

International Bank for Reconstruction and Development  
International Development Association

INSP/97705-KE

**ADDENDUM TO**  
**MANAGEMENT REPORT AND RECOMMENDATION**  
**IN RESPONSE TO THE**  
**INSPECTION PANEL INVESTIGATION REPORT**  
**KENYA**  
**ELECTRICITY EXPANSION PROJECT**  
**(LOAN NO. P103037)**

October 30, 2016

## **ABBREVIATIONS AND ACRONYMS**

CAC	Council of Elders
EIB	European Investment Bank
EIB-CM	EIB Complaint Mechanism
GCHM	Grievance and Complaints Handling Mechanism
GRS	Grievance Redress Service
IPN	Inspection Panel
KEEP	Kenya Electricity Expansion Project
KeRRA	Kenya Rural Roads Authority
MoU	Memorandum of Understanding
MW	Megawatt
RAP	Resettlement Action Plan
RAPIC	RAP Implementation Committee
SCC	Stakeholder Coordination Committee

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- Annex 1. Agreement on Olkaria IV Resettlement Mediation
- Annex 2. Agreement to Mediate Complaints Regarding Olkaria IV Resettlement



## I. BACKGROUND

1. This is an addendum to the [Management Report and Recommendation](#), dated September 17, 2015, in response to the [Inspection Panel Investigation Report 97705-KE](#), issued on July 2, 2015 and considered by the Executive Directors during the [Board meeting on October 20, 2015](#). This addendum contains Management's proposed Action Plan for Executive Directors' approval.

2. **Overview:** The Kenya Electricity Expansion Project (KEEP) was designed to increase capacity and efficiency of electricity supply and expanding access to electricity in urban, peri-urban and rural areas, and is successfully supplying 280MW of low-cost green energy into Kenya's national grid system. The Inspection Panel recognized many positive aspects of the project's resettlement, but confirmed that shortcomings in the process led to harms for some of the most vulnerable people affected by the project. The successful mediation process between KenGen and the affected community and facilitated by the Bank jointly with the European Investment Bank (EIB) has helped to address community concerns.

3. **The Project.** KEEP was approved by Executive Directors on May 27, 2010 for US\$330 million equivalent financing. An Additional Financing for the Project for US\$68 million equivalent was approved on June 16, 2016. The Project was placed in Category A, requiring a full environmental and social assessment. Component A of the Project, the subject of the Request, involves the construction of the Olkaria IV 140MW power plant, which is situated within the Hells Gate National Park, near Naivasha, in Nakuru County. The component also includes construction of another 140MW plant at the existing Olkaria I site; steam gathering facilities to supply all 4x70MW units (280MW) at the Olkaria I and IV power plants; a 10-kilometer road to the Olkaria IV power plant within the national park, and laboratories and offices (known as the Geothermal Complex) outside the park. Component A of the Project is being implemented by the Kenya Electricity Generation Company Ltd. (KenGen), a partly privately-owned company. The Olkaria IV plant was taken over by KenGen from the contractor on September 12, 2014, was officially commissioned on October 17, 2014.

4. **Project Status.** The Project remains in a moderately satisfactory status in the achievement of Project development objectives and implementation progress. The creation of infrastructure assets, as envisaged under the Project, is largely complete (Table 1). With the provision of the Additional Financing, the Closing Date of the Project as extended to December 31, 2017 (from September 30, 2016).

**Table 1: Project Status of KEEP**

PDO	(a) Increase the capacity, efficiency, and quality of electricity supply; and (b) expand access to electricity in urban, peri-urban, and rural areas.
Closing date	December 31, 2017
Disbursement rate	90%
Project status	Component A (geothermal generation): Completed (280MW new geothermal capacity at Olkaria has been commissioned and is in operation) Component B (transmission): Substations (97%); Lines (96%) Component C (distribution): Construction of 24 distribution substations was completed by March 2016, the construction of 24 distribution lines

	was completed in 2015, while 12 lines are still under construction, at 74% of construction advance, with completion date expected in October 2016. Component D (technical assistance): All technical assistance contracts are completed.
Rating on PDO	Moderately Satisfactory
Rating on Implementation	Moderately Satisfactory

5. ***The Request for Inspection.*** On November 13, 2014, the Inspection Panel registered a Request for Inspection (IPN Request RQ 14/06) concerning the KEEP. The Request was submitted by members and representatives of a Maasai community resettled due to the Project-supported geothermal developments in the Greater Olkaria Geothermal Area in Nakuru County, Kenya. The Project is co-financed by the European Investment Bank (EIB). The same concerns brought to the Panel were raised with the EIB Complaint Mechanism (EIB-CM).

6. ***Inspection Panel Process and Board Meeting.*** The Bank's Executive Directors authorized an investigation of the Request, recommended by the Panel, on February 13, 2015. The Panel investigation was jointly conducted with the EIB-CM. On July 2, 2015, the Panel submitted its Investigation Report to the Board. The Management Report and Recommendation in response to the Panel's findings was submitted to the Board on September 17, 2015. The Executive Directors met to consider the Panel's Investigation Report and the Management Report on October 20, 2015.

7. At the time of the October 2015 Board meeting, the EIB-CM, at the request of KenGen and the Project affected community, including the Requesters, had started a mediation process with the aim of reaching an agreement between KenGen and the Requesters on remedial actions. Given this circumstance, Management noted in the Management Report that it did not consider it feasible or constructive to develop and consult on an action plan separate from the ongoing mediation process since it related to the same complainants and the same issues raised. Therefore, in order to minimize any mutual interference and to achieve the required outcome, i.e., addressing relevant issues in the Panel's Report, Management proposed to the Board to participate in the EIB-sponsored mediation process, through the Bank's Grievance Redress Service (GRS)<sup>1</sup> as co-facilitator, jointly with the EIB-CM. Use of the Bank's recently inaugurated GRS allowed Management to provide targeted support, independent of the Project team and specifically focused on resolving the concerns of the Project affected people.

8. The Management Report included an Action Plan outline with proposed areas of Management actions to address the Panel's findings (Table 2 below). Management indicated that it expected that the mediation process would help shape these actions in a more specific manner, and would also secure the Requesters' endorsement of such actions. Moreover,

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<sup>1</sup> The Grievance Redress Service (GRS) is the World Bank's Management-led grievance redress mechanism. Launched in 2015, the GRS responds to complaints from project-affected people who believe that a World Bank-funded project has caused, or will cause them harm. The GRS provides support to project teams to address the issues raised in a quick and effective manner. The GRS provides a single entry point to submit complaints to Bank Management, and ensures the Bank's responsiveness and accountability. <http://www.worldbank.org/grs>

Management ensured that the issues identified by the Panel Report would be included in the mediation discussion with the Requesters.

9. The Board endorsed the Bank's participation in the mediation process and welcomed the Bank's commitment to work through its GRS in the mediation process, to resolve outstanding issues. Management committed to return to the Board within one year to present the results of the mediation, and to present a Management Action Plan addressing the Panel's findings for Board approval (see Management Action Plan in Table 3 below). The formal agreement between the World Bank and EIB-CM was recorded in a Memorandum of Understanding (MoU) dated December 17, 2015.

10. World Bank participation as co-facilitator in this mediated process to resolve a dispute between the implementing agency and the community is unique, and an exception to the normal practice of developing an action plan to address the Panel's findings. Therefore, this process and its outcomes have provided several lessons, inter alia, on (a) how to handle disputes when more than one financier is involved, which is a common situation in large infrastructure developments; (b) how to develop an agenda for mediation with the community, particularly when many of the issues reflect intra-community dynamics; and (c) how to prepare for mediation sessions and keep them on course, particularly when there are significant extraneous pressures informing and influencing the community.

**Table 2: Proposed Management Actions 2015**

<b><i>Issues identified in Panel Report</i></b>	<b><i>Management Actions for consideration in the mediation process</i></b>
	Management will work with KenGen to:
<i>Identification of Project affected people</i>	<ul style="list-style-type: none"> <li>• Ensure that Project affected people who believe that they have been left out or miscategorized understand that they can bring forward such claims</li> <li>• Review claims and revise the entitlements where justified</li> </ul>
<i>Consultation, Participation and Grievance Redress</i>	<ul style="list-style-type: none"> <li>• Review the agreed Grievance and Complaints Handling Mechanism (GCHM) and discuss with Project affected people possible adjustments to improve its functionality</li> <li>• Ensure translations of relevant resettlement documents into Maa</li> </ul>
<i>Adequacy of Resettlement Site and Infrastructures and Amenities</i>	<ul style="list-style-type: none"> <li>• Ensure finalization of the land titling process for the 1,700 acres at RAPland and for 14 acres for the Cultural Center</li> <li>• Ensure construction of all roads at RAPland is completed</li> </ul>
<i>Livelihood Restoration</i>	<ul style="list-style-type: none"> <li>• Have an independent post-relocation survey done to determine the overall post-relocation impacts on the Project affected people, in particular, vulnerable and poor people affected by the Project</li> <li>• Formulate tailor-made programs to ensure livelihood activities for the vulnerable and the very poor among the</li> </ul>

	<p>Project affected people (as identified through the survey) are enhanced</p> <ul style="list-style-type: none"> <li>• Continue to work with disabled Project affected people to ensure accessibility of houses and facilities provided at RAPland</li> <li>• Offer support to manage the funds generated from leasing out the bus to ensure cost effective and affordable transportation for those Project affected people whose income depends on commuting</li> </ul>
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## II. MEDIATION PROCESS

11. ***Mediation to address the issues raised in the Request for Inspection was originally proposed by the EIB-CM.*** Upon receiving the complaint, the EIB-CM conducted two visits to the Project area to meet with the Requesters and KenGen and discuss the concerns raised in the Request. As a result of these visits, the EIB-CM concluded that there was scope for organizing a mediation process to address the issues raised. This approach would also enable the community to play an active role in finding a solution to their concerns. Both the Requesters and KenGen accepted the EIB-CM's proposal to engage in mediation and the mediation process officially began in August 2015.

12. ***Participation.*** The EIB-CM's designated mediator traveled to Kenya in May 2015 (two months prior to the start of the mediation process) to meet with the Requesters and representatives of the broader Maasai community. The purpose of this visit was to explain how the mediation process would function and to learn the views and expectations of the different community groups regarding the mediation. The EIB-CM mediator noted that while their general expectations matched, the various groups expressed different positions on the issues to discuss and how to solve them. Therefore, to understand better the views and concerns and the provide a culturally compatible and readily available support to the community in the mediation process, the EIB-CM also decided to engage two certified, local mediation experts.

13. ***The most important initial step was to identify the representatives of the Maasai community who could represent the interests of all the Project affected people in the mediation meetings.*** Representatives were chosen from several different groups, and each group selected its representatives on its own: (a) the traditional structure elected by the community, the Council of Elders (CAC), selected four representatives; (b) a Project-related structure formed in the context of the resettlement program and freely elected by the community, the Resettlement Action Plan Implementation Committee (RAPIC), appointed six members; and (c) the group of 50 complainants to the Inspection Panel and the EIB-CM, including many considered to be vulnerable people, chose six members as well, ensuring that youth and women were also represented. A total of sixteen community representatives took part in the mediation process. In addition, one observer was invited from the Welfare Society. The three certified mediators facilitated the selection process, but were not involved in the selection itself. The selection occurred through discussion and majority vote. The process ensured that



both traditional and Project structures were represented at the mediation table along with others on the margins of such structures.

14. **Process.** After both parties requested EIB-CM to undertake the mediation an *Agreement to Mediate* was negotiated and agreed upon, which set out the principles, rules and process for the mediation.<sup>2</sup> The mediation was conducted in three sessions: the first in August 2015, the second in September 2015, and the third and final one in May 2016. The first session served to identify and agree on the issues which would be the subject of the subsequent mediation discussions and agreement. During this session, the discussion focused on a number of problems that arose during the implementation of the resettlement program, particularly: the number of households entitled to resettlement assistance and whether some had been wrongly excluded from the entitlements; the legal arrangements for land titles for the community following the resettlement; income restoration opportunities in the new resettlement sites, particularly for the most vulnerable groups; and services at the resettlement site, including transportation to now more distant job locations. The second session, held in September 2015, offered the parties the opportunity to discuss in greater depth the concerns outlined in the first mediation meeting and to lay out a number of concrete options to solve them. KenGen and the community representatives then committed to explore such options outside of the mediation in an effort to make the next mediation session a conclusive one.

15. During and before each mediation session, the mediators undertook considerable work separately with the community and KenGen to help them reach an understanding by identifying and discussing options to address the issues of concern. Such work was transparent, inclusive, impartial, and supportive of the communities, and aimed at correcting power imbalances. The mediators facilitated many meetings to support the different groups within the community to find common grounds in preparation for the mediation sessions, and to help KenGen to better understand the diverse concerns and expectations of the community so that KenGen could develop appropriate options to address them.<sup>3</sup>

16. **Bank support.** The Bank's GRS and the EIB-CM participated in the mediation meetings to oversee the process and ensure that it was judicious, fair, practical and focused on the agreed issues. Both the GRS and the EIB-CM retained the ability to intervene in the discussion to provide clarifications and to advise both parties. They coordinated closely on their involvement and maintained constant communications with the local mediators to keep abreast of ongoing discussions on the outstanding issues as well as any emerging issues that could potentially affect the outcome of a final agreement (e.g., occupation of the cultural center, questions about the land titles).

17. **Mediation meeting.** The third and final mediation session took place on May 26–29, 2016 near Naivasha. The community representatives were provided each day with accommodation, meals, per diem, free transport and had the opportunity to return to their communities for further consultations on the issues under discussion. The community representatives, the KenGen team, representatives from the GRS and EIB-CM, and the two

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<sup>2</sup> The terms of the Agreement to mediate are attached in Annex 2.

<sup>3</sup> The mediators held around 30 meetings (including 3 full day workshops) for the preparation of the mediation, of which around 70% were used to facilitate and support the community to prepare for the mediation.

local mediators participated in the session. The mediation session started with a full day for discussion between the community and representatives of the GRS and EIB-CM, without KenGen's presence. This allowed the community to ask questions about the process and present its request that both the World Bank and the EIB should monitor the implementation of the mediation agreement, i.e., each party's compliance with its respective commitments.

18. **Mediation agreement.** The parties finalized and signed the mediation agreement on May 28, 2016 (see Annex 1). Fifteen of sixteen community representatives signed the agreement. One community representative decided not to sign the agreement but did not explain why. After the conclusion of the mediation session, at a *Baraza* (public community meeting) on June 10, 2016, the agreement was presented to the whole community, a clear majority of which supported it.

19. Management would like to emphasize that the mediation agreement was the result of a complex process, which required commitment on the part of KenGen, the GRS, the Bank Project team and the EIB-CM and the community. Thorough work led to identifying actions and presenting a package that could effectively address the concerns of the community, while the mediation process provided a platform for the diverse voices within the community to be expressed and reconciled when possible. Building such consensus entailed the necessary time to ensure the full and informed participation of all. Challenges however remain for the implementation of the mediation agreement especially because of continuing internal divisions in the community, which manifested in the protracted process to agree on a solution to the transport problem. Management recognizes that this mediation resulted from a specific situation following the conclusion of the Panel process, and will continue to explore such problem-solving approaches on a case by case basis in the future.

### III. MANAGEMENT ACTION PLAN

20. The mediation agreement provides the basis for Management's Action Plan, shown in Table 3 below. The Action Plan addresses issues of noncompliance identified by the Panel, based on the areas Management identified at the time of the Management Report and Recommendation. The Plan also includes steps agreed during the mediation between KenGen and the community representatives. These latter steps are beyond the Panel's compliance findings but were included in Management's Action Plan because they are intended to provide additional benefits to the community. All actions were extensively discussed during the mediation with the community representatives, who in turn consulted on them with their constituency. The community representatives accepted the proposed actions and the mediation agreement only after they engaged and discussed them with the broader community.

21. Management notes that the mediation agreement is an agreement reached and signed by KenGen and the community representatives and is owned solely by the two parties; it is not endorsed or approved by the GRS, the EIB-CM or either Bank, none of which are parties to it. Rather, the mediation process facilitated by the two Banks provided the opportunity for discussion of issues that the parties jointly identified and which led to the agreement. The agreement also informs Management's Action Plan, which is Management's obligation under the Panel Resolution and on the implementation of which Management will report to the Board.

22. In this context, the Action Plan also includes activities to scale up Management's safeguards capacity in the country and ensure more effective supervision of the implementation of the Action Plan and of the entire Kenya portfolio. Actions to strengthen such capacity have begun and are ongoing. A safeguards coordinator has been appointed in the Kenya Country Management Unit, with responsibility for quality assurance and assigning appropriate safeguards staff to projects for the systematic monitoring of risks. A lead social development specialist, based in Nairobi, has been hired to oversee the social safeguards portfolio, and several short-term consultants have been trained and retained on a full-time basis to support the Bank staff. Management has also retained a seasoned safeguards specialist to roll out a training program for new staff and consultants of both the Bank and implementing agencies.

### **Additional background on selected issues**

23. **Post-resettlement Census.** KenGen will convene a post-RAP clinic where individuals who believe that they were left out or were miscategorized will be reexamined, and a decision on their entitlement will be made on a case by case basis. This will take place in the presence of CAC, RAPIC, KenGen, GIBB, and EIB-CM and World Bank representatives, who will witness the process. The first phase of this process has already started with face-to-face interviews of the claimants. The verification and validation of the claimants' status will occur during the second phase which will take place during the last week of November. The community submitted a list of approximately 200 individuals who allegedly have been left out from the resettlement and who requested a review of their case.

24. **Land titles.** There was some confusion and misinformation about the titles for the resettlement site and Cultural Center, which led to repeated verification of the titles to reassure the community. The Bank and EIB-CM verified independently and through two separate lawyers that the two land parcels in question are registered in KenGen's name and that the land is free of any encumbrances. As per the RAP MoU, KenGen will transfer the two titles for 1,500 acres at RAPland and 14 acres at the Cultural Center to the Ewangan Sinyati Welfare Society, which is the formal entity for the Project affected people. According to the mediation agreement, KenGen will be able to complete the process of title transfer once the community has identified and registered in court five trustees in whose name the land will be held<sup>4</sup> while formalizing a limitation of the trustees' power to sell or charge the land without community authorization. All stakeholders, including the representatives of the Project affected people, agreed that additional measures need to be put in place to protect their secure tenure and to avoid a situation where major decisions affecting community assets take place without the full consent of the entire community. This agreement was influenced by the community's experience with the bus that KenGen had provided for transportation while the community was not able to internally agree on its use (see paragraph 26). This limitation to sell or charge the land also responds to the strong recommendation made by the Bank and EIB-CM to ensure that the legal tenure of the Project affected people is not jeopardized by a minority decision. KenGen has offered to provide legal support to the Project affected people to help manage the

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<sup>4</sup> Since the Project affected people's society is not a corporation it cannot hold land in its name under Kenyan law, but needs to appoint at least five trustees who hold the land in their name.

registration of the trustees in court.<sup>5</sup> KenGen is currently waiting for the Project affected people to select the trustees from among the community so that the process can be started.

25. ***Income Restoration Program.*** This support will consist of advice provided to Project affected people on diversifying income sources beyond livestock and tourism, based on an analysis of market and job opportunities in the vicinity. Specific training modules will be offered, with a special focus on women and youth, both of whom expressed great interest in such opportunities during the mediation session. Support will also be offered to women traders to trade as groups and/or form cooperatives in order to enhance their marketing abilities. KenGen will also explore the scope for microcredit schemes as an instrument to improve livelihoods. While community representatives seemed wary of such microcredit schemes during the mediation, this option remains available.

26. ***Transportation.*** Transportation to and from places of work is an important concern of the community, specifically for the individuals that work at the Cultural Center or the gorge, and is significantly linked to income restoration for that group. Women in particular are affected by the lack of transportation and raised their concerns at the mediation sessions and directly with the Banks. As part of the RAP MoU, KenGen had provided a bus to the community which was leased out rather than being used for community transport. The substantial revenues which the community generated from the leasing arrangement also appear to have been used for a variety of needs other than transport. Given the different groups within the community and their diverging needs and priorities, it became very difficult to find consensus to use a portion of those funds to organize transportation to and from the Cultural Center.

27. The transportation issue was discussed as part of the mediation process; however, it was not possible to resolve the matter during the discussions. Community representatives expressed the desire to discuss and resolve the issue internally, and return with an agreed solution on how to resolve the transport issue to be presented to both Banks and KenGen. This seemed to be either (a) to sell the bus and purchase several minibuses that could be used by the different groups as needed, (b) retain the leasing arrangement and use the funds generated to purchase one minibus that could serve the Cultural Center, or (c) use a portion of the leasing proceeds to hire a transport provider. Management notes that the Welfare Society was able to purchase a pickup truck using some of the leasing proceeds and that it was used for community purposes, but it was not available to facilitate transport to and from the Cultural Center.

28. The community finally reached an internal agreement on how to provide transport in September 2016. It was agreed that the Welfare Society would offer transport to Project affected people between RAPland and the Cultural Center using the bus originally provided by KenGen. The Society would sustain the costs of fuel and maintenance until a minibus is purchased for the Cultural Center people and for affected people from the three other villages. The Cultural Center Management Committee, for its part, would provide the driver's salary until the minibus is purchased, and the Welfare Society committed to hire a minibus in the event that the bigger bus is used for commercial purposes to generate income to purchase such a minibus.

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<sup>5</sup> It is expected that registration would take around two months.

29. ***Translations.*** While community members recognized the Bank's efforts to produce documents in Maa, many noted that this may have limited use for them. Specifically, when Project affected people wish to use Bank or KenGen documents when engaging with authorities, a Swahili translation would be more helpful. Moreover, it was explained that community members who could not understand Swahili, typically could also not read or write and hence would not benefit from any document in Maa.

30. ***Cultural Center.*** The support that KenGen committed to provide to the Cultural Center is not based on a Panel finding, but results from the mediation agreement. Recognizing the cultural and economic value of the Cultural Center for the community, KenGen agreed to fence the center and transfer the ownership of 14 acres comprising the Cultural Center to the Project affected people. To support the community to further develop the Center, KenGen has agreed to fund preparation of a feasibility study on a potential business development plan for the Cultural Center (i.e., identify existing businesses, their performance, challenges, and ways to improve them, and identify feasible ecotourism business options).

31. ***Cash compensation.*** KenGen commits to compensate the Project affected people who have had their houses connected to the power grid for the connection fee that they had to pay to Kenya Power and Lighting Company.

**Table 3: Management Action Plan**

Issue/ Action Category	Action	Action implemented/timeline
<b>A) Identification of Project Affected Persons</b>		
1) Ensure that Project Affected Persons who believe that they have been left out or wrongly categorized understand that they can bring forward such claims	<ul style="list-style-type: none"> <li>- KenGen will convene a post-RAP clinic where the cases of the 200 individuals whose names were submitted by the complainants will be re-examined and a decision on their entitlements made on a case by case basis. This will be witnessed by representatives of: the CAC, RAPIC, KenGen, GIBB Consultants, EIB-CM, World Bank, and Ministry of Energy and Petroleum. The Deputy County Commissioner for Naivasha Sub-county or his representative, will preside over the clinic.</li> <li>- KenGen will publicly announce the dates and venue of the clinic in Kiswahili and Maa languages at least 2 weeks in advance to the community through complainants' representatives, RAPIC, Mediators, World Bank, and EIB-CM.</li> </ul>	<p>First phase (interviews): <b>Completed</b> October 24 – 28, 2016</p> <p>Second phase (validation and decision): November 28 – December 2, 2016</p>
2) Review claims and confirm or revise the entitlements where justified	<ul style="list-style-type: none"> <li>- KenGen commits to provide additional houses at RAPland for those Project affected people who were found eligible and who were wrongly omitted, based on the outcome of the verification (under A 1).</li> </ul>	Start the process by December 1, 2016.
	<ul style="list-style-type: none"> <li>- KenGen commits to provide any cash compensation for those Project affected people who were found eligible and who were wrongly omitted, based on the outcome of the verification (under A 1).</li> </ul>	Start the process by December 1, 2016.
<b>B) Consultation, Participation and Grievance Redress</b>		
1) Review the Grievance and Complaints Handling Mechanism (GCHM) and discuss with Project affected people possible adjustments to improve its functionality.	<ul style="list-style-type: none"> <li>- KenGen will update and improve the current grievance redress structure to ensure that it is independent and effective.</li> <li>- KenGen will also consider community proposals for the design of the grievance redress structure to ensure that traditional community</li> </ul>	January 1, 2017



Issue/ Action Category	Action	Action implemented/timeline
	structures are reflected in such a mechanism. KenGen will reach out to community representatives to obtain such proposals.	
2) Facilitate participation of Project affected people, including women and youth, in community committees and facilitate access to livelihood restoration opportunities	- KenGen will promote enhanced representation of youth in future Stakeholder Coordination Committees (SCC) to facilitate communication on job opportunities as they arise. RAPland youth will be mobilized to nominate their representative and forward the name to KenGen for inclusion into the SCC membership. This will enhance youth participation in Project implementation.	January 1, 2017
	- KenGen will engage with the National Youth Service <sup>6</sup> to seek to create a partnership for RAPland youths; the National Youth Service, a government department, will ensure the youth have access to technical skills training and apprenticeships in different fields, leading to job placement opportunities.	January 1, 2017
	- KenGen will promote enhanced representation of women in future SCC to enhance their participation and to facilitate communication on job opportunities as they arise. KenGen will reach out to RAPland women to nominate their representative and provide the names for inclusion into the SCC.	January 1, 2017
	- KenGen will consider additional Project affected people from existing community sub-project committees for inclusion in RAPIC; these will be drawn from among youth and women to enhance their representation in RAPIC.	January 1, 2017
	- KenGen will ensure that every Project affected person has access to the measures proposed above and	January 1, 2017

<sup>6</sup> The National Youth Service is a government department. The purpose is to alleviate youth unemployment by providing necessary skills.

Issue/ Action Category	Action	Action implemented/timeline
	specifically that the most vulnerable are given priority access to unskilled and semi-skilled employment and training programs conducted by KenGen.	
<b>C) Adequacy of Resettlement Site and Infrastructures and Amenities</b>		
1) Ensure finalization of the land titling process for the 1,700 acres at RAPland and for 14 acres for the Cultural Center	<b>Land Titles:</b>	
	– KenGen will transfer titles for 1,500 acres at RAPland and 14 acres at the Cultural Center to the Project affected people. KenGen will complete the process of title transfer once the community has nominated and registered the trustees holding the land on behalf of the community.	90 days upon receipt of relevant documents from the Project affected people community (Land Holding Entity Registration & PIN Certificates)
	– KenGen will process and hand out subdivided titles for public facilities on RAPland, such as road network, health facility, school, and other registered social amenities (e.g., churches).	July 31, 2017
	– KenGen will provide RAPIC with the RAPland map sheet and accounts for the 200 acres of social amenities.	<i>Completed</i>
	– KenGen will revisit and confirm with surveyors and community members the boundaries of the 14 acres of Cultural Center land.	<i>Completed</i>
	– KenGen will fence the 14 acres of the Cultural Center and provide signs to protect against encroachment, unauthorized access and theft.	March 31, 2017
	– KenGen will support community efforts to ensure complete vacation of the Cultural Center, and jointly inspect the situation upon completion.	<i>Completed</i>
2) Ensure finalization of RAPland infrastructure, including water supply and roads	<b>Water supply:</b>	
	– KenGen will continue to ensure reliable interim water supply through KenGen water bowsers while the RAPland waterline is being restored.	<i>Ongoing</i>
	– KenGen will repair and extend a permanent water pipeline in RAPland.	April 30, 2017
	– KenGen will support the establishment of a Water Resource	April 30, 2017



Issue/ Action Category	Action	Action implemented/timeline
	Users Association in the community to ensure sustainability of the water lines and systems and ownership by Project affected people of water management and conservation initiatives.	
	– KenGen will procure a consultant to train Project affected people on water harvesting (e.g., collection from roofs and storing in tanks) and conservation, and on maintenance of water line systems.	April 30, 2017
	– KenGen will re-route main water pipeline away from the road sides and build bridges to support the pipes over the gullies to avoid recurring damage to the line.	April 30, 2017
	– KenGen will repair the main water storage tank at Olkaria IV and install one additional water tank.	To commence construction by July 30, 2017
	<b>Roads:</b> – KenGen will repair the road to unreachable houses beyond the school.	April 30, 2017
	– KenGen will provide short-term solutions for flood related road conditions, such as creating temporary routes while the main road is under repair.	<i>Completed</i>
	– KenGen will upgrade RAPland roads to all-weather condition, according to the standards of Kenya Rural Roads Authority (KeRRA).	April 30, 2017
	– KenGen will register and hand over the roads to KeRRA to ensure government maintenance 1 year after receipt of the completion certificate.	One year after receipt of completion certificate
	– KenGen will review feasibility of using box culverts across gullies, as suggested by community.	<i>Completed</i>
	– KenGen will maintain roads for at least one year after completion of works (receipt of the completion certificate), prior to handing over to KeRRA.	One year after receipt of completion certificate

Issue/ Action Category	Action	Action implemented/timeline
	<ul style="list-style-type: none"> <li>KenGen will identify the areas where additional road repairs are needed and carry out such repairs.</li> </ul>	<b>Completed</b>
	<b>Others</b> <ul style="list-style-type: none"> <li>KenGen will provide bookshelves for school library.</li> </ul>	January 31, 2017
	<ul style="list-style-type: none"> <li>KenGen will deliver remaining medical clinic equipment.</li> </ul>	January 31, 2017
	<ul style="list-style-type: none"> <li>KenGen will provide clinic shelves, repair fence, fabricate and install Kraal gates, and discuss staffing issues with county government to achieve improved staffing of the county-run clinic.</li> </ul>	April 30, 2017
3) Ensuring rehabilitation/restoration of land at resettlement site	<ul style="list-style-type: none"> <li>KenGen will identify four major gullies that require stabilization and procure a contractor to undertake the required works.</li> </ul>	March 31, 2017
	<ul style="list-style-type: none"> <li>KenGen will undertake studies with technical experts to assess and recommend practical and sustainable interventions to improve soil stability, erosion prevention, productivity of pasture and smallholder agriculture, as well as the below actions:               <ul style="list-style-type: none"> <li>a) Procure a Consultant to undertake RAPland Improvement Studies.</li> </ul> </li> </ul>	March 31, 2017
	<ul style="list-style-type: none"> <li>b) Mapping of key environmental problematic areas (highly eroded areas/ unstable areas).</li> </ul>	March 31, 2017
	<ul style="list-style-type: none"> <li>c) Soil testing for purposes of determining appropriate vegetation and fodder crop species for the area.</li> </ul>	March 31, 2017
	<ul style="list-style-type: none"> <li>d) Raising of fodder crops and other plant species at KenGen tree nursery.</li> </ul>	March 31, 2017
	<ul style="list-style-type: none"> <li>e) Identification of land rehabilitation and improvement measures, including soil stabilization and soil control measures, and land productivity improvement measures.</li> </ul>	March 31, 2017

Issue/ Action Category	Action	Action implemented/timeline
	f) Technical assessment of soil stability and recommendations on sustainable interventions (productivity of pasture and smallholder agriculture) and supervision.	March 31, 2017
<b>D) Livelihood Restoration</b>		
1) Have an independent post-relocation survey done to determine the overall post-relocation impacts on the Project affected persons, in particular, vulnerable and poor people affected by the Project	- KenGen will share with the community representatives the criteria used for assessing vulnerability with RAPIC by June 30, 2016.	<b>Completed</b>
	- KenGen will reassess the status of the six individuals whose names were submitted in addition to the eight individuals already identified by KenGen and communicate the result of this re-assessment.	30 days after receipt of the additional six names
2) Formulate tailor-made programs to ensure livelihood activities for the vulnerable and the very poor among the Project affected persons (as identified through the survey) are enhanced. Continue to work with disabled Project affected persons to ensure accessibility of houses and facilities provided at RAPland	- KenGen will continue support of RAPland Olkaria Primary Pupils through scholarships.	<b>Ongoing</b>
	- KenGen will support the vulnerable Project affected people by linking the elderly and orphans to the national government social safety nets as well as linking the Naivasha Sub-county Medical Officer Health with the Kenya Palliative Care Society to train and build capacity of the local health unit and community to administer palliative care.	January 31, 2017
	- KenGen will consult with every vulnerable household head and identify sustainable actions for the identified vulnerable Project affected people and agree to implement them. - KenGen will review the access issues raised by handicapped community members at RAPland with a view to either relocate them inside RAPland or make needed adjustments to their housing, for better access.	January 31, 2017
3) Formulate training and other programs and advise Project affected people on income restoration	- KenGen will procure a consultant to undertake a feasibility study to assess potential business and employment opportunities. Based on the study's	March 31, 2017

Issue/ Action Category	Action	Action implemented/timeline
options, including for youth and women	findings the consultant will carry out training needs assessments, develop and deliver the required training for:	
	– <b>Women.</b> Train, advise and support women traders and Project affected people on sustainable production of wares, advertising and marketing of wares, and alternative incomes beyond livestock and tourism, e.g., agricultural production, entrepreneurship, craftworks, etc.	March 31, 2017
	– <b>Cooperatives.</b> KenGen will deliver the training for forming trading groups and cooperatives.	February 28, 2017
	– <b>Marketing.</b> KenGen will advise and support Project affected people to advertise and effectively market their wares.	February 28, 2017
	– <b>Micro-finance facility.</b> KenGen will explore possibilities of starting a micro finance facility to ensure access to small business finance at RAPland	April 30, 2017
4) Support provided to the Cultural Center	– KenGen will fence the Cultural Center land and provide signage to protect from encroachment.	March 31, 2017
	– KenGen will support community efforts to ensure Cultural Center is vacated and facilitate a joint inspection of the situation at the Cultural Center.	<b>Completed</b>
	– KenGen will support preparation of a feasibility study on potential business development plan for the Cultural Center (i.e., identify existing businesses, their performance, challenges, and ways of improving, and identify feasible ecotourism business options).	April 30, 2017
5) Offer support to manage the funds generated from leasing out the bus to ensure cost effective and affordable transportation for those Project affected persons whose income depends on commuting	– KenGen will provide awareness raising among Project affected people about the Welfare Society to promote ownership and participation among the community.	January 31, 2017
	– KenGen will provide training in corporate governance and accountability to the Project affected	January 31, 2017

Issue/ Action Category	Action	Action implemented/timeline
	people's Welfare Society to enhance its capacity to manage their assets (including bookkeeping, accounting, annual reporting trusteeship, society elections).	
	<ul style="list-style-type: none"> <li>– KenGen will convene a meeting with the participants of the mediation process to consider community proposals to resolve the transport issue. Submit proposals to the mediators to resolve the transport issue at the June 3, 2016 meeting.</li> </ul>	<i>Completed</i>
	<ul style="list-style-type: none"> <li>– KenGen will participate in all further discussions and meetings as may be convened and required to resolve the issue of maximizing the availability of transport facilities for the community.</li> </ul>	<i>Completed</i>
<b>E) Bank Safeguards Capacity and Supervision</b>		
1) Ensure strengthened safeguards coverage of the entire portfolio	<ul style="list-style-type: none"> <li>– Management will retain Lead Safeguards Specialist based in Nairobi to advise on complex social safeguards issues, support quality control, and advise on the country program. The specialist will also support coordination and monitoring of the safeguard performance of the country portfolio;</li> <li>– Management will hire additional specialist consultants to ensure effective supervision of safeguards;</li> <li>– Management will intensify training of safeguards specialists, specifically to strengthen skills in managing complex social issues;</li> </ul>	<i>Completed</i>

#### IV. STATUS OF IMPLEMENTATION OF DETAILED ACTIONS AND SPECIAL ISSUES

32. *Delays following the agreement.* The mediation agreement, signed on May 28, 2016, needed to fulfill one condition in order to enter into force. The Cultural Center, where a number of community members conduct their business and sell Maasai arts and crafts, can be used only during the day for commercial purposes and should be vacated in the night. Previously, there had been numerous instances of Project affected people staying the night, which is in violation of National Environmental Management Agency requirements. Since KenGen is the responsible party in such cases of violation, it insisted that the Cultural Center be completely vacated during the night. The community representatives had agreed to this condition.

33. However, after the mediation agreement was signed in May, a few individuals who own houses in RAPland moved back to the Cultural Center to live there, together with their relatives. After an intensive engagement with the community elders and the mediators, the issue was resolved and the individuals vacated the premises. KenGen reached a separate agreement with the Project affected people's representatives on August 30, 2016, in which it committed to assist with providing security to ensure that the Cultural Center land is not encroached upon and that the community members' merchandise can be safely stored on site. The community agreed to ensure that the Cultural Center would not be used for residential purposes in the future.

34. This issue of occupation of the Cultural Center land was also linked to the problem of lack of transportation between RAPland and the Cultural Center, which affected women working at the Cultural Center in particular. Solving the transportation issue (see paras 26-28 above) was key to ensuring that the Cultural Center land would not be occupied residential purposes, but only used for commercial purposes. In the mediation session in May 2016, the bus transportation issue was deemed to be an intra-community topic, since KenGen had already provided a bus that was standing idle due to disputes within the Welfare Society responsible for management of transportation services. However, in the months following the signing of the mediation agreement, it became apparent that this issue could not be left to the divided community (Project affected people at the Cultural Center and the remaining majority of Project affected people) to address, and there was a need for structured discussions to bring the various groups in the community together. These sessions were led by the RAPIC Chairman, in the presence of KenGen staff and World Bank staff and consultants. After extensive discussions, an agreement was finally reached on transportation among the interested community groups.

35. The mediation agreement was eventually declared effective as of September 29, 2016. Given this delay of more than 3 months for the agreement to become effective, the milestones in the mediation agreement had to be adjusted, and these are reflected in the above Action Plan.

#### Implementation and monitoring arrangements

36. *Actions undertaken by KenGen since October 2015.* Although the mediation process took approximately one year, it is important to point out that KenGen had immediately started work on the most pressing issues related to infrastructure and services at the resettlement site. KenGen continues to ensure reliable interim water supply through KenGen water bowsers while the RAPland waterline is being restored; it is also repairing and extending a permanent water

pipeline in RAPland. KenGen has also begun the repair of the road to unreachable houses beyond the school, and it is providing short-term solutions for flood related road conditions, such as creating temporary routes while the main road is under repair. KenGen has undertaken studies with technical experts to assess and recommend practical and sustainable interventions to improve soil stability, erosion prevention, productivity of pasture and smallholder agriculture. Some actions have been completed by now, i.e., supply and delivery of basic medical equipment and dispensary, and supply and delivery of furniture to schools, while others are ongoing and nearing completion, such as road construction in RAPland and rehabilitation of gullies. Other actions will be completed within the timelines as indicated in the Action Plan.

37. KenGen will continue to work directly with RAPIC, the Welfare Society, and through broader community engagement to ensure direct and timely communication with Project affected people regarding the implementation of the Action Plan, and specifically if there are any delays or adjustment that may become necessary.

38. The Bank, through the KEEP Additional Financing approved by the Board of Directors in June 2016, will be able to allocate resources that may be required to deliver the Action Plan. The total incremental value of the Action Plan (over and above those already completed and underway) is US\$2.4 million. The Bank Project team is engaged in discussions on which actions could be financed by the KEEP Additional Financing, consistent with the timelines set in the Action Plan.

39. The Bank, jointly with the EIB-CM, will undertake monitoring of Action Plan implementation. As requested by the community representatives and agreed by the two Banks, such monitoring will include implementation of the mediation agreement, specifically the compliance of both parties with their respective commitments.

40. Bank Management will report to the Board on the progress in the implementation of the Action Plan annually until its completion.

## AGREEMENT ON OLKARIA IV RESETTLEMENT MEDIATION

This agreement made on May 28, 2016, between:

**1. KENYA ELECTRICITY GENERATING COMPANY (KENGEN)**

Stima Plaza, P.O. Box 47936, 00100 NAIROBI  
represented by [REDACTED], Regulatory & Corporate Affairs Director  
(hereafter referred to as “KENGEN”),

and

**2. REPRESENTATIVES OF THE RESETTLED COMMUNITY:**

**COMPLAINANTS’ REPRESENTATIVES:**

[REDACTED]

(hereafter referred to as “the complainants”)

**REPRESENTATIVES OF RESETTLEMENT ACTION PLAN IMPLEMENTATION  
COMMITTEE (RAPIC):**

[REDACTED]

(hereafter referred to as “RAPIC”)

WITNESS THE FOLLOWING:

### Article 1

WHEREAS:

- KENGEN has resettled four villages (Olo Nongot, Olo Sinyat, Olomayiana Ndogo and the Oloolkarian Maasai Cultural Centre) in connection with the expansion of activities in the Olkaria geothermal field and notably the construction of the Olkaria IV powerstation. The Project, more specifically, comprises, *inter alia*, the construction of the two 70 MW units at the Olkaria Domes field (Olkaria IV power station), including the required infrastructure, transmission lines and substations.

AND

- The Project is co-financed by the EIB (12%), the Government of Kenya (22%), the French Development Agency (AFD, 15%), the Japan International Cooperation Agency (JICA,



23%), the German Development Bank (KfW, 7%) and the World Bank (7%), with the balance being provided by KenGen (14%).

AND

- In July 2014, the European Investment Bank's Complaints Mechanism (EIB-CM) received a complaint via email raising several issues concerning the involuntary resettlement that was due to take place in connection with the expansion of activities in the Olkaria geothermal field. In August 2014, a second complaint - a letter sent via email and signed by representatives of the community - with similar allegations, was received. In September 2014, the Bank's operational services forwarded to the EIB-CM two additional written complaints concerning the same issues.

AND

- The World Bank Inspection Panel (WB-IPN) received a similar complaint in October 2014. As a result, the EIB-CM and the WB-IPN coordinated their efforts and resources to (i) maximise the interaction with all the parties, (ii) avoid duplications and overlaps, and (iii) complement, to the greatest extent possible, each other's activities.

AND

- In March 2015, the EIB-CM prepared an Initial Assessment Report (IAR) after undertaking a preliminary analysis of the allegations presented. The IAR included proposals on the way forward with two main measures: (i) a compliance review of the issues identified during the preparation of the IAR, to be carried out together with the WB-IPN. and (ii) a problem-solving approach, by providing independent facilitation services to foster the dialogue between the complainants and the existing project organisational structures. The proposed way forward was accepted by the stakeholders (complainants and promoter).

AND

- After the complainants and the promoter accepted the mediation process, they also decided that the rest of the community should be associated to the process and this could be best done by having a delegation of the RAPIC participating in the process, as well as a representation of the Elders (Community Advisory Council of Elders – CAC) as “friends of the mediation.”

AND

- It was agreed that the World Bank Grievance Redress Service (WB-GRS) and the EIB Complaints Mechanism (EIB-CM) would join the mediation as part of the mediation team, supporting the mediators.

AND

- The Ministry of Energy and Petroleum and the Ewangan Sinyati Welfare Society were invited to send observers to the mediation meetings.

AND

- There is an overriding public interest that the present mediation process is conducted in a transparent manner and it is recognised that the content of the settlement agreement is not considered confidential.

## **Article 2**

*Items italicized below are statements or clarifications by KenGen on the relevant issues that do not contain commitments.*

### **KENGEN undertakes to:**

#### **1. RAPLand productivity**

1. Improve the productivity of the land through soil stabilisation and erosion prevention. To this end KENGEN will undertake studies with expert technical advice to assess and recommend practical and sustainable interventions to improve soil stability and productivity of pasture and small holder agriculture, as follows:
  - (a) Identify four major gullies that require stabilisation. Identifying contractor and hiring equipment by June 30, 2016.
  - (b) Select species of grass and trees upon expert advice and start planting by March 2017.
  - (c) Involve a RAPIC sub-committee in monitoring the implementation of the above.

#### **2. Land titles**

1. Transfer titles for 1,500 acres at RAPLand and 14 acres at the Cultural Centre to the PAPs' land holding entity, the Ewangan Sinyati Welfare Society. KenGen will complete the process of title transfer once the community has fulfilled its obligations under article 3, paragraph 6 and 7 of this agreement. KenGen will transfer the titles within 90 days upon receipt of the required documentation from the community in line with the above requirements.
2. Process and hand out subdivided titles to the government, and other institutions responsible for road network, health facility, school and other registered social amenities, such as churches by July 31, 2016.
3. Provide to RAPIC the RAPLand plans and accounts for the 200 Acres of social amenities by June 3, 2016.
4. Revisit with surveyors and community members to confirm the boundaries of the 14 acres of Cultural Centre land by June 30, 2016.

*Any further subdivisions of land will only take place after the titles have been transferred to the Welfare Society.*

#### **3. Vulnerable PAPs**

1. Share the criteria used for assessing vulnerability with RAPIC by June 30, 2016.
2. Reassess the status of the 6 individuals whose names were submitted in addition to the 8 individuals already identified by KenGen. Within 30 days of receipt of full name per ID, name of household head, address and contact details of all such individuals, KenGen will submit the result of the assessment to the mediators who will inform the community.

#### **4. Suitability and overcrowding of the houses**

*KenGen clarifies that PAPs are free to construct any other housing structures within RAPLand.*

#### **5. Census**

1. Convene clinic where the cases of those names submitted by the complainants will be re-examined, and a decision on the entitlement will be made on a case by case basis in the presence of KENGEN, GIBB, and EIB and World Bank representatives, by July 31, 2016.

KenGen will announce the dates and venue of the clinic at least 2 weeks in advance to the community through RAPIC, the mediators and World Bank and EIB.

2. Commit to provide additional houses for eligible PAPs who were wrongly omitted, based on the outcome of the verification / examination mentioned above. KenGen to start the process for constructing such houses within 1 month after confirmation of names.
3. Commit to provide any cash compensation for eligible PAPs who were wrongly omitted, based on the outcome of the verification / examination mentioned above. KenGen to provide such compensation within 30 days after confirmation of names.

**6. Resettlement allowance of Ksh. 35,000/-**

1. Reimburse the power connection fee of approximately Ksh 32,000/-. In consideration for the community dropping items 7, and marking as agreed items 8, 9, and 10 as written below.
2. Payment will be made within 60 days upon confirmation that the Cultural Centre is fully vacated by June 3, 2016.

**7. Ksh 500,000/-**

*Acknowledges that the community has dropped this demand.*

**8. Profit sharing**

*KenGen will be guided by the upcoming national legislation on modalities of any profit sharing.*

**9. Benefit sharing**

*KenGen will be guided by the upcoming national legislation on modalities of any profit sharing.*

**10. Subsidised electricity**

*KENGEN is not able to subsidize electricity costs since a different institution (KPLC) is in charge of electricity distribution and retailing. It is noted that the tariff regime for low volume consumers is already highly subsidized.*

**11 A. Youth empowerment and employment**

1. Identify existing youth groups, sustainable income opportunities and required support for youth to access those. Identify training needs for entrepreneurial activities in line with local market demands, and develop and provide a training program for youths to start by September 30, 2016.
2. Ensure youth representation in future Stakeholder Coordination Committees (SCC) to facilitate communication on arising job opportunities by July 31, 2016.
3. Engage with the National Youth Service to seek to create a partnership for RAPLand by July 31, 2016.

**11 B. Women empowerment and equal access to opportunities**

1. Identify existing women businesses and suggest sustainable income opportunities and required support for RAPLand women to access those by July 31, 2016.
2. Identify training needs for women entrepreneurial activities in line with local market demands by July 31, 2016.
3. Develop and provide a training program for women based on the above by July 31, 2016.
4. Ensure representation of women in future SCC to facilitate communication on arising job opportunities by July 31, 2016.
5. Support community efforts to form and register a women's businesses group.

6. Engage with the Catholic Church and the AIC church to seek to create a partnership for RAPLand women by July 31, 2016.
7. Consider ideas on how to help orphans in the community.
8. Work with the community to help vulnerable PAPs secure the monthly government support by registering for this support.

### **12. Water services**

1. Provide PAPs with enough and reliable water for both humans and livestock at RAPLand.
2. Continue to ensure reliable interim measures through KENGEN's water bowsers while the RAPLand waterline is being restored.
3. Restore and expand a permanent water line at RAPLand by December 31, 2016.
4. Support the establishment of a Water Resource Users Association to ensure sustainability.
5. Train PAPs on water harvesting and conservation, and on maintenance of water line systems by December 31, 2016.
6. Re-route pipelines away from the road sides and build bridges to support the pipes over the gullies by December 31, 2016.
7. Repair the road to unreachable houses beyond the school by June 30, 2016.
8. Repair one water storage tank and install one additional water tank at Olkaria IV site by July 31, 2017.

### **13. Roads**

1. Mobilize own resources for short-term support to repair flood related road conditions.
2. Upgrade RAPLand roads to all-weather condition, according to the standards of Kenya Rural Roads Authority (KeRRA) by December 31, 2016.
3. Register and hand over the roads to KeRRA to ensure government maintenance after 1 year of receipt of the completion certificate.
4. Review technical feasibility of community suggestion to use box culverts across gullies by June 30, 2016.
5. Maintain roads for at least one year after completion of works (receipt of the completion certificate), prior to handing over to KeRRA.
6. Identify the areas where additional works are needed and deploy more equipment by June 30, 2016.

### **14. Eroding gullies and quality of grazing land**

*Settled as per # 1 above*

### **15. Restoration of livelihoods**

1. Train women traders on sustainable production of wares and marketing of their products.
2. Explore and sensitize women traders on benefits of trading as groups and/or cooperatives to enhance their marketing abilities, as well as ensuring that they remain visible.
3. Explore possibilities of starting a micro credit facility to ensure access to small business finance at RAPLand.
4. Advise and support PAPs to advertise and effectively market their wares.
5. Advise PAPs of alternative income sources beyond livestock and tourism, e.g., agricultural production, entrepreneurship, craftwork, etc.

The start of all above activities is staggered between June and September 2016.

### **16. Support for school**

1. Provide bookshelves for school library by September 30, 2016.
2. Continue supporting RAPLand children's education through Scholarship Fund.

### **17. Chairs for the social hall and churches**

*This was completed. 200 chairs for the social hall and 100 chairs each for the three churches were delivered in November 2015.*

### **18. Furniture and equipment for the Clinic**

1. Deliver further equipment by July 31, 2016.
2. Provide clinic shelves, fence and gates by December 30, 2016.
3. Discuss staffing issues with the County Government to achieve compliance with legal requirements (County to provide more than one staff member).

*KENGEN cannot provide medical service to the community, nor employ medical staff at clinic as per County legislation*

### **19. Chief's office**

*KENGEN already provided the building to accommodate the chief and will monitor the community's efforts in pursuing establishment of RAPLand as a sub-location in order to strengthen local government.*

### **20. Commercial centre**

*KENGEN accounted for the 200 Acres of community facilities which did not include space for the commercial center and which will have to be located within the remaining 1,500 acres.*

### **21. Mosque**

*Any construction of a mosque is a matter for interested parties to negotiate with the community.*

### **22. New AKIRA steam well next to RAPLand**

1. Support information sharing on the status of the proposed AKIRA scheme on an ongoing basis.

### **23. Grievances Redress Mechanism**

1. Consider and review community proposals for the establishment of an independent and effective GRM upon receipt of such proposals.

### **24. RAPIC**

1. Consider additional PAPs from existing community sub-project committees under this agreement for inclusion in RAPIC, if deemed necessary by the community.

### **25. Welfare Society**

1. Avail training in corporate governance and accountability to enable the Welfare Society to act as a trustee for the PAPs' assets (including bookkeeping, accounting, annual reporting, trusteeship, society elections) by September 30, 2016.
2. Provide awareness training about the Welfare Society to the wider community by September 30, 2016.

### **26. Transport**

1. Convene a meeting by June 3, 2016, with the participants of this mediation to consider community proposals to resolve the transport issue.

### **27. Cultural centre**

1. Transfer the title as per agreement on #2.
2. Support preparation of a feasibility study on potential options for business development for the Cultural Center by December 31, 2016.
3. Advise and support PAPs to advertise and effectively market their wares, as per agreement on # 15.
4. Fence the Cultural Center and provide signs to protect from encroachment by December 31, 2016.
5. Support community efforts to ensure that no one is living in the Cultural Center, and jointly inspect the situation at the Cultural Center by June 3, 2016.

### **Article 3**

The **Representatives of the Resettled Community** undertake to:

1. Collaborate in good faith in the implementation of the measures hereby agreed.
2. Ensure that every project affected person (PAP) has access to the measures proposed and more specifically that the most vulnerable ones are given priority of access to all employment and capacity building programmes.
3. Submit proposals for the composition and implementation of an appropriate Grievance Redress Mechanism by June 30, 2016.
4. Submit to the mediators proposals to resolve the transport issue to be presented at the June 3, 2016 meeting.
5. Participate in all further discussions and meetings as may be convened and required to resolve the issue of maximising the availability of transport facilities for the community.
6. Collaborate in the preparation of measures leading to the empowerment and improvement of the governance of the Welfare Society and participate in the implementation of the necessary measures. such measures to include in particular attention to the holding of meetings, election of trustees to hold the community land, election of officials and the audit of accounts.
7. Incorporate in its constitution or other documents, restrictions on sale or charge of community land.
8. Seek legal and accounting advice to assist where required.
9. Consider additional PAPs from existing community sub-project committees for inclusion in RAPIC, if deemed necessary by the community.
10. Continue its negotiations with the County authorities to have RAPLand established as a sub-location.
11. Ensure that no one is living in the Cultural Center by June 3, 2016.
12. Disseminate the content of this agreement to the PAPs and outline their responsibilities at a public baraza, with the presence of the mediators, by June 10, 2016.

#### **Article 4**

The Representatives of the community acknowledge that this Agreement settles their previous claims and renounce any further claims against Kengen regarding the matters settled in this Agreement, provided that the terms of this Agreement are complied with.

#### **Article 5**

The EIB-CM and the World Bank will monitor the implementation of the actions hereby agreed in order to ensure effective implementation.

#### **Article 6**

This Agreement will only come into force when there is no one living permanently any longer on the Cultural Center land. Guards may only work shifts of no more than 12 hours on site.

#### **Article 7**

This Agreement is made in six identical originals, out of which, after being duly signed by the Parties, each Party shall take two copies.

**ON BEHALF OF KENGEN**

**The Regulatory and Corporate Affairs Director**

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**ON BEHALF OF THE COMPLAINANTS**

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

**ON BEHALF OF THE RAPIC**

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]



The representatives of the Elders, as friends of the mediation, witness that this agreement reflects the discussions held during the meetings and will continue to act as friends of the mediation in order to bring the parties together during the implementation of the agreement.

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**ON BEHALF OF THE EUROPEAN INVESTMENT BANK AND THE WORLD BANK**

\_\_\_\_\_  
EUROPEAN INVESTMENT BANK

\_\_\_\_\_  
WORLD BANK

**THE MEDIATORS**

\_\_\_\_\_

\_\_\_\_\_

**THIS IS THE ENGLISH VERSION OF THE "AGREEMENT TO MEDIATE". THE ORIGINAL DOCUMENT IN SWAHILI WAS SIGNED BY THE PARTIES. NAMES WERE REMOVED FOR PURPOSES OF PRIVACY PROTECTION.**

**EUROPEAN INVESTMENT BANK (COMPLAINTS MECHANISM)**

**AGREEMENT TO MEDIATE**

**With Respect to**

**COMPLAINTS REGARDING OLKARIA IV RESETTLEMENT OF PROJECT AFFECTED PERSONS (PAPs)**

**A. PARTIES**

**1. PAPs REPRESENTATIVES:**

The European Investment Bank Complaints Mechanism (EIB-CM) received several complaints some signed by more than one person. All these complainants have agreed to be represented in the mediation by the following:

1. [NAME]
2. [NAME]
3. [NAME]
4. [NAME]
5. [NAME]
6. [NAME]

**RESETTLEMENT ACTION PLAN IMPLEMENTATION COMMITTEE (RAPIC)**

This committee is a representation of PAPs in the resettlement implementation process and has been involved in all major decisions concerning the resettlement processes. They shall be represented at the Mediation by the following:

1. [NAME]
2. [NAME]
3. [NAME]
4. [NAME]
5. [NAME]
6. [NAME]

These two groups shall herein be referred to as the Project Affected Persons (PAPs)

## **2. PROJECT PROMOTERS**

### **KENYA ELECTRICITY GENERATING COMPANY (KENGEN)**

KENGEN as the project promoters responsible for the implementation of Olkaria IV project shall be represented by the following (Herein referred to as Promoters):

1. [NAME]
2. [NAME]
3. [NAME]

## **3. MEDIATORS**

The European Investment Bank (EIB) being a financing partner for Olkaria IV Project, the EIB-CM offered the parties to facilitate the resolution of the complaints through a mediation process. They have therefore appointed the following as mediators (herein referred to as Mediators):

1. [NAME]
2. [NAME]
3. [NAME]

In addition the EIB-CM in consultation with the parties may appoint additional experts to support the mediation team.

## **4. INTERPRETERS**

The EIB-CM shall provide interpreters for all the sessions. Such interpreters shall form part of the Mediation team. They shall only perform the duties of an interpreter strictly following the international code of ethics for interpreters.

The PAPs, Promoters and Mediators (herein referred to as the Parties) shall form the Mediation Team. The interpreters shall be ex-official members of the Mediation Team.

## **5. SPECIAL PARTICIPANTS**

### **5.1 Council of Elders**

In order to ensure and encourage fairness, openness, and proper decorum in the mediation dialogue, and in order to bring to the mediation space respect and traditional wisdom, the following members of the council of elders in the four villages shall attend the procedures as friends of the mediation:

1. [NAME]
2. [NAME]
3. [NAME]

4. [NAME]

Their presence in the mediation space is expected to bring traditional wisdom, patience and foresight to the gathering and support inter-party consultations during the mediation.

## **5.2 Welfare Society**

Further it was agreed that one official of the PAP Welfare Society shall be invited to the mediation space as a resource person. This was necessitated by the fact that all the common infrastructure as well as social institutions like the medical centre and the schools are under the Welfare Society. The following official shall represent the Welfare Society:

1. [NAME]

This person may be asked to attend those sessions that concern communal assets and institutions particularly water, roads and transport.

## **5.3 European Investment Bank Complaints Mechanism**

Since the trigger for this process was the complaints made to EIB-CM, the EIB-CM has the obligation to ensure that the mediation process is judicious, fair and practical and therefore shall have a special participant in the mediation as a friend of the Mediators:

1. [NAME]

## **6. OBSERVERS**

6.1 The Government of Kenya through the Ministry of Energy and Petroleum responsible for geothermal energy development will appoint an observer to the mediation process.

6.1 The World Bank as a financier of the Olkaria IV, and as part of the response to the Inspection Panel report, may request to be an observer in the mediation process and such request shall be granted after consultations with all the parties.

## **B. MEDIATION AGREEMENT**

Therefore after the processes of determination of the parties and agreeing to mediate with the intention of achieving a final solution to all outstanding complaints, the parties agree as follows:

1. To enter into Mediation with the intent of resolving issues in relation to the complaints raised about the resettlement of Project Affected Persons occasioned by Olkaria IV project (herein referred to as the "Dispute")
2. To accept the Mediators of the European Investment Bank Complaints Mechanism to mediate the Dispute between them in accordance with the terms of this Agreement.
3. To support the Mediation and proceed according to the terms of this Agreement, the European Code of Conduct for Mediators and Article 3.2 of Title II of the Principles, Terms of Reference and Rules of Procedure of the EIB Complaints Mechanism.

4.1 The Mediators shall be impartial and will assist the Parties to do any or all of the following:

- Communicate with one another
- Identify the issues in the Dispute
- Explore and generate options to solve the Dispute
- Reach an agreement regarding the resolution of the whole, or part, of the Dispute

4.2 The Mediators will not adjudicate the Dispute or any aspect of it or give legal or other professional advice to any Party. However, the Mediators may suggest methods of engagement in the dialogue around a Dispute.

5.1. In the absence of any agreement of the Parties to the contrary and unless prohibited by applicable law:

- a) The proceedings, but not the fact that they are taking place, have taken place or will take place, are private and confidential;
- b) Any settlement agreement between the Parties shall be kept confidential. Confidentiality of the settlement agreement may be waived in writing by the Parties.
- c) Even if confidentiality was not waived by the Parties, the latter shall have the right to disclose the settlement agreement if such disclosure is required by applicable law or it is necessary for purposes of its implementation or enforcement.

5.2. Unless required to do so by applicable law and in the absence of any agreement of the Parties to the contrary, a Party shall not in any manner produce as evidence in any judicial, arbitral or similar proceedings:

- a) Any documents, statements or communications which are submitted by another Party or by the Mediator in or for the proceedings, unless they can be obtained independently by the Party seeking to produce them in the judicial, arbitral or similar proceedings;
- b) Any views expressed or suggestions made by any Party within the proceedings with regard to the Dispute or the possible settlement of the dispute;
- c) Any admissions made by another Party within the proceedings;
- d) Any views or proposals put forward by the Mediators within the proceedings; or
- e) The fact that any Party indicated within the proceedings that it was ready to accept a proposal for a settlement.

5.3 The Parties' obligation of confidentiality will continue with full force and effect after the conclusion of the Mediation.

5.4.1 The Mediators are free to meet and communicate separately with each Party both before and during the mediation session.

5.4.2 The Mediator reserves the right to share information learned in the private sessions with the opposing Party if the Mediators believe that such information will facilitate a resolution of the dispute.

5.4.3 However, should a Party divulge certain information that they do not want the opposing Party to know, such Party will clearly inform the Mediators that such information is to be held in strict confidence and not to be shared with the other Party

6. The Parties shall not call the Mediators or the EIB (or any of its employees, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Dispute.

7. The Mediation shall be organized into sessions. The Mediators shall call the session and indicate the agenda items for that Session.

8. Should a session agenda be exhausted because the Parties have reached agreement on all disputes in the agenda, the Mediators may, with the approval of the other parties, move to the next session.

9. Should a session be deadlocked – where there is no movement within the parties to reach an agreement, and the Mediators believe it would be futile to continue with the session, the Mediators shall act as follows:

- a) Call for a temporary halt to further discussions on that Session, mark all matters related to that dispute as pending to be re-opened in another Session with agreement from all parties
- b) Suspend discussions on the specific dispute on the agenda and establish new agenda items for discussion during that session. With the agreement of all parties the suspension can be lifted and discussions resume

Or

- c) Call off any further discussions on the dispute and mark the item UNRESOLVED

10. Each Party shall have a spokesperson at the table and every party can only communicate through the spokesperson. However, with the approval of all parties, specific sessions can be open to dialogue to all Mediation Team members

11. No Team Member shall use rude language or create a scene at all times whether in Session or out of Session. Team Members are expected to behave with uttermost respect for the process and give appropriate courtesy to all views from all sources.

12. All parties in the Mediation Team are required to strictly observance the following rules:

i) Respect the Chair: There shall be a Chair for each Session from among the Mediators. He or she shall ensure that all parties appreciate and keep timely their presentations, interventions or contributions. No party shall be denied the right to express their point within these rules.

ii) The role of the parties is to put forward their perspectives/ opinions on the dispute under discussion and point out the difference between their views and those of the other party. It is never to discredit in a demeaning way the views of the other party. Every party is a part of the Mediation process.

ii) Each party must decide who their spokesperson or Team Leader is for every Session. He or she is the only one allowed to interject on behalf of the party.

iii) Interjections can only be made on the basis of the following issues:-

- a) That the person speaking is not audible or the interpretations are not clear
- b) That the point being raised has already been made

- c) That the matter being raised is not part of any dispute before the Mediation Team
- d) That the party feels the Chair of the Session should call for a break

iv) A point of objection can only be made when the other party is off the floor

v) All member of the Mediation Team from all parties must be able to listen carefully and with empathy to all the contribution from others. There shall be no interruptions; aggressive behaviour or walking out from the session while someone is talking

Failure to observance any of the rules mention in i) to v) above may result in the offending party being requested to substitute the person disrespecting the rules or if the situation persists, the offending person shall be barred from the Mediation without substitution.

13. All team members must be available when session is called to order by the Chair. If a member is frequently absent during sessions then the Chair shall request the party to submit another name.

14. The chair shall, in consultations with all the parties state when there shall be breaks during a session.

15. The EIB will support the logistics costs (lodging, transportation, meals, meeting rooms), no per diem shall be paid to any member save for an out of pocket expense allowance of Ksh1,000 per day to cover personal expenses during the meetings.

This agreement between the parties shall take effect upon being signed by all the members of the parties as follows:

**PAPs Representatives:**

1. [NAME] \_\_\_\_\_
2. [NAME] \_\_\_\_\_
3. [NAME] \_\_\_\_\_
4. [NAME] \_\_\_\_\_
5. [NAME] \_\_\_\_\_
6. [NAME] \_\_\_\_\_
7. [NAME] \_\_\_\_\_
8. [NAME] \_\_\_\_\_
9. [NAME] \_\_\_\_\_
10. [NAME] \_\_\_\_\_
11. [NAME] \_\_\_\_\_
12. [NAME] \_\_\_\_\_

**Promoters Representatives:**

1. [NAME] \_\_\_\_\_

2. [NAME] \_\_\_\_\_

3. [NAME] \_\_\_\_\_

**EIB Mediators:**

1. [NAME] \_\_\_\_\_

2. [NAME] \_\_\_\_\_

3. [NAME] \_\_\_\_\_

**Special Participants:**

**Council of Elders**

1. [NAME] \_\_\_\_\_

2. [NAME] \_\_\_\_\_

3. [NAME] \_\_\_\_\_

4. [NAME] \_\_\_\_\_

**PAPs Welfare Society**

1. [NAME] \_\_\_\_\_

**EIB-CM Representative**

[NAME] \_\_\_\_\_