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

September 17, 2015

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

Pursuant to paragraph 23 of the Resolution Establishing the Inspection Panel (IBRD Resolution 93-10 and IDA Resolution 93-6), attached for consideration by Executive Directors is Management's Report and Recommendation in response to the findings set out in the Investigation Report No. 97705-KE dated July 2, 2015, of the Inspection Panel on the captioned Project (Kenya Electricity Expansion Project, Credit No. P103037).

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**KENYA
ELECTRICITY EXPANSION PROJECT
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ABBREVIATIONS AND ACRONYMS

CAC	Community Advisory Council
EIB	European Investment Bank
EIB-CM	European Investment Bank – Complaints Mechanism
ESIA	Environmental and Social Impact Assessment
GCHM	Grievance and Complaints Handling Mechanism
GRS	World Bank Grievance Redress Service
IDA	International Development Association
IPN	Inspection Panel
IPPF	Indigenous Peoples Planning Framework
KEEP	Kenya Electricity Expansion Project
KenGen	Kenya Electricity Generation Company Ltd.
KeRRA	Kenya Rural Roads Authority
KES	Kenyan Shilling
KfW	Kreditanstalt für Wiederaufbau (German Development Bank)
Km	Kilometer
kWh	Kilowatt hour
MoU	Memorandum of Understanding
MW	Megawatt
OP	Operational Policy
RAP	Resettlement Action Plan
RAPIC	RAP Implementation Committee

Currency Unit (as of September 17, 2015)

1 KES = 0.009 USD

1 USD = 104 KES

EXECUTIVE SUMMARY

Management Response

- i. ***Management welcomes the Panel's review of the Project.*** Moreover, Management appreciates the Panel's recognition of the importance of the Project for Kenya, the value of the Bank's engagement in this type of project, and the steps Management has already taken to address some of the Requesters' concerns.
- ii. ***Management acknowledges the Panel's findings of compliance with OP 4.11 (Physical Cultural Resources), and those of noncompliance with OP 4.10 (Indigenous Peoples) and 4.12 (Involuntary Resettlement).***
- iii. ***Management appreciates the Panel's assessment of implementation challenges that have been encountered in the resettlement process.*** Management agrees that there have been weaknesses in the process and is fully committed to working with the affected community and the Kenyan authorities on those aspects that require strengthening going forward.
- iv. ***At the same time, Management would like to emphasize that resettlement has provided substantial benefits to community members, specifically securing legally-recognized ownership to the land on which they now reside, and other social infrastructure include educational, health and social facilities.*** Most notably, the affected community will, for the first time and as a result of Project facilitation, secure legally-recognized land ownership. Management also notes that there is strong support within the community for the Project (as the Panel's Report affirms), and that the majority of affected community members are happy with the resettlement.
- v. ***Management remains committed to supporting Kenya Electricity Generation Company Ltd. (KenGen) to address legitimate concerns of those members of the community who believe that they have been adversely affected by the resettlement.*** Management notes that the Project is still ongoing and provides opportunities to review and improve the resettlement process, and that KenGen is committed to using the remaining Project period to do that.
- vi. ***Management agrees that some Project-affected people claim to have been adversely affected by the resettlement and that it has proven difficult to definitively confirm these claims.*** It has been particularly challenging for the Project to respond to some allegations that Project-affected people have been left out of the resettlement process, when such individuals have not come forward and identified themselves in a manner that would allow their claims to be verified, including through the established grievance redress structures.
- vii. ***Management is committed to ensuring that all Project-affected people who believe they have been omitted from the RAP process will have an opportunity to have their claim reviewed and any potential errors rectified. Management, however, expects the number of persons who may have been inadvertently left out to be rather small, given that the census list has been vetted by the Project-affected people over a period of three years and through several fora.***
- viii. ***Management remains of the view that Project-affected people have been closely involved in the selection and design of the resettlement site.*** The location of the site and the nature and

design of amenities – including housing – reflect the expressed preferences of the Project-affected people among the available options and takes into account criteria that they identified as important.

ix. ***Management wishes to note that divisions inside the Project affected community, as well as inside the Maasai community in the area, have had an impact on the resettlement process.*** Until recently, an unrelated dispute within the wider Maasai community regarding the resettlement site (“RAPland”) seriously constrained the Project’s efforts to acquire the land and provide titles for the Project-affected people, as a court had to review and decide on the claim of another Maasai group first. Differences of opinion and aspirations within the community have also presented challenges, as is often the case in a process as complex and sensitive as this one. Various factions have on occasion pursued goals different from those of the majority.

x. ***Since the Inspection Panel’s investigation has started, the Project managed to make progress on a number of important issues raised by the Requesters.*** Specifically the titling and transfer of the land at the resettlement site has advanced, and the construction of the missing roads is underway. Management will continue to closely follow up on the outstanding issues, including those that result from the Management Action Plan to address the Panel’s findings.

Action Plan

xi. ***The KEEP investigation was done jointly by the World Bank’s Inspection Panel and the European Investment Bank’s Compliance Mechanism (EIB-CM), which also received a complaint on the Project.*** The EIB, at the request of KenGen and the Requesters, has started a mediation process with the aim of both parties agreeing on remedial actions to address the investigation’s findings. This has implications for the Bank’s own Management Action Plan in response to the Panel’s findings. In order for the Bank and EIB to synchronize and mutually enhance their redress efforts and to achieve the required outcome, Management proposes that the Bank participate in the mediation process initiated by the EIB.

xii. ***This Management Report and Recommendation identifies proposed actions which would be agreed with the Requesters through the mediation process.*** In Management’s view, this is the only way to achieve the goal intended by the Panel Resolution, which is to address adverse impacts resulting from policy noncompliance.

xiii. Management will report back to the Board on the outcome of the mediation process as soon as it is completed.

Background

xiv. The Kenya Electricity Expansion Project (KEEP) was approved by the Bank’s Board on May 27, 2010 (Credit is US\$330 million equivalent). The Project has two development objectives: (i) to increase the capacity, efficiency and quality of electricity supply; and (ii) to expand access to electricity in urban, peri-urban and rural areas. The Project is meeting its objectives through several components. Component A, to which the Request for Inspection pertains, supports construction of geothermal generation capacity. This comprises: (i) construction of the Olkaria IV 140MW power plant; and (ii) construction of another 140MW power plant at the existing Olkaria I site, both situated within the Hells Gate National Park, near Naivasha. Component A also includes construction of steam gathering facilities to supply all units at the Olkaria I and IV power plants.

Component A of the Project is being implemented by the Kenya Electricity Generation Company Ltd. (KenGen). The Olkaria IV plant was taken over by KenGen from the contractor on September 12, 2014 and was officially commissioned on October 17, 2014.

xv. ***The Olkaria IV sub-project required the resettlement of members of a local Maasai community from four villages located on or near the Project site.*** The resettlement was undertaken to mitigate potential health impacts, specifically related to hydrogen sulfide and noise, as identified in the 2012 Environmental and Social Impact Assessment. An Environmental and Social Management Plan was prepared to address the negative impacts related to the Project.

xvi. ***The resettlement of the Project-affected people from the four villages to the 1,700 acre resettlement site (referred to as “RAPland”) took place between August 21 and September 2, 2014. In total, 150 households (comprising 126 household heads and about 1,200 people) were resettled to RAPland.***

xvii. On November 13, 2014, the Inspection Panel registered the Request for Inspection, IPN Request RQ 14/06, concerning the KEEP, financed by IDA. The Request was submitted by members and representatives of a Maasai community resettled due to geothermal developments in the Greater Olkaria Geothermal Area in Nakuru County, Kenya. The Panel and the EIB-CM, which received complaints relating to the same concerns, entered into a Memorandum of Understanding (MoU) in order to coordinate the processing of these complaints. Executive Directors authorized an investigation on February 13, 2015. On July 2, 2015, the Panel issued its report outlining the findings of the investigation.

I. INTRODUCTION

1. On November 13, 2014, the Inspection Panel registered a Request for Inspection, IPN Request RQ 14/06 (hereafter referred to as “the Request”), concerning the Kenya: Electricity Expansion Project (“the Project”) financed by IDA (the Bank). The Request was submitted by members and representatives of a Maasai community resettled due to geothermal developments in the Greater Olkaria Geothermal Area in Nakuru County, Kenya, who have requested that their identities remain confidential (hereafter referred to as the “Requesters”). The Panel and the Complaints Mechanism of the European Investment Bank (EIB-CM), which received complaints relating to the same concerns, entered into a Memorandum of Understanding (MoU) in order to coordinate the processing of these complaints.

2. The Executive Directors and the President of IDA were notified by the Panel of receipt of the Request. Management provided its [Response](#) to the claims in the Request on December 19, 2014.¹ In its Report to the Board, the Panel found the Request eligible and recommended that the Executive Directors authorize an investigation. The investigation was authorized by the Executive Directors on February 13, 2015.

3. On July 2, 2015, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel’s clear and thorough presentation of its findings. This report, responding to the findings of the Panel, is organized in six sections. Section II provides background on the Project and an update on its status. Section III summarizes the findings of the Panel. Section IV presents Management’s response to the Panel’s findings. Section V contains Management’s Action Plan in response to the Panel’s findings, and Section VI is the conclusion. The Panel’s findings, along with Management’s responses, are described in detail in Annex 1.

II. PROJECT BACKGROUND AND STATUS

4. ***The Project.*** The Kenya Electricity Expansion Project (KEEP) was approved by the Bank’s Board on May 27, 2010. The amount of the Credit is US\$330 million equivalent. The closing date is September 30, 2016. US\$246 million have been disbursed to date.

5. ***Project Objectives.*** The Project has two development objectives: (i) to increase the capacity, efficiency and quality of electricity supply; and (ii) to expand access to electricity in urban, peri-urban and rural areas.

6. ***Project Components.*** The Project is meeting its objectives through construction of geothermal generation capacity (Component A), transmission lines and substations (Component B), and distribution lines and substations (Component C). In addition, the Project supports policy, institutional and regulatory development (Component D). The KEEP was placed in environmental screening Category A, requiring a full Environmental Assessment.

7. Component A of the Project comprises construction of the Olkaria IV 140MW power plant, which is situated within the Hells Gate National Park, near Naivasha, about 100 kilometers from Nairobi. Component A also includes construction of another 140MW at the existing Olkaria I site,

¹ Management Response is available at <http://ewebapps.worldbank.org/apps/ip/PanelCases/97-Management%20Response%20-%20Kenya%20Electricity%20Expansion%20Project.pdf>

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 and was officially commissioned on October 17, 2014.

8. Component A of the Project is co-financed by the Agence Française de Développement, European Investment Bank (EIB), Japan International Cooperation Agency, KfW Development Bank (Germany) and IDA. IDA financing of US\$120 million in Component A is for the steam gathering facilities (with co-financing of \$84 million from KfW), the 10 kilometer road and the Geothermal Complex. Since all 4 280MW units at Olkaria I and IV were synchronized to the national electricity grid on various dates between August and November 2014, the electricity produced by the units has displaced units running on heavy fuel oil with positive benefits for the average cost of power produced in Kenya and for the average price per kWh paid by electricity customers. The cost of electricity produced by Olkaria IV is approximately \$0.08 per kWh compared to approximately \$0.22 for electricity produced in plants that operate using fuel oil. Reduced use of heavy fuel oil also has positive benefit for the national balance of payments by decreasing oil imports.

9. The Olkaria IV sub-project required the resettlement of members of a local Maasai community from four villages located on or near the Project site. The resettlement was undertaken to mitigate potential health impacts, specifically related to hydrogen sulfide and noise, as identified in the 2012 Environmental and Social Impact Assessment (ESIA). An Environmental and Social Management Plan was prepared to address the negative impacts related to the Project.

10. The resettlement of the Project-affected people from the four villages to the 1,700 acre resettlement site (referred to as “RAPland”) took place between August 21 and September 2, 2014. In total, 150 households (comprising 126 household heads² and about 1,200 people) were resettled to RAPland. Thirty one Project-affected people with rental structures received cash at full replacement cost of the structures, while 31 housing tenants received cash equivalent to three months’ rent, and 22 land tenants with structures received cash at replacement cost of the structures.

² One “household head” can head more than household.

III. FINDINGS OF THE PANEL

Issue	Panel Findings & Key Observations
Identification of Indigenous Peoples	The Panel finds that, by not applying the Bank's Policy on Indigenous Peoples to the Maasai community in the Project area, and by not ensuring the protections and benefits afforded to them under this Policy, the Bank is not in compliance with the requirements of OP 4.10 on Indigenous Peoples.
Identification of Cultural Aspects	The Panel finds Management is in compliance with Bank Policy on Physical Cultural Resources, OP 4.11, since the sites of cultural value are unaffected by the Project and the community continues to have access to them.
Identification of Project-affected people	The Panel finds the identification of Project-affected people – through the two censuses, the validation exercise, and up to the award of compensation – did not offer satisfactory assurance of reliability in its outcome due to methodological flaws in the process, and is in non-compliance with OP 4.12 (paragraph 14).
Consultation, Participation, and Grievance Redress	The Panel considers the establishment of Resettlement Action Plan Implementation Committee (RAPIC) to be a well-intentioned effort to achieve broad representation of the Project-affected people, in line with Bank Policy. Nonetheless, the Panel finds that the serious shortcomings in achieving meaningful consultations and inclusive participation in the resettlement activities of the Project are in non-compliance with OP 4.12 (paragraph 2b) due to the ineffective communication with the community, the sidelining from the RAPIC of the traditional authority structure of the Elders, the omission of Maa language during consultations, and the failure to disclose documents to the affected community in a place accessible to them and in a form, manner and language understandable to them.
Adequacy of Resettlement Site, Infrastructure and Amenities	<p>The Panel finds Management's failure to ensure that displacement of the Project-affected people did not occur before the elements necessary for resettlement were in place is in non-compliance with OP 4.12 (paragraph 10). Furthermore, considering the long history of land tenure insecurity of the Maasai, the Panel believes particular attention must be paid to securing the communal land title for the community (OP 4.12, Annex A, paragraph 12).</p> <p>The Panel finds the housing solution offered to the Project-affected people, without providing each household a choice among different construction types, materials and sizes, is in non-compliance with OP 4.12 (paragraph 6a). While the houses built suited many Project-affected</p>

Issue	Panel Findings & Key Observations
	people, they are inconsistent with the cultural preferences and lifestyles of others.
Livelihood Restoration	<p>The Panel finds that the insufficient attention and assistance to vulnerable Project-affected people, who require particular consideration, are in non-compliance with OP 4.12 (paragraph 2c and paragraph 8).</p> <p>The Panel finds that the “land-for-land” principle implemented in the Project is a positive, development-oriented compensation option for involuntary resettlement of rural populations, and is in compliance with OP 4.12 (paragraph 6b). The Panel further finds that the lack of investments in RAPland to improve its productive potential and in livelihood restoration measures, is adversely affecting efforts of Project-affected people to bridge the gap in their livelihoods between the time of their relocation and the time those livelihoods can be restored, and is in non-compliance with OP 4.12 (paragraph 6a and c).</p>
Supervision and Monitoring	The Panel finds the Bank’s inadequate supervision of the Project’s resettlement activities and its insufficient monitoring (based on updated sociological data) of the wellbeing of Project-affected people and the restoration of their livelihoods to pre-displacement levels or better, are in non-compliance with Bank Policy on Involuntary Resettlement (OP 4.12 paragraph 24 and BP 4.12 paragraph 14).

IV. RESPONSE TO FINDINGS BY THE PANEL

11. Management welcomes the Panel's thorough review of the Project. Moreover, Management appreciates the Panel's recognition of the importance of the KEEP for Kenya, the value of the Bank's engagement in this type of project, and the steps Management has already taken to address the Requesters' legitimate concerns. Management's response is found below and in greater detail in Annex 1.

12. ***Management appreciates the Panel's assessment of implementation challenges that have been encountered in the resettlement process, and agrees that some aspects of that process will require strengthening going forward. At the same time, Management would like to emphasize that resettlement has provided substantial benefits to community members.*** Most notably, the affected community will, for the first time and as a result of Project facilitation, secure legally-recognized ownership to the land on which they reside. Management also notes that there is strong support within the community for the Project (as the Panel's Report affirms), and that the majority of affected community members are happy with the resettlement.³

13. ***Management recognizes that some Project-affected people claim to have been adversely affected by the resettlement.*** Management notes, however, that it has proven difficult to confirm these claims. It has been particularly challenging for the Project to respond to some allegations that Project-affected people have been left out of the resettlement process, given that such individuals have never come forward and identified themselves in a manner that would allow their claims to be verified, including through the established grievance redress structures. Management is working with KenGen to ensure that such Project-affected people continue to have every opportunity to come forward with their concerns and that no legitimate claim is left unaddressed.

14. ***Management remains committed to supporting KenGen to address legitimate concerns of Project-affected people who believe that they have been adversely affected by the resettlement.*** Management notes that the Project is still ongoing and provides opportunities to review and improve the resettlement process, and that KenGen is committed to using the remaining Project period to do that.

15. ***Management remains of the view that Project-affected people have been closely involved in the selection and design of the resettlement site.*** The location of the site and the nature and design of amenities – including housing – reflect the expressed preferences of Project-affected people among the available options and takes into account criteria that they identified as important (remaining in the vicinity, size of area, remaining together as one community, retaining clusters of residential houses belonging to an extended family set, etc.).

16. ***Management considers that overall, the Project has appropriately adhered to the overarching principle that a Bank-supported project needs to reflect the informed choices of affected people.*** In this respect, Management is of the view that that the Project-affected people did not lack the capacity and information necessary to take informed decisions regarding resettlement under the Project. The selection of a new location and the choice of new dwellings were concrete issues that people can understand independently of their level of education. The

³150 households (comprising 126 household heads and about 1,200 people) were resettled to RAPland. One "household head" can head more than household. (See also paragraph 10.)

Project-affected people have been closely involved in discussing and deciding upon both, a process which included visual inspections of the new area as well as model homes. That process was consultative and engaging and sought to empower the community and its members, rather than to impose a model from the outside.

17. ***Management wishes to note that divisions inside the Project affected community as well as inside the greater Maasai community in the area have had an impact on the resettlement process.*** Differences of opinion and aspirations within the community have presented challenges, as is often the case in a process as complex and sensitive as this one. Various factions have on occasion pursued goals different from those of the majority. Beyond the immediately affected community, there have also been attempts by regional/national Maasai leaders to gain control over the resettlement process. Finally, until recently, an unrelated dispute within the wider Maasai community regarding RAPland seriously constrained the Project's efforts to acquire the land and provide titles for the Project-affected people, as a court had to review and decide on the claim first.

18. ***Management responds to the specific findings in more detail below.***

A. Identification of Indigenous Peoples.

19. ***Panel finding.*** *The Panel finds the Maasai community submitting the Request meets the four criteria of the World Bank's Indigenous Peoples Policy (OP 4.10) and thus should have benefitted from its provisions. The Panel finds Management's decision not to apply the Policy to the [Project-affected people] gave rise to significant shortcomings regarding consultation, the cultural compatibility of the resettlement, benefit sharing, and the use of Maasai-specific expertise and [...] believes applying the Policy might have avoided or mitigated some of the harms caused by the Project. The Panel finds that, by not applying the Bank's Policy on Indigenous Peoples to the Maasai community in the Project area, and by not ensuring the protections and benefits afforded to them under this Policy, the Bank is not in compliance with the requirements of OP 4.10 on Indigenous Peoples.*

20. ***Management acknowledges that, due to then-prevailing interpretations of the scope of OP 4.10, the policy was not applied to the Maasai in the Project area. However, Management maintains that Project design and implementation have been guided throughout by key principles that are embedded in OP 4.10.*** There have been challenges and some shortcomings in implementation of resettlement under the Project, which are discussed below and which Management believes need to be addressed going forward. However, in Management's view these challenges did not arise because of a lack of commitment to these key principles in Project design and implementation.

21. ***The appropriate classification of pastoralist groups like the Maasai has been the subject of challenging and sensitive discussions over several decades, both within the Bank and with borrowing countries (particularly in East Africa), and approaches to the subject have evolved over time in different contexts.*** At the time the Project was prepared and approved, the application of OP 4.10 by the Bank in Africa had, as a matter of established precedent, been largely restricted to hunter-gatherer groups and was not extended to pastoralist communities. Consistent with this precedent and Government of Kenya policy at the time, a number of such groups (e.g., Sengwer, Ogiek, Waata and Boni) were tentatively identified as being present in the areas where the

transmission and distribution components of the Project were to be implemented, and an Indigenous Peoples Planning Framework (IPPF) was prepared and disclosed.⁴ However, reflecting prevailing practice, the IPPF did not extend to the Maasai in Olkaria.

22. ***Government of Kenya policy and Bank practice on this complex issue have subsequently evolved toward application of OP 4.10 to the Maasai, in the wake of important Constitutional developments in Kenya.*** In August 2010, the Government of Kenya adopted a new Constitution that committed the State to addressing the needs of vulnerable groups within society, including members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. In parallel with this Constitutional reform, Management decided to re-evaluate the application of OP 4.10 to pastoral groups in Kenya, and in November of that year held a workshop in Nairobi with the Government of Kenya on the subject. Management continued the dialogue with the Government of Kenya in 2011 and 2012, and informed the Board of this dialogue through briefings and information about specific projects.⁵ A technical study by Bank specialists concluded in June 2012 that the Maasai in many contexts met the requirements of OP 4.10, and in December 2012, Management affirmed that the policy would be applied on a project-by-project basis to pastoral-nomadic groups in Kenya that met the policy criteria. Shortly thereafter, in early June 2013, the Government of Kenya decided that “vulnerable and marginalized groups” included pastoral-nomadic groups, such as the Maasai. Since then, OP 4.10 has been triggered for such groups in relevant Bank operations.

23. ***Although OP 4.10 was not formally applied under the Project to the Maasai, in Management’s view key principles of OP 4.10 have guided Project design and implementation.*** Management believes that this approach has enabled the Project to be responsive in addressing the concerns of the affected community during implementation. These principles include:

- ***Informed and culturally-appropriate consultation:*** Bank Management worked closely with the Government of Kenya to ensure that the Project engaged in extensive consultations with the community. Consultations were designed to be: (i) culturally appropriate; (ii) gender and inter-generationally inclusive; (iii) conducted in good faith; and (iv) voluntary, free of interference and non-manipulative.
- ***Culturally-appropriate design of resettlement:*** The Project has aimed to ensure that the selection and design of resettlement amenities reflect community choices. Consultations on the selection of the resettlement site, housing, resettlement site layout and other aspects of implementation of the Resettlement Action Plan (RAP) were shaped by a commitment to the concept of free, prior and informed consultations leading to broad community support.

⁴ It should be noted that none of these Indigenous Peoples tentatively identified early on in Project preparation were found during implementation to be in the Project area and, therefore, no Indigenous Peoples Plans were prepared.

⁵ The Memorandum of the President for the Africa Eastern Electricity project, approved in July 2012, explained that in the Bank’s prior practice with respect to the application of OP 4.10 in Africa, the policy was interpreted to apply solely to hunter-gatherer groups. However, the Bank was reviewing the application of OP 4.10 to certain pastoral groups in Kenya and subsequently determined that, to the extent such groups were identified by the Bank as Indigenous Peoples, their presence would trigger applicability of OP 4.10 in future projects that may affect them.

- **Security of community land rights:** Prior to relocation, Project-affected people had no legal ownership of the land despite their communal ancestral claims to it. As a result of the Project, the Project-affected people will for the first time have formal title to communally-owned land (RAPland and the Cultural Center land), enhancing their security of tenure and reducing their vulnerability to court actions, displacement or eviction by other claimants.

24. ***Management acknowledges that there have been challenges in how the Project has addressed the above principles.*** There have no doubt been shortcomings, a number of which correlate to those identified in the Panel’s Report. *These are discussed in greater detail in the following Sections of this Report, and areas that may need to be addressed going forward are identified.*

25. ***On the matter of benefit sharing, Management acknowledges that the option of Project-affected people receiving direct financial benefits from the generation of electricity at Olkaria was not pursued.*** Management notes that there is not yet a national consensus on how to approach this complex and controversial issue, nor is the necessary policy and legal framework in place (see below). Hence, aside from the fact that OP 4.10 was not triggered for the Maasai, Management considers that it would have been inappropriate to insist on a financial benefit sharing approach in the absence of a national mechanism that enables or compels the sharing of royalties or revenue at the project level. Instead, the emphasis during Project implementation has been on conferring culturally appropriate benefits to the community, as described below.

26. ***Sharing of financial benefits from natural resource exploitation has been a sensitive and controversial political issue for many years, but no national laws or consensus has yet emerged.*** In 2010, Kenya enacted a new Constitution that vests the mandate for exploitation, utilization and management of natural resources in the national government for the benefit of the people of Kenya. The Constitution obligates the state government to “...ensure the equitable sharing of the accruing benefits.” The Constitution also requires equitable sharing of revenue raised nationally between the national government and the county governments. A commission on revenue allocation has been established under the Constitution to recommend the basis for sharing such revenue. A number of relevant draft laws are under consideration, but there are widely differing views among various stakeholders on key aspects of benefit sharing including: (i) what natural resources should be subject to benefit sharing; (ii) whether the benefit sharing should be at the project level or if they should be paid to the national government and form part of national revenue, to be shared equitably, in accordance with the Constitution, between the two levels of governments through the Commission for Revenue Allocation; (iii) whether the negotiations for benefit sharing are to be carried out by the project developers directly with local communities or through their respective county governments; (iv) definition of “local community;” (v) social impacts of paying benefits to one group and leaving out other groups in the same area; and (vii) percentages of benefits to be shared. In short, five years since the promulgation of Kenya’s Constitution in 2010, which set out broad principles on the matter, there are neither national laws nor consensus on fundamental issues such as scope of the natural resources to fall under the arrangement and modalities of sharing the benefits.

B. Identification of Project-affected people

27. ***Panel finding.*** *The Panel finds the identification of [Project-affected people] (through the two censuses, the validation exercise, and up to the award of compensation) did not offer satisfactory assurance of reliability in its outcome due to methodological flaws in the process, and is in non-compliance with OP 4.12 (paragraph 14.)*

28. ***Management believes that the methodology used to identify the Project-affected people was generally robust, consultative and participatory.*** At the same time, Management acknowledges that given the complexity of identifying and categorizing Project-affected people, errors can occur. Management shares the Panel's concern about complaints that a small group of individuals possibly was either improperly omitted from the census or miscategorized. Both Management and KenGen remain committed to ensuring that no one legitimately entitled to compensation or other resettlement assistance is omitted from receiving those benefits.

29. ***Based on the complaints channels provided for through the Project, the process of identification of Project-affected people was designed to be self-correcting and to provide a reasonable level of confidence that eligible Project-affected people would be correctly identified and categorized.*** (The steps in this process are summarized in the next three paragraphs, and described in more detail in Annex 2.)

30. The initial census and preparation of the resulting RAP was undertaken by the consultant, Gibb Africa Limited, with a cut-off date of September 16, 2009. The process included a Social Impact Assessment, with a draft presented in a public meeting for comments. This was followed by another census and social survey, as agreed with the village Elders in early September 4, 2009. Households were enumerated, with photos of each head of household in front of their respective structures. The social surveys were undertaken using questionnaires, focus group discussion, key informant interviews, and meetings with Project-affected people.

31. In 2012, the RAP, including the census, was updated in response to the recommendation of a multi-donor supervision mission of November 2011, since more than a year had passed since the 2009 census and the RAP had not yet been implemented. The 2012 update was conducted through household questionnaires and interviews, focus group discussions, and house to house enumeration by four teams. The updated RAP included the natural growth of households and change in ownership and/or assets. The list of Project-affected people was presented for validation and disclosure at a public meeting on May 24, 2012.

32. In 2013, KenGen found it necessary to validate the data collected in the 2009 and 2012 censuses as the number of houses had increased, some Project-affected people were claiming to have been grouped in the wrong category, others to have been left out, and some that were included should not have been. This final validation exercise also served to identify any inconsistency in the previous census; it was conducted through house to house census and interviews simultaneously in the four villages by four separate teams of experienced staff, composed of sociologists and a social/environmental specialist from the consultant firm contracted by KenGen on May 14, 2013, from 8am to 8pm. It included: (i) confirming each Project-affected head of household against his/her photograph and that of the family taken in the 2009 census; (ii) having the validation form signed as agreement on assets and entitlement; (iii) photographing the heads of households in front of their respective houses; (iv) marking the houses with specific codes from the database and; (v) assigning codes to new Project-affected people as a result of natural growth.

33. ***Notwithstanding the exhaustive nature of the above-described process, both KenGen and Management have been mindful of the possibility that errors may occur during implementation.*** KenGen's commitment throughout, as expressed in its MoU with the Project-affected people, has been to address and correct any such errors that affected parties legitimately bring to its attention, through the Project grievance mechanism or otherwise. Indeed, a number of complaints about exclusion have been raised to date and have been thoroughly investigated by KenGen based on the eligibility criteria set out in the RAP and agreed in the MoU between the community and KenGen.

34. ***As stated already, Management is committed to ensure that all Project-affected people who believe they have been omitted from the RAP process will have an opportunity to have their claim reviewed and any potential errors rectified. Management, however, expects the number of person who may have been inadvertently left out to be rather small,*** given that the census list has been vetted by the Project-affected people over a period of three years, including through: (i) review of the lists of eligible persons by Project-affected people at the village level with their elected village chairman, the village Elders and the district commissioners; (ii) review of the lists by the RAPIC, the elected representatives from the four villages; and (iii) public barazas on dates agreed to with the Project-affected people and attended by them, the general community, RAPIC members, provincial administration and village Elders. The Project-affected people have had multiple opportunities, since the time of the first census (2010 Gibb census) through to the agreement and signing of the MoU (July 1, 2013) and vetting processes that preceded it, to step forward and submit their claims.

C. Consultation, Participation and Grievance Redress

35. ***Panel finding.*** *The Panel considers the establishment of RAPIC to be a well-intentioned effort to achieve broad representation of the [Project-affected people], in line with Bank Policy. Nonetheless, the Panel finds the serious shortcomings in achieving meaningful consultations and inclusive participation in the resettlement activities of the Project are in non-compliance with OP 4.12 (paragraph 2b) due to the ineffective communication with the community, the sidelining from RAPIC of the traditional authority structure of the Elders, the omission of Maa language during consultations, and the failure to disclose documents to the affected community in a place accessible to them and in a form, manner, and language understandable to them.*

36. ***Management considers that the RAP was prepared through meaningful consultation with and participation of all segments and groups of Project-affected people, and that this approach was followed throughout the RAP implementation process up to the relocation to RAPland and beyond.*** This included a multi-layered consultation mechanism comprising: (i) direct consultations with all Project-affected people through public meetings (barazas) at central venues (usually the Cultural Center); (ii) village by village sensitization especially on the agreed Grievance and Complaints Handling Mechanism (GCHM); and (iii) consultations and negotiations at the level of the RAPIC, with five representatives from each village. KenGen and the Bank have continued the consultations following relocation.

37. The presence of a Maa speaker in the consultant team as well as the presence of village Elders and bilingual (Kiswahili and Maa) speakers among the Project-affected people provided adequate assurance of meaningful consultations with affected people who only spoke Maa during the various census and validation exercises.

38. *The effectiveness of the consultations between KenGen and the Project-affected people is demonstrated by the extent to which they shaped the outcomes of the resettlement process.*

Full consensus on all matters either within a community or between a community and its outside partners is frequently hard to achieve, and areas of disagreement cannot always be avoided. Nevertheless, within the context of Project resettlement, consultation played a vital and effective role in shaping design and implementation. Examples include:

- (i) The agreement of the Project-affected people and KenGen, at the insistence of the former, to enter into a legally binding MoU as an affirmation that KenGen would honor and implement all compensation measures stipulated in the RAP (this is, to Management's knowledge, the first RAP in Kenya with a negotiated legally binding MoU);
- (ii) The selection of RAPland from amongst many possible alternative sites (see Section E, below) and the agreement to confer full ownership title on the community to RAPland;
- (iii) Alteration of the layout and spacing of the houses on the resettlement site from the original model prepared by KenGen's technical staff, in order to accommodate the wishes of the Project-affected people, such as attaching the kitchen to the main house rather than leaving it detached (requested by women), and enlarging the living and bedrooms (requested by men);
- (iv) The decision to move all four villages of Project-affected people together and to allocate houses according to family sets. The Project-affected people requested that proximity of village groups and family groupings within villages be factored into the planning and allocation of housing clusters while arranging clusters according to extended family set ups. However, they did not wish to be resettled in an "estate-like" setting, preferring scattered residential settings that reflected their pre-Project situation;
- (v) Agreement to install a number of 30-meter gaps for livestock passage in the RAPland perimeter fencing to enable access to grazing land outside RAPland in line with the pastoral activities of the Project-affected people;
- (vi) The placement of water kiosks within a one km radius (as compared to up to 5 km previously, e.g., for Olonogot village) at the request of Project-affected women; and
- (vii) The increase of livestock watering troughs from the originally planned four to eight.

39. Management notes that the Project-affected people retained their own lawyer who advised them in the process and represented them during the RAP and MoU negotiations (the MoU of July 1, 2013 and the amended MoU on September 10, 2014 are both signed by the legal representative of the Project-affected people).

40. *KenGen and the Bank are committed to ensuring continued engagement and consultations with Project-affected people until all compensation measures are duly completed.*

The need for consultation has not diminished with the completion of relocation, and concerted efforts will be made to strengthen such processes going forward, with the benefit *inter alia* of the Panel's observations on areas in need of improvement.

41. ***In Management’s view, the RAPIC represented an important attempt to establish a “hybrid” mechanism for consultation – a systematic and representative way of consulting with Project-affected people in culturally appropriate ways while trying to ensure inclusion of women, youth and people with disabilities who otherwise would have had no voice in the traditional decision-making processes dominated by male Elders.*** Management appreciates the Panel’s observation that the establishment of the RAPIC was a well-intentioned effort to achieve broad representation of the Project-affected people, in line with Bank policy. At the same time, the Panel finds that the RAPIC sidelined the traditional authority structure of the Elders.

42. ***In Management’s view, the Panel’s observations about the RAPIC highlight the challenge inherent in trying to achieve consultation that is both inclusive and culturally appropriate in certain social contexts.*** In traditional Maasai culture, the Council of Elders is viewed as the legitimate forum for decision-making in most cases. At the same time, Maasai traditional culture does not allow women and youth to participate in the decision-making process, and they would have been excluded had only the Council of Elders system had been used. Hence, the RAPIC was a deliberate attempt to balance countervailing social considerations, in the interest of ensuring inclusive consultations.

43. ***In any such “hybrid” approach, tensions are inevitable.*** As part of the quest for appropriate balance, the first tier of grievance redress under the Project was entrusted to a Community Advisory Council (CAC) – composed of selected members from the village level Council of Elders in each of the four villages of Project-affected people. Management believes this approach was appropriate. At the same time, Management is concerned about reports that CAC members have increasingly started to sit with the RAPIC, as opposed to maintaining the independence that is required to avoid potential conflicts of interest, and agrees that this should be addressed going forward to ensure that the grievance mechanism functions effectively.

44. Management notes the Panel’s concern that the RAPIC consists of a relatively high percentage of more educated and elite community members. However, Management observes that the choice of representatives of the Project-affected people on the RAPIC was properly left entirely up to the community, and that it would have been both patronizing and counterproductive to interfere in that choice.

45. ***Management concurs with the Panel that genuine and effective participation of the Project-affected people requires that consultations be conducted in Maa and Management is working with the community and the authorities to review and enhance that aspect of the process moving forward.*** As the Panel noted, most of the Project-affected people cannot read. Hence, oral interpretation in the Maa language has been an important part of the consultation process. As noted under part A., above, the consultant team included a Maa speaker throughout the RAP and census process.⁶ All consultations, whether at the RAPIC, in the villages during sensitization discussions about key RAP implementation issues, or at public meetings, involved Maa interpretation. The interpreters in all cases included representatives from among the Project-affected people. However, Management agrees that some misunderstandings might have been mitigated had the Project arranged for the translation of key documents or summaries thereof into Maa.

⁶ In the 2009 Census, one of the enumerators was a Maasai woman from the local area (Naivasha).

D. Adequacy of Resettlement Site and Infrastructures and Amenities

46. ***Panel finding.*** *The Panel finds that Management’s failure to ensure that displacement of the [Project-affected people] did not occur before the elements necessary for resettlement were in place is in non-compliance with OP 4.12 (paragraph 10). Furthermore, considering the long history of land tenure insecurity of the Maasai, the Panel believes particular attention must be paid to securing the communal land-title for the community (OP 4.12, Annex A, paragraph 12). The Panel finds the housing solution offered to the [Project-affected people], without providing each household a choice among different construction types, materials, and sizes, is in non-compliance with OP 4.12 (paragraph 6a). While the houses built suited many [Project-affected people], they are inconsistent with the cultural preferences and lifestyles of others.*

47. ***Management notes that by the time of relocation, which took place between August 21 and September 2, 2014, most of the conditions necessary for resettlement were in place.*** All residential housing units, complete with pit latrines, bathroom, 2000 liter tank for rainwater harvesting per household, the primary school and teachers’ houses, churches, health dispensary, social hall, livestock watering troughs, communal water kiosks, a social hall and usable main and link roads, were all in place. In addition, eligible Project-affected people had received other cash compensation (except the disturbance allowance, which they chose to pay to Kenya Power and Lighting to enable their houses to receive electricity).

48. ***Two outstanding issues at the time of relocation were: (i) the incomplete land titling process for the 1,700 acres at RAPland and for 14 acres for the Cultural Center; and (ii) the construction of roads.***⁷ KenGen consulted with Project-affected people on these two issues and both parties agreed to amend the MoU to give KenGen more time to complete these aspects of the agreed compensation measures. Management is of the view that the decision to relocate to the resettlement site prior to the completion of the roads and of the land title process was an informed decision taken by the Project-affected people, and notes that on both issues, significant progress has been made.

49. ***Management was informed by KenGen that the Kedong Ranch land title was transferred to KenGen on June 15, 2015.*** KenGen has begun the process of surveying the roads and public facility land in RAPland in order to separate the community land from the land that will remain in public hands. This will be followed by the registration of approximately 1,500 RAPland acres and the 14 Cultural Center acres in the name of the legal entity – Ewang Sinyati Welfare Society – and transfer of the remaining approximately 200 RAPland acres to the sector ministries responsible for the roads and other public facilities. Management will continue to monitor this process, but notes that with the transfer of title from Kedong Ranch to KenGen, a critical milestone in the process has been achieved.

50. ***Management agrees that the delay in constructing the all-weather road has become an inconvenience for the Project-affected people especially during the rainy seasons.*** Management notes that the road was not constructed by the time the Project-affected people moved to RAPland, due to an oversight in KenGen’s budget provisions that took some time to correct. Following the competitive procurement process for the road contractor, the contract was negotiated and signed

⁷ In line with Kenya Rural Roads Authority standards.

on August 10, 2015. The contractor has mobilized and is at the site. Construction will take approximately six months (until February 2016).

51. ***Management believes that the decision to opt for modern houses was an informed decision, and notes that Project-affected people were offered alternatives.*** During negotiations, planning and implementation of the housing solutions, Project-affected people did not raise any objections to the proposed housing designs; they expressed their preference for scattered residential settings that reflected their pre-Project situation and rejected being resettled in an “estate-like” setting. In addition, and in conformity with their culture and traditional lifestyle, they wished to be resettled in clusters comprising extended family units in their respective villages – all of which wishes were honored by KenGen. Among the Project-affected people, the youth and the women were especially emphatic in their support for modern houses with a separate kitchen and separate toilets and bathroom per household (RAP 2013, section 6, tables 6-5 and 6-6). ***Nonetheless, the option to construct either manyattas⁸ or modern houses was offered to the Project-affected people*** and the advantages and disadvantages discussed (see ESIA, November 2012, page 61) with the Project-affected people through a consultative process. Scaled model houses were used to inform their choice and changes were made to the design based on the their preferences. Project-affected people were also shown a life-size walk-through model house to allow for a true-to-life impression. Through the RAPIC and CAC, the Project-affected people negotiated, redesigned and approved the type of houses they wanted built. KenGen obtained a special release from the CAC for the men to live in houses built by KenGen instead of by the women, who traditionally build and maintain the houses. The Project-affected people, and especially the women, were happy that the concrete construction would not require the maintenance that a mud house entails and would protect them from the elements.

E. Livelihood Restoration

52. ***Panel finding.*** *The Panel finds the insufficient attention and assistance to vulnerable [Project-affected people], who require particular consideration, are in non-compliance with OP 4.12 (paragraph 2c and paragraph 8). The Panel finds that the “land-for-land” principle implemented in the Project is a positive, development-oriented, compensation option for involuntary resettlement of rural populations, and is in compliance with OP 4.12 (paragraph 6b). The Panel observes, however, that RAPland’s poor pasture and topography (with steep ravines and gullies scoured by seasonal flashfloods) cannot be considered equivalent in quality to the land where the [Project-affected people] were previously located. The Panel further finds the lack of investments in RAPland to improve its productive potential and in livelihood restoration measures, is adversely affecting [Project-affected people’s] efforts to bridge the gap in their livelihoods between the time of their relocation and the time those livelihoods can be restored, and is in non-compliance with OP 4.12 (paragraph 6a and c). The Panel finds the Project inadequately accepted the assertion, stated in the RAP, that the Maasai would be able to continue their existing income-generating activities in RAPland without any changes to their livelihoods.*

53. ***Project preparation has given specific attention to the needs of vulnerable and poor Project-affected people, including landless, women, disabled and children.*** A number of socio-

⁸ Traditional Maasai settlement.

economic surveys were undertaken during the preparation and implementation of the RAP to identify vulnerable groups among the Project-affected people. Socioeconomic data on the Project-affected communities was collected in the 2009 RAP through a household survey.⁹ The 2009 RAP identified the poor and vulnerable Project-affected people as the “elderly, some youth/orphans, female headed households (4 FHH) and the disabled (one [Project-affected person] from Cultural Center).”¹⁰ Recognizing the patrilineal nature of decision-making vested in the Elders, the Project sought out the specific views of women and youth. In 2012 the socio-economic data was updated when Gibb Africa undertook a qualitative validation of the 2009 findings through focus groups and key informant interviews in the four villages. The focus groups aimed to understand better the then current livelihoods and revenue sources of the Project-affected people, including the grazing patterns of the pastoralists.

54. Through the consultation for the 2009 RAP, the 2012 ESIA and the follow up 2011/2012 focus groups, women and youth from the four villages emphasized their wishes: (i) for modern housing with separate kitchen, separate toilet and bathroom; (ii) for watering points for animals; (iii) for schools and health services; (iv) to be supported in their business at the Cultural Center and to access other employment opportunities; and (v) for KenGen to assist orphans among the Project-affected people with schooling opportunities.¹¹

55. ***The Project also aimed to protect the interests of youth, women and the disabled through ensuring their representation in the RAPIC.*** The RAPIC had at least two women representatives from each village, one representative of the vulnerable and disabled and one for youth for the four villages, whose role it was to highlight the issues of concern of their respective groups. By the end of 2014, Project-affected people had formed six Committees to implement their livelihoods enhancement strategies. These are: (i) Environment Committee; (ii) Roads; (iii) Water; (iv) Cattle Dip; (v) Bus/Welfare Committee; and (vi) the Cultural Center Management Committee.

56. ***The RAP also had provisions to compensate those who were landless, i.e., Land Tenants, who did not have an ancestral claim to land but had built an asset on it.*** The Land Tenants were offered lump sum cash compensation for the replacement value of their residential houses. Eight¹² Project-affected people were identified in this category. Compensation was also offered to Housing Tenants, i.e., Project-affected people who would have to seek alternative housing to rent. These were mostly people from other parts of the country who had moved to the area for employment and were renting accommodation. They were offered a lump sum equivalent to three months’ rent to enable them to resettle.

57. ***Management acknowledges that these efforts may not have been sufficient to more definitively identify immediate and medium-term impacts on livelihoods post-relocation, including those for vulnerable groups, and how to best assist these groups.*** In August/September 2014, the Project undertook an immediate post-relocation assessment observed by the Bank, where some issues of concern were raised by the Project-affected people. Going forward, the Bank will

⁹ The 2009 survey was administered to all the Project-affected households. Where the household head was not present, the spouse was the respondent. Where neither were present, an adult in the household was interviewed and the relationship between the respondent and the household was indicated on the survey form.

¹⁰ KenGen Olkaria IV Power Plant Resettlement Action Plan, December 2009 para. 5.9.4., page 5-17.

¹¹ 2009 RAP section 6.2 and Table 8.6 page 7-5.

¹² RAP Validation Report, June 2013, Gibb Africa, Appendix 3.

continue to follow up with KenGen to review the socio-economic situation of Project-affected people following relocation and employ measures required to achieve the RAP goals. Specifically, this will include:

- An independent post-relocation survey to determine the overall post-relocation impacts on the Project-affected people, in particular, vulnerable and poor people affected by the Project.
- Formulation of tailor-made programs to ensure livelihood activities for the vulnerable and the very poor among the Project-affected people (as identified through the survey) are enhanced.
- With regard to the complaint of restricted access to housing by one handicapped Project-affected person, the Project has completed the restructuring of the house to make it and its compound disabled-accessible. The Project will continue to work with this person to see what more needs to be done to ensure accessibility to the various amenities that have been provided at RAPland.

58. ***Management appreciates the Panel's observation that the Project's emphasis on land-for-land compensation is a positive and development-oriented approach. Management further notes that the Project-affected people were fully involved in the search for resettlement land and in decisions on whether to accept the current RAPland.*** Prior to the final decision, KenGen and the Chairmen of all four Project-affected villages identified a total of eight possible resettlement sites (see list in Annex 1, Item 6), with the current RAPland being the last.

59. ***After accepting in principle that the current RAPland was satisfactory, the Project-affected people requested to have access roads cut through it and beacons erected to enable them walk through the area with a view to identifying any challenges and opportunities within the site.*** Among the challenges were gullies and potential for soil erosion in some areas. Other positive factors and considerations overrode these challenges and the Project-affected people preferred the site over the other seven. The current RAPland site, 1,700 acres located about 14 km from the former Project-affected villages, was acceptable to the Project-affected people because: (i) they were familiar with the area; (ii) enough land was available for settlement, social amenities and grazing; (iii) the owner was willing to sell; (iv) due diligence revealed that the land had no encumbrances affecting a sale agreement between KenGen and Kedong Ranch Ltd; and (v) their work places, such as KenGen, the flower farms and even the market could easily be accessed from this site.

60. ***Management would like to clarify that the 1,700 acres at RAPland should not be characterized as a "replacement" for 4,200 acres. The 4,200 acre area cited in the Panel's Report represents the Project area, and does not describe the area from which the Project-affected people were displaced.*** There is reference in the Panel's Report to a 4,200 acre area from which the Project-affected people have been relocated. The Report suggests that the size of this 4,200 acre area needs to be taken into account in determining whether the 1,700 acre RAPland is a suitable replacement. It is important to note that the 4,200 acre area referred to in the RAP as the "estimated total impacted land area"¹³ comprises the land required for steam production and

¹³ Olkaria IV, RAP 2009, Vol. 1, pages i and 1-3.

reinjection wells and for pipes required to transport the steam. The reference in the RAP was not intended to describe the extent and location of land from which the Project-affected people and their livestock activities were being relocated.

61. ***While the Project-affected villages (on a total of approximately 84 acres) were located within the 4,200 acre area, the 4,200 acre area was for the most part not used by the Project-affected people as pasture for livestock grazing prior to resettlement.*** KenGen purchased the land required for the Project from Kedong Ranch, and neither prior to that purchase nor thereafter did the Project-affected people have grazing rights there. Hence, prior to resettlement, their livestock was, with minor exceptions, grazed in areas outside the 4,200 acre Project site, often as much as 30 km away (near Gilgil and Suswa, for example).¹⁴ This practice continues today.

62. ***Hence, the 1,700-acre RAPland was not intended as a “replacement” for 4,200 acres, and its adequacy should not be judged on that basis, because the resettlement has, in fact, not resulted in the Project-affected people being displaced from 4,200 acres. The Project-affected people have not lost access to the areas that they have previously used for grazing purposes, most of which is outside the 4,200 acre Project site. On the other hand, they have acquired secure access to the 1,500 acres of RAPland to which they will now have full legal title.***

63. ***Management is of the view that the livelihood restoration activities were actively discussed and agreed to by the Project-affected people with KenGen and reflected in the MoU.*** These include: (i) approximately 1,500 acres with security of tenure; (ii) permanent residential housing units, complete with pit latrine, bathroom and rainwater tank, livestock pens for cattle and other ruminants, and homestead fencing, on a 1 acre piece of land; (iii) modern primary school complete with library, Early Childhood Education Center (kindergarten), teachers’ houses, wash rooms for boys, girls and teachers, water tank and electricity supply; (iv) 3 churches that were restored; (v) a dispensary that is fully equipped and which has a maternity wing (dispensaries in rural Kenya do not usually have them); (vi) social hall; (vii) 8 livestock watering troughs; (viii) 2 cattle dips; (ix) communal water kiosks within one km radius of each household; (x) 2 fish ponds; (xi) a main road to RAPland and access roads linking the settlement clusters to each other; (xii) a 60-seater bus for the transportation of Project-affected people (but which they have chosen to turn into an income generating venture for themselves); and (xiii) capacity building for each of the livelihood project management committees.

64. ***With regard to the commuting requirements of some Project-affected people, Management agrees with the Panel that the Project cannot be faulted for failing to ensure transportation of Project-affected people to maintain access to their jobs, since it provided the community with a 60-seater bus.*** Based on the decision of the Project-affected people to lease the bus to a private company and to use the lease income to purchase, operate, and maintain minibuses, the issue appears to be addressed. The Project will follow up with the welfare society of the Project-affected people to see if they require any assistance for these transactions.

¹⁴ Annex 9 of the 2009 RAP Vol. II tabulates the livestock owned by Project-affected people in the four villages. Since the land was privately owned by Kedong, Project-affected people did not have livestock grazing rights in the settlement area of the four villages (although Kedong did apparently tolerate a small amount of grazing in the immediate vicinity of the villages). Thus, they grazed the majority of their livestock outside the 4,200 acre area required by the Project.

65. ***Assessment of livelihood activities is underway.*** Both KenGen and the RAP Independent Evaluation Panel are carrying out assessments. These will help determine if the activities have or have not achieved the goal of restoring the livelihood of the Project-affected people. Management will work with KenGen to invest in any livelihood restoration measures needed to achieve the stated goal.

66. ***Access to electricity infrastructure.*** As part of the negotiated agreement, KenGen paid for electricity infrastructure (poles, transformers, etc.) to bring electricity supply to RAPland within easy access of each household. Most Project-affected people chose to have their new houses connected to the electricity infrastructure, which required the payment of the usual connection fee.¹⁵ ***It is important to note that it was a deliberate decision of the Project-affected people to use their transition allowance of KES 35,000 to obtain a power connection, and not a matter of decision of or acceptance by the Bank, as presented in the Panel's Report.*** Project-affected people had to actively initiate the process of obtaining a power connection for their homes through a written application, which they did.

F. Supervision and Monitoring

67. ***Panel finding.*** *The Panel finds the Bank's inadequate supervision of the Project's resettlement activities, and its insufficient monitoring (based on updated sociological data) of [Project-affected people's] wellbeing and the restoration of their livelihoods to pre-displacement levels or better, are in non-compliance with Bank Policy on Involuntary Resettlement (OP 4.12 paragraph 24 and BP 4.12 paragraph 14).*

68. Management agrees that intensive supervision is needed for projects of this type. At the same time it should be recognized that Management did in fact provide close monitoring of the design and implementation of resettlement through enhanced safeguards and RAP implementation support, with over 32 missions from October 2011 to April 2015. Missions involved observing: (i) barazas (public meetings including all Project-affected people and other stakeholders), RAPIC meetings, and sensitization meetings on land registration; (ii) public disclosure of the entitlement matrix, list of Project-affected people to receive houses and payment of cash compensation; and (iii) the relocation process. Three missions have been undertaken since the resettlement in August-September 2014 to assess how Project-affected people are settling in after the relocation to RAPland. The Country Director visited RAPland in October 2014. In addition to field missions, several meetings were held with KenGen officials to discuss RAP implementation progress. The Bank team brought complaints received from Project-affected people to the attention of KenGen in addition to responding to such complaints directly, either in written form or in face to face meetings with the complainants at the Bank offices in Nairobi or in the field.

69. A Senior Social Development Specialist and a senior social development consultant, both based in Kenya, worked closely with KenGen in RAP implementation monitoring, identification of risks and mitigation strategies. Considerable support, with frequent visits to Olkaria, was provided in 2012 when critical activities and delicate consultations and negotiations between Project-affected people and KenGen were taking place and decisions on key provisions of OP 4.12

¹⁵ One Project-affected person declined this option. Nevertheless his house in RAPland was connected in error to the electricity supply. He was refunded the KES 35,000 disturbance allowance on December 9, 2014.

were being made by both parties. Examples of activities observed by the Bank included: (i) identification of acceptable land; (ii) issues of location of Cultural Center and amount of land for Cultural Center business; (iii) sensitization of Project-affected people on land registration options; (iv) public disclosure of compensation measures; (v) public disclosure of relocation time table including dates for cash compensation and the actual relocation; (vi) the relocation exercise; (vii) post-relocation consultations between KenGen and Project-affected people; among others.

V. ACTION PLAN

70. The KEEP investigation process was exceptional as it was done jointly by the World Bank's Inspection Panel and the EIB-CM, which also received a complaint on the Project. While the processes of the two accountability mechanisms are not fundamentally different at the investigation stage, they proceed differently from there. World Bank Management is required to propose, as part of its Management Response, actions to address any Panel findings of noncompliance, which have been agreed with the Borrower and consulted upon with the Requesters, and the Board then needs to consider such actions. The EIB, at the request of KenGen, has started a mediation process with the aim of agreeing with the Requesters on remedial actions. The mediation process is currently at an early stage, focused on the identification of issues for which the participating parties (i.e., KenGen and the Requesters) commit to finding a mutually agreeable solution.

71. ***The different approaches result in a situation where it is neither feasible nor constructive for World Bank Management to develop a separate action plan and consult on such a plan with the Borrower and the Requesters,*** for the following reasons:

- (i) Developing and consulting on an Action Plan would result in duplication of the ongoing EIB-sponsored mediation process, which is covering the same issues;
- (ii) Requesters would likely be confused about the two parallel processes and might reject engaging in consultations on a World Bank action plan on the basis that the specific actions are still subject to mediation;
- (iii) Given the latent division inside the community, this could lead to a split where different fractions engage with either the Bank or the EIB process; and
- (iv) The Borrower would be required to address two sets of action plan requirements for the same issues in the same project, which may not be compatible.

72. ***EIB's mediation process is equally affected by the Bank's ongoing Panel process.*** The Panel carried out the investigation of the resettlement related issues and the EIB-CM relied on the Panel for the subject matter. The Panel's Report is not disclosed until the end of the Inspection Panel process. In this case, it has become apparent that the EIB-sponsored mediation process is already being overshadowed by speculations about the Panel's Report, including assumptions that it will determine specific compensation amounts that Project-affected people believe should be paid to them, or award damages of all kinds.

73. ***Hence, in order to minimize any mutual interference and to achieve the required outcome, i.e., addressing the issues noted in the Panel's findings, Management proposes that the Bank participate in the EIB-sponsored mediation process.*** Since the mediation process

ideally will lead to a joint understanding about remedial actions, Management wishes to allow the mediation process to move ahead with the Bank participating as a co-facilitator with EIB in the process. The formal agreement for this is recorded in a MoU between the World Bank and EIB (Annex 4). The mediation process would be supported through the Bank's Grievance Redress Service.

74. The Management Report and Recommendation identifies proposed actions to address the Panel's findings, as detailed in the MoU. The mediation process is expected to shape these actions in a more specific manner, and to result in the Requesters' endorsement of the proposed actions. Management has reviewed its own proposed actions against the agreement between the mediation parties on the content of the mediation process to ensure that the issues set out below are included in the process and have been discussed and agreed with the Requesters.

75. Management has consulted with the Chair of the Committee on Development Effectiveness and the Panel Chair on this approach and has formally agreed with the EIB to join the mediation process. In Management's view, this is the only way to achieve the goal intended by the Panel Resolution, which is to address adverse impacts resulting from policy noncompliance.

76. Management will report back to the Board on the outcome of the mediation process, as well as on the implementation of the agreed Action Plan.

77. Management is of the view that the mediation should be given the required time to produce results. However, World Bank and EIB Management expect that the mediation process should yield results within 6 months and that it should not exceed 12 months. Should the mediation process fail, Management would inform the Board accordingly and revert back to the usual procedure prescribed in the Panel Resolution, i.e., submit an Action Plan for Board review and approval.

Table 1: Proposed Management Actions

<i>Panel finding</i>	<i>Management Actions for consideration in the mediation process</i>
	Management will work with KenGen to:
<i>Identification of Project-affected people</i>	<ul style="list-style-type: none"> • Ensure that Project-affected people who believe that they have been left out or miscategorized understand that they can bring forward such claims • Review claims and revise the entitlements where justified
<i>Consultation, Participation and Grievance Redress</i>	<ul style="list-style-type: none"> • Review the agreed Grievance and Complaints Handling Mechanism (GCHM) and discuss with Project-affected people possible adjustments to improve its functionality • Ensure translations of relevant resettlement documents into Maa

<i>Adequacy of Resettlement Site and Infrastructures and Amenities</i>	<ul style="list-style-type: none"> • Ensure finalization the land titling process for the 1,700 acres at RAPland and for 14 acres for the Cultural Center • Ensure construction of all roads at RAPland is completed
<i>Livelihood Restoration</i>	<ul style="list-style-type: none"> • 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 • Formulate tailor-made programs to ensure livelihood activities for the vulnerable and the very poor among the Project-affected people (as identified through the survey) are enhanced • Continue to work with disabled Project-affected people to ensure accessibility of houses and facilities provided at RAPland • 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

VI. CONCLUSION

78. Management believes that the Bank team has made every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project. Management believes that the approach described in Section V above will lead to actions that address the Panel's findings.

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT ON
KENYA: NATURAL RESOURCE MANAGEMENT PROJECT**

**ANNEX 1
FINDINGS, COMMENTS AND ACTIONS**

1.	<p>Identification of Indigenous Peoples</p> <p><i>The Panel finds the Maasai community submitting the Request meets the four criteria of the World Bank's Indigenous Peoples Policy (OP 4.10) and thus should have benefitted from its provisions. The Panel finds Management's decision not to apply the Policy to the [Project-affected people] gave rise to significant shortcomings regarding consultation, the cultural compatibility of the resettlement, benefit sharing, and the use of Maasai-specific expertise and [...] believes applying the Policy might have avoided or mitigated some of the harms caused by the Project. The Panel finds that, by not applying the Bank's Policy on Indigenous Peoples to the Maasai community in the Project area, and by not ensuring the protections and benefits afforded to them under this Policy, the Bank is not in compliance with the requirements of OP 4.10 on Indigenous Peoples.</i></p>	<p>Comment: Management notes the findings by the Inspection Panel regarding the application of OP 4.10 to the Maasai. OP 4.10 was applied to KEEP, but not to the geothermal generation component of the Project due to the fact that at the time the Project was under preparation, the Bank, based on technical guidance by social specialists, had been applying OP 4.10 only for hunter-gatherer groups in Kenya. As the entire Project area included such groups (e.g., Sengwer, Ogiek, Waata and Boni), the policy was applied to the transmission and distribution components, and an IPPF was prepared and disclosed. The IPPF noted that "Further screening in the field and consultations with the Government of Kenya may result in the addition of other groups to the list of indigenous peoples." In the meantime, the Government of Kenya was in the process of amending its Constitution, which included a discussion on "vulnerable groups" (see last section below).</p> <p>Given the cultural sensitivities regarding the Maasai, the Bank team did take into consideration key principles of OP 4.10 in designing the Project. Management believes that this approach proved to be responsive in addressing concerns of the Maasai during Project implementation.</p> <p>Free prior and informed consultations leading to broad community support. While the Project did not apply OP 4.10 to the Maasai Project-affected people, it adopted the principle that the consultations on the Project's activities, resettlement site and RAP implementation had to be free, prior and informed consultations leading to broad community support. Consultations were designed to be: (i) culturally appropriate; (ii) gender and inter-generationally inclusive; (iii) conducted in good faith; and (iv) voluntary, free of interference and non-manipulative. Bank Management worked closely with the Government of Kenya to ensure that the Project engaged in extensive consultations with the community. The consultations sought consent on a number of issues, including the time and place of meetings, agenda items, contents of a legally binding MoU, decisions on the layout, spacing and clustering of houses at the resettlement site, setting dates for relocation etc., with oral translation into Maa, the native language of the Project-affected people.</p> <p>Project-affected people were involved in all steps of the RAP process, including: (i) identification and acceptance of RAPland and Cultural Center land; (ii) decisions on the settlement pattern; I (iii) input into the design of houses; (iv) the distances to/from communal water kiosks; and most importantly, (v) negotiations and agreements on the legally binding MoU which clearly spelled out all the actions to be taken by KenGen as well as the responsibilities of both KenGen and the Project-affected people (this is the first RAP in Kenya with a negotiated legally binding MoU). The MoU clearly stated that the actions and responsibilities were to be carried out in the spirit of good faith.</p> <p>Cultural compatibility of resettlement. Prior to the establishment of the RAPIC, consultations with Project-affected people were through public barazas (public meetings of all Project-affected people) organized through the Sub-County Administration and village Chairmen/Elders.</p>
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	<p>The RAPIC was established in order to have a systematic and representative way of consulting with Project-affected people in culturally appropriate ways and to ensure inclusion of women, youth and people with disabilities who otherwise would have had no voice in decision-making processes if only the Council of Elders system were used by the Project (Maasai traditional culture does not allow women and youth in the decision-making process). The RAPIC was thus a hybrid of the cultural, 'modern' and administrative setups to ensure that women, youth and people with disabilities were included in decision-making.</p> <p>Conflict resolution is an important part of Maasai culture, and the CAC – composed of selected members from the village level Council of Elders of each of the four villages of Project-affected people – took the lead in addressing grievances and complaints (for more information on the grievance redress process, please see Item 4).</p> <p>After the establishment of the RAPIC, consultations with Project-affected people were conducted through it and through public barazas. Each village was sensitized by KenGen – following an advance notification – on the RAP implementation work ahead, which required full and active involvement of Project-affected people in each step of the way, especially decisions on what was culturally acceptable.</p> <p>By blending traditional and modern approaches to consultation and participation in Project design and implementation, the RAPIC effectively allowed for the following:</p> <ul style="list-style-type: none"> • Siting of community water points kiosk, demand and acquisition of water tanks for rain harvesting for each household. • Request for and establishment of a health center and Early Childhood Education Center (kindergarten). <p><i>Benefit Sharing from the Commercialization of Natural and Cultural Resources:</i> The RAP has not harmed the Project-affected people in terms of land tenure. Prior to relocation, Project-affected people had no legal ownership of the land despite their communal ancestral claims to it. RAPland continues to be held communally – which is in line with the claim by Project-affected people to own the land communally and also in line with Article 63 of the Constitution of Kenya, 2010. Furthermore, the Project-affected people will, for the first time, have legal security of tenure of RAPland and the Cultural Center land since they will soon have titles to both, thus giving them freedom from threats of court cases or eviction.</p> <p>The 1,700 acres of land, of which approximately 1,500 will be titled in the name of the community, providing enhanced security of tenure, is divided into: (i) 150 acres residential area (since each house sits on one acre); (ii) 1,350 acres for exclusive grazing by Project-affected people since they have communal legal right to it and it is an important part of their cultural way of life; and (iii) 200 acres transferred to the sector ministries for roads and public facilities, such as the school, dispensary, social hall and churches; there is adequate space for future activities by Project-affected people; and</p> <p>Other culturally appropriate amenities from the Project include:</p> <ul style="list-style-type: none"> • Houses at RAPland are clustered according to the extended family system in line with Maasai culture, as requested by the Project-affected people.
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	<ul style="list-style-type: none"> • Fourteen acres of land with legal security of tenure (at the former Cultural Center) have been set aside for cultural activities by Project-affected people, with access to important cultural sites such as the Oljorwa gorge and others. • Livestock pens for each household are fenced off to cushion livestock from predators such as hyenas (traditionally, Maasai men spend the night outside the house at night in order to guard against livestock predators). • At the request of the Project-affected people, all the social amenities have been connected to electricity by the Project while the they themselves paid for connecting their homes to the electric grid. <p>Management acknowledges that the option of Project-affected people receiving direct financial benefits from the generation of electricity at Olkaria was not pursued. Management notes that there is not yet a national consensus on how to approach this complex and controversial issue, nor is the necessary policy and legal framework in place. Hence, aside from the fact that OP 4.10 was not triggered for the Maasai, Management considers that it would have been inappropriate to insist on a financial benefit sharing approach in the absence of a national mechanism that enables or compels the sharing of royalties or revenue at the project level. Instead, the emphasis during Project implementation has been on conferring culturally appropriate benefits to the community, as described below.</p> <p>Maasai-specific Expertise: Many of the Project-affected people cannot read Maa. Hence, oral interpretation in the Maa language has been an important part of the consultation process. All consultations, whether at the RAPIC, in the villages during sensitization discussions about key RAP implementation issues, or at public meetings, involved Maa interpretation. The interpreters in all cases included representatives from among the Project-affected people.</p> <p>The consultations raised and addressed a number of issues about culture, including measures to protect certain rites, establish the Cultural Center, ensure access to traditional sites, etc. In addition, the CAC and RAPIC, both of which include Maasai Elders (male and female) have also raised cultural concerns with KenGen as the Project developed.</p> <p>The reasons for interpretation in meetings in which the Bank and most KenGen staff were present were: (1) most Project-affected people and their representatives in both the RAPIC and CAC could only participate effectively in Maa, even though most of them also understand Swahili, the national language; (2) most of the KenGen and Bank staff involved in the RAP implementation could also only communicate in English or Swahili; and (3) there was a critical need for all stakeholders to understand each other well. Thus, all meetings involving Project-affected people, KenGen, the Bank and other financiers were interpreted. The Project-affected people would switch to Maa to negotiate among themselves, and, once consensus was reached or a decision made, one of them would translate the decision into English or Swahili (for the non-Maasai participants).</p> <p>The majority of the Project-affected people can converse in Swahili. The enumeration and social survey team that Gibb Africa used in 2009 was composed of students from Kenyatta University's School of Environment. Enumeration was conducted in Swahili. A Maa speaking translator from the Maasai community in Naivasha who trained with the enumeration team, was</p>
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		<p>available to those Project-affected people who could not converse in Swahili.</p> <p>KenGen engaged a Maa speaking Community Liaison Officer in August 2011 who had earlier lived in the Olkaria area and was conversant with the four villages. The Officer attended the majority of the RAPIC meetings and was present throughout the 2012 census and public barazas to provide interpretation in addition to the local interpreters who were selected by the community. It is important to note that for the ESIA and the RAP consultations, the Maasai community preferred the use of interpreters from their community whom they knew, and in whom they had confidence.</p> <p>Applying OP 4.10 to the Maasai in Kenya. In August 2010, the Government of Kenya adopted a new Constitution that referred to the State addressing the needs of vulnerable groups within society, including members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. In September 2010, Management decided to review the application of OP 4.10 to pastoral groups in Kenya, and in November of that year held a workshop in Nairobi with the Government of Kenya. At the time, the Government of Kenya was reluctant to apply the Indigenous Peoples policy to the Maasai and other pastoral groups until it had completed national consultations on which groups should be considered as “vulnerable”. This sensitivity was not only an issue in Kenya, but in other countries in East Africa that were grappling with the political and social implications of singling out certain ethnic groups and/or including groups, such as pastoralists, in a broader definition of Indigenous Peoples that would be involved in and affected by Bank-financed lending. Management continued the dialogue with Kenya in 2011 and 2012, and informed the Board of this dialogue through briefings and information about specific projects.</p> <p>In June 2012, technical staff advised Management that the Maasai largely met the requirements of OP 4.10. In December 2012, Management agreed that the policy would be applied on a project-by-project basis to all groups in Kenya that met the policy criteria, including pastoral-nomadic groups.</p> <p>At the beginning of 2013, the Government of Kenya decided that “vulnerable and marginalized groups” included pastoral-nomadic groups, such as the Maasai, and since that time, it has agreed to the application of OP 4.10 to such groups, and has required preparation of Vulnerable and Marginalized Groups Frameworks and/or Vulnerable and Marginalized Groups Plans. Such Frameworks and Plans have included the Maasai in several projects in Kenya.</p> <p>Finally, it should be noted that none of the hunter-gatherers identified early on in Project preparation actually were found to be in the Project area and, therefore, no IPPs were prepared.</p> <p>Action: See Actions under Item 4.</p>
2.	<p>Identification of Cultural Aspects</p> <p><i>The Panel finds Management is in compliance with Bank Policy on Physical Cultural Resources, OP 4.11, since the sites of cultural value are unaffected by the Project and the community continues to have access to them.</i></p>	<p>Management notes the Panel’s finding of compliance with OP 4.11.</p>

3.	<p>Identification of Project-affected people</p> <p><i>The Panel finds the identification of [Project-affected people] (through the two censuses, the validation exercise, and up to the award of compensation) did not offer satisfactory assurance of reliability in its outcome due to methodological flaws in the process, and is in non-compliance with OP 4.12 (paragraph 14).</i></p>	<p>Comment: Project-affected people Identification: Management does not agree with the Panel's finding that the identification of Project-affected people does not offer satisfactory assurance of reliability. Upon determining the need for involuntary resettlement under the geothermal generation component of KEEP, the Government of Kenya through KenGen carried out a census in 2009 to identify the Project-affected people. The census and preparation of the resulting RAP was undertaken by Gibb Africa Limited. The RAP was disclosed in Kenya on January 6, 2010, and in the Bank Infoshop on January 25, 2010.</p> <p>The census and the ESIA clearly identified four villages with four clear categories of Project-affected people that would be directly affected by the Project and who would require to be either relocated or compensated as per OP 4.12. The ESIA and the RAP were prepared through a robust consultative process, which was initiated in 2009 and culminated in the final RAP in June 2013. The process of identification of Project-affected people was also robust, and included a Social Impact Assessment, with a draft presented in a public meeting for comments. This was followed by another census and social survey, as agreed with the village Elders during the introductory meeting at Simba Lodge, September 4, 2009. Households were enumerated, with photos of each head of household in front of their respective structures. The social surveys were undertaken using questionnaires, focus group discussion, key informant interviews, and meetings with Project-affected people.</p> <p>The categories of affected people included:</p> <ul style="list-style-type: none"> (i) Project-affected people with assets and claim to ancestral land ownership (Land and Asset owners) in each of the four villages, even though legal title of the land was held by a private entity (Kedong Ranch Ltd). This category of Project-affected people would be eligible for: (a) communal land for land compensation; (b) a housing unit for each household at the resettlement site; and (c) disturbance allowance at a flat rate of KES 35,000, which was calculated at 5 percent of the asset value for each household; (ii) Project-affected people with housing units from which they drew income in the form of rent (Landlords). This category of Project-affected people was eligible for cash compensation for each rental house at current replacement cost; (iii) Project-affected people who rented residential housing units from the Landlords (Housing Tenants). This category of Project-affected people was eligible for an equivalent of 3 months' rent in cash compensation; and (iv) Project-affected people from other parts of Kenya who lived in any of the four affected villages but without claim to ancestral land ownership (Land Tenants with structures). This category of Project-affected people would be eligible for cash compensation at current replacement cost of structures owned and a disturbance allowance at a flat rate of KES 35,000. <p>Management believes that the methodology used to identify the Project-affected people was consultative and participatory, and met the criteria for "Free, Prior Informed Consultation." The preparation of the ESIA and the social survey included 11 public consultation meetings with key stakeholders in 11 locations during August-September of 2009; the cut-off</p>
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	<p>date negotiated with the community from the four villages for this initial survey was September 16, 2009.</p> <p>At the end of the 2009 census, KenGen and the Project-affected people were still negotiating on the entitlements and the livelihood restoration plans for the RAP. Disclosure of entitlements was therefore not done at this time as no solid agreements had been made between KenGen and the Project-affected people. The 2009 RAP report did, however, outline entitlement proposals.</p> <p>In September 2010, the village Chairmen requested to review the 2009 census data. Gibb Africa was requested by KenGen to provide the census database to the community through the village Chairmen at that time. The village Chairmen took the lists back to the community for review. Project-affected people therefore had an opportunity to view the list and see what records had been collected and register complaints if they believed they had been omitted. Feedback on the database was then provided by the elected Village Chairmen at an Executive Meeting attended by village Elders, District Commissioner officer, KenGen and Gibb Africa.</p> <p>In 2012, the RAP, including the 2009 census data, was updated in response to the recommendation of the multi-donor supervision mission of November 2011, since more than a year had passed since the 2009 census and the RAP had not yet been implemented. The 2012 update was conducted through household questionnaires and interviews, focus group discussions, and house to house enumeration by four teams. The updated RAP included the natural growth of households and change in ownership and/or assets.</p> <p>The list of Project-affected people was presented for validation and disclosure at a public baraza at the Cultural Center on May 24, 2012. To ensure full participation the date had been previously negotiated and agreed to with the Project-affected people. Each name was categorized based on the entitlements developed from the eligibility criteria in the RAP. Each Project-affected person's name and category of entitlement was read out. The Project-affected people were then given the opportunity to query any name or category or both as heard. The copy of the 2012 RAP (and annexes) were available for inspection by the community at the homes of the village RAPIC members.</p> <p>In 2013, KenGen found it necessary to validate the data collected in the 2009 and 2012 censuses as the number of houses had increased, some Project-affected people were claiming to have been grouped in the wrong category, others to have been left out, and some that were included should not have been. This final validation exercise also served to identify any inconsistency in the previous census. It was conducted on May 14, 2013 from 8am to 8pm, through a house to house census and interviews simultaneously in the four villages by four separate teams, composed of an experienced staff of sociologists and a social/environmental specialist from the consultant firm contracted by KenGen. The census: (i) confirmed each Project-affected head of household against his/her photograph and that of the family taken in the 2009 census; (ii) had the validation form signed as agreement on assets and entitlement; (iii) photographed the heads of households in front of their respective houses; (iv) marked the houses with specific codes from the database and; (v) assigned codes to new Project-affected people as a result of natural growth.</p> <p>Notwithstanding the exhaustive nature of the above-described process, both KenGen and Management have been mindful of the possibility that errors may occur during implementation. KenGen's commitment throughout, as expressed in its MoU with the Project-affected people, has been to address</p>
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		<p>and correct any such errors that affected parties legitimately bring to its attention, through the Project grievance mechanism or otherwise. Indeed, a number of complaints about exclusion have been raised to date and have been thoroughly investigated by KenGen based on the eligibility criteria set out in the RAP and agreed in the MoU between the community and KenGen. For example, one individual claimed that though eligible, he had been excluded from housing benefit. KenGen brought this claim to the attention of the RAPIC, which examined the claim and found that it was without basis. The same individual also wrote to claim that four other individuals he said were entitled to housing compensation had been excluded. Likewise, this claim was investigated with the same result.</p> <p>Management is committed to ensure that all Project-affected people who believe they have been omitted from the RAP process will have an opportunity to have their claim reviewed and any potential errors rectified. Management, however, expects the number of person who may have been inadvertently left out to be rather small, given that the census list has been vetted by the Project-affected people over a period of three years, including through: (i) review of the lists of eligible people by Project-affected people at the village level with their elected village chairman, the village Elders and the district commissioners; (ii) review of the lists by the RAPIC, the elected representatives from the four villages; and (iii) public barazas on dates agreed to with the Project-affected people and attended by them, the general community, RAPIC members, provincial administration and village Elders. The Project-affected people have had multiple opportunities, since the time of the first census (2010 Gibb census) through to the agreement and signing of the MoU (July 1, 2013) and vetting processes that preceded it, to step forward and submit their claims.</p> <p>Action: Management will work with KenGen to ensure that: Project-affected people who believe that they have been left out or miscategorised understand that they can bring forward such claims; and claims are reviewed and entitlements revised where justified.</p>
4.	<p>Consultation, Participation, and Grievance Redress</p> <p><i>The Panel considers the establishment of RAPIC to be a well-intentioned effort to achieve broad representation of the [Project-affected people], in line with Bank Policy. Nonetheless, the Panel finds the serious shortcomings in achieving meaningful consultations and inclusive participation in the resettlement activities of the Project are in non-compliance with OP 4.12 (paragraph 2b) due to the ineffective communication with the community, the sidelining from RAPIC of the traditional authority structure of the Elders, the omission of Maa language during consultations, and the failure to disclose documents to the affected community in a place accessible to them and in a form,</i></p>	<p>Comment: Consultation and participation of Project-affected people: Management considers that the RAP was prepared through meaningful consultation with and participation of all segments of the Project-affected population, as called for in OP 4.12 para 2 (b), and that this approach was followed throughout the RAP implementation process up to the relocation to RAPland and afterward, as KenGen and the Bank have continued the consultations following relocation. In addition to diligently following the agreed upon consultation program, KenGen also put in place a multi-layered consultation mechanism, which ensured that voices of all Project-affected people were not only heard, but respected and included in the RAP. This mechanism included: (i) direct consultations with all Project-affected people through public barazas at central venues (usually the Cultural Center); (ii) village by village sensitization especially on the agreed GCHM; and (iii) consultations and negotiations at the level of the RAPIC, with five representatives from each village.</p> <p>The presence of a Maa speaker in the consultant team as well as the presence of village Elders and bilingual (Swahili and Maa) speakers among the Project-affected people provided adequate assurance of meaningful consultations with affected people who only spoke Maa during the various census and validation exercises.</p>

<p><i>manner, and language understandable to them.</i></p>	<p>A clear demonstration of the high level of consultations between KenGen and the Project-affected people is seen in the milestones achieved by the Project-affected people. Examples include:</p> <ul style="list-style-type: none"> (i) The fact that the Project-affected people insisted, and KenGen agreed, after many sessions of consultations and negotiations, to enter into a legally binding MoU as an affirmation that KenGen would honor and implement all compensation measures stipulated in the RAP; (ii) The selection of RAPland from among many possible alternative sites and the agreement to confer full ownership title on the community to RAPland; (iii) As a result of close consultations with Project-affected people, the layout and spacing of the houses on the resettlement site were changed from the original model prepared by KenGen's technical staff, in order to accommodate the wishes of the Project-affected people, such as attaching the kitchen to the main house rather than leaving it detached (requested by women), and enlarging the living and bedrooms (requested by men); (iv) KenGen honored the wishes to move all four Project-affected villages together and to allocate houses according to family sets. The Project-affected people requested that proximity of village groups and family groupings within villages be factored into the planning and allocation of housing clusters while arranging clusters according to extended family set ups. However, they did not wish to be resettled in an "estate-like" setting, preferring scattered residential settings that reflected their pre-Project situation; (v) Consultations resulted in the agreement between Project-affected people and KenGen that there would be a number of 30-meter gaps for livestock passage in the RAPland perimeter fencing to enable access to grazing land outside RAPland in line with the pastoral activities of the Project-affected people; and (vi) At the request of the women, water kiosks were placed within a one km radius (as compared to up to 5 km previously, e.g., for Olonongot village). <p>Other results of high level consultations and negotiations include the increase of livestock watering troughs from the originally planned four to eight.</p> <p>Action: KenGen and the Bank will continue the engagement and consultations with Project-affected people until all compensation measures are duly completed.</p> <p>Grievance Redress: KenGen and the Project-affected people agreed to a four tier GCHM. This included: (i) CAC; (ii) RAPIC; (iii) Mediation, and, (iv) Court of Law.</p> <p>During the period of RAP implementation up to the time of relocation, the first two tiers were the most active. The traditional role of the Council of Elders among the Maasai is resolution of conflicts among community members, usually resulting from competition for pasture and water for livestock. The CAC was established to play this traditional role in the process of RAP implementation as the first tier for grievance redress. The members were given an orientation by KenGen on their roles and responsibilities in grievance redress, given the complexity of the grievances that were likely to arise from a resettlement process which hitherto had never</p>
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		<p>been part of their mandate. Women and youth do not sit in the Council of Elders (an Elder by definition is a male member who is married/has a family), a cultural fact that was honored by the Project and KenGen.</p> <p>The RAPIC formed the second tier for grievance redress due to the fact that it was composed mainly of elected representatives of all segments of the affected population, including women, youth and people with disabilities in addition to the Elders who are well versed in Maasai tradition and culture. The Project-affected people and KenGen agreed, and the agreement was included in the legally binding MoU, that both parties would resort to the established GCHM, although a few Project-affected people chose to ignore this. It should also be noted that CAC members chose to sit in RAPIC meetings against advice that this would compromise their independence.</p> <p>Proposed Actions: Management will review the agreed Grievance and Complaints Handling Mechanism (GCHM) and work with KenGen to discuss with Project-affected people possible adjustments to improve its functionality; and ensure translations of summaries of relevant resettlement documents into Maa.</p>
5.	<p><i>Adequacy of Resettlement Site and Infrastructures and Amenities. The Panel finds Management’s failure to ensure that displacement of the [Project-affected people] did not occur before the elements necessary for resettlement were in place is in non-compliance with OP 4.12 (paragraph 10).</i></p> <p><i>Furthermore, considering the long history of land tenure insecurity of the Maasai, the Panel believes particular attention must be paid to securing the communal land-title for the community (OP 4.12 Annex A paragraph 12).</i></p> <p><i>The Panel finds the housing solution offered to the [Project-affected people], without providing each household a choice among different construction types, materials, and sizes, is in non-compliance with OP 4.12 (paragraph 6a). While the houses built suited many [Project-affected people], they are inconsistent with the cultural preferences and lifestyles of others.</i></p>	<p>Comment: Management is of the view that the decision to relocate to the resettlement site prior to the completion of the roads and the land title process for the 1,700 acres at RAPland and 14 acres for the Cultural Center was an informed decision taken by the Project-affected people and signed off on in an amendment to the MoU between KenGen and the Project-affected people on August 13, 2014, prior to the relocation on August 21, 2014.</p> <p>Management was informed by KenGen that the title transferring the land from Kedong Ranch to KenGen was received on June 15, 2015. KenGen has begun the process of demarcating the public facilities (school, churches, health center, social hall etc.) and is conducting a full survey of all the roads and facilities to separate the “community land” from the public land for the processing of titles to the respective line ministries. This will be followed by the registration of approximately 1,500 acres at RAPland and the 14 acres at the Cultural Center in the name of the legal entity – Ewang Sinyati Welfare Society, and the remaining approximately 200 acres at RAPland to the sector ministries for the public facilities. Management will continue to monitor this process but notes that with the transfer of title from Kedong Ranch to KenGen, a critical milestone in the process has been achieved.</p> <p>In the amended MoU signed on August 13, 2014, it was made clear that KenGen would ensure that the roads are always passable until such time as the roads are upgraded and handed over to the Kenya Rural Roads Authority (KeRRA). Management agrees that the delay in constructing the all-weather road has become an inconvenience for the Project-affected people especially during the rainy seasons. Management notes that the road was not constructed by the time the Project-affected people moved to RAPland, due to an oversight in KenGen’s budget provisions that took some time to correct. Following the competitive procurement process for the road contractor, the contract was negotiated and signed on August 10, 2015. The contractor has mobilized and is at the site. Construction of the road will take approximately six months (until February 2016).</p> <p>Management believes that the decision to opt for modern houses was an informed one, and notes that Project-affected people were offered alternatives. As a result of development in Naivasha, the atmosphere is changing and the opportunity to own “modern” houses was a welcome choice for the Project-affected people. The youth and the women especially</p>

	<p>wanted modern houses with a separate kitchen and separate toilets and bathroom per household (RAP 2013 section 6, tables 6-5 & 6-6). Nonetheless, the option to construct either <i>manyattas</i> or modern houses was offered to the Project-affected people and the advantages and disadvantages of both were discussed (see ESIA, November 2012, page 61) with them through a consultative process, on July 3, 2012 at a public baraza at the Cultural Center attended by 92 Project-affected people, and on July 7, 2012 at the stakeholder consultative meeting at Mvuke Social Hall. During a sensitization workshop organized by the Bank's consultant on November 8-9, 2012, the Project-affected people expressed their desire to be settled in a layout similar to their current settlements, where there is some distance between one family and the next, and blood relatives are neighbours. Scaled model houses were used to inform their choice and changes were made to the design based on their preferences. Project-affected people were also shown a life-size walk-through model house to allow for a true-to-life impression. The RAPIC viewed a life-size walk-through model house on April 6, 2013. Through the RAPIC and CAC, the Project-affected people negotiated, redesigned and approved the type of houses they wanted built without any cultural additions; the only change recommended was the placement of the cattle pens behind the homes. KenGen obtained a special release from the CAC for men to live in houses built by KenGen instead of by the women, who traditionally build and maintain the houses. The Project-affected people, and especially the women, were happy that the concrete construction would not require the maintenance that a mud house entails and would protect them from the elements.</p> <p>Management noted that a few Project-affected people felt that the houses were not culturally appropriate, especially those men with multiple wives, as they were "unable to peg the animal skin on a concrete floor." The objective of the RAP, however, was to improve the living conditions of those being resettled; It is also important to remember that the women requested modern houses, with concrete floors (instead of dirt floors), which help to improve children's health by reducing transmission of parasites.</p> <p>Inadequacy of resettlement site: By the time of relocation, which took place between August 21 and September 2, 2014, most of the conditions necessary for resettlement were in place. All residential housing units, complete with pit latrines, bathroom, 2000 liter tank for rainwater harvesting per household, the primary school and teachers' houses, churches, health dispensary, social hall, livestock watering troughs, communal water kiosks, a social hall and usable main and link roads, were all in place. In addition, eligible Project-affected people had received other cash compensation (except the disturbance allowance, which they chose to pay to Kenya Power and Lighting to connect their houses to the electric grid). The two outstanding issues were acquisition of the communal land titles and the construction of roads. KenGen consulted with Project-affected people on these two issues and both parties agreed to amend the MoU to give KenGen more time to complete these aspects of the agreed compensation measures. Management notes that on both issues, significant progress has been made.</p> <p>Housing solution: During negotiations, planning and implementation of the housing solutions, Project-affected people did not raise any objections to the proposed housing designs, although they rejected the first model because they did not wish to be resettled in an "estate-like" setting, preferring scattered residential settings that reflected their pre-Project situation. In addition, and in conformity with their culture and traditional lifestyle, they wished to be resettled in clusters comprising extended family units in their</p>
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		<p>respective villages – all of which wishes were honored by KenGen (see above for more details).</p> <p>There were only two divergent voices of Project-affected people who now own housing units at RAPland, and who preferred cash over land for land compensation. In keeping with the Maasai tradition of protecting their members from harm, both were advised against insisting on cash for fear that they could end up destitute if they misused it, and thus become a burden to other community members. Also, the claim of Project-affected people to land ownership is both ancestral and communal, with no legal title. In such a scenario, it would be difficult to work out cash compensation measures for two individuals.</p> <p>Action: (i) KenGen will fast track the transfer of land title to the Project-affected people and the completion of the roads; (ii) the Bank will continue monitoring RAP implementation until all due measures have been satisfactorily completed; and (iii) training will be provided on how to maintain modern houses.</p>
6.	<p>Livelihood Restoration</p> <p><i>The Panel finds the insufficient attention and assistance to vulnerable [Project-affected people], who require particular consideration, are in non-compliance with OP 4.12 (paragraph 2c and paragraph 8).</i></p> <p><i>The Panel finds that the “land-for-land” principle implemented in the Project is a positive, development-oriented, compensation option for involuntary resettlement of rural populations, and is in compliance with OP 4.12 (paragraph 6b). The Panel observes, however, that RAPland’s poor pasture and topography (with steep ravines and gullies scoured by seasonal flashfloods) cannot be considered equivalent in quality to the land where the [Project-affected people] were previously located. The Panel further finds the lack of investments in RAPland to improve its productive potential and in livelihood restoration measures, is adversely affecting [Project-affected people’s] efforts to bridge the gap in their livelihoods between the time of their relocation and the time those livelihoods can be restored, and is in non-compliance with OP 4.12 (paragraph 6a and c). The Panel finds the Project inadequately accepted the assertion, stated in the RAP, that the Maasai would be able</i></p>	<p>Comment: RAPland’s poor pasture and topography: Project-affected people were not only informed but were also fully involved in the search for resettlement land and in decisions on whether to accept the current RAPland site. Prior to the final decision, KenGen and the Chairmen of all four Project-affected villages identified a total of eight possible resettlement sites, with the current RAPland being the last. After accepting in principle that the current RAPland site was satisfactory, the Project-affected people requested to have access roads cut through it and beacons erected to enable them walk through the area with a view to identifying any challenges and opportunities within the site. Among the challenges were gullies and potential for soil erosion in some areas. Other positive factors and considerations overrode these challenges (see Item 7 below) and the Project-affected people preferred the site over the other seven. The rejected sites and reasons for their rejection by Project-affected people included:</p> <ol style="list-style-type: none"> I. Kedong Suswa Triangle: approximately 1,700 acres and approximately 15 km – 30 km from the Project-affected villages. This was rejected due to: (i) hostility from the Suswa host community; (ii) the rocky terrain, and (iii) distance to employment opportunities. II. Sanctuary: approximately 34-50km from the Project-affected villages. The land itself was acceptable but was rejected because: (i) the acreage was not adequate to settle all Project-affected people (who wished that all villages be moved together); AND (ii) there was potential for land use conflicts due to its proximity to Naivasha urban center. III. Moi Ndabi and Ndabibi, located north of Lake Naivasha. Although the Project-affected people were interested in the land, it was rejected since it previously belonged to the agricultural development corporation (ADC), had been sub-divided into smaller plots and sold to individuals who were not willing to sell. IV. Government of Kenya land, L.R. no. 1381: approximately 700 acres about 50-70km along Naivasha-Nakuru highway adjacent to Delamere farm, which was rejected because: (i) enough acreage could not be found; and (ii) there were squatters on part of the land. V. Mai Mahiu located south west of Kedong Suswa Triangle. This land was rejected because of a previous attack on the Maasai community while grazing in the area.

<p><i>to continue their existing income-generating activities in RAPland without any changes to their livelihoods.</i></p>	<p>VI. Maiella Settlement: located west of the Olkaria Project site on LR. no. 8398. The site was rejected because of: (i) previous tribal clashes between the Maasai and Kikuyu communities; and (ii) the fact that the area fell under the KenGen Greater Olkaria geothermal license area and there would have been a risk of further resettlement in the future.</p> <p>VII. Crater Lake, 20 acres. The land was acceptable to the Project-affected people but was rejected because: (i) it was owned by three persons and hence there was potential for conflict; and (ii) the owners accepted to sell only 20 acres, which was not adequate for resettlement of those affected by the Project.</p> <p>The current RAPland site is 1,700 acres located about 14 km from the former Project-affected villages. The land was acceptable to the Project-affected people because of the following reasons: (i) it was unoccupied and therefore with no possibility of opposition from a host community; (ii) it was close enough to pursue employment opportunities near the old villages; (iii) the Project-affected people were familiar with the area as they had been grazing their livestock in the area previously; (iv) enough land was available for settlement, social amenities and grazing; (v) the owner was willing to sell; and (vi) due diligence revealed that the land had no encumbrances when the sale agreement was entered into between KenGen and Kedong Ranch Ltd.</p> <p>Management would like to clarify that the 1,700 acres at RAPland should not be characterized as a “replacement” for 4,200 acres. The 4,200 acre area cited in the Panel’s Report represents the Project area and does not describe the area from which the Project-affected people were displaced. There is reference in the Panel’s Report to a 4,200 acre area from which the Project-affected people have been relocated. The Report suggests that the size of this 4,200 acre area needs to be taken into account in determining whether the 1,700 acre RAPland is a suitable replacement. It is important to note that the 4,200 acre area referred to in the RAP as the “estimated total impacted land area”¹ comprises the land required for steam production and reinjection wells and for pipes required to transport the steam. The reference in the RAP was not intended to describe the extent and location of land from which the Project-affected people and their livestock activities were being relocated.</p> <p>While the Project-affected villages (on a total of approximately 84 acres) were located within the 4,200 acre area, the 4,200 acre area was for the most part <i>not</i> used by the Project-affected people as pasture for livestock grazing prior to resettlement. KenGen purchased the land required for the Project from Kedong Ranch, and neither prior to that purchase nor thereafter did the Project-affected people have grazing rights there. Hence, prior to resettlement, their livestock was, with minor exceptions, grazed in areas outside the 4,200 acre Project Site, often as much as 30 km away (near Gilgil and Suswa, for example).² This practice continues today.</p> <p><i>Hence, the 1,700-acre RAPland was not intended as a “replacement” for 4,200 acres, and its adequacy should not be judged on that basis, because the resettlement has, in fact, not resulted in the Project-affected people</i></p>
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¹ Olkaria IV, RAP 2009, Vol. 1, pages i and 1-3.

² Annex 9 of the 2009 RAP Vol. II tabulates the livestock owned by Project-affected people in the four villages. Since the land was privately owned by Kedong, the Project-affected people did not have livestock grazing rights in the settlement area of the four villages (although Kedong did apparently tolerate a small amount of grazing in the immediate vicinity of the villages). Thus, they grazed the majority of their livestock outside the 4,200 acre area required by the Project.

	<p><i>being displaced from 4,200 acres. The Project-affected people have not lost access to the areas that they have previously used for grazing purposes, most of which is outside the 4,200 acre project site. On the other hand, they <u>have</u> acquired secure access to the 1,500 acres of RAPland to which they will now have full legal title.</i></p> <p><i>Investments in RAPland to improve its productive potential:</i> Management agrees that this has not been addressed, since it was not foreseen in the RAP.</p> <p><i>Project preparation has given specific attention to the needs of vulnerable and poor people among those affected by the Project, including landless, women, disabled and children.</i> A number of socio-economic surveys were undertaken during the preparation and implementation of the RAP to identify vulnerable groups among the Project-affected people. Socio-economic data on the Project-affected communities was collected in the 2009 RAP through the household survey.³ The 2009 RAP identified the poor and vulnerable Project-affected people as the “elderly, some youth/orphans, female headed households (4 FHH) and the disabled (one [Project-affected person] from Cultural Center).”⁴ Recognizing the patrilineal nature of decision-making vested in the Elders, the Project sought out the specific views of women and youth. In 2012, the socio-economic data was updated by Gibb Africa. Focus groups were used to understand better the then current livelihoods and revenue sources of the Project-affected people, including the grazing patterns of the pastoralists.</p> <p>Through the consultation for the 2009 RAP, the 2012 Environmental and Social Impact Assessment (ESIA) and the follow up 2011/2012 focus groups, women and youth from the four villages emphasized their wishes: (i) for modern housing with separate kitchen, separate toilet and bathroom; (ii) for watering points for animals; (iii) for schools and health services; (iv) to be supported in their business at the Cultural Center and to access other employment opportunities; and (v) for KenGen to assist orphans among the Project-affected people with schooling opportunities.⁵</p> <p><i>The Project also aimed to protect the interests of youth, women and the disabled through ensuring their representation in the RAPIC.</i> The RAPIC had at least two women representatives from each village, one representative of the vulnerable and disabled and one for youth for the four villages, whose role it was to highlight the issues of concern of their respective groups. As of November 2014, Project-affected people had formed six Committees to implement their livelihoods enhancement strategies. These are: (i) Environment Committee; (ii) Roads; (iii) Water; (iv) Cattle Dip; (v) Bus/Welfare Committee; and (vi) the Cultural Center Management Committee.</p> <p><i>The RAP also had provisions to compensate those who were landless, i.e., Land Tenants, who did not have an ancestral claim to land but had built an asset on it.</i> The Land Tenants were offered lump sum cash compensation for the replacement value of their residential houses. Eight⁶ Project-affected people were identified in this category. Compensation was also offered to Housing Tenants, i.e., Project-affected people who would have to seek</p>
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³ The 2009 survey was administered to all the Project-affected households. Where the household head was not present, the spouse was the respondent. Where neither were present, an adult in the household was interviewed and the relationship between the respondent and the household was indicated on the survey form.

⁴ KenGen Olkaria IV Power Plant Resettlement Action Plan, December 2009 para. 5.9.4. page 5-17.

⁵ 2009 RAP section 6.2 and Table 8.6 page 7-5.

⁶ RAP Validation Report, June 2013, Gibb Africa, Appendix 3.

	<p>alternative housing to rent. These were mostly people from other parts of the country who had moved to the area for employment and were renting accommodation. They were offered a lump sum equivalent to three months' rent to enable them to resettle.</p> <p>Management acknowledges that these efforts may not have been sufficient to more definitively identify immediate and medium-term impacts on livelihoods post-relocation, including those for vulnerable groups, and how to best assist these groups. In August/September 2014, the Project undertook an immediate post-relocation assessment observed by the Bank, where some issues of concern were raised by the Project-affected people.</p> <p>Investment in livelihood restoration measures: Management is of the view that the livelihood restoration activities were actively discussed and agreed to by the Project-affected people with KenGen and reflected in the MoU. These include: (i) approximately 1,500 acres with security of tenure; (ii) permanent residential housing units, complete with pit latrines, bathroom and 2000 liter tank for rainwater harvesting per household, livestock pens for cattle and other ruminants and homestead fencing, on a 1 acre piece of land; (iii) modern primary school complete with library, Early Childhood Education Center (kindergarten), teachers' houses, wash rooms for boys, girls and teachers, water tank and electricity supply; (iv) 3 churches that were restored; (v) a dispensary that is fully equipped and which has a maternity wing (dispensaries in rural Kenya do not usually have them); (vi) social hall; (vii) 8 livestock watering troughs; (viii) 2 cattle dips; (ix) communal water kiosks within one km radius of each household; (x) 2 fish ponds; (xi) a main road to RAPland and access roads linking the settlement clusters to each other; (xii) a 60-seater bus for the transportation of Project-affected people (but which they have chosen to turn into an income generating venture for themselves); and (xiii) capacity building for each of the livelihood project management committees.</p> <p>With regard to the commuting requirements of some Project-affected people, Management agrees with the Panel that the Project cannot be faulted for failing to ensure transportation of Project-affected people to maintain access to their jobs, since it provided the community with a 60-seater bus. Based on the decision of the Project-affected people to lease the bus to a private company and to use the lease income to purchase, operate, and maintain minibuses, the issue appears to be addressed. The Project will follow up with the welfare society of the Project-affected people to see if they require any assistance for these transactions.</p> <p>The assessment of the livelihood activities is underway. Both KenGen and the RAP Independent Evaluation Panel are carrying out assessments. These will help determine if the activities have or have not achieved the goal of restoring the livelihood of the Project-affected people.</p> <p>Actions: Going forward, the Bank will continue to follow up with KenGen to review the socio-economic situation of Project-affected people following relocation and employ measures required to achieve the RAP goals. Specifically, this will include:</p> <ul style="list-style-type: none"> • An independent post-relocation survey to determine the overall post-relocation impacts on the Project-affected people, in particular, vulnerable and poor among them. • Formulation of tailor-made programs to ensure livelihood activities for the vulnerable and the very poor among the Project-affected people (as identified through the survey) are enhanced.
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		<ul style="list-style-type: none"> With regard to the complaint of restricted access to housing by one handicapped Project-affected person, the Project has completed the restructuring of the house to make it and its compound disabled-accessible. The Project will continue to work with this person to see what more needs to be done to ensure accessibility to the various amenities that have been provided at RAPland.
7.	<p><i>Supervision and Monitoring</i></p> <p><i>The Panel finds the Bank's inadequate supervision of the Project's resettlement activities, and its insufficient monitoring (based on updated sociological data) of [Project-affected people's] wellbeing and the restoration of their livelihoods to pre-displacement levels or better, are in non-compliance with Bank Policy on Involuntary Resettlement (OP 4.12 paragraph 24 and BP 4.12 paragraph 14).</i></p>	<p><i>Comment: Management agrees that intensive supervision is needed for projects of this type. At the same time it should be recognized that Management did in fact provide close monitoring of the design and implementation of resettlement through enhanced safeguards and RAP implementation support, with over 32 missions from October 2011 to April 2015.</i> Missions involved observing: (i) barazas including all Project-affected people and other stakeholders, RAPIC meetings, and sensitization meetings on land registration; (ii) public disclosure of the entitlement matrix, list of Project-affected people to receive houses and payment of cash compensation; and (iii) the relocation process. Three missions have been undertaken since the resettlement in August-September 2014 to assess how Project-affected people are settling in after the relocation to RAPland. The Country Director visited RAPland in October 2014. In addition to field missions, several meetings were held with KenGen officials to discuss RAP implementation progress. The Bank team brought complaints received from Project-affected people to the attention of KenGen in addition to responding to such complaints directly, either in written form or in face to face meetings with the complainants at the Bank offices in Nairobi or in the field.</p> <p>A Senior Social Development Specialist and a senior social development consultant, both based in Kenya, worked closely with KenGen in RAP implementation monitoring, identification of risks and mitigation strategies. Considerable support, with frequent visits to Olkaria, was provided in 2012 when critical activities and delicate consultations and negotiations between Project-affected people and KenGen were taking place and decisions on key provisions of OP 4.12 were being made by both parties. Examples of activities observed by Management included: (i) identification of acceptable land; (ii) issues of location of Cultural Center and amount of land for Cultural Center business; (iii) sensitization of Project-affected people on land registration options; (iv) public disclosure of compensation measures; (v) public disclosure of relocation time table including dates for cash compensation and the actual relocation; (vi) the relocation exercise; (vii) post-relocation consultations between KenGen and Project-affected people; among others.</p>

ANNEX 2.
BACKGROUND ON THE OLKARIA RESETTLEMENT PROCESS

1. The Olkaria IV sub-project required the resettlement of members of a local Maasai community from four villages located on or near the Project site. The resettlement was undertaken to mitigate potential health impacts, specifically related to hydrogen sulfide and noise, as identified in the 2012 ESIA. An Environmental and Social Management Plan was prepared to address the negative impacts related to the Project.
2. The resettlement of the Project-affected people from the four villages to the 1,700 acre resettlement site (referred to by the Project-affected people and KenGen as “RAPland”) took place between August 21 and September 2, 2014. In total, 150 households (comprising 126 household heads¹ and about 1,200 people) were resettled to the RAPland.
3. The RAP, first disclosed on December 1, 2009, had a cut-off date of September 16, 2009. It was updated in 2012 to take care of natural growth cases (increase in number of households as a result of marriages) and re-disclosed on July 1, 2012 following a census validation exercise.
4. ***Selection of Resettlement Site.*** The selection of the relocation site was informed by the need to resettle Project-affected people in an area close to employment opportunities, and free of inhabitants and pre-existing claims.
5. KenGen had difficulty finding a resettlement site that did not already have a geothermal license issued, that was free of claims, that was owned by a willing seller and that was large enough to accommodate all the Project-affected people in a contiguous area with enough grazing area for their livestock.
6. Agreement on the current RAPland was the result of a lengthy search for land that was acceptable to the Project-affected people followed by a lengthy process of negotiation. Project-affected people requested that: (i) all four villages where Project-affected people lived be moved together; and (ii) the site not be far from KenGen, the gorge/Cultural Center, flower farms, etc. The first site, Suswa Triangle, was rejected because of (i) hostility from the Suswa host community, (ii) the rocky terrain, and (iii) the distance to employment opportunities. Other potential resettlement sites that were explored included Sanctuary, Moi Ndabi, Mai Mahiu, and Maiella. Finally land located at Kedong Ranch, which is part of Land Reference (LR) No. 8396 south of Olkaria IV, was identified and Project-affected people from all four villages agreed to be resettled there, specifically because: (i) it was unoccupied and therefore with no possibility of opposition from a host community; (ii) it was close enough to pursue employment opportunities near the old villages; (iii) Project-affected people were familiar with the area as they had been grazing their livestock in the area previously; (iv) enough land was available for settlement, social amenities and grazing; (v) the owner was willing to sell; and (vi) due diligence revealed that the land had no encumbrances when the sale agreement was entered into between KenGen and Kedong Ranch Ltd.

¹ A “household head” can head more than one household.

7. On December 15-16, 2012, representatives from all four villages visited the proposed RAPland site to assess its adequacy. On December 21, 2012, two public barazas at Cultural Center and Olonongot were held to discuss the site, and acceptance forms were signed by representatives from each of the four Project-affected villages on the same date. The transfer of the titles to the Project-affected people is currently in process.

8. ***The RAP and subsequent package of livelihood enhancement measures were developed through an intensive and participatory process that began in 2010 and that is ongoing.*** The purchase of the resettlement land and the cash compensation were accepted by the Project-affected people following the negotiation process and are reflected in a legally-binding MoU.

9. ***Management believes that the Olkaria resettlement has significantly improved the social and economic wellbeing of the Project-affected people.*** The Project did not disrupt the livelihood basis of Project-affected people (i.e., after relocation they could continue with whatever livelihood activities they were already engaged in) and therefore the focus of the RAP was on livelihood enhancement rather than restoration activities. Over and above measures including land-for-land compensation, replacement of houses or cash compensation depending on affected category and assets owned, and a disturbance/movement allowance, the RAP also provided for sub-projects to facilitate livelihood enhancement for the Project-affected people. These included:

- (a) *Modern primary school.* Prior to the RAP, the primary school at Olonongot village had neither a library nor an Early Childhood Education Center (kindergarten). Also, the classrooms had dirt floors² and timber walls. There was no running water or electricity. The community nursery school at the Cultural Center village stopped operating in 2013.³ *The Project has constructed a fully furnished modern school* using permanent materials, including concrete block walls and concrete floors. It is complete with a library, kindergarten, administration block, wash rooms for girls, boys and teachers, and residential houses for teachers.
- (b) *Water for domestic use.* Prior to movement to RAPland, Cultural Center Project-affected people accessed water from a stand pipe within the village and Olomayana Ndogo Project-affected people accessed water from a T-line one kilometer from the village. Olonongot village was supported by KenGen's water tankers since the nearest water source was 5 kilometers away. Olosinyat accessed water close to the village from a T-line of a water line that supplies water to Olkaria IV power plant. *Post relocation, all Project-affected people are within a one kilometer radius of a communal water kiosk.* In addition, each individual household has provision for rainwater collection including a 2,000 liter reserve water tank.
- (c) *New health dispensary.* Prior to movement to RAPland, the three health facilities that were nearest to the former villages were Oserian, Mvuke (KenGen) and the Shah. All three are private and Project-affected people could access these health facilities provided they were able to pay for consultation and drugs. Otherwise, they had to travel to the Sub-County Hospital in Naivasha, which is between 35 and 40 kilometers away. *The dispensary that*

² This was covered with concrete by KenGen in 2013.

³ Prior to 2013, KenGen paid the teachers' salaries through its "casual" employment program. This program was discontinued in 2013.

has been constructed by the Project was built according to Ministry of Health specifications. It is currently being managed by a clinical officer/general practitioner (as opposed to a nurse which is the standard in rural Kenya). KenGen has initiated the process for a registration number to enable the dispensary to use the government procurement process for supplies and drugs. Until this is secured, KenGen will procure needed basic medical equipment and furnishings. The Government has undertaken vaccination outreach for polio and tetanus for children and mothers at RAPland. At present, services are free. However on handover to the Government, Project-affected people will be required to pay KES 20 (ca. USD 0.36) for registration which is the standard practice in health dispensaries in Kenya. The dispensary has the following facilities: (i) consultation room; (ii) nursing room; (iii) treatment area; (iv) card/registry area; (v) pharmacy; (vi) drug store; (vii) a 3 bed obstetric care unit; (viii) mini water treatment plant; (ix) an incinerator for managing biomedical waste; (x) toilet facilities; (xi) water supply network; and (xii) electricity supply. In addition to the standard health care available at public clinics, the dispensary offers family planning, mother and child health care and HIV and TB services.

- (d) *Enhancing livestock health and quality.* Pastoralism is the main livelihood source of the Project-affected people. The Project has constructed *eight livestock watering troughs and one cattle dip*. These facilities did not exist in the former villages. The Project-affected people are planning to charge non-Project-affected people for the use of the cattle dip.
- (e) *Fish ponds for enhanced nutrition of Project-affected people and income.* Prior to relocation, one Project-affected household had two fish ponds that were non-functional. These were replaced at RAPland and populated with fingerlings, with the aim of introducing fish as an alternative source of nutrition for the Project-affected people and income for the household.
- (f) *Social hall for community meetings.* This is to provide Project-affected people, Project-affected women's groups and Project-affected youth groups with a place for meeting and discussing community matters. The hall can also be hired out to outside parties. This facility did not exist in the former villages.
- (g) *Accessible electricity infrastructure.* As part of the negotiated agreement, KenGen paid for electricity infrastructure (poles, transformers etc.) to bring electricity supply to RAPland within easy access of each household. Project-affected people chose to use the lump sum KES 35,000 movement/disturbance allowance for the cost of connecting their individual houses to the electricity infrastructure paid for by KenGen.⁴
- (h) *Provision of a bus for commuting.* As part of the negotiated agreement, KenGen provided for a 60-seat bus that would be given to the Project-affected people to allow those among them who have jobs at or close to the previous village sites to commute from the resettlement site. The bus was handed over to the Project-affected people on November 27, 2014.

⁴ One Project-affected person declined this option. Nevertheless his house in RAPland was connected in error to the electricity supply. He was refunded the KES 35,000 disturbance allowance on December 9, 2014.

Inter- and intra-community tensions

10. ***During the negotiations to agree on the RAP and its implementation, some inter- and intra-community tensions and disagreements surfaced.*** They arose between the Project-affected people and outside Maasai communities (Maasai from Narok, Mai Mahiu, Kajiado and the greater Naivasha area; and Maasai community at Suswa Triangle) and within the Project-affected group itself (on the issue of a mosque and ownership and management of the Maasai Cultural Center business after relocation). These were resolved through consultations and negotiations with KenGen and/or through the GCHM.⁵

- (a) *In 2011 there were disagreements between some Project-affected people and people from external Maasai groups who were seeking influence over the RAP process.* A group of Maasai community representatives, (referred to by KenGen as Group B), composed of Elders who were selected by the then Minister for Culture and National Heritage “to look after the interests of the wider Maasai community stakeholders who would be directly or indirectly affected by the Project” intervened in meetings of the Project-affected people. This Group B was not recognized by Group A (composed of Chairmen of the four villages directly affected by the Project, and who were to be resettled), which considered them as intruders. Following a number of consultations with all stakeholders (KenGen and Group A and B representatives), it was agreed that Group B and other communities of Maasai in the greater Naivasha area would be accommodated in the Stakeholder Coordinating Committee, but that Group A (the Project-affected people) would remain the custodians and decision makers for the Olkaria IV RAP. The broad mandate of the Stakeholder Coordinating Committee was to liaise with KenGen with regard to: (i) casual employment opportunities; and (ii) issues related to the environment outside of the RAP – on behalf of the Maasai community in the broader Naivasha area.
- (b) *Maasai Community at the Suswa Triangle.* In the process of identifying an acceptable resettlement site, consideration was given to the Suswa Triangle, located to the south of Olkaria and about 20 kilometers from Mai Mahiu. The Maasai community already established in this area expressed during consultations that they were unwilling to accommodate the Project-affected people. Therefore the Suswa Triangle was considered to be unsuitable, and an uninhabited resettlement site was sought, resulting eventually in the selection of the RAPland site.
- (c) *Cultural Center Project-affected people.* One of the villages from which Project-affected people were resettled was the Maasai Cultural Center village. The Cultural Center, which is located in close proximity to the Oljorwa gorge, served both as a village and as a center

⁵ The GCHM consisted of four levels. Level one, the CAC, is composed of Elders who are knowledgeable in traditional systems for grievance handling. Each Project-affected village elected two Elders to the CAC. Level two is the RAPIC. This is composed of 5 representatives, of whom at least 2 are women, from each of the four Project-affected villages. This level also has a youth representative and a representative of people with disabilities. KenGen and relevant line ministry representatives are also members of the RAPIC. The third level is that of independent arbiter who should be agreed jointly by both the complainant and defendant (whether KenGen or any other person). However, none of the Project-affected people sought the services of an independent arbiter during RAP implementation. Finally, (Level 4) a complainant may seek resolution from the law courts.

for the display of various Maasai arts and cultural practices. This latter aspect of the village therefore provided opportunities for the Cultural Center villagers and Maasai from other parts of the country to display and sell Maasai artifacts as well as to provide tour guide services to tourists who visited the gorge. As a result of the dual role of the Cultural Center, it had two committees, the village Council of Elders (found in any Maasai village) and the Cultural Center Management Committee, which was responsible for the tourism business aspects of the village. Both aspects of the Center had representation in the RAPIC, with the village represented by five people, including two women, and the Cultural Center (business) management by one person. To accommodate the business aspect of the Center after relocation, 14 acres of land were donated by KenGen from land it had purchased. Title (communal) to these 14 acres will be given to all the Project-affected people. The original Cultural Center committee sought to retain its management of the post-relocation business. The Project-affected people in the Cultural Center village did not want Project-affected people from the other three villages to be part of the Cultural Center business after relocation. Negotiations as part of the RAP concluded with agreement that the use of the 14-acre Cultural Center was to be non-exclusive (i.e., available to all Project-affected people and to outside groups of Maasai to conduct businesses).

Annex 3: Pictures from the resettlement site (“RAPLand”)
(September 15, 2015)



Picture 1: Kitchen garden with kale and maize at RAPLand



Picture 2. House at RAPLand



Picture 3. RAPLand Primary School



Picture 4. RAPLand Primary School



Picture 5. RAPLand Primary School



Picture 6. Subsistence maize farming at RAPLand



Picture 7. RAPLand Community Clinic



Picture 8. RAPLand Community Clinic



Picture 9. RAPLand Community Clinic waiting room



Picture 10. House at RAPLand



Picture 4. Water kiosk at RAPLand



Picture 5. Water tank at the RAPLand Community Clinic



Picture 6. Communal stand pipe at RAPLand

MEMORANDUM OF UNDERSTANDING

BETWEEN

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,
INTERNATIONAL DEVELOPMENT ASSOCIATION**

AND

**THE EUROPEAN INVESTMENT BANK COMPLAINTS MECHANISM
ON COOPERATION REGARDING COMPLAINTS RECEIVED IN RELATION TO
THE KENYA ELECTRICITY EXPANSION PROJECT**

[DATE]

This Memorandum of Understanding (“Memorandum”) represents a statement of intent by the International Bank for Reconstruction and Development (“IBRD”) and the International Development Association (“IDA”) (together, the “World Bank” or the “Bank”) and the European Investment Bank Complaints Mechanism (“EIB-CM” or the “Other Party”) (together the “Parties”), to work together towards the achievement of common objectives and outlines the basis for collaboration between them.

1. Background

- (a) The World Bank is an international development institution established by Articles of Agreement adopted by its member countries. The Bank’s mission is to reduce poverty, improve living conditions, and promote sustainable and comprehensive development in the developing world. It achieves these objectives by providing loans, concessional financing, technical assistance, and knowledge-sharing services to its member countries and through partnerships with other organizations.
- (b) Further to its mission, the Bank through IDA is providing support to the Kenya Electricity Expansion Project (“the Project” or “the KEEP”), which is being co-financed by the European Investment Bank (“the EIB”) and other development partners.
- (c) On October 26, 2014, the World Bank Inspection Panel (“the Panel”) received a Request for Inspection, IPN Request RQ14/06 (“the Request”), from communities alleging harm resulting from the Project. The Panel registered the Request on November 13, 2014, and pursuant to an eligibility assessment (“the Eligibility Report”), recommended that an investigation be carried on the alleged issues of harm and related Bank’s non-compliance with Operational Policies and Procedures. On February 13, 2015, the Bank’s Board approved this recommendation and the Panel recently submitted its Investigation Report to the Bank’s Board and Management.
- (d) The Bank’s Management is currently preparing a response and action plan (“the Management Report”), to the Panel’s Investigation Report. In this context, the Bank has an interest in collaborating with EIB-CM and the mediation process referred to below, to foster coordination and cooperation in addressing alleged issues of harm and alleged related non-compliance concerning the Project.
- (e) The Bank will participate in the mediation process through its Grievance Redress Service (the “GRS”), which is housed in the Bank’s Operational Policy and Country Services Vice Presidency, in the manner specified below.
- (f) The EIB is an EU body established in 1958 by the Treaty of Rome, which aims at fostering European integration and the balanced development of the Union as well as supporting the Union's development aid and cooperation policies. The EIB is a co-financier of the KEEP.
- (g) The EIB-CM is the internal independent accountability mechanism of the EIB designed to handle complaints against the EIB by individuals, organizations or corporations affected by EIB activities as well as facilitating the resolution of the concerns raised through problem solving.
- (h) In July 2014 the EIB-CM received a complaint from the resettled communities alleging harm resulting from the Project. In line with its Principles, Terms of Reference and Rules of Procedures, the EIB-CM is conducting an investigation of the issues raised in the complaint and has set up a mediation process to address in particular, issues related to the implementation of the Resettlement Action Plan developed under the Project.
- (i) The EIB-CM, in line with its Principles, Terms of Reference and Rules of Procedures, has an interest in collaborating with the World Bank to foster coordination and cooperation in addressing alleged issues of harm and alleged related non-compliance concerning the Project.

2. Common Objectives

- (a) Consistent with their respective mandates, and subject to the policies and procedures of their respective institutions, the Parties desire to cooperate in carrying out activities conducive to coordination and cooperation in addressing alleged issues of harm stemming from non-compliance concerning the Project, as identified in the Management Report in response to the Inspection Panel's Investigation report on the Project as well as in the EIB-CM Conclusions report. In so doing, the Parties will promote efficiency so that they can carry out their respective mandates.
- (b) The Parties anticipate that their collaboration will focus on a number of specific substantive areas, as identified in the both Reports, which will include [but are not limited to]:
 - (i) Identification of Project Affected Persons;
 - (ii) Consultation, Participation and Grievance Redress;
 - (iii) Adequacy of Resettlement Site and Related Infrastructure; and,
 - (iv) Livelihood Restoration Measures.

3. Forms of Collaboration

- (a) Further to the achievement of their common objectives, and subject to the policies and procedures of their respective institutions, the Parties intend to consider ways to coordinate and cooperate in the mediation process for the Project initiated by the EIB-CM. As noted above, the Bank will participate in the mediation process as co-facilitator through its GRS.
- (b) The Parties anticipate that each Party will contribute to the activities undertaken pursuant to this Memorandum by providing their respective staff time.

4. Key Points of Contact

- (a) Each Party hereby designates and appoints below its representative with overall responsibility for implementing this Memorandum:

For the World Bank:

[Name]
[Title]
[Address]
Phone: []
Fax: []
Email: []

For [Name of Other Party]:

[Name]
[Title]
[Address]
Phone: []
Fax: []
Email: []

5. Limits to Agreement

- (a) This Memorandum does not constitute an agreement or commitment by either Party to enter into or provide support for any specific activity or project.
- (b) Nothing in this Memorandum shall be construed as creating a joint venture, an agency relationship, or a legal partnership between the Parties.

- (c) Nothing in this Memorandum is intended to be, or should be construed as a waiver of the privileges and immunities of either Party or its officers and employees, which privileges and immunities are hereby specifically reserved.
- (d) Nothing in this Memorandum is intended to be, or should be construed as a waiver of each Parties' operational policies and procedures. It is understood that at all times, the Bank and the EIB-CM will apply their own policies and procedures to further the achievement of their common objectives, set forth in this Memorandum.

6. Disclosure and Publicity

- (a) The Bank may disclose to the public this Memorandum and information with respect to activities and projects contemplated herein in accordance with the Bank's Policy on the Disclosure of Information. The EIB-CM may make such disclosure in accordance with its Transparency Policy and the EU rules on access to documents. The participants in the mediation process will sign an Agreement to Mediate which details the confidentiality rules relating to the mediation process and the rules on disclosure of information related to the process.
- (b) Any sharing of information between the Parties will be subject to their respective policies and procedures relating to the disclosure of information.
- (c) Confidential information of the one Party shall be handled by the other Party with no lesser standard of care than it would use in handling its own confidential information.

7. Term

This Memorandum shall come into force and effect upon signature by both Parties on the date set forth below and shall terminate when the mediation process for the Project is closed.

8. Modification and Termination

- (a) This Memorandum may be modified or terminated at any time by mutual written agreement of the Parties. Further, the Memorandum may be terminated by either Party at its sole discretion with 60 days prior notice in writing to the other Party.

9. Miscellaneous

- (a) The section headings in this Memorandum are for convenience only and are not intended, and shall not be construed, to alter, limit, or enlarge in any way the scope or meaning of the language contained in this Memorandum.
- (b) This Memorandum will supersede any previous intentions or agreements communicated and agreed upon between the Parties in respect of the collaborative activities and projects contemplated herein.
- (c) The person signing this Memorandum on behalf of each Party hereby represents and warrants to the other Party that he or she has the requisite legal power and authority to execute this Memorandum on behalf of the Party and bind the Party to the obligations herein.

In witness whereof, the Parties have caused this Memorandum to become effective as of the day and date written below.

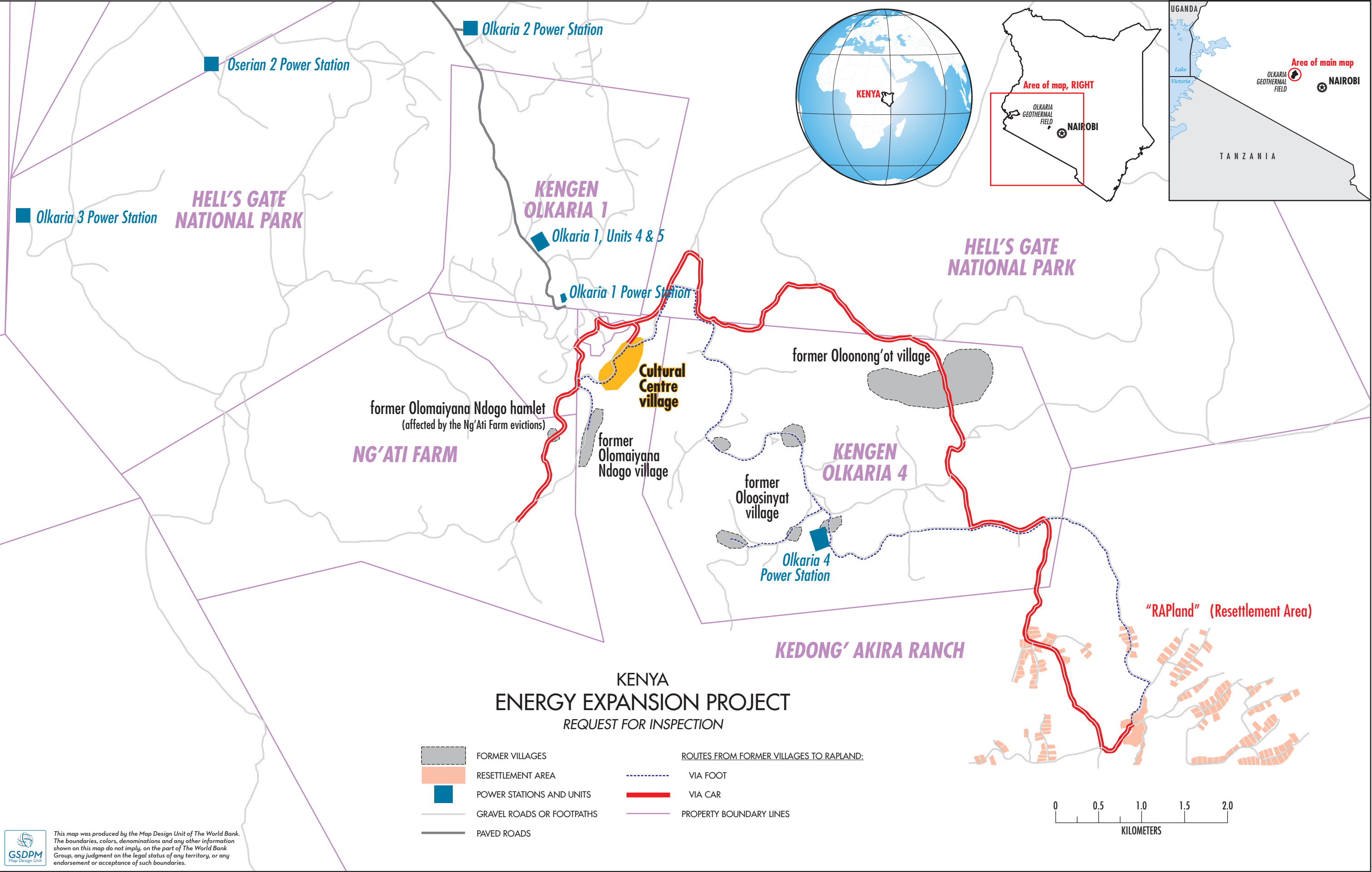
**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT,
INTERNATIONAL DEVELOPMENT ASSOCIATION**

**EUROPEAN INVESTMENT BANK COMPLIANCE
MECHANISM**

Name: _____
Title: _____

Name: _____
Title: _____

Date:



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