Plan covers at least a 25-year period and can extend up to 50 years or more. A LOM Plan is a strategic document and is neither final nor binding; it can be adapted as circumstances change. According to the Panel's mining expert, good planning practice takes into account the predicted market for (in this case) lignite, the pace of mine expansion required to satisfy that market, the proximity of the mine to inhabited areas, and a security or buffer zone around such areas, thereby making it possible to predict the timing of any necessary resettlement required.

56. Once a mine is operational mine plans are more accurately defined. Generally a five-year plan is developed in line with the LOM Plan, detailing the mining company's intended mining progress over this period. In parallel to the five-year plan a one-year plan is prepared that focuses on operational issues such as working face layouts, equipment availability and maintenance, and production levels and quality. In many countries this one-year plan must be submitted to the country's mining authority for approval. In Kosovo the Independent Commission for Mines and Minerals (ICMM) approves such plans. According to the Panel's mining expert, mining companies typically update five-year plans annually to take into account production changes and varying impacts, including those on resettlement.

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<sup>49</sup> A 2015 study covering 41 MIDR projects discovered resettlement may take place at any time in the mine lifecycle, with only five percent of projects undertaking resettlement during the early study or planning phase, while 51 percent resettled PAPs during construction and a further 44 percent did so during the operational phase. The prevalence of multiple and brownfield resettlement events in MIDR introduces a unique and dynamic condition inadequately represented in the DIDR literature. It is important to note that the 41 MIDR 'projects' studied took place at only 33 mine 'sites,' which means at least eight mining projects, almost a quarter of the total, undertook more than one resettlement 'event' during the mine's life. See: Owen & Kemp, pp. 479-480.

<sup>50</sup> The Centre for Social Responsibility in Mining notes that "[t]he feasibility stages that follow initial exploration can be a drawn out process... more potential mines are scrapped or experience major delays in development at this stage than go ahead." Esteves, Ana Maria, Brereton, David, Samson, Daniel and Barclay, Mary-Anne (2010), *Procuring from SMEs in local communities: a good practice guide for the Australian mining, oil and gas sectors*, Brisbane, QLD, Australia: CSRM, p. 10.

#### (iv) Summary of Relevant Mine Planning Documents

57. The Panel's Investigation reviewed three European Agency for Reconstruction mining plans<sup>51</sup>:

- The March 2005 EAR Mid-term Mining Plan for Existing Coal Mines (referred to as the "Mid-term Mining Plan"), prepared by Vattenfall Europe Mining AG and Deutsche Montan Technologie GmbH,
- The June 2005 EAR Main Mining Plan for New Sibovc Mine (referred to as the "Main Mining Plan"), prepared by Vattenfall Europe Mining AG and Deutsche Montan Technologie GmbH, and
- The May 2006 EAR Complementary Mining Plan for the Sibovc Southwest Mine (referred to as the "Complementary Mining Plan"), prepared by the STEAG Consortium.

58. The Panel also reviewed the mining-related sections of the Bank-financed Strategic Environmental and Social Assessment (SESA) and the Draft New Mining Field Development Plan (NMFDP). These documents are discussed below in section (v) of this chapter, which deals with the Bank's engagement.

59. The March 2005 **Mid-term Mining Plan** identified technical and operational measures for the production and supply of coal from existing mines. This Plan covered a seven-year period, after which the new Sibovc Mine was expected to produce enough coal to meet all of Kosovo's energy needs. The Plan estimated the Bardh and Mirash Mines could fully satisfy coal needs for existing power plants until 2008. Thereafter the output capacity would diminish until the mines were depleted in 2011.<sup>52</sup>

60. The June 2005 **Main Mining Plan** aimed at guaranteeing coal supply security and economic viability over the entire life of existing and new power plants, which was estimated at approximately 30 years. Part 1 of the Main Mining Plan assessed potential, future mining fields. The assessments in Parts 2 to 4 of the Plan were based on the mining field option chosen in Part 1.

61. The Main Mining Plan assessed the potential mining fields of the Sibovc Field, D-Field, and South-Field.

62. It concluded that the Sibovc Field was the most inexpensive source of coal for a newly-built plant. In the D-Field fewer households would need resettling but a motorway was planned to run through the field; as a result, an estimated 30-40% of the minable lignite will be lost, which would cost this field its viability. The South-Field was the most expensive option due to unfavorable geological conditions. The Main Mining Plan therefore advised that mining the Sibovc Field would be preferable, despite having the most resettlement-related impact.<sup>53</sup>

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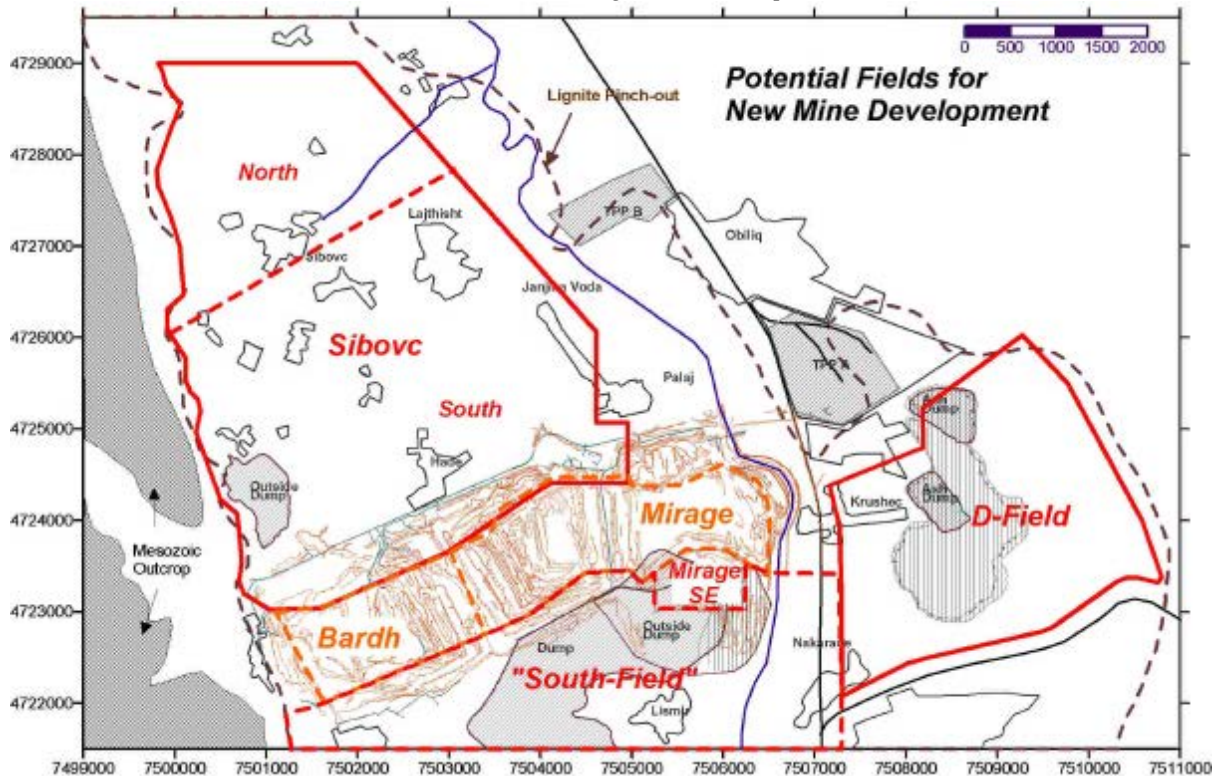
<sup>51</sup> These mining plans were prepared without World Bank involvement but have subsequently been used by the Bank as reference documents.

<sup>52</sup> 2005 Mid-term Mining Plan, pp. 42-44.

<sup>53</sup> Main Mining Plan, Part I, Section 5.5 Valuation of the Mining Fields, pp. 61-62.

**Image 1: Potential Mining Fields**

(Source: Main Mining Plan, Part I, p. 28)



63. The Main Mining Plan explained that UNMIK was committed to launching a project for establishing a new power plant, but a detailed concept was unavailable at the time the Plan was prepared.<sup>54</sup> The Main Mining Plan mentioned, as context, that (i) preparatory works had not started for the new Sibovc Mine, (ii) there were neither plans, permits, nor operating licenses for a new mine or power plant, (iii) quick resettlement of Hade Village was problematic, and (iv) large investments would be required to open up Sibovc. Therefore a new power plant could be commissioned no earlier than 2012. The Main Mining Plan explained that, in view of the high investments required in both the mining and power sectors, it would be advisable to engage private investors working in parallel with KEK.<sup>55</sup>

64. As to resettlement, the Main Mining Plan recommended that the Sibovc Field be opened up to the north of the Bardh and Mirash Mines and that Hade Village be completely resettled. According to the Plan the resettlement of people evacuated from the safety zone must be completed by mid-2005, and the remaining part of Hade cleared by 2009. The Main Mining Plan also observed that despite the forthcoming resettlement many new houses had been built. When KEK took inventory 330 plots with buildings were counted; when the Main Mining Plan was prepared there were about 700 houses, 111 of which were in the safety zone and subject to evacuation.<sup>56</sup>

<sup>54</sup> Main Mining Plan, Part I, p.11.

<sup>55</sup> Ibid., p. 11.

<sup>56</sup> Main Mining Plan, Part II, pp. 222-224.

**Table 2: Potential Mining Fields**  
(Source: Main Mining Plan, Part I, p. 61)

Criteria	Unit	Sibovc	D-Field	South-Field
Lignite content within technological border*	[ mt ]	900	280	500
Overburden : Coal – Ratio incl. dumping material	[ bcm/t ]	0.85	0.90	2.8
Average Net Calorific Value	[ kJ/kg ]	8312	7340	similar to Si-bovc
Average Sulphur Content	[ % ]	1.1	1.0	similar to Sibovc
Land Use	-	Agriculture	KEK (Dumps)	KEK (Dumps)
Covering by dumped Masses	[ m sqm ]	0.5	2.2	5.5
Resettlement		Hade, Sibovc Lajthishte	few houses	Lismir, Kuzmin
Constrains		Resettlement of Hade	Motorway	Currently hardly competitive

\* Considering the geological content within the slope system in the boundaries of the mines

65. The Main Mining Plan further explained that a joint resettlement of all families in Hade Village was impossible for reasons of time. Survey work in Hade started in February 2005, and when the Main Mining Plan was prepared 115 households had been recorded outside the safety zone.

66. Regarding good practice in resettlement planning, the Main Mining Plan explained that “[i]ncluding all preparatory measures (principles and contracts) a period of 10 to 12 years is recommended to carry out a normal planned resettlement of locations. According to mining requirements this might also be implemented faster, if compromises are agreed in written form in a contract.”<sup>57</sup>

67. Assumptions underlying the Main Mining Plan changed, including the timeline for the new plant. Thus in May 2006 the **Complementary Mining Plan** was prepared to secure lignite for only the existing plants. As a result, mine planning was amended to reflect the reduced volume of lignite – of 9Mt/a – and the limited financial resources available. This Plan concluded the new criteria could be met by smaller development of the Sibovc Southwest Field, which is a northern extension of the Bardh Mine. It covered the years 2007-2024, after which the existing power plants were expected to have ceased operations.<sup>58</sup> The Plan also explained that due to new mine technology it was possible to bypass most of Hade Village, except the Shala neighborhood.<sup>59</sup>

<sup>57</sup> Ibid., p. 235.

<sup>58</sup> Complementary Mining Plan, Part I, p. 11.

<sup>59</sup> Ibid., Part II, p. 140.



**Table 3: Communities Affected by Resettlement***(Source: Complementary Mining Plan, Part 2, p. 145)*

Settlement area	Year of the resettlement	Number of households					
		Based on aerial view	Structurally complete	without roof	Destroyed	new	Total
Mirene	Dec 2015	7	2	2	1		12
Shipitulla East	Dec 2015	7	2		8		17
Hade Western Slope	Dec 2009	15				20	35
Hade North	Dec 2019	35	2		4		41
Konxhul	Dec 2019	1			3		4
Total		65	6	2	16	20	109

68. The Complementary Mining Plan recommended that regular, planned resettlement take place over a period of six years, which could be reduced if agreed contractually. For smaller settlements this period could be shorter, but at least four years were needed to secure social acceptance.<sup>60</sup>

#### (v) The World Bank's Role in the Mining Sector

69. The Bank was not involved in preparation of the EAR Mining Plans, but references in these plans illustrate the Bank's advisory role. For example, the Bank recommended "*the introduction of the GIS as main element of the resettlement and data management.*"<sup>61</sup> The Complementary Mining Plan mentioned that "[a]ccording to information of the World Bank a study was ordered among other for the use of fallow land in the area of the community of Bardh."<sup>62</sup>

70. The May 2008 **Strategic Environmental and Social Assessment (SESA)** was prepared under the Bank-financed LPTAP and is the preliminary environmental and social assessment of Kosovo's lignite sector development. The SESA stated that, according to its TORs, the SESA had to be carried out in response to and in parallel with the Draft New Mining Field Development Plan (NMFDP).<sup>63</sup> The SESA focused on assessing the environmental and social consequences of different scenarios for developing the KRPP and made recommendations for the siting of the KRPP. The SESA also reviewed the criteria used by Vattenfall and others to rank the different mining fields. The SESA concurred with Vattenfall's assessment that the Sibovc Field (also referred to as the New Mining Field or NMF<sup>64</sup>) was the best option for exploitation. The SESA explained that the rate of developing the NMF, which has lignite reserves to supply a 2,000 MW plant for more than 40 years, depended on the development strategy for the new plant.<sup>65</sup>

<sup>60</sup> Complementary Mining Plan, Part II, p. 151.

<sup>61</sup> Main Mining Plan, Part II, p. 229.

<sup>62</sup> Complementary Mining Plan, Part II, p. 144.

<sup>63</sup> SESA, pp. 2-3.

<sup>64</sup> After the Sibovc Field was identified as the preferred mining field option subsequent documents refer to it as the New Mining Field or NMF.

<sup>65</sup> SESA, pp. 273-274.

71. The December 2008 Draft NMFDP<sup>66</sup> was prepared under the LPTAP and cautioned it did not constitute a formal Spatial Plan, but was the input and proposal of the LPTAP to the Ministry of Environment and Spatial Planning (MESP) for setting up such a plan for the New Mining Field. The Draft NMFDP also emphasized it was linked to the SESA and stated that among its main inputs were the 2005 Main Mining Plan and the 2006 Complementary Mining Plan. The Draft NMFDP did not assess mine planning options but referenced the previous work done under these mining plans. As to the Main Mining Plan, the Draft NMFDP stated that “[e]ven though the underlying assumptions about the Kosovo New Power Plant have changed and with this the time scales of lignite progressive mining footprint, this plan still provides the overall picture of the new mine development, and it is used as the presently best available source for this Draft NMFDP.”<sup>67</sup> At the time the Draft NMFDP was prepared KEK was still expected to be privatized and mining to be taken over by a private investor.

**Table 4: Estimated Relocation Timeline**

(Source: Draft NMFDP, p. 43)

Timeframe Settlement	Year when land claim outline reaches the settlement (Note : tentative estimate only : (i) subject to mining plan and (ii) mine advance pace, depending on Kosovo New Power Plant units and phasing, cf. section 3.2.1 above).	Year (period) of resettlement (Tentative estimates, uncertainty factors see left)  Note: the resettlement policy framework (RPF) recommends that resettlement should start 5 years in advance.
Hade (remaining part North of Palaj / Caravodice – Grabov road).	Between 2013 and 2017 (Depending on the mining advance direction after 2013).	2008 – 2013, however if mining advance does not turn east after 2013, resettlement period could be extended until 2017.
Shipitule East mah. (inside mining area of SW field).	Between 2013 and 2017 (Depending on the mining advance direction after 2013).	2008 – 2013, however if mining advance turns east after 2013, resettlement period could be extended until 2017.
Lajthishtë	Early - mid-2030s	2025 - 2030
Sibovc (Note: Sibovc has a dispersed village structure with mahalas covering large area in the centre of the NMF).	Early - mid 2020s for southern mahalas of Sibovc village Mid 2030s for central mahalas End of 2030s for main village (i.e. northern) mahalas	By early 2020s for all Sibovc village parts, if the RPF is stringently adopted. RPF recommends resettling villages completely once the first part is affected.

72. The Draft NMFDP explained that 495 families remaining in Hade Village were to be resettled before the full mining extension into the NMF could start.<sup>68</sup> Also, four villages with around 750 households would need to be resettled over the next 30 to 40 years. The remaining part of Hade Village was identified as the main, near-term resettlement challenge.<sup>69</sup> The Draft NMFDP estimated about half the NMF will be developed by the mid-2030s.<sup>70</sup> Depending on the handover arrangements between KEK and the private company, but only after Hade Village

<sup>66</sup> The final document prepared under the Bank-financed LPTAP is titled “Final Draft New Mining Field Development Plan (NMFDP)”.

<sup>67</sup> Draft NMFDP, p. ix.

<sup>68</sup> Ibid., p. 4.

<sup>69</sup> Ibid., p. 18.

<sup>70</sup> Draft NMFDP, p. 26.



is completely resettled, the Sibovc Southwest Field would be expanded eastward to exploit the lignite located under Hade. A new mining plan would then be needed for the ensuing northward expansion.<sup>71</sup> The Panel notes this demonstrates the fluidity of mining plans. The Draft NMFDP predicted the northern end of the NMF could be reached in about 40-50 years, at the end of KRPP's lifetime.<sup>72</sup> The Draft NMFDP presented a tentative resettlement timeline, shown below.

#### **(vi) Recent Developments**

73. KEK submitted a mining plan to the ICMM based on the Complementary Mining Plan for the Sibovc Southwest Mine in 2006 and received a mining license for the Sibovc Southwest Field until 2017.<sup>73</sup> KEK currently produces 8.4Mt (2014) to supply Kosovo A and B. KEK's January 2016 Mining Plan is based on this supply need and assumes Kosovo A will cease operations by 2017 and the refurbished Kosovo B will continue operating until 2030. KEK's current mining activities across the Sibovc Southwest Field advance approximately 150m per year with a 1km-wide working face.

74. KEK's January 2016 Mining Plan shows only the West of Hade and Shipitulle as affected villages. However, the Plan includes mining license areas approved earlier by the ICMM for exploitation that would have required Hade be resettled. The ICCM told the Panel team that KEK has not met the conditions of this license, which call for yearly plans submitted to the ICMM. To receive a mining license for a particular year, a mining plan and an expropriation certificate are required. As of the Inspection Panel's visit KEK had almost reached the boundaries of the area covered under their existing mining license, and a new one could not be issued as KEK lacked an expropriation certificate for the appropriate area. The Panel understands KEK consequently was not authorized to expand its upper mining working face from its current mining position. The Panel notes it is therefore unclear whether and how mining activities would proceed in the coming months unless that certificate is issued.

75. To conclude, the 2006 Complementary Mining Plan is the most recent mining plan on which current KEK licenses are based. The 2005 Main Mining Plan, which provides a detailed LOM Plan addressing the supply needs of current and new power plants, while outdated remains the most comprehensive, long-term plan. The Panel notes the NMF is well-defined. KEK awaits more detailed, geological research before it can decide where to mine and therefore which villages need to be resettled, adding that might involve all or none of the rest of Hade Village.<sup>74</sup> Furthermore, since the 2005 Main Mining Plan was prepared, key KRPP parameters – such as the required coal volume – have changed substantially. In addition, the KRPP and related mining activities were decoupled in 2014, with mining no longer intended for privatization.

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<sup>71</sup> Ibid., pp. 27-28.

<sup>72</sup> Ibid., p. 28.

<sup>73</sup> Draft NMFDP, p. 27.

<sup>74</sup> Meeting between IPN team and KEK Management team in Kosovo, January 21, 2016.

## Chapter 3: The Zone of Special Economic Interest

### A. Introduction

76. This chapter examines the Requesters' claim that the Bank provided technical advice which led to the establishment of the Zone of Special Economic Interest (the "Zone"), and thereby contributed to the harm suffered by the affected population (described as numbering 55,000 in 2011).<sup>75</sup> The Zone was initially designated by UNMIK in November 2004,<sup>76</sup> and enlarged to cover the entire "New Mining Area" following a Government of Kosovo decision in March 2009.<sup>77</sup>

### B. Requesters' Claims

77. The Requesters allege the Bank assisted GoK preparation of the proposed KPP by providing technical assistance which recommended establishing the Zone, and that the Zone was enacted without carrying out an impact assessment or following due process, i.e. *"meaningful and timely notification and participation."* They state the Zone significantly restricts use of property, thereby *"effectively taking of [sic] our land, limiting our lives and livelihoods"* without compensation or restoration of livelihoods. They claim residents were ordered to halt new construction for the indefinite future in anticipation of resettlement due to possible mining needs in the Zone.

78. The Annex to the Request ties the Government's 2011 Spatial Plan to the LPTAP-financed Draft Sibovc Development Plan (later titled Final Draft New Mining Field Development Plan), describing the latter as *"a planning document"* which proposes future spatial development in the New Mining Field area inside the Zone.<sup>78</sup> The Request further says this Spatial Plan envisions – but does not provide – a two-phase, involuntary resettlement plan, and fails to explore other viable, alternative project designs and tradeoffs to minimize adverse social and economic effects of land acquisition or restrictions on land use, and instead maximizes lignite production.

79. In discussions with the Panel during its visits to Obiliq the Requesters complained about the impact of the Zone on their lives and, in particular, on their children's future. They claimed the Bank was involved in both the initial designation of the Zone and the much larger area identified in the Spatial Plan.

### C. Management Response

80. The Management Response says the Zone was established pursuant to Government Decision No 4/119 of November 3, 2004, as part of broader decisions on phased mining of the

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<sup>75</sup> The Spatial Plan for the Special Economic Interest Area "New Mining Field," Ministry of Environment and Spatial Planning, Institute for Spatial Planning, March 2011, p. 61.

<sup>76</sup> Republic of Kosovo, MESP Decision No. 4/119, November 3, 2004. English translation provided by World Bank Management.

<sup>77</sup> Republic of Kosovo, MESP Decision No. 02/57, March 13, 2009. English translation provided by World Bank Management.

<sup>78</sup> Annex to Request, p. 12, para 27. Note: The Draft Sibovc Development Plan of May 2008 is attached to the SESA as Annex B. It was later issued separately as the Final Draft New Mining Field Development Plan, December 2008.

lignite deposit in the New Mining Field. Management adds that the Zone originally covered the villages of Hade, Sibovc, Leshkoshiq, and Cerkevna Vodice, and the Municipality of Obiliq but the Government revised and enlarged the Zone to include the entire New Mining Field in March 2009. This larger Zone took effect in October 2011 when the Kosovo Assembly approved the Spatial Plan.<sup>79</sup>

81. Management asserts the Bank financed no technical assistance related to the Zone,<sup>80</sup> and that the Request inaccurately links Zone restrictions to the proposed KPP.<sup>81</sup> Management clarifies that the SESA and Draft NMFDP, both financed by the LPTAP, “*informed the Spatial Plan, however the Spatial Plan was not financed under a Bank project.*”<sup>82</sup> The Spatial Plan, which proposed the expanded Zone, was prepared by the Government “*to analyze different development strategies for the New Mining Field and the technical, economic, environmental and social impacts thereof, and to provide a planning framework.*”

82. Management states that the Draft NMFDP was prepared as a regional, energy sector development plan that described the spatial implications of developing a new mine and of current and future power plants. Management observes that the advice provided under the LPTAP was largely not incorporated in the final expropriation law.<sup>83</sup> Management adds that the Spatial Plan is outdated as it was based on a different and much larger, lignite-fired power plant of 2,000 MW while the proposed KRPP would have a capacity of 600 MW.

83. With respect to speculative construction in the Zone, Management notes the Shala RAP provides for compensation of illegal structures erected without building permits since the Zone took effect in 2004. Management confirms that, under the implementation of the Shala RAP, affected people were in fact compensated for structures built in breach of this restriction.<sup>84</sup>

84. According to Management the ESIA under preparation for the proposed KPP will review issues related to the establishment of the Zone<sup>85</sup> including resettlement issues,<sup>86</sup> and will perform a gap analysis against Bank policy for impacts from the Zone.<sup>87</sup>

#### **D. Bank Policy Requirements**

85. The Panel notes Management did not apply OP/BP 4.12 on Involuntary Resettlement to the LPTAP. The implications of this decision on the LPTAP and its resettlement-related documents is discussed in Chapter 5 below.

#### **E. Panel Analysis and Findings**

86. The Panel understands the overall objective of the LPTAP was to provide Kosovo authorities with policy, legal, and regulatory advice necessary to complete the proposed New Power Plant and Mine transaction. The assignment was divided into two tracks, one to assist

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<sup>79</sup> Management Response, Annex 4, #3, p. 40.

<sup>80</sup> Ibid., footnote p. 10.

<sup>81</sup> Ibid., para 56.

<sup>82</sup> Ibid., Annex 1, #5, p. 29.

<sup>83</sup> Ibid., footnote 15.

<sup>84</sup> Ibid., para 38, p. 10.

<sup>85</sup> Ibid., para 44, p. 13.

<sup>86</sup> Ibid., Annex 1, No. 3, p. 25.

<sup>87</sup> Ibid., Annex 1, No. 1, p. 23.

with developing a legislative framework, the other to prepare the private sector transaction.<sup>88</sup> Key legislation within this framework included a draft regulation on the SESA, the preparation of the RPF, and draft legislation on land acquisition and resettlement.<sup>89</sup> A schematic presented in the LPTAP PAD indicates this legislation was to be drafted by 2007 and adopted by 2008.<sup>90</sup>

87. **SESA (May 2008).** The Panel notes the LPTAP PAD, approved nearly two years after the Zone's initial designation, makes no reference to the Zone, even though one of its key deliverables is the SESA which was meant to "*identify and discuss the broad range of environmental and social issues associated with the development of lignite mining ... in the Sibovc-Obiliq area.*"<sup>91</sup> (The SESA is described in greater detail in Chapter 2 above.)

88. The SESA says that the Serbian-era resettlement law was applied in the absence of new Kosovo legislation. Given this situation, it explains that all issues relevant to resettlement had to be decided by the Parliament, which it describes as a possibly lengthy process. The SESA then states "*[i]n order to ensure the legal bases of lignite extraction and future land purchase, it is necessary to declare the Sibovc field a reserved mining area.*"<sup>92</sup> Reporting on consultations with affected communities, it says the villages of Hade and Palaj/Crkvena Vodica had the greatest number of respondents who claimed the "*introduction of significant limitations on construction of new or reconstruction of old buildings related to the building of Kosovo C would be a problem....*"<sup>93</sup> The mitigation measures and monitoring plans outlined in the SESA make no reference to the restrictions placed on inhabitants by the 2004 Zone decision and proposed no mitigation.<sup>94</sup>

89. **Draft NMFDP (December 2008).** The Draft NMFDP, based on the 2005 Main Mining Plan, states its purpose is to provide a basis for developing a spatial plan for the New Mining Field. It suggests that the final NMFDP, to be enacted by the Government, (i) describe the spatial implications of the proposed KRPP, (ii) establish the spatial planning framework for the activities of the private sector investor who will develop the KRPP and the New Mining Field, (iii) propose measures to handle impacts in an environmentally and socially acceptable manner, and (iv) provide guidance to affected municipalities for their future, local spatial planning. The Draft NMFDP further states that it does not constitute a formal spatial plan, but is the proposal of the LPTAP for a formalized NMFDP following the Law on Spatial Planning.<sup>95</sup>

90. The Panel notes, as stated in the Management Response, that the SESA and Draft NMFDP both inform the Government's Spatial Plan for the New Mining Field. The Draft NMFDP notes "*[t]he total future mining concession for the New Mining Field covers an area of 16 km<sup>2</sup>,*" and marks this area with a dotted line in Image 2 below, labelling it the "SDP Zone of Interest."<sup>96</sup>

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<sup>88</sup> LPTAP PAD, Annex 4: Detailed Project Description, p. 43.

<sup>89</sup> Ibid, Annex 3: Results Framework and Monitoring, KOSOVO: Lignite Power Technical Assistance Project, Subcomponent 1, p. 35.

<sup>90</sup> Ibid., pp. 38-42.

<sup>91</sup> Ibid., p. 81.

<sup>92</sup> SESA, Section 3.4.11, p. 215

<sup>93</sup> Ibid., Executive Summary, p. 31.

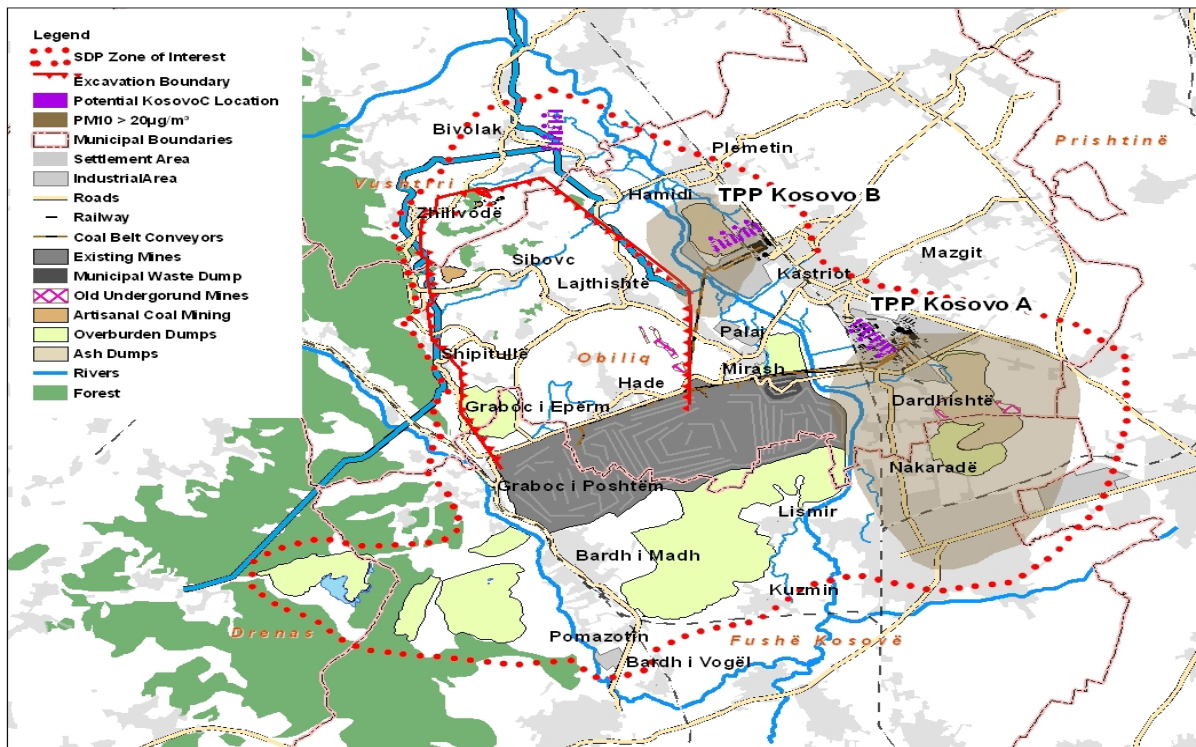
<sup>94</sup> Ibid., Chapter 6, p. 334.

<sup>95</sup> The World Bank/LPTAP, Final Draft New Mining Field Development Plan (NMFDP), Environmental and Social Safeguard Advisory Services for Private Sector Participation in the Development of New Generation Capacity, Related Transmission and the Development of the Sibovc Lignite Field, ERM Italia, ELC Electroconsult, The CSA Group, December 2008, p. x.

<sup>96</sup> The World Bank/LPTAP, Final Draft New Mining Field Development Plan (NMFDP), p. 26.

## Image 2: “NMFDP Interest Zone”

Source: Final Draft New Mining Field Development Plan, December 2008, The World Bank / LPTAP ESSAS, ERM – ELC – CSA, p. xii.



91. With reference to land use and building restrictions, the Draft NMFDP says that the NMFDP (i.e. the Spatial Plan) will set restrictions for future construction of buildings and structures in the NMF area. These restrictions “*should include a stop for building of new private houses and a regulation how necessary buildings and structures in the public interest can be constructed in the interim time until mining advances.*” It further states that a principal construction restriction in this respect is already in place, and then references the 2004 UNMIK Executive decision which declared the villages of Hade, Sibovc, Leskovicic, and Palaj as a Zone of Special Interest for the Kosovo economy.<sup>97</sup>

92. The Draft NMFDP proposes a buffer zone of 200 meters as a safety zone around the mine, resettling the villages that existed inside this mine safety line.<sup>98</sup> It also called for a buffer zone of at least 500 meters from the boundary of the proposed, new power plant.<sup>99</sup>

93. Moreover, the Draft NMFDP explains that the pace of mining advance will depend on various parameters, including the “*development option*” chosen for the KRPP. It cautions that the exact timelines for mine advance and consequent land take will only be known after a new mining plan has been developed by a future Project Company.<sup>100</sup> It warns that the area in the

<sup>97</sup> Draft NMFDP, Section 4.4.5, p. 56. The Main Mining Plan (2005) prepared by Vattenfall for European Agency for Reconstruction also states the same, i.e. “*To provide the legal base for lignite extraction and the required land purchase in the future Sibovc field it is necessary to declare this area a “reserved mining area”. This pre-requisite was established with the UN-Resolution dated 18.11.2004,*” Section 12.3, p. 68.

<sup>98</sup> Draft NMFDP, Section 3.2.1.1, “Land Requirements of the New Mining Field,” p. 26.

<sup>99</sup> Draft NMFDP, Section 4.4.1, “Proposed Implementing Instructions For Power Plant Development.”

<sup>100</sup> Loc. cit.

mining field is losing “*economic vigor and social fabric*”, and that the population be provided a timeframe “*of things to come and a perspective for their lives elsewhere*”.<sup>101</sup>

94. **Spatial Plan (March 2011).** The Spatial Plan, developed by the MESP, traces its origins to a March 2009 decision by the Ministry of Energy and Mines which declared a 143 km<sup>2</sup> Area of Special Economic Interest.<sup>102</sup> This Area includes 26 settlements<sup>103</sup> and a population of 55,000 inhabitants, of whom about 6,320 persons were expected to face displacement over the next 40 years.<sup>104</sup> The Panel notes that updated numbers will be provided in the forthcoming ESIA and are expected to be significantly lower due to various reasons, including outmigration.

#### **Box 9: Types of Zones of Economic Interest**

Zones of Economic Interests “*can be broadly defined as demarcated geographic areas contained within a country’s national boundaries where the rules of business are different from those that prevail in the national territory. These differential rules principally deal with investment conditions, international trade and customs, taxation, and the regulatory environment...*”

Source: Farole, Thomas 2011, *Special Economic Zones in Africa: Comparing Performance and Learning from Global Experience*. Washington, DC: World Bank, p.23.

The term can cover a broad range of zones, such as free-trade zones, export-processing zones, industrial parks, economic and technology development zones, high-tech zones, science and innovation parks, free ports, enterprise zones, and others. The basic concept includes several specific characteristics: (a) it is a geographically delimited area, usually physically secured; (b) it has a single management or administration; (c) it offers benefits for investors physically within the zone, and (d) it has a separate customs area (duty-free benefits) and streamlined procedures

Source: Zeng, Zhihua Douglas. *Global Experiences with Special Economic Zones With a Focus on China and Africa*, World Bank, February 2015.

#### **Zones of Special Interest in Kosovo**

The website of the Kosovo Ministry of Trade states there are currently 11 Zones of Special Interests, but the Obiliq Zone is excluded from this number. According to Decision No. 03/9 dated 27.02.2008 of the Government of Kosovo, initially nine zones were declared (Decision No. 1071 dated 02.07.2008), whereas Decision No. 125 of 26.01.2009 included two new zones, increasing the total to 11.

Source: <http://www.invest-ks.org/en/Mining-and-Energy-in-Kosovo>

The Kosovar legal framework for dealing with new, energy sector development is provided by the Law on Spatial Planning of Kosovo (Law No. 2003/14). As per Article 12 of this law, Spatial Plans for Special Areas shall be set up requiring a particular regime for organization, development, use, and protection. The Spatial Plan of Kosovo defines area categories for special development as Zones of Special Interest for Kosovo – such as for lignite open mining and energy generation.

Source: Article 12, *Law on Spatial Planning* (Law No. 2003/14) available at: [http://www.assembly-kosova.org/common/docs/ligjet/2003\\_14\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2003_14_en.pdf)

95. The Spatial Plan states that the expected energy development and mining sector operations will mainly affect Obiliq Municipality with long-term implications such as restricted land use and other development constraints.<sup>105</sup> The Spatial Plan’s Annex 5 provides a series of actions related to compensation and resettlement planning, including the RPF and RAPs for

<sup>101</sup> Draft NMFDP, “Threats for the NMFDP area,” p. 17.

<sup>102</sup> The Spatial Plan for the Special Economic Interest Area “New Mining Field,” Ministry of Environment and Spatial Planning, Institute for Spatial Planning, March 2011, p. 17.

<sup>103</sup> Ibid., p. 108.

<sup>104</sup> Ibid., p. 106.

<sup>105</sup> Ibid., p. 76.

Hade and Shipitulle.<sup>106</sup> It does not, however, elaborate on construction- and livelihood-related restrictions to be imposed on NMF residents, but instead refers this to the urban regulatory plans that are the responsibility of municipalities. It also recommends construction be allowed in the settlements, given their inevitable densification and expansion, as long as the settlements are not subject to relocation, and calls for “*the monitoring of developments in the area of interest.*”<sup>107</sup> The Spatial Plan includes a section titled “Regulation and Use of Space” which clearly states that the “*space*” within the new mining area be preserved exclusively for mining activities, that settlements must be removed according to a master mining plan, and that municipalities will decide restrictions on new construction. It also says illegal, new construction will not be compensated.<sup>108</sup>

96. Government Decision No. 02/57, declaring the enlarged Zone of 143 km<sup>2</sup>, states “[t]he Ministry of Environment and Spatial Planning is obliged to develop Spatial Plan based on ‘Draft Development Plan for New Mining Area’ prepared by LPTAP, financed by World Bank.”<sup>109</sup> As noted above, the Draft NMFDP recommended that the Spatial Plan restrict future construction of buildings and structures in the NMF, thereby placing responsibility in the hands of the Government. Contrary to the recommendation of the Draft NMFDP and taking into account the expanded area specified by Government Decision No. 02/57, the Obiliq Urban Development Plan stipulated no new settlements be allowed in the much larger 143 km<sup>2</sup> area.<sup>110</sup> The Panel notes that despite these restrictions illegal, speculative construction has continued in the Zone since 2004 and the Shala RAP provides for the compensation of such illegal structures. The Panel also notes the authority to issue building permits and prevent illegal construction rests with the municipality and KEK has no preventive role, although it must provide the compensation.

97. The Panel understands the 143 km<sup>2</sup> Zone includes not only the proposed 16 km<sup>2</sup> New Mining Field (Sibovc Southwest Mining Field), but also the area affected by the entire energy supply infrastructure in the area – i.e. mining waste dumps, power stations, ash dumps, electricity transmission lines, water supply canals, and even dust settlement zones. The Panel’s expert notes that the designation of such a large area is not standard practice for mining development. In other countries a smaller mining area, such as the 16 km<sup>2</sup> in this example, would normally be considered for special restrictions since this is the area needed for mine expansion, and may be developed over a number of years. The construction timeframe of a power station, its infrastructure, and even the main conveyor routes can be predetermined since their spatial requirements are more readily known. Consequently, their social and environmental impacts can also be ascertained without the uncertainty associated with mine expansion. These impacts can be more readily documented and mitigated through environmental assessments and resettlement plans. More typical of a “mineral protection zone” are the plans shown as Figures 3-1 “Estimated Mining Advance” and 3-2 “Spatial Evolution of Mining Activities” of the Draft NMFDP which identified the schematic of the mining plan for the NMF/Sibovc Southwest Mine.<sup>111</sup>

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<sup>106</sup> Spatial Plan, Annex 5.

<sup>107</sup> Ibid., Aim 2 / Goal 8, p. 131.

<sup>108</sup> Spatial Plan, p. 146. The master mining plan reference is to the Vattenfall Main Mining Plan (2005).

<sup>109</sup> Republic of Kosovo, MESP Decision No. 02/57, March 13, 2009. English translation provided by World Bank Management.

<sup>110</sup> Municipal and Urban Development Plan of Obiliq 2009-2020+, Municipal Assembly Obiliq, p. 124, Section 3.1.5.3. Available in Albanian at: <https://kk.rks-gov.net/obiliq/Reguloret-dhe-Pasqyrat-Komunale/Planet-urbane-komunale.aspx>.

<sup>111</sup> Final Draft NMFDP, pp. 31-32.



98. In its Response to the 2012 Request for Inspection, Management said the ESIA will examine impacts of the proposed KPP on the livelihoods of residents in the KPP-affected area of the Zone and recommend actions to mitigate adverse impacts. Management further stated that in the event the Bank decides to support the proposed KPP, it will draw the Government's attention to the need to address the legitimate concerns of residents in the non-KPP portion of the NMF area.<sup>112</sup> The Panel notes that four years after the 2012 Management Response the final ESIA is not ready and affected communities have not received appropriate remedies. At the time of the 2012 Management Response, the ESIA for the proposed KPP was expected to be prepared in the ensuing 12-15 months, i.e. by mid-2013.<sup>113</sup>

99. The Panel understands from the 2015 Management Response that the Bank will assess the impact of the Zone, including on resettlement, and conduct a gap analysis of country legislation and Bank policy in the ESIA still under preparation.

**100. Panel Finding. The Panel finds the Bank was not involved in establishing the Zone of Special Economic Interest in 2004 and is therefore not responsible for the harm arising from it.**

101. The Panel notes Management's statement that two Bank-financed studies informed the Government's decision to expand the Zone in 2009. The Panel believes the size of the Zone where restrictions were applied far exceeded the recommendations of these studies.

102. The Panel draws attention to the serious harm and difficult conditions experienced by the Requesters and others living in the Zone, and the severe effects such hardships have had on their lives over a prolonged period. Given such harm and the Bank's prominent role as sector advisor to the Government, the Panel considers the failure to recommend solutions – such as a major reduction in the area of the Zone or introduction of asset valuation timing and methods – constitute missed opportunities on the part of the Bank to help address the harm in a timely manner. The Panel understands the Bank will assess the social impact of the Zone in the ESIA for the proposed KPP. Although the ESIA has been significantly delayed, it is expected to suggest appropriate remedies to these serious, longstanding, and still urgent legacy issues.

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<sup>112</sup> Management Response to Request for Inspection Panel Review of the Kosovo Power Project (Proposed), May 21, 2012, World Bank, para 29.

<sup>113</sup> Ibid., para 27.

## Chapter 4: The Hade Emergency Evacuation

### A. Introduction

103. Between November 2004 and June 2005, 158 households with 664 persons were evacuated on an emergency basis from Hade Village after UNMIK determined the existence of grave risks of land subsidence following a landslide.<sup>114</sup>

104. This chapter examines whether, as claimed in the Request, World Bank technical assistance contributed to circumstances which led to the evacuation of these families. It also discusses the Bank's role as adviser to the Government subsequent to this evacuation.

### B. Requesters' Claims

105. The Request refers to the evacuation of certain households from Shala neighborhood as "forced displacement" as a result of the Bank's non-compliance with its policies. It is signed by an individual identified as the "Head of Community" who was evicted in 2004 from this neighborhood and imprisoned in 2004 for refusing to leave while his and other houses were demolished by authorities. In meetings with the Panel team in Obiliq, this individual and others who had been forcibly evicted complained about the resettlement process, the inadequacy of the transitional assistance, and their inability to restore their livelihoods after the evacuation. They told the Panel that prior to the evacuation their livelihoods included cattle raising and farming.



*Figure 5: Panel Team in a meeting with representatives of emergency evacuation households*

106. The Requesters said 45 families were still living in temporary housing, with no information about their future prospects. They also informed the Panel that as part of Hade Village they should have been resettled in New Shkabaj together with the rest of their

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<sup>114</sup> Management Response, para 24, p. 7.

community. They told the Panel their land remained in the same condition as 12 years ago; there had been no land subsidence and they could have safely remained in their homes.

107. The Panel was also informed that some members of this group have filed court cases starting in 2012 regarding the termination of their transition allowances. They claim the Government is in breach of the Transition Allowance Contract. They believe allowances should have continued until they move into the resettlement site which was not ready due to insufficient or faulty infrastructure.

### **C. Management Response**

108. The Management Response states the emergency evacuation from Hade Village, comprising households based within the safety zone of the Bardh and Mirash Mines, was carried out by UNMIK and PISG pursuant to UNMIK's order number 2004/6 (March 29, 2004). According to Management this evacuation was not part of any Bank project.<sup>115</sup>

109. Management mentions that, in response to a June 2004 request from PISG to provide urgent advice on the resettlement process, the Bank sent a two-person mission to Kosovo in July 2004 to share the Bank's experience in resettlement, provide policy advice, and assist in preparing terms of reference for resettlement consultants to be recruited by the authorities. As pointed out in a letter from the Country Director to UNMIK in August 2004, this mission was an emergency response to the imminent danger of loss of lives and injury.<sup>116</sup> According to Management no further Bank missions relating to this evacuation occurred.<sup>117</sup>

110. A year later, in June 2005, a pre-identification mission for a proposed Kosovo Lignite Mining and Energy – Social and Environmental Support Project (later incorporated into the LPTAP) undertook preliminary evaluation of the adequacy of Kosovo's resettlement practices in relation to the Bank's OP/BP 4.12 on Involuntary Resettlement. As part of its work, the mission reviewed the experience of the Hade evacuation and concluded the legal, regulatory, and institutional frameworks for resettlement were inadequate, pointing to the need to develop a comprehensive resettlement framework.

111. Management says the Bank continued to encourage the Government to engage with the resettled households in order to resolve outstanding issues. Management adds that information about the progress of that process has been requested and obtained from the Government on a regular basis. Management further states the Bank does not interfere in issues being resolved through the national courts.<sup>118</sup>

112. Moreover, while responding to the statement in the Request's Annex that the 2004/05 emergency evacuation be treated as a legacy issue, Management states the ESIA under preparation for KPP will treat the mine as a related activity, examine relevant issues, and undertake a gap analysis with Bank safeguard policies.<sup>119</sup>

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<sup>115</sup> Management Response, Annex 2, para i.

<sup>116</sup> Ibid., para 25, p. 7.

<sup>117</sup> Ibid., Annex 2, para iii.

<sup>118</sup> Ibid., para 26, p. 8.

<sup>119</sup> Ibid., para 17, p. 63.

## D. Bank Policy Requirements

113. OP/BP 4.12 on Involuntary Resettlement covers direct economic and social impacts resulting from Bank-assisted investment projects. These impacts can be caused by the involuntary taking of land or the involuntary restriction of access.<sup>120</sup>

114. Regarding implementation of resettlement activities, OP/BP 4.12 requires the Borrower to prepare, implement, and monitor the resettlement instrument. Moreover, OP/BP 4.12 states that Borrower commitment to, and capacity for, undertaking successful resettlement are key determinants of Bank involvement in a project. With respect to supervision, OP/BP 4.12 requires the Bank to supervise resettlement implementation regularly to determine compliance with the resettlement instrument. Moreover, the policy requires that, to the extent possible, resettlers' preferences for relocating in preexisting communities and groups be honored.<sup>121</sup>

## E. Panel Analysis and Findings

115. Following the landslide at the Bardh Mine in November 2002 a technical evaluation indicated “*an imminent threat of land subsidence endangering some inhabitants of Hade village (within the safety zone of the Bardh-Mirash mines).*”<sup>122</sup> Subsequently, on March 29, 2004, UNMIK and the PISG established a special resettlement committee for Hade “*to plan for, and execute, an emergency relocation of at-risk households.*”<sup>123</sup> The Panel notes, while relocation of these households was deemed a matter of urgency due to the risk of landslide, this risk was caused by years of poor mining practices that left unstable mine slopes. Relocation of these households was required in the near-term due to an urgent safety concern and as a prerequisite for establishing stable, geotechnical conditions to ensure continued and safe mine productivity<sup>124</sup> and, in the longer term, as a precondition for the planned mine expansion anticipated in the Bank-supported Energy Sector Study endorsed by UNMIK.<sup>125</sup>

116. Between November 2004 and February 2005, 61 families who had agreed to move were relocated temporarily to apartments in nearby urban centers and received rent, electricity, and food allowances. Subsequently, between May and June 2005, some 30 families who had refused to move were forcibly evacuated by UNMIK police. Most of them were relocated to pre-identified shelters and their belongings were stored in a warehouse in Obiliq.<sup>126</sup>

117. According to information provided in the Management Response, as of July, 2015, 98 percent of the evacuated households had received compensation, while the remaining two

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<sup>120</sup> OP 4.12 on Involuntary Resettlement, para 3.

<sup>121</sup> OP 4.12 on Involuntary Resettlement, para 13 c.

<sup>122</sup> Management Response, Annex 2, p. 33. The Panel was told in an interview with ICMM that this situation was created by the Mirash mining operation working contrary to the conditions of its mining license.

<sup>123</sup> Ibid., p. 9.

<sup>124</sup> “In 2003 Vattenfall carried out a geotechnical assessment of the slope system with the following results: – The entire north mine boundary has an general (sic) slope angle between 18-20° and is endangered by sliding with safety factors < 1.0. – For a long-term public safety of the border slope system a safety factor of 1.2 is necessary; that means widening of the slope system to 10° in overburden material. – To achieve these results, a flattening of the slope system up to 180 m northern of the coal connection belts is necessary, including the partly relocation of the village Hade.” European Agency for Reconstruction, Final Report, Mid Term Mining Plan for the Existing Coal Mines, Vattenfall Europe Mining AG, Deutsche Montan Technologie GmbH, March 2005, EuropeAid/116986/D/SV/KOS, Influence of technological Development by the Village Hade, p. 130.

<sup>125</sup> Management Response, Annex 2, 2004 Emergency Evacuation, para ii, p. 33

<sup>126</sup> Management Response, Annex 2, para ii, p. 33.

percent refused compensation and went to court for issues related to termination of the transitional allowances in 2012. Out of 98 families who applied for a plot at New Shkabaj, 77 received titles to their new land, while the others decided not to apply since they contested the Government's decision to terminate rental allowance.<sup>127</sup>



Figure 6: Apartment building (left) in Obiliq where resettled families were provided temporary housing since 2004-05

118. **ESTAPs.** On June 16, 2004, the Bank informed UNMIK of the results of a supervision mission for ESTAP-II combined with a preparation mission for a third Energy Sector Technical Assistance Project (ESTAP-III),<sup>128</sup> which took place May 26-June 2 of that year. The Bank brought to UNMIK's attention "*several serious issues on which urgent action needs to be taken i.e., removal of overburden in lignite mines, resettlement of Hade village...which have the potential of creating a situation of crisis at any time. We urge that attention be paid to resolving these issues on a priority basis.*"<sup>129</sup> On March 29, 2005, the Board approved ESTAP-III.<sup>130</sup> ESTAP-III viewed the development of the Sibovc Field and Hade's resettlement as necessary to sustain lignite supply.

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<sup>127</sup> Ibid., para 26, p. 8.

<sup>128</sup> The Energy Sector Technical Assistance Project-III, approved on March 29, 2005, closed on June 30, 2008. More information about ESTAP-III is available at <http://www.worldbank.org/projects/P088865/energy-sector-technical-assistance-3-project?lang=en&tab=overview>.

<sup>129</sup> World Bank Country Director and Regional Coordinator for Southeast Europe, Europe, and Central Asia Region to Deputy Special Representative of the Secretary-General, United Nations Interim Administration in Kosovo, June 16, 2004.

<sup>130</sup> Project Appraisal Document on a Proposed Grant to the United Nations Interim Administration Mission in Kosovo for the Benefit of Kosovo for an Energy Sector Technical Assistance Project-III, February 24, 2005, Report No: 31430-XK. Available at [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2005/03/11/000090341\\_20050311112648/Rendered/PDF/31430.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2005/03/11/000090341_20050311112648/Rendered/PDF/31430.pdf).

**Table 5: Chronology – Key Events Related to 2004/05 Emergency Evacuation**

<b>November 2002</b>	Heavy rains lead to a landslide in the overburden at Bardh coalmine, causing a major accident
<b>29 March, 2004</b>	UNMIK declares emergency (safety) zone and orders implementation of Hade Evacuation Plan; <i>order number 2004/6</i>
<b>March 2, 2004</b>	Inter-ministerial Working Group is created to oversee the work of a Resettlement Committee
<b>April 2004</b>	Resettlement Committee plan adopted
<b>June 2004</b>	WB receives request from PISG to provide urgent advice on the resettlement process
<b>July 2004</b>	Two-person World Bank Technical Assistance mission provides advice and recommendations on compensation, resettlement options, and participation of affected persons in the emergency resettlement process
<b>December 2004</b>	Remaining families ordered to leave by December 2005
<b>November 2004-February 2005</b>	61 families voluntarily relocated to temporary apartments
<b>May-June 2005</b>	Some 30 families forcibly evacuated given risk of landslide
<b>June 2005</b>	A pre-identification mission for proposed Kosovo Lignite Mining and Energy – Social and Environmental Support reviewed the experience of the Hade resettlement and recommended development of a comprehensive RPF.
<b>April 2014</b>	First Monitoring Report of Shala Neighborhood Resettlement suggests engaging 2004/05 households regarding relocation to New Shkabaj resettlement site
<b>September 2014</b>	Second Monitoring Report of Shala Neighborhood Resettlement suggests engaging 2004/05 households regarding relocation to New Shkabaj resettlement site

*Source: ESTAP-II PAD; UNMIK/ED/2004/6; Management Response, Annex 2*

119. The purpose of the July 2004 mission was to discuss safeguards issues associated with ongoing mining operations and provide technical expertise on resettlement issues related to Hade. This mission offered three sets of recommendations related to compensation options, processes, and procedures. It recommended providing clearer compensation options, making more effort to collect information about the affected households and better informing them about compensation options through a public information campaign, and undertaking a transparent consultation process.<sup>131</sup> In June 2005 a pre-identification mission for another Bank project undertook preliminary evaluation of Kosovo’s resettlement practices in relation to the Bank’s Involuntary Resettlement Policy. The mission reviewed the experience of the Hade emergency evacuation and identified several deficiencies. The mission concluded that the legal, regulatory, and institutional frameworks for resettlement were inadequate, pointing to the need to develop a comprehensive resettlement policy framework, which was later supported by the LPTAP.<sup>132</sup>

120. **Shala RAP.** The key tasks of the ToR for the RAP include reviewing documents related to the 2004 resettlement *vis-à-vis* Bank policy standards; identifying gaps, potential legacy issues, and retrofitting options, and proposing “*eligibility policies and an entitlement matrix*,

<sup>131</sup> Aide Memoire, Mining Sector Mission, 4 – 5 July 2004, World Bank.

<sup>132</sup> The Lignite Power Technical Assistance Project, approved on October 12, 2006, closed on December 31, 2011. More information about LPTAP is available at <http://www.worldbank.org/projects/P097635/lignite-power-technical-assistance-project?lang=en&tab=overview>.



including measures specifically directed at those who were resettled in 2004”.<sup>133</sup> The ToR continues that “[r]etrofitting measures to accommodate people resettled in 2004 may be carried out in a separate government program; nevertheless the identification of gaps and remedies is essential.” The Shala RAP stated 105 plots will be transferred to households displaced by the 2004/05 emergency evacuation.<sup>134</sup> For additional information about the Shala RAP see Chapter 6 below.

121. In the 2012 Management Response to the first Request for Inspection, Management made it clear that the Bank agreed with Requesters that a number of issues remain in relation to the emergency evacuation carried out by UNMIK. Management stated the Bank was committed to providing the Government technical advice and using its good offices to resolve outstanding issues.<sup>135</sup>

122. **CLRP-SAF.**<sup>136</sup> This Project, approved two years after the preparation of the Shala RAP, included in its Component F the monitoring of implementation of the RAP, preparation of the ESIA for the proposed KPP, and appointment of a Panel of Experts to advise the MESP on the ESIA and on implementation of the RAP.<sup>137</sup> However, it stated specifically that the monitoring contract “will not cover the people displaced in 2004 from Hade village.”<sup>138</sup> It reiterated that the Bank “will provide the Government with technical advice and use its good offices to encourage the Government to engage the resettled households to resolve outstanding issues.”<sup>139</sup>

123. MESP commissioned a consulting company to prepare two monitoring and evaluation reports and a Final Completion Report of the Shala RAP. In its first monitoring report, the consulting firm stated “Although not included in rePlan’s [the consulting firm] monitoring contract for the Shala neighborhood, we recommend engaging the households evacuated in 2004/2005 regarding relocation to New Shkabaj –... Renewed engagement should include a forum with these households updating them on progress at the site and the relocation schedule as well as formal resolution of any grievances and an investigation of their current housing situation.”<sup>140</sup>

124. The first monitoring report explained “[t]his process is the responsibility of the Government of Kosovo and it is beyond the scope of the Shala RAP and rePlan’s monitoring and evaluation efforts” and recommended MESP “[e]ngage households evacuated in

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<sup>133</sup> Kosovo-Lignite Power Project, Terms of Reference, Consultant Services for the Preparation of, and Implementation Support for, a Resettlement Action Plan, Hade, Kosovo, para 15 (f).

<sup>134</sup> Resettlement Action Plan, Shala Neighbourhood Hade Project Kosovo, Project Hade Office, Ministry of Environment and Spatial Planning rePlan Inc., 2011, Update February 2013, Report No: 1399,c pp. 11 and 54.

<sup>135</sup> Management Response, p. 9.

<sup>136</sup> The Clean-up and Land Reclamation Project – Second Additional Financing (CLRP-SAF), approved on May 10, 2013, will close on February 29, 2016. More information about CLRP-SAF is available at <http://www.worldbank.org/projects/P131539/af-clean-up-land-reclamation-project?lang=en&tab=overview>.

<sup>137</sup> Financing Agreement (Second Additional Financing for Energy Sector Clean-up and Land Reclamation Project) Between Republic of Kosovo and International Development Association, Schedule 1, Part F, May 15, 2013, Credit Number 5240-XK.

<sup>138</sup> Project Paper on a Proposed Second Additional Financing (Credit) and Second Restructuring (Grant) to the Republic of Kosovo for the Kosovo Energy Sector Clean-up and Land Reclamation Project, March 28, 2013, Report No: 73115-XK, p. 7. Available at [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2013/04/18/000333037\\_20130418101313/Rendered/PDF/731150PJPR0P12010Box374377B00OUO090.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2013/04/18/000333037_20130418101313/Rendered/PDF/731150PJPR0P12010Box374377B00OUO090.pdf).

<sup>139</sup> Ibid.

<sup>140</sup> Monitoring Report #1 Shala Neighbourhood Resettlement, April 2014, rePlan.



2004/2005 regarding relocation to New Shkabaj” by May 2014. The second monitoring report reiterated this.<sup>141</sup>

125. **Bank Supervision.** There are several examples of Bank Management documenting the Hade emergency evacuation as an issue of concern. The Management Letter issued after the ESTAP-II Implementation Support Mission and preparation of ESTAP-III (June 16, 2004) observed that the resettlement of Hade Village required urgent action. A LPTAP Safeguards Approach Note stated the evacuated community wished to stay together and that “[t]his will be respected with the operation starting with the first 150-odd houses in the Shala area moving first and the remainder, about 498 households, to follow”.<sup>142</sup>

126. A September 2012 Bank mission document reported the Government had cut off transitional allowances of the evacuees. It stated that MESP had confirmed residents can apply for land titles. Another reason offered by the Government for ending the allowance was that 90% of the families were not living in the temporary accommodations allocated to them and instead were subletting them.<sup>143</sup>

127. A January 2013 Aide-Mémoire issued after the CLRP Implementation Support Mission established that the Sibovc Southwest Mine would be a facility associated with the KRPP.<sup>144</sup>

128. Based on the above supervision record, the Panel notes the Bank has been aware and concerned about the status of the Hade evacuees since their resettlement commenced. It appears this concern was not followed up with appropriate, mitigation-related advice during the years leading up to the CLRP-SAF; references to their situation were not made in the CLRP-SAF monitoring reports. Also, the Panel could find no evidence that subsequent supervision missions proposed specific actions to the Government for resettlement of the 2004/05 evacuees as had been suggested in earlier supervision documents.

129. The 2016 Final Completion Report of the Shala RAP does not include information on the 2004/05 evacuation because, as explained in the report, this event pre-dates World Bank involvement and was not the result of, nor supported by a Bank-financed project.<sup>145</sup> In this regard the Panel notes that the recommendations of the two consultant monitoring reports regarding engaging the 2004/05 evacuees were not adopted by the Bank. Updated information provided by Management clarifies that all contracts with the 2004/05 evacuation families for rent and food allowances were terminated in 2012 after agreement on plot allocations was reached with these families. Moreover, the Panel has learned the Supreme Court has ruled in favor of the MESP in the transition allowances case.<sup>146</sup> Also, the latest information provided to the Panel at the time this Report was drafted was that, of 113 plots in New Shkabaj which

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<sup>141</sup> Monitoring Report #2, Resettlement Action Plan, Shala Neighbourhood, Hade Project, Kosovo, September 2014, rePlan.

<sup>142</sup> Kosovo-Lignite Power Project Safeguards Status & Approach Note (No Date). This Note states its objective is to seek management input on the project team’s approach to safeguards risk management. In particular, it asks “does the approach appropriately handle the need for immediate resettlement prior to transfer of the mine to the private operator? do [sic] the safeguards issues trigger a panel of experts under OP4.01? if [sic] so, can we ask the investor to pay for the panel? are [sic] cumulative impacts being handled appropriately?”

<sup>143</sup> Report of World Bank Social Specialist Mission, September 19-23, 2012. See full report, attached as Annex 4 to Aide Memoire for Energy Sector Mission of October 15-26, 2012.

<sup>144</sup> Kosovo, Energy Sector Clean-up and Land Reclamation Project (CLRP, P096181), Implementation Support, Mission, May 12-16, 2014, Aide-Mémoire, Footnote 3.

<sup>145</sup> Final Completion Report, Footnote 1, p. 4.

<sup>146</sup> Response provided by Management to Inspection Panel on May 15, 2016 via internal communications.

were to be allocated to the 2004 households, deeds for 102 plots have been issued, while the remaining 11 deeds have not been claimed.<sup>147</sup> Based on information gathered during its Investigation visit, the Panel understands only one 2004 household has built a house in New Shkabaj.

130. The Panel notes that households evacuated from Hade in 2004/05 have suffered hardship as a consequence of the resettlement process, including 45 households that are still living in temporary shelters and claiming inability to restore their livelihoods, and possibly others whose condition is unknown. The evacuees in temporary shelters told the Panel they wanted to resettle in the New Shkabaj resettlement site along with other members of their former community of Hade.

**131. Panel Finding. The Panel finds the Bank was not involved in the 2004/05 emergency evacuation of a part of Hade Village, nor was it involved in the subsequent resettlement process, and thus is not responsible for the harm arising from it.** The Panel understands the evacuation decision was taken by UNMIK and resettlement was the responsibility of UNMIK, the PISG, and later the GoK.

132. The Panel observes that since 2005 several Bank supervision missions documented the status of the evacuees and proposed the use of the Bank's good offices, as did the Management Response, to find relief for these households. The Panel notes, however, that despite being aware and concerned the Bank provided no specific, mitigation-related advice.

133. The Panel notes the serious harm households have suffered due to their emergency evacuation and their many years in temporary accommodations. The Panel has learned that most of these households have received – albeit after significant delays – plot deeds in New Shkabaj, thereby offering them the opportunity to join others from the original Hade Village should they have the interest and means to do this. The Panel also draws attention to Management's statement in response to the emergency evacuation that the ESIA under preparation for the proposed KPP will treat the mine required for KRPP as a related activity and will examine relevant issues.

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<sup>147</sup> Loc. cit. The Panel wishes to clarify that information provided in the Management Response is in the context of number of families, and this updated information refers to plot deeds.

## Chapter 5: The Resettlement Policy Framework

### A. Introduction

134. This chapter first discusses application of the Bank's OP/BP 4.12 on Involuntary Resettlement to the LPTAP, under which the RPF and the RAP for the Shala neighborhood of Hade Village were financed by the Bank. It then addresses whether the RPF, which applies to the New Mining Field and covers current and possible future resettlement, was the correct instrument in this specific context. The chapter assesses whether the RPF is adequate and in compliance with the Policy. It also discusses the RPF in relation to the Zone, analyzed in Chapter 3 above.

### B. Requesters' Claims

135. The Annex to the Request argues the Bank and Government have selected the wrong resettlement policy instrument. It states that Bank Policy requires preparation of a RAP whereas preparation of a RPF is permitted only in special circumstances; a RPF is used for sector investment or financial intermediary operations and the more comprehensive RAP is intended for discrete infrastructure projects.<sup>148</sup> It argues the KPP is a single project at a single site with a single concessionaire and requires a full RAP before appraisal and *"not the Kosovo RPF and with the Shala RAP as an example that should be used for the displacement of thousands of future Kosovars."*<sup>149</sup>

136. The Annex contends the Bank has overestimated the institutional capacities of those responsible for resettlement implementation.<sup>150</sup> It claims the quality and comprehensiveness of the RPF falls far short of those developed by other Bank projects in the region.<sup>151</sup>

### C. Management Response

137. Management says the policy objectives of OP/BP 4.12 are addressed explicitly or implicitly in the RPF for the New Mining Field, as well as in the Shala RAP. It also asserts that any RAPs prepared under the RPF will achieve such objectives.<sup>152</sup>

138. The Response states that in this particular case the general area of the New Mining Field may have been established, but the exact location and timing of mine expansion requiring land-take and resettlement over the following decades remain unknown. According to Management the Government has committed to using the RPF for resettlement within the New Mining Field and in the preparation of specific RAPs for subsequent resettlement events. The RPF explains that site-specific RAPs are required for any new land-take that generates resettlement, once such resettlement has been defined and the affected area is known. The Response adds that the ESIA for the proposed, new plant will study the mining development alternatives over the next 30 years and is analyzing environmental and social impacts as well as the mitigation and monitoring measures of mine development alternatives.

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<sup>148</sup> Annex to the Request, pp. 17-19.

<sup>149</sup> Ibid., p. 19.

<sup>150</sup> Ibid., p. 36.

<sup>151</sup> Ibid., p. 18.

<sup>152</sup> Management Response, p. 30.

139. Regarding the claim that the Bank has overestimated the institutional capacities of those responsible for implementing resettlement in Kosovo, the Response explains that the Bank has recognized weak capacity and sought to address it through specific activities. This includes a 2014 Workshop on International Good Practices on Resettlement for 25 key staff of relevant ministries and Obiliq Municipality, a 2014 three-day workshop for 30 KEK and MESP staff including a study tour to Germany, as well as a two-week practical training course on Land Acquisition, Resettlement, and Social Sustainability in the Netherlands in 2015, which included five participants from Kosovo.<sup>153</sup>

140. The Management Response recognizes the RPF could be strengthened in certain areas, but argues this did not contribute to the harm alleged by the Requesters. Management says the Bank's support has helped address and mitigate adverse impacts of mining activities even though these do not result from Bank-financed projects.<sup>154</sup> The Response explains that due to the removal of mine expansion from the proposed KPP, the RPF must be updated to assign institutional responsibilities clearly.<sup>155</sup> It further refers to the Good Practices Workshop, which found that *"many aspects in the RPF Entitlement Matrix are working properly, but that some aspects may need to be reviewed and re-assessed in the monitoring program and further resettlement planning, such as: i) issues related to agriculture-based livelihoods must be better assessed and mitigated; ii) temporary relocation must be avoided and the rental allowance criteria must be clarified; iii) responsibilities for infrastructure and services at the resettlement site need to be clarified; and iv) impacts on those remaining in areas where people are being displaced should be better considered. It was recommended therefore to [...] consider an update to the RPF accordingly."*<sup>156</sup>

141. The Response also explains that, if the Bank decides to support the KPP, it would require *"in addition to any measures described in the ESIA: (i) sufficient provisions are in place to finance potential resettlement associated with the proposed KRPP and related activities; (ii) an updated RPF is prepared based on lessons from the Shala RAP and the ESIA analysis; (iii) RAPs are prepared and implemented for the affected villages/neighborhoods sufficiently in advance of any mining activities impacting such villages/neighborhoods; and (iv) the economic analysis of the proposed KRPP includes the cost of resettlement activities."*<sup>157</sup>

#### **D. Bank Policy Requirements**

142. Bank Policy OP/BP 4.12 on Involuntary Resettlement introduces different resettlement planning instruments.<sup>158</sup> According to the Policy a RPF must be prepared during project

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<sup>153</sup> Management Response, p. 62.

<sup>154</sup> Ibid., p. 18.

<sup>155</sup> Ibid., pp. 9-10.

<sup>156</sup> Ibid., pp. 50-51. Also, "[i]nternational experts and the Bank highlighted the urgent need to clearly define a longer term planning horizon for the land acquisition and resettlement required for mine expansion. Based on international practices, it was recommended that RAPs be prepared in accordance with multi-year mine plans and that they should envision adequate timelines between planning, commencement (and associated cut-off date) and actual move. Interdiction cut-offs (no residence, land transactions or changes to existing structures allowed after a certain deadline) could be declared in coherence with the RAP time frame. Once such a planning scheme has been discussed and agreed with relevant parties, it should be reflected in a revision to the RPF." Ibid., pp. 42-43.

<sup>157</sup> Ibid., pp. 17-18.

<sup>158</sup> OP 4.12, para 17.

preparation for sector investment operations or financial intermediary operations that may involve involuntary resettlement, and for operations with subprojects that may require involuntary resettlement where project impacts and precise locations are unknown.<sup>159</sup> Annex A of OP 4.12 states an RPF must include, inter alia, the estimated population displacement, likely categories of displaced persons, and methods of valuing affected assets.<sup>160</sup>

## E. Panel Analysis and Findings

143. The RPF was prepared under the Bank-financed LPTAP and a version was appended to the SESA, dated April 2008. This draft was later revised and promulgated by the Kosovo Assembly in October 2011.<sup>161</sup> The RPF applies to the New Mining Field and covers current and future resettlement. It requires a RAP for each individual resettlement event.

144. **Choice of Resettlement Instrument.** Mining projects tend to have an incremental nature, as described in the MIDR section of Chapter 2 above. According to the Panel's expert it is common for a MIDR to prepare a series of RAPs, one for each resettlement event, as a mine expands. The delays and changes to the size and technology of the KRPP compounded the typical legal and financial uncertainties described in Chapter 2 and rendered its future lignite demand, and consequently its mining plans, less clear. The Panel understands that the combined effects of these variables made it unfeasible at the time to produce a comprehensive RAP covering the entire New Mining Field, or the upfront preparation of several, individual RAPs covering future resettlement events in addition to Shala. The 2005 Main Mining Plan included a substantial section on resettlement which attempted to outline and cost out all the elements needed for resettlement through 2038, but this was not intended as a RAP. It based its estimates on approximate numbers of affected households and population and relied upon aerial photographs and admittedly outdated cadastral records. The 2005 Main Mining Plan noted that "[a]ccording to the development of the opencast mine, it will not be necessary to resettle the villages at the same time and to only one site. A possible option could be to perform resettlement in several stages which has to be adjusted to the real opencast mine advance."<sup>162</sup>

145. The most recent comprehensive guidance on resettlement – the 2015 *Land Access and Resettlement: A Guide to Best Practice* – discusses at length the advantages and disadvantages of life-of-project versus phased land-take approaches.<sup>163</sup> The main disincentives to acquiring all potentially required land upfront are the major costs imposed at a stage where the project is not yet earning revenue, and the logistical challenges of resettling thousands of people all at once, especially for land which may lie fallow for long periods before the project is ready to mine it. Taking land prematurely prevents its more productive, interim use for farming, etc. Also, resettled people who see their former lands going unused by the mine may question the timing of their removal. Furthermore, if the project is canceled or plans change, all the land taken may not be needed. On the other hand, there could be commercial reasons for acquiring all project land at the outset, if possible, because land prices commonly increase over time and

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<sup>159</sup> OP 4.12, para 26 – 30.

<sup>160</sup> OP 4.12, Annex A, para 24, sub-points d and g.

<sup>161</sup> The World Bank cleared the revised RAP in March 2013. The revised version removed background and contextual sections and updated some of the language, but most of the RPF was retained. It was then issued in 2011 with “for Land Acquisition for the New Mining Field Zone” added to its title. The date of the Decision 10/22 was July 6, 2011.

<sup>162</sup> Main Mining Plan, p. 235.

<sup>163</sup> G. Reddy, E. Smyth, M. Steyn, *Land Access and Resettlement. A Guide to Best Practice*, Sheffield, Greenleaf Publishing, 2015, pp. 50-52 and 138-139.

surrounding populations grow, thus inflating the eventual costs of land acquisition when compared with early purchase, especially when speculators take interest. The Panel notes that a desire to control cost escalation and speculation may have motivated the declaration of the Zone. The *Guide* does not prescribe either approach to land acquisition, as both are practiced, but cautions project proponents to consider all aspects when making decisions.

146. The Panel considers the decision to produce a RPF, to be supported by individual RAPs as additional land is required for mining expansion, is reasonable in the specific context of the New Mining Field and in line with international mining practice. As additional land is needed for mining, funds must be raised for its acquisition, including the costs associated with any required resettlement. The Panel emphasizes that the key to managing this successfully is to have sufficiently advanced planning, as Bank Management foresees for the ESIA: “*The ESIA for the proposed KRPP will study the mining development alternatives in terms of scale, locations and phasing over the next 30 years. The ESIA is also analyzing environmental and social impacts, mitigation and monitoring measures of mine development alternatives.*”<sup>164</sup> The Panel notes that early and continuous consultations are also crucial to keeping potentially affected people informed about and engaged in developments at all stages of mine expansion.

147. **Panel Finding. The Panel finds the LPTAP approach of preparing a RPF and subsequently preparing RAPs for each affected site are appropriate and in compliance with OP/BP 4.12 on Involuntary Resettlement.** This is due to the nature of mining exploration, where exact location and timeframe of future mine expansion cannot always be determined years in advance. The Panel emphasizes the importance of preparing a mining plan which facilitates resettlement planning at least three years prior to any needed relocation.

148. **Application of OP/BP 4.12 on Involuntary Resettlement.** The World Bank under the LPTAP prepared two key, resettlement instruments – the RPF and the Shala RAP. Bank documents show that OP/BP 4.12 was not applied to the LPTAP.<sup>165</sup> The Management Response argues that “[a]ll the objectives of OP 4.12 are addressed explicitly or implicitly in the Resettlement Policy Framework (RPF) for the New Mining Field and any Resettlement Action Plans (RAPs) prepared under the RPF are required to operationalize and achieve such objectives.”<sup>166</sup>

149. The Panel notes that while the LPTAP and CLRP-SAF did not cause resettlement, the RPF and RAP have major social impacts as the RPF guides future resettlement in the New Mining Field and the RAP was used in the specific case of the Shala resettlement and was meant to serve as a model for future resettlement.<sup>167</sup> Applying OP/BP 4.12 would have given clear, detailed guidance and would have required that the Bank ensure all procedural and substantive provisions are followed. The Panel notes that striving to meet the objectives of the Policy without applying the Policy in its entirety may lead to oversights and resulting shortcomings. In its review of the RPF and the Shala RAP the Panel found instances of non-compliance with OP/BP 4.12 leading to harm or potential harm, as discussed below.

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<sup>164</sup> Management Response, p. 56.

<sup>165</sup> LPTAP PAD, p. 19.

<sup>166</sup> Management Response, p. 38. The Panel notes that, despite not triggering the policy, the Bank’s LPTAP Implementation Status & Results Reports rate the Project as satisfactory with regards to OP/BP 4.12 compliance. (see, for example, ISR 7).

<sup>167</sup> KEK, Shala RAP, p. 16.

150. The Panel also wishes to highlight the Bank's 2014 *Interim Guidelines on the Application of Safeguard Policies to Technical Assistance (TA) Activities in Bank-Financed Projects and Trust Funds Administered by the Bank*.<sup>168</sup> Although these Guidelines did not exist when the two resettlement instruments were prepared, they are relevant as they convey an understanding of how and why TA activities can have significant social and environmental impacts. The Guidelines state "*TA activities (...) irrespective of their sources of financing and whether they are stand-alone or as part of an investment operation, should be reviewed for their potential environmental and social implications, risk and impacts and [are] therefore, subject to Bank safeguard policies when applicable*".<sup>169</sup> The Guidelines further state that while most TA activities have no direct adverse environmental or social impacts, the outcomes of TA support may nevertheless have "*significant environmental and social implications going forward, entailing risks and potentially inducing adverse impacts*."<sup>170</sup>

151. The Panel considers important the concerns raised in the Request related to the resettlement instruments and their application and adequacy. The Panel agrees with the Requesters that the LPTAP supported the drafting of the RPF and the Shala RAP, both of which have significant social consequences. The Panel believes OP/BP 4.12, which sets the required standards with respect to involuntary resettlement, could have provided guidance to avoid and mitigate impacts. Financing resettlement instruments under the LPTAP presented genuine social risks and impacts in Kosovo's low-capacity, institutional environment. The Panel acknowledges Management's argument that the LPTAP, being a technical assistance project, did not itself result in land-take. However, the LPTAP's resettlement-related outputs, when implemented, led to significant, downstream social impacts, such as major delays in the resettlement process. Application of OP/BP 4.12 would have facilitated clear understanding of the Bank's responsibilities *vis-à-vis* the preparation, acceptability, and supervision of these outputs.

152. The Panel notes both the RPF and the Shala RAP have significant social impacts on the population living in the New Mining Field. Therefore these instruments should have been prepared in compliance with OP/BP 4.12 to ensure proper identification and mitigation of adverse impacts.<sup>171</sup>

153. **Adequacy of the RPF.** Annex A of OP 4.12 on Involuntary Resettlement prescribes the elements comprising a RPF.<sup>172</sup> Some are adequately addressed in the present RPF – namely, descriptions of principles and objectives, the process for preparing and approving RAPs, eligibility criteria, and grievance redress mechanisms. However, measures for consulting with and ensuring participation of displaced persons are inadequately covered in the RPF. Although it details the need for consultation, the RPF views it as a passive, information-sharing and agreement process, rather than an active, participatory process that involves displaced persons in the planning and monitoring of their resettlement.

154. The RPF also lacks an estimate of the population likely to be affected. Moreover, the Panel believes the RPF should have required that potentially affected communities be informed

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<sup>168</sup> Interim Guidelines on the Application of Safeguard Policies to Technical Assistance (TA) Activities in Bank Financed Projects and Trust Funds Administered by the Bank, dated January 2014.

<sup>169</sup> Interim Guidelines on the Application of Safeguard Policies to Technical Assistance, para 1.

<sup>170</sup> Ibid., para 3.

<sup>171</sup> The adequacy of both documents and any compliance with OP/BP 4.12 is discussed below in this chapter, in Chapter 6, and in Annex 2.

<sup>172</sup> World Bank, *OP 4.12 Annex A – Involuntary Resettlement Instruments*, pp. 4-5.



about mining plans, told when these change, and given maximum notice of intended resettlement. Monitoring and evaluation is another weak element of the RPF. The document lacks a specific framework comparing the laws of Kosovo with the Bank's Policy requirements, appropriate methods for valuing affected assets, and a description of the resettlement implementation process, including arrangements for civil works, funding arrangements, and contingency measures. Overall, given the Policy objective of restoring livelihoods, the Panel believes such RPF omissions constitute a shortcoming that could lead to social impacts on residents in the New Mining Field, especially the most vulnerable displaced people for whom Bank Policy requires special assistance.

155. **The RPF and the Zone.** With reference to Chapter 3 above, the Panel notes the RPF mentions neither the Zone nor its restrictions or effects on those living within the New Mining Field. The Panel believes the RPF should have analyzed the Zone and its impact on communities living under its restrictions. The RPF also provides generic advice by linking asset valuation to cutoff dates imposed when a RAP is developed. The Panel believes RPF preparation should have included a comprehensive diagnosis of the area and provided a valuation methodology suitable to the restrictions imposed by the Zone.

156. **Panel Finding. The Panel finds Management in non-compliance for failing to apply OP/BP 4.12 on Involuntary Resettlement to the preparation of the RPF, and specifically for not including in the RPF principles and methods for valuing the assets of affected people living under the restrictions of the Zone of Special Economic Interest.**

157. The Panel recognizes the Response has committed to update the RPF based on identified shortcomings and changed conditions. The Panel expects the proposed, updated RPF will examine resettlement impacts in the context of Zone restrictions.



*Figure 7: Sibovc South Mine and settlements*

## Chapter 6: The Shala Resettlement

### A. Introduction

158. This chapter assesses the adequacy of the Shala RAP against requirements of OP/BP 4.12 on Involuntary Resettlement.<sup>173</sup> This RAP applies to the Shala neighborhood of Hade village where mine expansion required the physical resettlement of 63 households (320 fulltime residents), and acquired land and assets belonging to 30 nonresident households.<sup>174</sup> It also examines compliance of the Bank's supervision of the implementation of the Shala RAP under the CLRP-SAF against OP/BP 4.12.

### B. Requesters' Claims

159. The Requesters claim they are suffering loss of land, livelihoods, and wellbeing. The Request alleges that Bank non-compliance with its own policies exacerbated social and economic risks borne by Shala residents by designing and implementing involuntary resettlement that sidestepped required planning and due diligence. They further assert that parts of their community was forcefully displaced by a RAP that is non-compliant with international standards and Bank Policies. According to the Request *"the Bank's concealment of this noncompliance"* created a false certainty in the Government that the RAP conformed to international standards.

160. The Annex to the Request claims a failure *"to address the livelihood improvement and restoration objectives in the model involuntary resettlement at Shala neighborhood in Hade"*<sup>175</sup>. The Annex argues that cash compensation substituted for restoration of livelihoods and living standards, that there were no baseline data or targets to assess whether livelihood and living standards have been restored or improved, and no monitoring and evaluation of the process.

161. During the Panel's field visit the Requesters expressed concern about the vague institutional responsibilities and roles, which they believe delayed resettlement. They complained that almost four years after the start of the resettlement process they still lack a viable resettlement site with functioning infrastructure. The Requesters were particularly concerned about sewerage, water, and electricity services. They showed the Panel team houses which at the time had to get electricity and water from neighbors due to lack of connectivity. They claimed improper design of the sewerage system had led to clogging and leakage. The Requesters also mentioned the poor condition of secondary roads at the resettlement site. They argued that resettlement failed to fulfill terms of the Tripartite Agreement signed by the affected community and MESP in 2011, and in the RAP.

162. The Requesters further explained that due to delays in preparing the resettlement site and the commencement of mining activities close to their houses, they were temporarily resettled and provided emergency rent and food assistance. However, this arrangement was terminated before all contractual conditions were met. They also complained about the absence

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<sup>173</sup> The Panel discussed the application of OP/BP 4.12 on Involuntary Resettlement to LPTAP in Chapter 5 and found Management in non-compliance for failing to apply it.

<sup>174</sup> RAP, p. 1.

<sup>175</sup> Annex to the Request, p. 28. For more analysis on the Improvement of Livelihoods and Living Standards, see pp. 27-36.

of livelihood restoration measures, inadequate information and consultation, and the lack of a functioning grievance redress mechanism.

### C. Management Response

163. Management's Response disagrees that preparation of the Shala RAP circumvented required planning. According to Management the RAP was based on the required due diligence and conducted with support from an internationally recognized resettlement firm. The Response says the RAP was prepared in line with the RPF and through comprehensive consultations with affected families. It adds that the RAP provided for compensation to adversely affected people, including those who constructed illegal structures after the Zone was established in 2004. Management agrees temporary resettlement is not a recommended practice, but says it does not constitute policy non-compliance with OP/BP 4.12.

164. Management further argues the RAP has clear, livelihood restoration objectives and supervision and monitoring has revealed no homelessness or loss of employment caused by the resettlement; rather, living conditions have improved. The Response says no households had reported earning income from agricultural activities and no specific cases were identified requiring vulnerability assistance. Furthermore, Management observes that the Shala Resettlement Completion Report would assess the need for additional livelihood restoration measures, and document evidence of livelihood restoration.<sup>176</sup> Management also confirms that most household heads have permanent jobs, predominantly at KEK.<sup>177</sup>

165. The Response claims that since no resettlement resulted from a Bank-supported project the Bank had no obligation to supervise the RAP or its applications. According to Management the Government asked the Bank to finance external monitoring of the Shala RAP implementation under the CLRP-SAF. The Bank is therefore supervising its implementation and monitoring, even though the resettlement was not caused by a Bank-financed project.<sup>178</sup> The Response disagrees with the charge that the Bank had "*concealed*" its noncompliance; on the contrary, Bank supervision of the RAP implementation has promoted transparency of issues emerging during implementation, and has ensured these issues are communicated to the Government. The Response said Bank resettlement specialists conducted regular support and supervision visits (13 between 2012 and 2015) and the Bank visited the resettlement site at least 11 times to monitor progress of infrastructure and home building.

166. The Response explains that basic infrastructure (main road, water, sewerage system, and electricity connections) was completed in December 2013 and accepted by the Verification Committee. Although the resettlement site was not yet connected to the main sewerage system at that time this was resolved in April 2014. Pending issues as of July 2015 included sewerage problems affecting three households, the need to connect the site to an electricity substation to service future resettlement, water connections for the plots of the 2004/05 evacuees should they decide to start building houses, and a long-term agreement with the local school to accommodate the children of future resettlement before a school is constructed at the resettlement site.<sup>179</sup> Moreover, Management says the secondary roads will be finished once the construction activities for the houses are completed.<sup>180</sup>

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<sup>176</sup> Management Response, p. 51.

<sup>177</sup> Ibid., p. 11.

<sup>178</sup> Ibid., p. 9.

<sup>179</sup> Ibid., p. 54.

<sup>180</sup> Ibid., p. 12.

167. Management acknowledges the Shala RAP implementation experience revealed the need to improve future RAPs by clarifying the entitlement matrix, presenting clearer resettlement timelines, and making a more detailed assessment of the Government's implementation capacity.

#### **D. Bank Policy Requirements**

168. Bank Policy OP/BP 4.12 on Involuntary Resettlement states that the livelihoods and standards of living of displaced persons should be improved or at least restored to pre-displacement levels or those before project implementation, whichever is higher.<sup>181</sup>

169. The Policy's Annex A states the scope and detail of the resettlement plan varies with the size and complexity of resettlement, and lays out the elements contained in a resettlement plan. One of these elements relates to the organizational framework for implementing resettlement. This includes identifying the agencies responsible for meeting resettlement needs, ensuring appropriate coordination between agencies and jurisdictions involved in implementation, and measures to strengthen the implementing agencies' capacity to design and carry out resettlement activities. Another element is a schedule of all resettlement activities from preparation through implementation, including target dates for the achievement of expected benefits.<sup>182</sup>

170. OP/BP 4.12 explains it is the Borrower's responsibility to carry out adequate monitoring and evaluation of the resettlement instrument's activities. The Bank is obligated to supervise resettlement implementation to assess its compliance with the resettlement instrument.<sup>183</sup>

#### **E. Panel Analysis and Findings**

171. The 2011 Shala RAP was prepared by a resettlement consulting firm and was financed by the Bank under the LPTAP. The RAP was intended to serve as a model RAP for future resettlement in the area.

172. The Panel notes there were severe delays in preparing the resettlement site and providing basic infrastructure. (These delays are also discussed below under Monitoring and Supervision of the Shala Resettlement). While such delays were partly due to challenges in the transfer of land titles from UNMIK to the new Government, they are also attributable to the Shala RAP and its implementation. The Panel identified certain shortcomings of the Shala RAP, some of which likely did not cause harm. Discussed below are those that caused harm to the community, particularly by adding to delays. The subject of livelihoods is also discussed below given its central importance in OP/BP 4.12 and the claims made by the Requesters.

173. **Institutional Arrangements and Capacity.** The RAP describes in general terms the institutional arrangements and responsibilities for resettlement preparation and implementation. The Hade Project Office of the Ministry of Environment and Spatial Planning (MESP) was to lead, in cooperation with KEK and in consultation with affected households, the day-to-day management of the resettlement program and the preparation of the RAP. KEK was

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<sup>181</sup> OP 4.12, para 2c.

<sup>182</sup> OP 4.12, Annex A, para 2.

<sup>183</sup> OP 4.12, para 24.

responsible for implementing the RAP with assistance from the Hade Project Office. All major decisions regarding compensation and relocation were to be reviewed by an inter-ministerial commission including KEK, the MESP, the Ministry of Finance, and Obiliq Municipality.

174. During its field visit the Panel observed ambiguity regarding institutional responsibility and division of roles among the MESP, KEK, and the Obiliq Municipality for addressing different aspects of resettlement implementation, which likely contributed to the delays in preparing basic infrastructure at the resettlement site. The Panel also notes the RAP does not assess the resettlement capacity and experience of the implementing agency. At the same time the Panel recognizes certain capacity development activities were supported by the Bank, such as the workshops mentioned in Chapter 5 above.



*Figure 8: Panel Team and Requesters at New Shkabaj resettlement site*

175. **Schedule and Infrastructure.** The Shala RAP mentions no dates for implementing the resettlement program beyond the commencement of site preparation in December 2011. The Panel believes it should have contained a clear and specific timeline for implementing and completing all resettlement activities to ensure proper planning and implementation; this might have helped avoid or manage delays in providing basic infrastructure at the resettlement site.

176. The RAP states infrastructure facilities (such as school and kindergarten, health center, mosque, cemetery, public open spaces, and parks) will be constructed in phases and will adequately serve the community at full build-out of the resettlement site.<sup>184</sup> However, the Panel observed during its field visit that the community did not have a clear understanding of when and what type of infrastructure will be available. Some community members told the Panel team they expected to have a school, kindergarten, clinic, mosque, cemetery, and recreational areas at the outset, as shown in images from the 2006 Urban Regulatory Plan used in consultations to depict how New Shkabaj would eventually look like. Records of consultation meetings during RAP preparation indicate Project proponents explained New Shkabaj would

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<sup>184</sup> KEK, Shala RAP, p. 53.



be a phased development. The Panel notes the records of consultations are insufficiently detailed to demonstrate that enough effort went into explaining what the phased development concept meant and when the different features of the proposed plan would become available. It appears this has confused and frustrated the community.

177. **Temporary Resettlement.** The Panel notes that temporary resettlement is not recommended in any resettlement situation except disaster relief. This may have been the case for the 2004/05 emergency evacuation (which is not linked to the Bank) and partially in the Shala resettlement, as 21 households were asked by KEK to relocate in January 2012 due to safety concerns.<sup>185</sup> However, the possibility of temporary resettlement was anticipated in the Shala RAP preparation process, since such discussions were held with community members for more than a year. This process included interviews with individual households about what arrangements they would prefer should temporary resettlement be required.<sup>186</sup> See the supervision section of this chapter (below) for further discussion of temporary resettlement, particularly issues with the payment of rental allowances.



Figure 9: Houses at New Shkabaj resettlement site

178. **Livelihood Restoration.** The RPF required subsequent RAPs to include programs for training and institutional development for the affected population, and budgets for implementation.<sup>187</sup> The Shala RAP describes livelihood restoration as “[p]rograms that will provide Project Affected Households with a viable opportunity to restore their livelihoods to pre-Project levels”.<sup>188</sup> It states project affected households generally derive their livelihoods from employment, casual labor, government and family support, and complementary subsistence agricultural activities. The RAP’s Entitlement Matrix, in addition to requiring loss of businesses or employment be monetarily compensated, also states that eligible PAPs are entitled to participate in livelihood restoration and assistance programs. The RAP provides

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<sup>185</sup> Monitoring Report #1, April 2014, p. 2.

<sup>186</sup> KEK, Shala RAP, p. 50.

<sup>187</sup> RPF, p. 22.

<sup>188</sup> KEK, Shala RAP, p. v.

objectives of the Livelihood Restoration and Community Development initiatives, and states such activities will be developed in consultation with project affected households.<sup>189</sup>

179. Lack of livelihood and income restoration measures was a deficiency highlighted in the first monitoring report during the implementation of the RAP. The second monitoring report provides an update on the 20 additional jobs provided by KEK but it does not report on any other livelihood activities.<sup>190</sup> Furthermore, while Bank supervision documents follow-up on services and infrastructure issues related to the resettlement site and sought remedies for rental allowance stoppage, they do not report on the RAP's proposed Livelihood Restoration and Community Development Program. The Panel therefore concludes that such a program was not developed as foreseen, and this requirement of the RAP was not followed-up on by Bank Management.

180. The Final Completion Report of the Shala RAP states that the overall population of both physically and economically displaced households shows higher rates of employment and improved livelihood conditions than before their resettlement.<sup>191</sup> According to this report two out of three (65.6 percent) of heads of households were employed, and four out of five of these are employed by KEK (80.9 percent). It also states that less than two out of ten households (18.8 percent) described themselves as unemployed and in search of a job.<sup>192</sup> While the Panel understands there was significant unemployment before and after the resettlement, on balance it concludes that employment opportunities were positively influenced by the additional KEK jobs.

181. The Shala RAP states that a vulnerability risk assessment of individual project affected households was carried out prior to RAP preparation. This assessment confirmed there “*were no specific cases identified requiring specific vulnerability assistance*”.<sup>193</sup> The RAP cites data on household income levels, including for seven households with monthly incomes of less than €100.<sup>194</sup> The Panel also draws attention to the eleven female headed households reported in the 2011 baseline survey. The RAP does not mention these female headed households, and neither do the two monitoring reports, the Final Completion Report, or the Bank's supervision documents.

182. The Panel notes the RAP's statement that no households report earning income from agriculture activities, but that 66 (out of 93) households supplement their livelihoods with subsistence production, 10 households reported growing other crops, and six households raised livestock, some of which were grazed on land outside the designated Project area. Cash compensation was provided to those who lost agricultural land and there are indications that affected people have acquired additional farmland. The RAP stated KEK would provide landowners and tenants engaging in subsistence agriculture with access to alternative lands and resources sufficient to restore or improve livelihood activities but it provides no evidence of land availability or suitability.<sup>195</sup> The argument that the resettlement plots are large enough and suitable for growing household crops and rearing small livestock is important, although it is unclear whether this is full replacement for what was lost.

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<sup>189</sup> KEK, Shala RAP, p. 57.

<sup>190</sup> Monitoring Report #2, September 2014, p. 14.

<sup>191</sup> Final Completion Report, p. 37.

<sup>192</sup> Final Completion Report, p. 26.

<sup>193</sup> KEK, Op. cit., p. 12.

<sup>194</sup> Ibid., Table 3.4: Monthly household Income, p. 31.

<sup>195</sup> Ibid., p. 47.



183. **Panel Finding. The Panel finds Management in non-compliance for failing to apply OP/BP 4.12 on Involuntary Resettlement to the preparation of the Shala RAP, and for ambiguity in the Shala RAP about institutional arrangements and the absence of a detailed resettlement schedule.** The Panel believes this contributed to the significant delays experienced during resettlement. Community members remained in temporary status for a prolonged period which caused harm by perpetuating uncertainty about their future and disruption to their lives.

184. The Panel also notes as a shortcoming the Shala RAP's inattention to livelihood strategies for all affected households, including the most vulnerable and poorest households, especially given that this RAP is intended as a model for future resettlement in the New Mining Field. The Panel observes that the Livelihood Restoration and Community Development Program anticipated in the RAP was not developed, and notes the importance of the recommendation of the Final Completion Report that employment opportunities be complemented with other livelihood support activities in future resettlement events.

185. **Monitoring and Supervision of the Shala Resettlement.** Monitoring and evaluation and Bank supervision are keys to assessing whether a resettlement project is implemented successfully and what corrective measures may be required to deal with implementation challenges. They are also crucial for establishing whether a RAP has achieved its objectives. The CLRP-SAF, approved in May 2013, added a component to the Project giving the Bank responsibility for monitoring the Shala RAP implementation. A resettlement consulting firm was hired which produced two monitoring reports, one in April 2014 and another in September 2014, and prepared a Final Completion Report for the Shala resettlement in July 2016.



Figure 10: Sibovc South Mine and Hade village

186. The Shala RAP preamble states the “RAP is a working document and will be updated as progress is made during the planning, implementation and consultation processes.”<sup>196</sup> There is no evidence this has been done, except for the minor revision of some data in February 2013 when the document was disclosed under the CLRP-SAF.

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<sup>196</sup> KEK, Shala RAP, p. iv.

187. The consulting firm which developed the RAP, was meant to conduct the monitoring of the RAP implementation, but its contract ended in 2011 and was renewed only in October 2013.<sup>197</sup> The Panel notes the Bank considered a second, additional financing to the LPTAP in 2011, which could have included monitoring and supervision of the Shala RAP implementation. However, this additional financing did not proceed, thereby not allowing uninterrupted supervision.

188. The Panel notes the RAP monitoring reports of April and September 2014 are based on consultations, are comprehensive, and make clear recommendations. However, the absence of livelihood and income restoration measures was a major deficiency highlighted in both monitoring reports<sup>198</sup>. Further deficiencies emphasized in these reports include the lack of a functioning grievance mechanism and insufficiently documented stakeholder engagement, which may have contributed to the community's lack of knowledge about inadequacies in the resettlement process.

189. The list of recommendations from the second monitoring report, incorporating relevant recommendations from the first, is listed below (Box 10) as it sheds light on the RAP's weaknesses and where further efforts were required.

**Box 10: List of Recommendations from the Second Monitoring Report<sup>199</sup>**

1. Define the agency that will assume a leadership role in stakeholder engagement activities related to the Shala resettlement.
2. Strengthen disclosure to address questions and concerns related to the closure of the resettlement.
3. Improve documentation of stakeholder engagement activities.
4. Implement a formal grievance management mechanism.
5. Support the connection of the community electrical grid to the appropriate substation.
6. Advance final "non-essential" construction activities at New Shkabaj.
7. Derive lessons learned about the Shala resettlement process to inform a potential review of resettlement legislation, policy, and practice in Kosovo.
8. Develop and implement policies to promote the sustainability of the resettlement process and infrastructure.
9. Engage the community and municipal authorities to address concerns about safety of children en route to school.
10. Support the creation of a community organization in New Shkabaj that can oversee the implementation of future community projects.
11. Conduct a socio-economic survey of affected households at the conclusion of the relocation.
12. Although not included in the firm's monitoring contract for the Shala neighborhood, we recommend engaging the households displaced in 2004/05 regarding relocation to New Shkabaj.

190. All Shala households eventually moved to temporary accommodations while awaiting preparation of their resettlement plots. Most households decided on their own to move ahead of schedule due to mining-related disturbances, without the rental and living allowances paid

<sup>197</sup> Implementation Status and Results Report, No. 12, CLRP-SAF, August 21, 2013.

<sup>198</sup> Monitoring Report #1, April 2014, p. 3. "*Documented evidence is lacking regarding impacts to livelihoods and all ongoing or planned livelihoods restoration programs, a key consideration in the completion of a compliant resettlement process.*" It also states on p. 10 "*No quantitative data is available on the current livelihoods activities or income status of project affected households. Livelihoods restoration is a priority concern of the resettlement process.*" Monitoring Report #2 restates the need for gathering quantitative data on livelihood restoration.

<sup>199</sup> Monitoring Report #2, September 2014, pp. 15-16.

to the 21 families required to move in 2012 for safety reasons. The Panel notes these households had to pay rent for extended periods without assistance.

191. The Bank launched effective action when it discovered the rental payments to the 21 Shala households were stopped prematurely in violation of the Tripartite Agreement signed between the community and MESP. Assistance payments for those families, which continued for almost two years, ended before households accepted that the resettlement site was ready. This happened twice, in July 2013 and in December 2013. On both occasions the Bank took actions, including Threat of Suspension of disbursements for CLRP-SAF, to ensure retroactive resumption of payments.

192. Bank advice to the Government subsequent to the Shala RAP has consistently emphasized the need for advance planning to avoid the unnecessary complications of temporary displacement in future resettlements.

193. Another recurring theme in the Bank's supervision reports is the lack of a functioning grievance management system. The system described in the Shala RAP was not maintained once the approximately 50 grievances pertaining to compensation valuation were resolved. The Bank has formally raised this deficiency with the Government through correspondence and through the two RAP monitoring reports.

**194. Panel Finding. The Panel finds monitoring and supervision after the Bank's re-engagement with the resettlement process under CLRP-SAF to be in compliance with OP/BP 4.12 on Involuntary Resettlement.**

195. The Panel notes, as indicated above, the significant delays in preparing the resettlement site and the harm this caused the affected community, including their prolonged stay in temporary accommodations. Bearing in mind the capacity constraints of the implementing agency and the Borrower, the lengthy delay in contracting a firm to monitor the Shala RAP implementation may have compromised the Bank's ability to recommend solutions to the Government at a critical stage. Earlier monitoring could have reduced delays and supported essential work on livelihood enhancement programs, community development, and grievance redress at the onset of the resettlement process.

## **Chapter 7: Concluding Observations**

### **A. Introduction**

196. The complaints by members of the Hade community must be considered and understood in the context of significant developments and great uncertainty on several fronts over the years, domestically in Kosovo and in the broader regional and international contexts. All actors have faced highly challenging situations of both immediate and longer term natures.

197. Such conditions primarily include the evolution of Kosovo during the 1998-1999 period of conflict, the post-conflict administration by UNMIK beginning in 1999, and the period since Kosovo's declaration of independence from Serbia in 2008. This process of "nation building" has endured turmoil, uncertainty, capacity constraints, and dated practices, all of which had major impact on the operation and expansion of the energy sector in general, and the Sibovc mine in particular. Add to this the condition of the aging power plants and mining machinery which lacked financial resources for required maintenance and replacement due to various factors, including the perceived political need to keep electricity prices low. Shortages of electricity, especially in winter, repeatedly led to critical situations with load shedding and dependence on very expensive imports.

198. Specific developments and trends affecting Kosovo's energy sector during this period include the global financial picture which prevented private funding at the level anticipated at an earlier stage. This contributed to major delays and adjustments of plans, such as the reversal of the decision to privatize the mine when investor interest did not materialize. Also, compared with preexisting practices, the bar was significantly raised for social and environmental aspects of mining and electricity generation such as involuntary resettlement, climate change, and public health considerations.

### **B. Harm**

199. The harm inflicted on the people of Hade is at the center of this Report. The Panel finds the complaints from members of Hade Village deal with genuine harm caused by the mining operation and the actual or planned expansion of the Sibovc mine in their immediate vicinity. This harm affected people evacuated in 2004/05, others resettled in 2012, and those who remained in Hade. It also extends to people living in other municipalities of the Zone whose lives and development have been constrained for a long period due to zoning regulations. The many delays experienced during the execution of various plans have undeniably been and remain consequential for the affected population, as they have protracted the hardships imposed.

200. Attribution of harm to specific actors or practices in Kosovo would be complex. Clearly the pre-existing practices of appropriating land and property, as well as institutional capacity and financial resource constraints, created an unfavorable framework. Capacity constraints have certainly contributed to harm through weak mine planning and resettlement practices, and slow execution of various plans. However, as mentioned above, the Panel's review is limited (per its mandate) to the accountability of the Bank in relation to its policies.

### **C. World Bank Involvement in Kosovo's Energy Sector Over a 15-year Period**

201. The role of the Bank has evolved since its first engagement with Kosovo in 2001. There have been many Bank interventions aimed at securing an increased and more reliable supply of electricity, for the most part ultimately geared towards the proposed KPP. In the process, the Bank has emerged as a prominent, energy sector advisor to successive Kosovar Governments.

202. While these many Bank projects occurred over 15 years, and may therefore seem piecemeal, taken together they reflect remarkable consistency. The fundamental principles established early on and adhered to throughout have been (i) Kosovo's reliance on lignite resources to meet its energy demands and (ii) the effort to privatize the sector with a view to bringing in capital and international best practices. With the benefit of hindsight, and hardly surprising given the timeframe and a markedly evolving situation, there are examples of course corrections due to flawed assumptions or unanticipated developments. For example, the ambition to privatize the Sibovc mine turned out to be unrealistic. Earlier aspirations for much larger energy-generation capacity, including for export, were amended. Capacity issues and course corrections delayed timelines considerably.

203. The Panel believes that without Bank involvement Kosovo's national capacity to deal with social and environmental aspects of mining operations would have been less developed, causing greater harm for the affected people. Noteworthy Bank contributions include enhanced institutional capacities, specific documents related to energy and mining sector strategies, frameworks for private sector investments, and sector regulations and policies. Other significant outputs include mine and power plant analysis, safeguards instruments such as the RPF and the Shala RAP, and the ESIA for the proposed new power plant (yet to be released following repeated and major delays). Added to these are the removal of Kosovo A's hazardous ash dump, cleanup of the Kosovo A gasification site, building capacity for cleanup and environmentally good mining practices, and air, soil, and water monitoring.

204. In more recent projects the Bank and other development partners have also focused on assisting Kosovo with energy efficiency measures and energy alternatives. According to some observers, especially from the civil society community, this is too little and too late. While of relevant contextual interest these efforts are, however, beyond the scope of this Investigation.

205. At the same time the Panel concludes that while the Bank has been prominent in the sector, there were occasions when it clearly could have opted to offer more advice to the Government on approaches to reduce harm caused to people by existing or planned mining operations. This Report identifies missed opportunities for the Bank to deploy its rich experiences. The most noteworthy examples relate to (i) the aftermath of the emergency evacuation and (ii) the ongoing, negative impact of the Zone restrictions. In neither of these situations was the Bank responsible for causing harm. But it could have done more to help the Government find ways to mitigate harm.

206. On a broader level this Report presents a case study of several positive actions taken to secure energy for the evolving needs of Kosovo while at the same time seeking to deal with harm or potential harm, especially regarding involuntary resettlement. It reveals this approach has been less than comprehensive and how the Bank at times strongly applied different levers to redress harm and at other times opted to remain on the sidelines, not engaging directly on certain issues, or doing so ineffectively. The fundamental question for the Bank is when to lead and how to avoid being a bystander when harm is present. It would appear that in Kosovo the

Bank has yet to achieve its full potential as a prominent player in the country's energy sector or bring to bear its considerable international experience with mining and resettlement.

207. Situations with pre-existing conditions – as explicitly referred to in the Management Response – are commonplace for the Bank and other development actors. The Bank in 2009 issued guidelines to address legacy issues.<sup>200</sup> The Panel notes that Bank engagement in Kosovo may not squarely fall into any one of the three types of legacy issues dealt with in these guidelines, but that such engagement does include essential aspects of each of them. Some issues have been approached over time and with success; others have not. The application of the guidelines would have offered opportunities for systematic analysis of risk, for reflection over events during the passage of time, and for deliberate decisions on tradeoffs with regard to Bank engagement. Even if performed today, such an analysis would be instructive. Indeed, the ESIA is potentially an important contribution given that the social and environmental legacies in the sector are real and severe.

#### **D. Looking Ahead**

208. The Management Response and staff interviews frequently reference the ESIA as a vehicle for dealing with harm to the affected population, including the legacy issues mentioned above. The Response specifically indicates that the ESIA will treat the Sibovc mine as a related activity to the KRPP. The Panel notes the opportunity for the Government, possibly with Bank support, to adjust the Zone's size and regulations, to improve the RPF, to resettle the households remaining in Hade, and to continue building institutional capacity. This presents prospects to redress harm caused to people in Hade and other communities, and to avoid or minimize any future harm caused by mine expansion.

209. The Panel expects the implementation of ESIA recommendations and the findings of this Report will contribute to the redress of harm caused over the years, and reduce risks of future harm caused by mine expansion.

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<sup>200</sup> Interim Guidelines for Addressing Legacy Issues in World Bank Projects, June 2009.

## Annex 1: Table of Findings

Issue	Panel Findings & Key Observations
<b>1: Zone of Special Economic Interest</b>	<p><b>The Panel finds the Bank was not involved in establishing the Zone of Special Economic Interest in 2004 and is therefore not responsible for the harm arising from it.</b></p> <p>The Panel notes Management’s statement that two Bank-financed studies informed the Government’s decision to expand the Zone in 2009. The Panel believes the size of the Zone where restrictions were applied far exceeded the recommendations of these studies.</p> <p>The Panel draws attention to the serious harm and difficult conditions experienced by the Requesters and others living in the Zone, and the severe effects such hardships have had on their lives over a prolonged period. Given such harm and the Bank’s prominent role as sector advisor to the Government, the Panel considers the failure to recommend solutions – such as a major reduction in the area of the Zone or introduction of asset valuation timing and methods – constitute missed opportunities on the part of the Bank to help address the harm in a timely manner. The Panel understands the Bank will assess the social impact of the Zone in the ESIA for the proposed KPP. Although the ESIA has been significantly delayed, it is expected to suggest appropriate remedies to these serious, longstanding, and still urgent legacy issues.</p>
<b>2: Hade Emergency Evacuation</b>	<p><b>The Panel finds the Bank was not involved in the 2004/05 emergency evacuation of a part of Hade Village, nor was it involved in the subsequent resettlement process, and thus is not responsible for the harm arising from it.</b> The Panel understands the evacuation decision was taken by UNMIK and resettlement was the responsibility of UNMIK, the PISG, and later the GoK.</p> <p>The Panel observes that since 2005 several Bank supervision missions documented the status of the evacuees and proposed the use of the Bank’s good offices, as did the Management Response, to find relief for these households. The Panel notes, however, that despite being aware and concerned the Bank provided no specific, mitigation-related advice.</p> <p>The Panel notes the serious harm households have suffered due to their emergency evacuation and their many years in temporary accommodations. The Panel has learned that most of these households have received – albeit after significant delays – plot deeds in New Shkabaj, thereby offering them the opportunity to join others from the original Hade Village should they have the interest and means to do this. The Panel also draws attention to Management’s statement in response to the emergency evacuation that the ESIA under preparation for the proposed KPP will treat the mine required for KRPP as a related activity and will examine relevant issues.</p>
<b>3: Resettle-ment Policy Framework</b>	<p><b>The Panel finds the LPTAP approach of preparing a RPF and subsequently preparing RAPs for each affected site are appropriate and in compliance with OP/BP 4.12 on Involuntary Resettlement.</b> This is due to the nature of mining exploration, where exact location and timeframe of future mine expansion cannot always be determined years in advance. The Panel emphasizes the importance of preparing a mining plan which facilitates resettlement planning at least three years prior to any needed relocation.</p>



	<p><b>The Panel finds Management in non-compliance for failing to apply OP/BP 4.12 on Involuntary Resettlement to the preparation of the RPF, and specifically for not including in the RPF principles and methods for valuing the assets of affected people living under the restrictions of the Zone of Special Economic Interest.</b></p> <p>The Panel notes that the RPF has significant social impacts on the population living in the New Mining Field. Compliance with OP/BP 4.12 was required to ensure proper identification and mitigation of adverse impacts.</p> <p>The Panel recognizes the commitment in the Management Response to update the RPF based on identified shortcomings and changed conditions. The Panel expects the proposed, updated RPF will examine resettlement impacts in the context of Zone restrictions.</p>
<b>4. Shala Resettlement</b>	<p><b>The Panel finds Management in non-compliance for failing to apply OP/BP 4.12 on Involuntary Resettlement to the preparation of the Shala RAP, and for ambiguity in the Shala RAP about institutional arrangements and the absence of a detailed resettlement schedule.</b> The Panel believes this contributed to the significant delays experienced during resettlement. Community members remained in temporary status for a prolonged period which caused harm by perpetuating uncertainty about their future and disruption to their lives.</p> <p>The Panel also notes as a shortcoming the Shala RAP's inattention to livelihood strategies for all affected households, including the most vulnerable and poorest households, especially given that this RAP is intended as a model for future resettlement in the New Mining Field. The Panel observes that the Livelihood Restoration and Community Development Program foreseen in the RAP was not developed, and notes the importance of the recommendation of the Final Completion Report that employment opportunities be complemented with other livelihood support activities in future resettlement events.</p> <p><b>The Panel finds monitoring and supervision after the Bank's re-engagement with the resettlement process under CLRP-SAF to be in compliance with OP/BP 4.12 on Involuntary Resettlement.</b></p> <p>The Panel notes the significant delays in preparing the resettlement site and the harm this caused the affected community, including their prolonged stay in temporary accommodations. Bearing in mind the capacity constraints of the implementing agency and the Borrower, the lengthy delay in contracting a firm to monitor the Shala RAP implementation may have compromised the Bank's ability to recommend solutions to the Government at a critical stage. Earlier monitoring could have reduced delays and supported essential work on livelihood enhancement programs, community development, and grievance redress at the onset of the resettlement process.</p>

## Annex 2: ESIA Commitments Noted in Management Response

Topic	Commitment	Page(s)
Mine Alternatives and Mitigation Measures	<p>The KPP ESIA includes analysis of mining alternatives in terms of scale, locations, and phasing over the next 30 years with the objective, inter alia, of enabling mining plans to avoid and minimize environmental and social impacts including resettlement or, if unavoidable, to provide information to support earlier planning of mitigation measures.</p> <p>Based on this information the previous estimates of total costs of resettlement can be updated and options studied if required.</p>	44, 56, 65
Lignite Needs	The KPP ESIA is analyzing the amount of lignite needed for current and proposed electricity production and the corresponding potential mining alternatives and possible development of mine contours. This will determine the needs and options for land acquisition and resettlement.	13, 25
2004/05 Emergency Displacement-Related Activity and Gap Analysis	For safeguard purposes the ESIA under preparation for KPP will treat the mine required for KRPP as a related activity, examine relevant issues, and undertake a gap analysis with Bank safeguard policies.	63
Shala Resettlement and Livelihood Restoration	The ESIA is assessing current resettlement practices and will recommend mitigation measures, as needed. Additionally the ESIA assessment of the current resettlement practices in Kosovo in the New Mining Field will include the experience with the Shala RAP and propose mitigation and monitoring measures.	51
RPF Updates	The ESIA for the proposed KPP is expected to provide recommendations to update and improve the existing RPF.	40
Institutional Capacity	Institutional capacities to deal with resettlement will be reviewed as part of the KPP ESIA and further mitigation measures will be recommended, as required.	63
Legal Framework	The ESIA is reviewing the country's applicable, legal framework and assessing relevant issues, including those from the establishment of the Zone of Special Economic Interest.	13
Consultation and Community Engagement	The KPP ESIA involves comprehensive consultations on behalf of the GoK with support from the ESIA consultants. The ESIA is including a Stakeholder Engagement Framework for future community engagement efforts, which should inform mining planning and help undertake the consultation process associated with future resettlements in a timelier manner.	48
Community Development Fund	The KPP ESIA and corresponding socio-economic survey will help design of the Community Development Fund (CDF) which will also integrate good international practice.	51

<b>Topic</b>	<b>Commitment</b>	<b>Page(s)</b>
Potential Village Impacts	In early 2014 the Bank learned of KEK's intention to expand the Sibovc Southwest Mine toward the village of Shipitulle. Since then the Bank has proactively urged the GoK to ensure that any future resettlement related to this expansion be conducted in accordance with the RPF. Other potential impacts on villages located near the mine – such as Hade, Shipitulle, and Grabovci I Poshtem – related to noise pollution, vibration, landslide risk, disruption of water resources, contaminated dust, damaged public infrastructure, etc. have been identified during Bank supervision missions and raised with the GoK. These impacts are also examined under the ESIA.	55
Mine Reclamation	The ESIA is preparing a set of conditions, requirements, and recommendations for the Mine Reclamation and Closure Plan for the Bardh and Mirash Mines, based on the existing Complementary Mining Plan for the Sibovc Southwest Mine, EU legislation, and Best Available Techniques Reference Documents.	68
Health Impacts	The ESIA will indicate health effects typically associated with pollutants related to lignite-fired power plants and other sources of air pollution. Incremental impacts of the proposed KPP and the effects of closing Kosovo A will be analyzed according to air quality standards as defined by the Ambient Air Quality Directive, which take into account World Health Organization standards. These analyses will help determine the reduction of short- and long-term mortality risks that Kosovo can achieve by reducing the concentration levels of ambient air pollution.	70
Buffer Zones	The issues of buffer zones and the impacts associated with mining operations near communities have been identified as major areas of focus of the KPP ESIA, which will provide information and analysis on such issues and identify mitigation and monitoring measures. The Bank acknowledges and has communicated to the GoK the importance of adequately managing this risk.	70

## **Annex 3: Biographies**

### **Panel Members**

**Gonzalo Castro de la Mata** was appointed to the Inspection Panel of the World Bank on December 16, 2013, and became its Chairman on November 1, 2014. He is a US and Peruvian national who brings to the Panel more than 20 years of international development experience. His career includes key roles across the private and public sectors and in several areas of development work, and adds a balance of interest, authority, experience, and flexibility. He has been involved in highly visible and complex international projects, including as the Chair of an Independent Panel for the Export-Import Bank of the US for the Camisea Project in Peru and as a member of a United Nations Review Panel of the Barro Blanco Dam in Panama.

In 2009 he founded Ecosystem Services LLC, a company specializing in market-based approaches to conservation and renewable energy. Previously he was the Managing Director of Sustainable Forestry Management (SFM) for the Americas, where he was responsible for seminal investments that generated the first carbon credits from native plantations and forest conservation. Before SFM he was the Head of the Biodiversity Unit at the Global Environment Facility (GEF), the Principal Environmental Specialist at the World Bank, the Director and Vice President of WWF's Latin American and Caribbean Program in Washington, and the founder and CEO of Wetlands for the Americas, among other roles. He earned a Ph.D. in Ecology and Population Biology from the University of Pennsylvania and received his M.A. and B.A. from Cayetano Heredia University in Lima, Peru. He has served on numerous international private and nonprofit boards.

**Zeinab Bashir El Bakri** was appointed to the Inspection Panel in September 2012. A national of Sudan, she brings to the Panel more than 20 years of development experience. Dr. El Bakri built a broad career at the African Development Bank (AfDB), where her last position was as Vice President of Operations from 2006-2009. In addition, between 1991 and 2005, she served in a number of positions at AfDB spanning multiple regions of Africa and focusing on portfolios including social development, gender, agriculture and agro-industry, climate change, and governance, by virtue of which she gained expertise in both policy development and operations.

After leaving AfDB she was appointed the Director of the Delivery Unit for the Office of His Highness the Prime Minister of Kuwait, and was responsible for ensuring delivery of reform initiatives. Dr. El Bakri's time at the African Development Bank was preceded by an academic career at the University of Khartoum, where she was Senior Lecturer in Anthropology and Sociology and managed the Women and Development Programme of the Development Studies and Research Center. Her early career included a number of consultancies with the UN System, philanthropy, and international NGOs. Throughout her career Dr. El Bakri has handled evaluation issues with meticulous attention to facts. Her work at AfDB included service on the Board Committee on Development Effectiveness and responsibility for management responses to independent evaluations within her sectors. She also established AfDB's Governance, Economic, and Financial Reforms Department. Dr. El Bakri holds a Ph.D. in Sociology & Anthropology from Hull University in the United Kingdom and received her M.A. and B.A. in Sociology from the American University in Cairo.

**Jan Mattsson** was appointed Member of the Inspection Panel in November 2014. A Swedish national, he brings to the Panel more than three decades of experience in the public and private

sectors as well as academia. Jan Mattsson's prior career has included operational field work, policy advice, program management, and leadership roles in the United Nations where he established robust systems for results-based management, transparency, and accountability. Throughout his career he has demonstrated an ability to engage and build trust with multiple stakeholders around complex issues, risk management, and innovation. He is passionate about social justice and behavioral ethics.

Jan Mattsson held responsibilities in several UN agencies over the years including UNDP, UNIDO, UNFPA, WFP, and UNODC. In his most recent UN assignment he was UN Under-Secretary-General and Executive Director of UNOPS, an organization specializing in implementation of development, humanitarian, and peace-building operations on behalf of multiple partners. After leaving the UN he founded M-Trust Leadership, an advisory firm promoting socially responsible investments and partnerships among business, government, and civil society in pursuit of sustainable development. Dr. Mattsson earned his Ph.D. in Engineering from the University of Linköping, Sweden, with a multi-disciplinary thesis on management of technological change.

### Expert Consultants

**Robin Dean** is a Technical Director and Chartered Mining Engineer with some 45 years of experience in the mining industry – 28 years in the British mining industry and 16 years in international mining. His expertise is in design and operation of both surface and underground mining operations, mine management, mining environmental impacts, and health and safety management. He has worked on diverse projects including mining technical assistance for feasibility studies for new mine designs, evaluation and advice on production, and environmental and health and safety (EH&S) management for ongoing mining operations. He has developed many Competent Person and Due Diligence reports for investors, advises on EH&S in the mining sector, and carries out health and safety auditing. Mr. Dean has borne statutory responsibilities for mining operations whilst in mine management and can advise on technical mining engineering, mine management, and environmental and health and safety issues. For projects in Romania, Poland, and Ukraine, Mr. Dean was involved in the evaluation of resettlement issues associated with the expansion of mining operations and its existing and potential financial liability on the mining companies.

**Catherine Macdonald** has worked in the community development and social impact field for over 20 years, more than half of that spent in the mining sector. Dr. Macdonald is well-versed in international standards for the management of social impacts of mining projects and has provided quality control and impact management advice to many extractive industries projects. She has advised mining-related resettlement projects which has included reviewing previous resettlement programs, providing remediation, and preparing Resettlement Action Plans (RAPs). Dr. Macdonald has produced a number of publications, including the *Framework for Socially Responsible Mining in Developing Countries*, commissioned by the Australian Department of Resources, Energy & Tourism (DRET) in 2011. Dr. Macdonald also led the team preparing *The World Bank/ICMM Community Development Toolkit* published in 2005 and worked on the updated version released in 2012. In 2015 she revised *The Community Engagement and Development Handbook for the Leading Practice Sustainable Development Program for the Mining Industry* for the Australian Department of Industry. She earned her Ph.D. in History from the University of Western Australia.

## **Annex 4: About the Panel**

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument allowing groups of two or more private citizens who believe they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”

The three-member Panel is empowered, subject to Board approval, to investigate problems alleged to have resulted from the Bank’s failure to comply with its own operating policies and procedures.

### **Processing Requests**

A Request for Inspection received by the Panel is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request (a purely administrative procedure).
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel conducts a 21-working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel so recommends and the Board so approves, the Panel undertakes a full Investigation, which is not time-bound.
- If the Panel declines to recommend an Investigation, the Board of Executive Directors may still instruct the Panel to conduct one if warranted.
- As soon as possible after the Board decides whether or not an Investigation should be carried out the Panel’s Report (including the Request for Inspection and Management’s Response) is made publicly available through the Panel’s website and Secretariat.
- When the Panel completes an Investigation it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- Bank Management has six weeks to submit its recommendations to the Board on the actions the Bank would take in response to the Panel’s findings and conclusions.
- The Board takes the final decision on what should be done based on the Panel’s findings and the Bank Management’s recommendations.
- As soon as possible after the Board’s decision the Panel’s Report and Management’s Recommendation are made publicly available through the Panel’s website and Secretariat.

**Annex 5: Map IBRD No. 34711 - Location of mining fields, power plants and affected villages**