

Report No. 97705-KE

KENYA

ELECTRICITY EXPANSION PROJECT (P103037)



INVESTIGATION REPORT

JULY 2, 2015

Acknowledgements

The preparation of this Report was made possible by the support and valuable contributions of many people. The Panel wishes to thank the Requesters and other Project-Affected Persons who met the Panel in Kenya and generously gave their time to help it understand their concerns.

The Panel is obliged to the national and local government officials in Kenya with whom the investigation team met and who provided invaluable insights. The Panel expresses its gratitude to the officials of the Kenya Electricity Generating Company (KenGen) for meeting with the team, sharing information, and contributing to a better understanding of the Project.

The Panel expresses its appreciation to World Bank Management, staff, and consultants for their assistance in obtaining documents, providing information, and responding promptly to team requests. The Panel is also grateful to the representatives of the European Investment Bank, the French Development Agency (Agence Française de Développement), the Japan International Cooperation Agency, and the Development Bank of Germany (Kreditanstalt für Wiederaufbau – KfW) for meeting with the team and exchanging views. The Panel further wishes to thank the World Bank Country Office in Kenya for assisting with logistical arrangements during the team's visits to Nairobi and the Project area.

The Panel is indebted to its consultants, Peter D. Little and William L. Partridge, for their expert advice and highly appreciates the professionalism they showed at all times. The Panel is also grateful to the members of its Secretariat for their competent and resourceful handling of this investigation.

The Panel expresses special appreciation to the Complaints Mechanism of the European Investment Bank (EIB-CM) for its cooperation and exemplary professionalism during this investigation. The partnership between the EIB-CM and the Inspection Panel added significant value to the process.

List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
AFD	Agence Française de Développement (French Development Agency)
BP	Bank Procedures
BTOR	Back-to-Office Report
CAC	Community Advisory Council
EIB	European Investment Bank
EIB-CM	Complaints Mechanism of the European Investment Bank
ESIA	Environmental and Social Impact Assessment
GCHM	Grievance and Complaints Handling Mechanism
IEP	Independent Evaluation Panel
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
ISDS	Integrated Safeguard Data Sheet
IWGIA	International Work Group for Indigenous Affairs
JICA	Japan International Cooperation Agency
KEEP	Kenya Electricity Expansion Project
KenGen	Kenya Electricity Generating Company Ltd.
KfW	Kreditanstalt für Wiederaufbau (Development Bank of Germany)
KSh	Kenyan Shillings
MoU	Memorandum of Understanding
MPIDO	Mainyoito Pastoralists Integrated Development Organization
NLC	National Land Commission (of Kenya)
OP	Operational Policy
PAD	Project Appraisal Document
PAPs	Project-Affected Persons
PID	Project Information Document
RAP	Resettlement Action Plan
RAPIC	Resettlement Action Plan Implementation Committee
RAPland	Olkaria IV Resettlement Site
SEA	Strategic Environmental Assessment
TLU	Tropical Livestock Unit
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Table of Contents

Acknowledgements.....	i
List of Abbreviations	ii
Executive Summary	v
Chapter 1 – Introduction and Project Context	1
A. Introduction	1
1. Outline and Organization of the Report	1
2. Rationale for the Project and Project Description	2
3. Request for Inspection and Management Response	4
4. The Panel’s Investigation Process	5
B. Timeline of Key Events Related to the Project	6
Chapter 2 – Identification of Indigenous Peoples and Physical Cultural Resources	8
A. Application of the Policy to the Maasai in the Project Area	8
B. Identification of Physical Cultural Resources	12
Chapter 3 – Resettlement Process.....	15
A. Resettlement Action Plans and Identification of PAPs	15
B. Consultation, Participation, and Grievance Redress	19
Chapter 4 – Socioeconomic Impacts of Resettlement	26
A. Adequacy of Resettlement Site, Infrastructure, and Amenities	26
1. Resettlement Site and Land-title.....	27
2. Housing and Other Infrastructure	29
B. Livelihood Restoration	32
1. Socioeconomic Impacts.....	34
2. Livelihood Restoration Opportunities	41
Chapter 5 – Supervision and Monitoring.....	44
Chapter 6 – Conclusions	47
Annex A: Table of Findings	51
Annex B: Historical Background of the Maasai in the Olkaria Area	53
Annex C: Context for Benefit Sharing from Commercialization of Natural Resources in Kenya.....	56
Annex D: Memorandum of Understanding with EIB-CM	58

Annex E: Biographies	62
Annex F: About the Panel.....	65
Annex G: Map (IBRD 41337)	66

Executive Summary

Background

1. This Report (the “Report”) responds to a Request for Inspection (the “Request”) of the Kenya Electricity Expansion Project (the “Project”), which the World Bank Inspection Panel (the “Panel”) received on October 26, 2014. 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 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 processing these complaints.

Project Context

2. The World Bank (the “Bank”) has supported geothermal generation in Kenya since the early 1980s, most recently through this Project, a Specific Investment Credit of the International Development Association, amounting to the equivalent of US\$330 Million. The Project was approved by the Bank’s Board of Executive Directors (the “Board”) on May 27, 2010 and will close on September 30, 2016. The European Investment Bank is one of several co-financiers.

3. The Project’s development objectives are to increase the capacity, efficiency, and quality of electricity supply, and to expand access to electricity in urban, peri-urban, and rural areas. The Project has four components: Generation, Transmission, Distribution, and Institutional Development/Operational Support. The Request relates to the geothermal power generation component, which is implemented by the Kenya Electricity Generating Company Ltd. (KenGen). The Bank’s Policies on Involuntary Resettlement, Indigenous Peoples, Environmental Assessment, and Natural Habitats were triggered for this Project.

Request for Inspection and Management Response

4. The Requesters claim the community agreed to resettle on the condition it would receive communal land-title, which had not been obtained as of the time of the Request. They assert the resettlement adversely affected them and, instead of restoring or uplifting their livelihoods, led to impoverishment and social tensions. Many of those resettled now live far from their previous sources of income. They also allege 14 families were excluded from receiving houses at the resettlement site, among them poor, orphans, and widows. They raise concerns about the cultural compatibility of the resettlement housing, health impacts due to new drilling in the vicinity of the resettlement site, and fear of future relocation. The Requesters lack trust in their community representatives and the Bank, and complain about inadequate consultation and participation, corruption, nepotism, and discrimination.

5. In its response World Bank Management affirms it closely monitored the design and implementation of the Project’s resettlement activities. It also affirms the Resettlement Action Plan (RAP) adequately mitigated potential adverse impacts. According to Management the livelihoods

of Project-Affected Persons (PAPs) were restored to pre-displacement levels, or better. A Resettlement Action Plan Implementation Committee (RAPIC) and a project-level grievance redress mechanism allow PAPs to seek redress. Management states it has neither found that 14 households were excluded from the RAP nor seen evidence of corruption, nepotism, irregular payments, or threats of retaliation. A MoU between KenGen and the community was agreed in a transparent process and includes, *inter alia*, criteria to determine inclusion in the RAP, eligibility for housing and cash compensation, housing conditions, and the provision of post-resettlement transportation. Management concludes it has followed its Operational Policies and Procedures, and the Requesters' rights or interests have not been, nor will they be, directly or adversely affected.

Panel Findings

6. The Panel's investigation findings relate to four main groups of issues: (i) Indigenous Peoples and Physical Cultural Resources, (ii) the resettlement process, (iii) the socioeconomic impacts of resettlement, and (iv) supervision and monitoring.

Indigenous Peoples and Physical Cultural Resources

7. 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 PAPs gave rise to significant shortcomings regarding consultation, the cultural compatibility of the resettlement, benefit sharing, and the use of Maasai-specific expertise and is in non-compliance with the requirements of OP 4.10. The Panel believes applying the Policy might have avoided or mitigated some of the harms caused by the Project.

8. Concerning impacts on Physical Cultural Resources such as the Ol Njorowa Gorge the Panel finds the sites were neither affected, nor was access to them hindered. The Panel therefore finds Management in compliance with OP 4.11 on Physical Cultural Resources.

The Resettlement Process

9. The Panel finds the identification of PAPs (by means of two censuses, a census validation exercise, and through the award of compensation) did not provide satisfactory assurance of reliability in its outcome due to methodological flaws in the process, and therefore is in non-compliance with OP 4.12 (paragraph 14).

10. The Panel notes the establishment of RAPIC – the mechanism used for consultation, disclosure of information, participation, and decision-making with PAPs – is a well-intentioned effort to achieve broad representation, and conforms to Bank Policy. Nonetheless, the Panel finds the serious shortcomings in achieving meaningful consultations and inclusive participation in the Project's resettlement activities are in non-compliance with OP 4.12 (paragraph 2b) due to the ineffective communication with the community, the sidelining of the community's traditional authority structure (the Elders), the omission of Maa language during consultations, and failure to

disclose documents to the affected community in a place accessible to them and in a form, manner, and language understandable to them.

Socioeconomic Impacts of Resettlement

11. The Panel notes that although relocation to the resettlement site (the “RAPland”) occurred after the houses were constructed, it was nevertheless before adequate roads, water supply, and electricity were in place. The Panel finds Management’s failure to ensure resettlement of the PAP villages occurred only after all requirements for resettlement were met is in non-compliance with OP 4.12 (paragraph 10). The Panel notes the long history of land tenure insecurity for the Maasai warranted special attention to guarantee the community received communal land-title. The Panel finds the housing solution offered to the PAPs, 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 PAPs, they are inconsistent with the cultural preferences and lifestyles of others.

12. The Panel notes the Project paid inadequate attention to the restoration of livelihoods of PAPs belonging to the most vulnerable segments of the community, which include those below the poverty line, the landless, women, the disabled, and children. The Panel finds the insufficient attention and assistance to these vulnerable PAPs are in non-compliance with OP 4.12 (paragraph 2c and paragraph 8).

13. The Panel finds 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 PAPs were previously located. The Panel finds the absence of investments in RAPland to improve its productive potential, and in livelihood restoration measures, are adversely affecting efforts by PAPs to bridge the gap in their livelihoods between the time of their relocation and the time those livelihoods can be restored, and are in non-compliance with OP 4.12 (paragraph 6a and c).

14. The Panel believes prospects remain for investing in improvements to RAPland’s productive capacity and in schemes for alternative income-generation. The Panel is confident additional Project-related benefits can still be considered and implemented, and these could contribute to the restoration of livelihoods as required by Bank Policy.

Supervision and Monitoring

15. The Panel notes the World Bank’s effort in conducting numerous supervision missions to the Project area. The Panel observes, however, there was insufficient capacity to deal with the complex issues arising out of these resettlement activities. Furthermore, the Panel finds the Bank inadequately supervised the resettlement activities and did not ensure sufficient monitoring based on updated sociological data to measure PAPs’ wellbeing and the restoration of their livelihoods to pre-displacement levels or better, and is in non-compliance with Bank Policy on Involuntary Resettlement (OP 4.12 paragraph 24 and BP 4.12 paragraph 14).

Conclusions

16. The Panel recognizes and appreciates the efforts by the Bank and KenGen to implement resettlement in Olkaria as a model, and has identified several actions that can be considered best practice (the introduction of participatory structures such as RAPIC, the use of the “land-for-land” principle, etc.). Despite these positive attributes, the Panel identified shortcomings, particularly those related to the need to implement culturally sensitive measures, which resulted from failure to apply the Bank’s Indigenous Peoples Policy to protect the Maasai PAPs. In this context and looking ahead the Panel notes the importance of: (i) redressing harms to PAPs through livelihood restoration measures with a focus on the most vulnerable segments and (ii) incorporating lessons in the Project and future resettlements.

17. In this respect it is noteworthy that, at the time of finalizing this report, the EIB-CM was initiating a mediation effort among the parties aimed at building trust and agreeing on solutions. Furthermore, in a Memorandum to the Panel and EIB-CM following the field visit, KenGen stated that it “*embraced the process as a learning platform*”, and added that it will have a “*much improved understanding and knowledge of its development partner’s policies, expectations and mandate, with regard to dealing with communities that host its projects.*”

18. The Panel notes that this investigation highlights: (i) the need to conduct adequate screening for the presence of Indigenous Peoples in project areas, (ii) the need for greater attention to the traditional authority structures of affected communities and their local languages, (iii) the need to offer a choice of housing options that may be better suited culturally and economically to different PAPs, (iv) the need to invest in livelihood restoration and to consider benefit sharing schemes, and (v) the need to monitor closely socioeconomic impacts, with particular attention to the most vulnerable segments of PAPs. By redressing harms and incorporating lessons learned, the model initially envisioned could still be realized.

Chapter 1 – Introduction and Project Context

A. Introduction

1. Outline and Organization of the Report

1. This Investigation Report (the “Report”) presents the findings and analysis of the issues raised in the Request for Inspection (the “Request”) of the Kenya Electricity Expansion Project (the “Project”) received by the World Bank Inspection Panel (the “Panel”) on October 26, 2014.¹ The Request concerns the geothermal power generation component of the Project, which is under implementation in the Greater Olkaria² Geothermal Area located in Naivasha Sub-County of Nakuru County, approximately 120 kilometers northwest of Nairobi.³

2. The Request was submitted by members and representatives of a Maasai community who asked the Panel to keep their identities confidential. Additionally, during the Panel’s Eligibility visit to the Project area in January 2015 the Panel received signatures from another group of community members in support of the Request.

3. The Panel registered the Request on November 13, 2014. After the World Bank Management Response (the “Response”) was submitted on December 19, 2014⁴ the Panel received two letters which the Requesters and other Project-Affected Persons (PAPs)⁵ had sent to the World Bank (the “Bank”) in July and August 2014. These letters raise concerns similar to those presented to the Panel in October, as well as additional issues. The Panel considers them an integral part of the Request.

4. Around the time the Panel received the Request, the Complaints Mechanism of the European Investment Bank (EIB-CM) also received four complaints relating to the Project and raising similar concerns. In the interests of efficiency and effectiveness the Panel and the EIB-CM decided to coordinate their processing of these complaints and signed a Memorandum of Understanding (MoU) on April 28, 2015 detailing the cooperation between the two mechanisms (see Annex D). This cooperation “*focuses on the sharing of information between the Panel and the EIB-CM within the limits set by confidentiality obligations (...). At all times, the cooperation between the Panel and EIB-CM shall be subject to the policies and procedures of their respective institutions.*”⁶

¹ Available on the Panel’s website at <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=102>.

² Olkaria is the most common spelling for the Project’s location, although the correct Maa spelling would be ol karia or ol-karia. The term Olkaria is used throughout this document.

³ See attached map in Annex G.

⁴ Management Response to the Request for Inspection, Kenya - Electricity Expansion Project, December 16, 2014, also available on the Panel’s website at <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=102>.

⁵ *Project-Affected Persons* is a technical term used to describe any person affected by the Project and eligible for compensation or assistance regardless of the entitlement (a house, or rent, or allowance, etc.). The Project uses the acronym PAP (Project-Affected Person) while referring to Project-Affected Households.

⁶ Memorandum of Understanding Between The World Bank Inspection Panel And The European Investment Bank Complaints Mechanism on cooperation regarding complaints received in relation to the Kenya Electricity Expansion Project, para. 1.

5. Consistent with its mandate the Panel investigated the issues raised in the Request relating to the Bank’s operational policies and procedures,⁷ with a focus on harm arising from instances of non-compliance. This Report is structured in six chapters:

- Chapter 1 (this chapter) introduces the Report and briefly summarizes the Project and its context. It presents the issues raised in the Request and the Management Response, and outlines the Panel’s investigation process. It also provides a timeline of key Project events.
- Chapter 2 addresses issues related to the identification of PAPs as Indigenous Peoples, the application of the Bank’s Indigenous Peoples Policy, and the aspects of cultural heritage raised in the Request.
- Chapter 3 examines the process of identifying PAPs and their entitlements. It describes and analyzes the design of the resettlement and its implementation, as well as the mechanisms for consultation with and participation of the PAP community in decision-making and redress of grievances.
- Chapter 4 reviews claims of impoverishment resulting from relocation to the resettlement site. It analyzes the adequacy of the site, including its infrastructure, amenities, and impacts on PAP livelihoods.
- Chapter 5 assesses supervision of Project implementation and monitoring of the socioeconomic situation of the PAPs.
- Chapter 6 presents the Panel’s conclusions.

2. Rationale for the Project and Project Description

6. Kenya depends heavily on hydropower for electricity, but this resource does not provide the reliable energy supply needed for an expanding economy.⁸ Undependable electricity has a negative effect on revenue for Kenya and on the nation’s growth. Low levels and high costs of access to electricity also constrain achievement of social objectives, and are obstacles particularly for lower-income households. According to the Project Appraisal Document (PAD) the country’s geothermal energy is a viable alternative as the main source of power, but the sector remains largely undeveloped.⁹ The Bank has been engaged in geothermal generation developments in Kenya since the early 1980s,¹⁰ and most recently through its support to the Olkaria IV geothermal power plant, which started operating in October 2014. Since then Kenya has seen a substantial

⁷ The term *Bank policy* in this Report refers to the World Bank’s policies. The EIB-CM uses in its compliance review the World Bank’s policy framework for Involuntary Resettlement as per the contractual arrangements between the EIB and KenGen.

⁸ Project Appraisal Document (the “PAD”), Electricity Expansion Project, Report No: 54147-KE, dated May 3, 2010. The Project’s page is available on the World Bank’s website at <http://www.worldbank.org/projects/P103037/electricity-expansion?lang=en>.

⁹ PAD (2010), pages 4-5.

¹⁰ PAD (2010), page 11.

increase in generating capacity and reduced cost of electricity for consumers, with resulting benefits to its citizens.

7. The Kenya Electricity Expansion Project (KEEP) is a Specific Investment Credit of the International Development Association (IDA), amounting to the equivalent of US\$330 Million. It was approved by the Bank's Board of Executive Directors (the "Board") on May 27, 2010 and will close on September 30, 2016. The Borrower is the Republic of Kenya. The Project has two development objectives: (i) to increase the capacity, efficiency, and quality of electricity supply, and (ii) to expand access to electricity in urban, peri-urban, and rural areas.

8. The Project is structured in four components; the Request pertains to Component A.

- Component A (Geothermal Power Generation) includes 280 MW of geothermal¹¹ generation capacity in Naivasha (140 MW from expansion of the existing Olkaria I power station and 140 MW from the construction of Olkaria IV in the Olkaria Domes field).¹²
- Component B (Transmission) includes extension of Kenya's electricity transmission network and construction of new 132/33 kV substations.
- Component C (Distribution) includes (i) strengthening and extension of electricity distribution networks in urban, peri-urban, and rural areas, (ii) electrification of priority loads (public facilities) in rural areas, (iii) electrification of urban slums, and (iv) expansion of the deferred payment mechanism for electricity connection fees.
- Component D (Sector Institutional Development and Operational Support) includes support of institutional development, training, project monitoring and evaluation, and provision of project implementation support.

9. The Project is co-financed by the European Investment Bank (EIB), the French Development Agency (Agence Française de Développement – AFD), the Japan International Cooperation Agency (JICA), and the Development Bank of Germany (Kreditanstalt für Wiederaufbau – KfW). According to the PAD the total Project cost is US\$1,391 Million equivalent and EIB, AFD, JICA, and KfW committed about US\$800 Million equivalent in co-financing.¹³

10. The Project is implemented by the Ministry of Energy, which is responsible for overall Project coordination. The Kenya Electricity Generating Company Ltd. (KenGen) is the implementing agency for the Project's Component A.

11. The Bank's policies on Involuntary Resettlement (OP/BP 4.12), Indigenous Peoples (OP/BP 4.10), Environmental Assessment (OP/BP 4.01), and Natural Habitats (OP/BP 4.04) were

¹¹ Geothermal energy is thermal energy generated in the Earth. The geothermal energy in the Earth's crust results from the original formation of the planet and from radioactive decay of minerals. The geothermal gradient, which is the difference in temperature between the core of the planet and its surface, drives continuous conduction of thermal energy in the form of heat from the core to the surface. See: Strategic Environmental Assessment (SEA) (2015) for the Olkaria Geothermal Field Development Programme, page 54.

¹² According to the PAD, the new geothermal-based capacity for electricity generation will help Kenya earn carbon credits under the Clean Development Mechanism (CDM), the post-2012 Carbon Partnership Facility, or other sources of carbon finance. See PAD (2010), page 43.

¹³ PAD (2010), pages 11 and 15.

triggered for the Project. However, OP 4.10 was not applied to the Maasai people.¹⁴ According to the PAD, the Project was classified as “Category A.”¹⁵

3. Request for Inspection and Management Response

12. The Requesters claim the resettlement negatively affected their lives and, instead of restoring or uplifting their livelihoods, it led to impoverishment and social tensions. They further explain that many of those resettled now live far from their previous sources of income and consequently must spend much of their earnings on transportation. They add that some families now have trouble affording their children’s school fees. According to the Requesters the community agreed to resettle on the condition it would receive communal land-title to the resettlement site, but they are still awaiting the title transfer. They allege 14 families were excluded from receiving houses at the resettlement site, among them the poor, orphans, and widows. They are also concerned about the effects on their health of new drilling in the vicinity of the resettlement site, and fear eviction from any planned geothermal developments.

13. The Requesters raise concerns about the cultural compatibility of the new housing. They repeatedly expressed to the Panel that, as indigenous Maasai people, they are concerned about potential impacts on Maasai culture, and that they should share in the benefits of the Project. The Requesters contend there was corruption, nepotism, and discrimination in the process of awarding compensation. They state they lack confidence and trust in their representatives on the resettlement implementation committee and in the World Bank, and complain about inadequate consultation and participation. The issues raised by the Requesters mainly relate to Bank Policies on Involuntary Resettlement and Indigenous Peoples.

14. In its Response, Management explains it provided close monitoring of the design and implementation of the Project’s resettlement activities and argues the implementation of the Resettlement Action Plan (RAP) adequately mitigated potential adverse impacts. Management claims the livelihoods of the PAPs were restored to the level before resettlement, or better, explaining that the RAP provided for subprojects to help enhance PAP livelihoods, which included, *inter alia*, a modern primary school, water for domestic use, and a new health dispensary. Management maintains that a RAP Implementation Committee (RAPIC) and a project-level grievance redress mechanism allow people to seek redress. Management is neither aware of the 14 households allegedly excluded from the RAP nor aware of any allegations of corruption, nepotism, irregular payments or threats of retaliation.

15. Management explains that several potential relocation sites were considered before choosing the current location with the agreement of the PAPs. The MoU signed between KenGen

¹⁴ OP 4.10 was triggered for other indigenous groups affected by other components of the Project.

¹⁵ PAD (2010), page 46. According to the Environmental Assessment Policy, OP 4.01, a proposed project is classified as “Category A” if it is likely to have significant adverse environmental impacts that are sensitive (a potential impact is considered “sensitive” if it may be irreversible – e.g., lead to loss of a major natural habitat) or raise issues covered by OP 4.04, Natural Habitats; OP/BP 4.10, Indigenous Peoples; OP/BP 4.11, Physical Cultural Resources or OP 4.12, Involuntary Resettlement), diverse, or unprecedented.

and the PAs¹⁶ was, according to Management, agreed in a transparent process and covers, *inter alia*, the criteria to determine inclusion in the RAP, eligibility for housing and cash compensation, housing conditions,¹⁷ and provision of post-resettlement transportation. Management believes KenGen adequately addressed the transportation issue by providing a 60-seater bus in accordance with the PAs' expressed wish, and that it was the PAs' decision to lease it to a third party. Management's Response also addresses the July 2013 evictions at Ng'ati Farm which, according to Management, are unrelated to the Project, although 13 PAP households were evicted and received government compensation. Management concludes it has followed its Policies and Procedures as applicable to the matters raised by the Request, and that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected.

4. The Panel's Investigation Process

16. **The Panel's Recommendation to Investigate.** The Panel made its determination on eligibility after reviewing the Request and the Management Response, and visiting the Project area in January 2015. On February 2, 2015 the Panel submitted its Report and Recommendation to the Bank's Board of Executive Directors confirming the eligibility of the Request for Inspection and recommending an investigation. The Board approved this recommendation on February 13, 2015. The Request, the Response, and the Panel's Report and Recommendation were made public shortly after the Board's approval and can be accessed on the Panel's website.¹⁸ On March 3, 2015 the Panel published its Investigation Plan.¹⁹

17. The Panel's investigation team (the "team" or the "investigation team") comprised Panel Member Jan Mattsson, Senior Operations Officer Serge Selwan, Operations Analyst Birgit Kuba, and two expert consultants – Dr. Peter Little (an anthropologist specializing in Indigenous Peoples in Kenya and pastoralism) and Dr. William Partridge (an anthropologist specializing in involuntary resettlement).²⁰ Alfredo Abad, Deputy Head of Division, EIB-CM, joined the team in accordance with the MoU between the Inspection Panel and EIB-CM. Nevertheless, the analysis and findings articulated in this Investigation Report are the Panel's.

18. The investigation included extensive examination of documentation obtained in both Washington and Kenya, and additional fact-finding through interviews conducted in Washington. A field mission to Kenya took place from March 25 to April 2, 2015.²¹ In the Project area the team

¹⁶ The Memorandum of Understanding (the "MoU signed between KenGen and the PAs") between the Kenya Electricity Generating Company Ltd (KenGen) and the Olkaria 280 MW Geothermal Development Project Affected Persons – PAs, dated July 1, 2013, is attached to the Management Response as Annex 3 and its Amendment as Annex 4.

¹⁷ Management explains that it was agreed the Project would not provide furniture for the new houses. The layout and spacing of houses was designed in close consultation with the PAs.

¹⁸ Inspection Panel Report and Recommendation, Kenya: Electricity Expansion Project (P103037), dated February 2, 2015. Report No. 94018-KE. See: <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=102>

¹⁹ Available at: <http://ewebapps.worldbank.org/apps/ip/PanelCases/97-Kenya%20Investigation%20Plan%20-3%20March%202015.pdf>.

²⁰ See: Annex E for the biographies of the Panel Members, expert consultants, and the Deputy Head of Division of EIB-CM.

²¹ On June 12, 2015, as the Panel was finalizing its investigation, KenGen submitted a Memorandum (the "KenGen June 2015 Memorandum") to the Panel and the EIB-CM on the discussions held during its field visit. The document is a summary of KenGen's position regarding the complaints and discussions that took place during the visit.

met with the Requesters, other affected-community members, the current and previous Deputy County Commissioners, KenGen staff, and civil society representatives from Narok County.

19. In Nairobi the investigation team conferred with Government authorities (including members of the Ministry of Energy and Petroleum, and of the Treasury), representatives of KenGen, and staff in the World Bank's Country Office. The team also met with representatives of GIBB Africa, the consulting firm engaged to work on the Project's environmental and social assessments,²² as well as representatives of the NGO Mainyoito Pastoralists Integrated Development Organization (MPIDO). A separate meeting was held with representatives of EIB, JICA, KfW, AFD, and Bank staff.

20. The investigation assessed whether the Bank complied with the following of its Operational Policies and Procedures:

- Indigenous Peoples (OP/BP 4.10),
- Physical Cultural Resources (OP/BP 4.11), and
- Involuntary Resettlement (OP/BP 4.12).

B. Timeline of Key Events Related to the Project

21. Due to the noise and air pollution that would result from operation of the Olkaria IV geothermal power plant, four Maasai communities living in the Project impact area had to be resettled. As part of the resettlement design, a RAP was prepared in December 2009 and a census was conducted in three villages (Cultural Centre, Olo Nongot, and Olo Sinyat). Following appraisal, the Board approved the Project on May 27, 2010. In July 2012 a census update was undertaken and the RAP was updated and included an additional village (Olo Mayana Ndogo). Due to continued differences in identifying PAPs eligible for resettlement, a census validation exercise was conducted in June 2013 which determined the final list of eligible affected households and their entitlements. The relocation of PAPs to the resettlement site took place between August 21 and September 2, 2014.

²² GIBB Africa Limited, a privately-owned company, "was commissioned by KenGen to undertake the Environmental and Social Impact Assessment Study for the proposed Olkaria IV Power Station in the Olkaria Domes area, Hells Gate Location of Naivasha District." See RAP (2012), page 1-1.

Table: Timeline of Key Events Related to the Project

December 2009	<ul style="list-style-type: none"> • Census • Resettlement Action Plan (RAP)
January 2010	<ul style="list-style-type: none"> • Draft Screening & Draft Indigenous Peoples Planning Framework (IPPF)
April 2010	<ul style="list-style-type: none"> • Environmental and Social Impact Assessment (ESIA)
May 2010	<ul style="list-style-type: none"> • Project Appraisal Document (PAD) • Board Approval
June 2012	<ul style="list-style-type: none"> • Creation of Resettlement Action Plan Implementation Committee (RAPIC)
July 2012	<ul style="list-style-type: none"> • Census Update • Updated RAP
September 2012	<ul style="list-style-type: none"> • Creation of the Community Advisory Council (CAC) composed of the community Elders
November 2012	<ul style="list-style-type: none"> • ESIA for the Proposed Construction of Houses and Other Facilities for Resettlement
June 2013	<ul style="list-style-type: none"> • Census Validation Exercise
July 2013	<ul style="list-style-type: none"> • Ng’ati Farm Evictions
August - September 2014	<ul style="list-style-type: none"> • Relocation of PAPs

Chapter 2 – Identification of Indigenous Peoples and Physical Cultural Resources

22. Issues of land rights in Olkaria and surrounding areas are complex and have deep historical roots. The Maasai in the Project area have been repeatedly relocated from their ancestral lands since colonial times (for more analysis, see Annex B). In light of these historical experiences the Maasai are fearful about any potential resettlement. Thus, anxiety during the course of the Project was to be expected, and required special attention be paid to the affected people. Although the Project triggered several World Bank safeguard Policies, including the Indigenous Peoples Policy, (OP/BP 4.10), Management determined the Policy would apply to four groups (Sengwer, Ogiek, Waata, and Boni), but not to the Maasai living in or around Olkaria.

A. Application of the Policy to the Maasai in the Project Area

23. **Request.** The Requesters claim their cultural beliefs and “*spirits of togetherness*” as “*One Community (family)*” are threatened by introducing ways of life based on “*loneliness and Single thinkings life* [sic].”²³ During both its visits the Panel heard repeated community claims that they, as indigenous Maasai people, are being denied their rights and should share in the benefits of the Project.

24. **Management Response.** The Response does not address the application of OP 4.10.²⁴

25. **Bank Policy** on Indigenous Peoples (OP 4.10) considers as “*Indigenous Peoples*” any distinct, vulnerable, social and cultural group possessing the following characteristics “*in varying degrees*”: (i) self-identification as a distinct indigenous cultural group with recognition of this identity by others, (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area, (iii) separate customary cultural, economic, social, or political institutions, and (iv) an indigenous language.²⁵ The Policy defines the term “*collective attachment*” as a physical presence spanning generations, and economic ties to lands and territories traditionally owned, or customarily used or occupied by them. This includes the attachment of nomadic groups to the territories they use on seasonal or cyclical bases.²⁶

26. **Panel Observations and Analysis.** The issue of Indigenous Peoples in Kenya, and Africa generally, is complex. Bank Policy OP 4.10, however, is clear on the four key elements required to identify Indigenous Peoples. The Panel analyzed these four criteria under Bank Policy to determine its applicability to the Maasai in this case.

27. **Self-identification and Recognition by Others.** The Maasai in the Project area consider themselves an Indigenous People and are identified as such at international fora, including at the United Nations and the African Union. The African Commission on Human and Peoples’ Rights

²³ Request for Inspection, Letter dated October 26, 2014.

²⁴ In interviews with the Panel, Bank Management addressed this issue (see para. 32).

²⁵ OP 4.10, para. 4.

²⁶ OP 4.10, para. 4, footnote 7.

(ACHPR) of the African Union recognizes the Maasai of Kenya as “*examples of pastoralists who identify as indigenous peoples.*”²⁷ The Maasai were represented at meetings for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),²⁸ for which Kenya hosted a meeting and provided a special background report.²⁹ The Maasai have also been recognized as Indigenous People by several international and national civil society organizations.³⁰

28. **Collective Attachment to Land.** The entire central Rift Valley, from south of Lake Naivasha (including Olkaria) to Lake Baringo and the nearby plateaus in the north, was once part of the vast grazing lands which the Maasai controlled in the early nineteenth century. Researchers point out that Naivasha, due to its permanent supply of water for livestock, was traditionally Maasai land.³¹ In fact, different historical accounts suggest that Naivasha, including Olkaria, was the “*traditional heartland*” of Maasai territory.³² Many Maasai continue to graze their cattle seasonally in the area.

29. **Separate Customary Cultural, Economic, Social, or Political Institutions.** The Project’s 2010 Environmental and Social Impact Assessment (ESIA) documents the cultural resources important to the Maasai in the general area.³³ According to the Panel’s experts such resources include the Ol Njorowa (or Orjorowa) Gorge, sacred caves that have been used for initiation rituals and other ceremonies, and deposits of ochre (red and white clay) used for Maasai cultural practices and personal adornment. Furthermore, as with typical Maasai, the PAP villages depended heavily on pastoralism. Their cattle provide subsistence security (milk, meat, and blood) as well as cash income (sales of animals, milk, meat, and hides).³⁴ Their residence-units (*enkaji*) have their own, distinct layouts. In addition the PAPs rely on customary leadership institutions, such as the Elders, which provide ritual and political leadership in the strongly male-dominated and age-graded Maasai culture.

30. **Indigenous Language.** The indigenous language of the Maasai is Maa, a Nilotic language with considerable tonal complexity and a unique grammatical structure that differs significantly from African Bantu languages.³⁵ The majority of adult Maasai PAPs are effectively monolingual in Maa language.

²⁷ Indigenous Peoples in Africa: The forgotten peoples. The African Commission’s work on indigenous peoples in Africa, 2006, Banjul, The Gambia, page 10.

²⁸ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly on September 13, 2007.

²⁹ Stavenhagen, Rodolfo (2006), Mission to Kenya. UN Doc. A/HRC/4/32/Add.3, February 26, 2007.

³⁰ Such organizations include the International Work Group for Indigenous Affairs (IWGIA), the Centre for Minority Rights Development, the Maa Civil Society Forum, the Mainyoto Pastoralist Integrated Development Organization (MPIDO), the World Initiative on Pastoralism, and the Kenya Pastoralists Network.

³¹ Chege, Ruth W., I. Tarus, and D. Nyakwaka (2015), Lake Naivasha, the Maasai and the British in the making of Naivasha Town, 1850-1911. *Journal of International Academic Research for Multidisciplinary* 3(1): 142-162, page 143.

³² King, Kenneth (1971), The Kenya Maasai and the protest phenomenon, 1900-1960. *Journal of African History* 12 (1): 117-137, page 121.

³³ Environmental and Social Impact Assessment (ESIA), (2010), page 3-49.

³⁴ Data from GIBB Africa indicate that in 2009 there were over 5,500 cattle and more than 19,000 goats and sheep in the PAP villages. RAP (2009), Volume II, Annex 9, Livestock Number at Household Level for PAPs.

³⁵ Mol, Frans (1972), Maa: A Dictionary of the Maasai Language and Folklore. Nairobi: Marketing and Publishing, Ltd.

31. Based on analysis of the Policy requirements for identifying and screening for the presence of Indigenous Peoples, the Panel concludes the Project-affected Maasai community is an Indigenous community covered under OP 4.10.



Figure 1: Indigenous Maasai at the Cultural Centre village

32. **Bank Screening.** The Panel notes that in the early stages of the Project’s design the Bank deliberated whether to apply the Indigenous Peoples Policy, and to which groups.³⁶ A presentation by Management on applying OP 4.10 to the design of the Project considered the classification of the ACHPR and showed that pastoralists, and specifically Maasai, could be identified as Indigenous People in Kenya.³⁷ Subsequently, in 2010, the Project staff prepared a Project-specific screening report for Indigenous Peoples, focusing mainly on hunter-gatherers (Sengwer, Ogiek, Waata, and Boni), and allowing for additional groups to be added “*after further field verification and consultation with the Kenyan government.*”³⁸ Bank Management explained to the Panel that the Bank’s practice at the time of project design focused on identifying hunter/gatherer groups as Indigenous; they believed “*opening up the Policy to pastoralists*” would best be undertaken gradually.

33. The Panel notes that a separate analysis by the World Bank dating from 2012 confirmed that the Maasai met the four criteria highlighted in OP 4.10 for the identification of Indigenous

³⁶ The Project Information Document (2009), indicates that both OP 4.10 and OP 4.11 (Physical Cultural Resources) could be triggered for the project. In November 2009 World Bank Management produced the concept stage Integrated Safeguard Data Sheet, which indicates that the World Bank would carry out a screening process to determine the application of OP 4.10.

³⁷ The World Bank Africa Region Clinic on the Indigenous Peoples Policy (OP 4.10) Kenya Energy Sector Recovery Project/ Kenya Electricity Expansion Project October 23, 2009, referencing Indigenous Peoples in Africa: The forgotten peoples. The African Commission’s work on indigenous peoples in Africa, 2006, Banjul, The Gambia, pages 15-16.

³⁸ Draft Screening report with Elements for the Preparation of an Indigenous Peoples Planning Framework (2010), page 1.

Peoples. Using a numerical methodology based on the degree to which 18 different ethnic groups met the four criteria, the document ranked the Maasai highest along with the Sengwer (Cherangany or Dorobo), which indicates they “*strongly meet the OP 4.10 criteria.*”³⁹ The Panel notes that the Project Agreement made specific reference to the application of the Indigenous Peoples Policy to the PAP community.⁴⁰

34. **Impact on PAPs.** The Panel heard a widely-held opinion among World Bank Management that applying the Indigenous Peoples Policy to the Maasai community at Olkaria would have made no significant difference to the PAPs. According to Management, the Project fulfilled the OP 4.10 Policy requirements even without formally applying the Policy. For example, Management believes the signing of a legally binding MoU between the PAPs and KenGen demonstrates performance to a higher standard than the Policy’s requirement of “*broad community support.*”

35. The Panel takes a different view and notes that failure to apply the Indigenous Peoples’ Policy was the root cause of the ensuing shortcomings in the protections and benefits afforded to the PAP community, including:

- **Informed Consultations and Broad Community Support.** Although the Panel notes from its interaction with the PAPs that the community broadly supports the Project, this was not achieved as a result of free, prior, and informed consultations as the Policy requires. Interviews with members of the local community were not conducted in Maa, the local language of the community, but in Swahili, and Project materials were not translated into Maa language. Therefore not all members of the Indigenous community had the opportunity to express support (or objection) based on informed consultations, and this could have had implications as discussed below.
- **Cultural Compatibility of Resettlement.** The pastoral ways of the Indigenous community, their attachment to their land, ancestral territory, and its resources (including for grazing and watering cattle), and its importance to their livelihoods and culture were not carefully analyzed or considered during the Project’s design and implementation. The Policy would have required preparation of a resettlement plan with greatest care and attention paid to its compatibility with the community’s cultural preferences. This had important implications for the RAP’s implementation.
- **Benefit Sharing from the Commercialization of Natural and Cultural Resources.** OP 4.10 requires that arrangements be made to enable Indigenous Peoples to share equitably in the benefits derived from commercial development of natural resources on lands or territories they traditionally owned, or customarily used or occupied, and further requires that, at a minimum, arrangements ensure Indigenous Peoples receive,

³⁹ AFR Regional Environmental and Safeguards Group and AFR Social Development Unit (2012), [Draft] Identifying Indigenous Peoples in Kenya. OPCOR Safeguards Program, page 18.

⁴⁰ Project Agreement, Kenya Electricity Expansion Project, between Kenya Electricity generating Company Limited and International Development Association (2010) (Credit Number 4743-KE), Schedule I, Safeguards, para. 6, “*The Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the requirements of the Indigenous Peoples Planning Framework (IPPF).*” The IPPF itself requires the screening of subprojects “*and if Indigenous People is a factor, a specific Indigenous Peoples Plan (IPP) will be prepared.*” See: Draft Indigenous Peoples Planning Framework (the “IPPF”) (2010), Republic of Kenya, Kenya Electricity Expansion Project (Bank document number IPP404), page 7, para. 16.

in a culturally appropriate manner, benefits, compensation, and rights to due process.⁴¹ An Indigenous Peoples Plan for the Maasai would have created an opportunity for due process in developing benefits the community could claim (more details in Annex C: Context for Benefit Sharing from the Commercialization of Natural Resources in Kenya).

- **Maasai-specific Expertise.** Local experts on Maasai culture and pastoralism and well-qualified Maa speakers were not engaged for the Project. No serious attempt was made to tap the network of specialized individuals and organizations based in Kenya, and this oversight may have prevented actions that could have avoided some of the harms described below.

36. The Panel therefore notes that failure to apply the Indigenous Peoples' Policy had far-reaching impacts on the PAPs and that adverse effects caused by the resettlement (including some of those identified in Chapters 3 and 4) might have been avoided or mitigated earlier in the Project's design or during implementation.

37. **Compliance Finding.** 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.

B. Identification of Physical Cultural Resources

38. **Request.** The Requesters "*call upon [the Panel] to discuss about the Orjorowa Gorge and Suswa conservancy in which our sacred and cultural sites are located.*" They explain the gorge is listed on the UNESCO World Heritages Sites tentative list.⁴² The Requesters "*fear that geothermal projects are going to destroy this important natural and cultural heritage as well as [their] livelihood with its expanding activities.*"⁴³

39. **Management Response.** The Response did not address the issue of Physical Cultural Resources.⁴⁴

40. **Bank Policy** on Physical Cultural Resources (OP 4.11) is intended to avoid or mitigate adverse impacts from World Bank-supported projects.⁴⁵ The Policy allows for the screening of impacts on Physical Cultural Resources as an integral part of the environmental assessment process.⁴⁶ It requires a Physical Cultural Resources management plan, including measures to avoid or mitigate adverse impacts on physical cultural resources and to manage chance finds.⁴⁷

⁴¹ OP 4.10, para. 18.

⁴² The "Tentative List" of the United Nations Educational, Scientific and Cultural Organization's (UNESCO) World Heritage Convention, is an inventory of those properties which each State Party intends to consider for nomination. Nominations to the World Heritage List are considered only if the nominated property has already been included on the Tentative List. See UNESCO's website at <http://whc.unesco.org/en/tentativelists/>.

⁴³ Request for Inspection, Letter dated July 30, 2014.

⁴⁴ In interviews with the Panel, Bank Management addressed this issue.

⁴⁵ OP 4.11, para. 3.

⁴⁶ OP 4.11, para. 4.

⁴⁷ OP 4.11, para. 9.

41. **Panel Observations and Analysis.** Resources important to Maasai culture and cultural practices are located in the general area and were documented in the 2010 ESIA.⁴⁸ GIBB Africa informed the investigation team that during its survey it geo-referenced significant cultural sites. These cultural resources include the Ol Njorowa Gorge, sacred caves used for initiation rituals and other ceremonies, and deposits of ochre (red and white clay)⁴⁹ important for Maasai cultural practices and personal adornment. They also include the Cultural Centre village, to the extent that it serves as a site of cultural significance for the Maasai to share their traditional ways and cultural identity with tourists.



Figure 2: Passage way in the Ol Njorowa Gorge

42. The 2012 RAP states access to the physical cultural resources will be maintained.⁵⁰ The Entitlement Matrix for the PAPs in the RAP refers to loss of access to the caves as well as to red and white soil of cultural/historic value, and notes that compensation would be considered after further discussion.⁵¹ During its visit, however, the Panel observed that the gorge, sacred caves and Suswa Conservancy, and the community's access to them, are unaffected by the Project. Regarding Cultural Centre, the Panel notes that the PAPs and KenGen agreed to maintain the village for tourism purposes. Management's Response states the Centre would remain at its current location, retaining all its structures, and that the PAPs would receive a communal land-title for the 14 acres donated by KenGen.⁵²

⁴⁸ ESIA (2010), page 3-49.

⁴⁹ The ochre deposits are located in Narasha, which is outside the area affected by Olkaria IV.

⁵⁰ RAP (2012), page 8-8.

⁵¹ RAP (2012), Table 8-8, page 8-17.

⁵² Management Response, page 15.

43. Concerning the graves located in the Project-affected area, the Panel notes the Aide Memoire of the Appraisal Mission in March 2010 recommended that, when revising the draft RAP, compensation for the loss of access to existing graves be determined as part of the compensation package.⁵³ During the investigation team’s visit, access to the graves was not raised as an issue of continuing community concern.

44. Moving forward, since important archaeological sites nearby at Gilgil, Elementaita, and Hyrax Hill (near Nakuru town) have been excavated by the National Museums of Kenya, the Project should revisit the issue if similar sites are found in the Project area.⁵⁴

45. **Compliance Finding.** 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.

⁵³ Kenya. Proposed Electricity Expansion Project. Preparation Mission February 16-26, 2010. Appraisal Mission March 1-10, 2010. Aide Memoire, page 27.

⁵⁴ The ESIA (2010) recognizes that “*the Nakuru-Naivasha basin is an important area for archaeological and cultural artefacts*” and states that, should archeological artefacts be found, the National Museums of Kenya should be informed immediately. See, ESIA, pages 3-52 and 7-22. The 2015 Strategic Environmental Assessment (SEA), prepared by KenGen for the Olkaria Geothermal Development Programme (2012-2020) for the Olkaria Geothermal Field, states “[i]t is essential that a procedure is in place for all of Olkaria to ensure that if any chance finding take place, it is handled properly.” The SEA contains a proposal for mitigation measures, which includes training subcontractors and KenGen personnel about archeological artefacts and the procedures to be followed upon discovery. See: SEA (2015), pages 395-396.

Chapter 3 – Resettlement Process

46. This Chapter focuses on the process of identifying PAPs and their entitlements. It analyzes the design of the resettlement process and its implementation, as well as the mechanism for consultation with and participation by the PAP community in decision-making related to resettlement activities. It also reviews the grievance redress mechanism, its composition, and functioning.

A. Resettlement Action Plans and Identification of PAPs

47. **Request.** The Requesters claim 14 households that should have received replacement houses in RAPland,⁵⁵ the name commonly given to the resettlement site, were excluded, among them the poor, widows, and orphans. They explain that fewer replacement houses were constructed at the resettlement site than were required by the RAP. According to the Requesters the resettlement process “*is full of corruption,*” as replacement houses and/or cash compensation were awarded to ineligible relatives of some PAPs.⁵⁶

48. **Management Response.** Management states it was unaware 14 families were excluded from the RAP. Management received a number of complaints from PAPs in connection with the RAP, but these cases were reviewed and resolved through RAPIC.⁵⁷

49. Management explains three censuses were conducted (in 2009, 2012, and 2013) to determine eligible PAPs. The 2009 census was updated in 2012 to accommodate any cases of natural growth. The “*2013 validation was done to clarify the inconsistent cases among the already identified PAPs and not to include new cases*” (emphasis in original text).⁵⁸ Management also states the PAPs identified for housing benefits were those consistently captured in the 2009, 2012, and 2013 censuses.⁵⁹ KenGen, GIBB Africa, RAPIC, and the Community Advisory Council (CAC)⁶⁰ met for a three-day 2013 census verification exercise wherein each name was read out, traced through the three censuses, discussed, and classified by CAC and RAPIC members.⁶¹ Management also claims it was unaware of allegations of corruption, nepotism, or discrimination based on ethnic, religious, or other grounds.⁶²

50. **Bank Policy.** The Operational Policy on Involuntary Resettlement (OP 4.12) requires that, upon identification of the need for involuntary resettlement, a census be carried out to identify the persons who will be affected by the project. It also requires the establishment of criteria according

⁵⁵ RAPland refers to the resettlement site under the Olkaria IV RAP, which describes it as the land with registration number 8396, known as Akira Ranch, and belonging to Kedong Ranch Limited. See: RAP (2012), page 7-2.

⁵⁶ Request for Inspection, Letter dated October 26, 2014.

⁵⁷ Management Response, page 22.

⁵⁸ Management Response, page 23.

⁵⁹ Management Response, page 23.

⁶⁰ The Community Advisory Council was created in September 2012 and includes two Elders from each of the four villages.

⁶¹ Management Response, page 24.

⁶² Management Response, page 25.

to which displaced persons will be deemed eligible for compensation or resettlement assistance.⁶³ The Policy further mandates establishing a cut-off date, after which affected people in the area of resettlement would be considered ineligible for compensation or assistance.⁶⁴

51. Additionally, the Policy requires, as a condition of appraisal, that a resettlement document conforming to the Policy be made available to the displaced community and local NGOs at a place accessible to them and in a form, manner, and language understandable to them.⁶⁵

52. **Panel Observations and Analysis.** The process of identifying PAPs eligible for compensation and their entitlements spanned the years 2009 to 2013. It included different activities and brought about major changes in the censuses of the PAP community.

53. In December 2009 a RAP was prepared that included a set of socioeconomic baseline data. Simultaneously a census was produced to determine PAP eligibility and entitlements. According to GIBB Africa this census included three villages to be relocated (Cultural Centre, Olo Nongot, and Olo Sinyat). The PAD refers to 93 households from these villages.⁶⁶ It is noteworthy that some in World Bank Management did not consider the 2009 RAP ready for appraisal and noted that the RAP report could not be considered final since it was missing analysis of alternative resettlement sites, income restoration programs, implementation arrangements and timetable, and appointment of an Independent Evaluation Panel (IEP), among other elements.⁶⁷

54. In a May 2012 supervision mission Management reported on the disclosure of a draft of an updated RAP. The mission report lists the disclosure to and approval by the PAPs of the census list, the entitlement matrix, and the livelihood restoration plan (including allowances).⁶⁸ The updated RAP was published later (in July 2012) without the census. The Panel notes that had these documents been published or disclosed with their full content, at least to the community and in their language, there would have been less confusion concerning the compensation awarded.

55. The updated RAP was finalized in July 2012 and included a new census conducted to take into account the fourth affected village (Olo Mayana Ndogo), and cases of natural growth in the three previously surveyed villages.⁶⁹ This census identified many additional affected-households, bringing the total number of PAP households from 93 in 2009 to 335.⁷⁰ GIBB Africa informed the

⁶³ OP 4.12, para. 14.

⁶⁴ OP 4.12, para. 16.

⁶⁵ OP 4.12, para. 22.

⁶⁶ PAD (2010), page 42 and 155.

⁶⁷ Kenya Electricity Expansion Project, World Bank Mission February-March 2010, Social Safeguards Issues.

⁶⁸ World Bank, May 2012 Field Progress Report, Enhanced Safeguards Implementation Support for the Kenya Electricity Expansion Project (KEEP) –P103037, Olkaria IV: Agreements Reached During Consultations between the PAPs Representatives and KenGen over the RAP. Document received from Management on April 1, 2015.

⁶⁹ According to the 2012 RAP natural growth includes: (i) cases where a man married a new wife and established a residential structure for the new household, (ii) cases where young men moved out of their parent's house through marriage or coming of age to establish their own household, (iii) new teachers at Olo Nongot Primary School, and (iv) new teachers at Olkaria Primary School. RAP (2012), page 2-3

⁷⁰ The 335 affected households (RAP (2012), para. 5.3.2) include 164 resident land and house owners, 12 nonresident landlords, 65 nonresident landowners with no assets, 70 tenants, 14 land tenants owning houses, and 10 teachers.

investigation team that many PAPs had not taken the 2009 census seriously, as they did not believe the Project would happen, but this changed in 2012.

56. The 2012 RAP did not include an update of the socioeconomic data for the PAPs. The Panel notes that had the decision been taken to move the cut-off date from 2009 to 2012, the baseline data would have been updated. Notwithstanding this, it would have been best practice to update the baseline data in 2012 to include the significantly larger number of PAPs.

57. The French Development Agency (AFD)⁷¹ commissioned a review of the 2012 census. The report indicates that the different RAPs submitted to the financiers “*were not easy to follow and understand.*” It adds that the reports included an “*incomplete presentation of the census which does not allow clear comprehension of the level of life of the PAPs, and to consider the adequacy of the proposed compensations.*”⁷²

58. In 2013 the Project, through RAPIC, conducted a census validation exercise to address concerns regarding eligibility for the different types of compensation and assistance. The exercise resulted in removing some households which had been recorded in the 2012 census as eligible to receive a house in RAPland, and it changed the status of other households from land and house owners in 2012 to tenants owning a house with no rights to the land. Consequently the number of houses distributed as compensation for loss of land and assets dropped from 164 in 2012 to 150. The Panel notes with concern that many of those deemed ineligible by RAPIC in the 2013 validation exercise were among the most vulnerable (widows, widowers, single mothers, and one-person households) lending credence to the Requesters’ claim that “*the poor, orphans and widows*” were excluded.

59. The Panel requested and obtained several documents with information about PAPs and noted serious inconsistencies among the documents, even with regard to the same census. Upon request, Management informed the Panel on April 27, 2015 that as a result of the validation process 113 original PAPs (“PAPs” here refers to heads of household), 22 households from polygamous families, one PAP with two structures, and 13 natural growth cases were awarded a total of 149 houses as compensation. KenGen’s compensation list includes 126 heads of households, some of which are polygamous, having received 149 houses.⁷³ A total of 179 heads of households were eventually compensated with a new house or cash compensation.⁷⁴ It provides the names of each head of household but not the names of the different spouses in polygamous marriages. The Panel notes the “Master List” of people receiving houses also includes names of some who were not

⁷¹ Agence Française de Développement.

⁷² The Final Census Report, Agence Française de Développement, Olkaria I and IV Geothermal Power Generation Project: Census of the Project Affected Persons (2012), page 3.

⁷³ With an average household size of 6.55 members, 126 households awarded 149 houses amount to more than 800 PAPs. The average size of a household is based on analysis of the demographic data in Annex 2 of the Environmental and Social Impact Assessment. GIBB Africa (2010): Environmental and Social Impact Assessment (ESIA) Report: Ol Karia IV (Domes) Geothermal Project in Naivasha District (hereafter ESIA).

⁷⁴ Based on the average size of a household, the 179 households amount to more than 1,170 PAPs. KenGen’s “Master List for Full Compensation due to each PAP in the Olkaria 280 MW RAP Implementation Process” does not distinguish from the rest of the PAPs the name of the owner of the 150th house, which was added in the MoU signed between KenGen and the PAPs.

recommended to receive a house in the 2013 validation report, as well as one household that had not been included in the validation exercise.

60. Some PAPs, including Elders, informed the investigation team they never had access to the two RAPs or the census reports. The Panel notes that these documents are available only in English and not in Maa, the language of the affected communities (for further details on the importance of Maa language for the PAPs, see below). The Panel learned the censuses' data were collected by consultants who did not speak Maa and therefore operated through translators, a methodology prone to inaccuracies and not in line with best practice. The Panel therefore believes the process, whereby PAPs were to learn their eligibility or lack thereof for resettlement assistance, failed to attain meaningful consultations with many affected people.

61. Since many PAPs lacked identification papers, the census-takers took a picture of each PAP holding a piece of paper upon which an individual matriculation number was written, listing a village and family cluster.⁷⁵ The Panel heard that all along, and even now, some PAPs believed that, by virtue of having the handwritten matriculation paper, they were entitled to a house in RAPland. The PAPs claimed they were only informed about the final decision concerning their eligibility or specific compensation at a public meeting on August 8, 2014 (a few weeks before resettlement).



Figure 3: PAPs showing their matriculation papers

62. Without timely access to the RAPs and census documents in a form, manner, and language understandable to the PAPs, they and the village Elders (the traditional decision-making body) had little knowledge about inclusion or exclusion of PAPs in the various censuses or the validation exercise. The Panel considers census data to be of great relevance and these should have been made available to the PAPs to read (or have read to them). Had the data been disclosed in places accessible to the PAPs, they would have learned their compensation eligibility status and disputes could have been minimized, avoided, or resolved much earlier in the process. Lacking adequate access to the censuses, the PAPs believe that since the number of houses to be built dropped from

⁷⁵ The 2012 RAP states that for “accuracy purposes, legal documents such as National Identification Cards (IDs), Passports, Electors cards or Birth Certificates for the PAPs were used to feed in their identification details. Afterwards finger prints of all the persons present for the enumeration were taken. Photographs were then taken of each household head in front of their dwelling. A second picture was taken of the entire family members that were present during the census.” RAP (2012), page 2-8.

164 in the 2012 census to 150, as listed in the MoU signed between KenGen and the PAPs, 14 families have been excluded.

63. The Panel notes the process undertaken – from identification of PAPs through both censuses, the 2013 validation exercise, and up to awarding the final compensation – does not permit a definitive confirmation or rejection of the Requesters’ specific claim regarding the exclusion of some families. The Panel also notes that the three census-related exercises were methodologically flawed and culturally incompatible, resulting in inconsistencies and contradictions. The Panel further notes that the Project’s failure to engage an independent, internationally-recognized panel of resettlement specialists to advise on effective census methods and culturally compatible consultation and decision-making mechanisms contributed to the difficulty of this situation (see Chapter 5 below on Supervision and Monitoring).

64. During its field visit the investigation team spoke with several individuals who claimed they should have been entitled to a house in RAPland. This included a widow who said she had not been covered in the 2009 census as she was away from her village at her husband’s deathbed in the hospital in Naivasha. She believed she had been reinstated and said she was awaiting transport to RAPland on the day of resettlement. Only then did she learn she would not receive a house. She stayed in her village but was collected by a car a few days later, driven away, and given 2,000 Kenyan Shillings (KSh)⁷⁶ in compensation.

65. The Panel notes that the MoU signed between KenGen and the PAPs includes a provision that requires the construction by KenGen of an additional house for any PAP who is found to have been omitted from the house beneficiary list, but was captured in the 2009 census.⁷⁷ The Panel observes that in a meeting with PAPs in February 2010, where KenGen and World Bank Management were present, it was acknowledged that the 2009 census was carried out during the dry period “*when some members [of the community] were away.*”⁷⁸

66. **Compliance Finding.** The Panel finds the identification of PAPs (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).

B. Consultation, Participation, and Grievance Redress

67. **Request.** The Requesters raise the concern that the community has not been properly consulted about Project activities, including environmental and health impacts, and impacts on livelihoods. According to them a meeting held by KenGen “*wasn’t to hear the views from PAPS but to announce their decisions and their work plans (...) and few of PAPS who were able to ask questions they were not answered but ignored [sic].*”⁷⁹ The Request also suggests there were

⁷⁶ 2,000 KSh is the equivalent of 20.6 US Dollars (Rate of June 09, 2015).

⁷⁷ MoU signed between KenGen and the PAPs, page 5, footnote 2.

⁷⁸ See “Minutes of Financiers Consultations with the Community held on 18.02.2010 at Lake Naivasha Simba Lodge”, page 3.

⁷⁹ Request for Inspection, Letter dated August 21, 2014. Additionally, consultation and participation issues occurred until the month prior to resettlement: “*Sir, I have to make it clear to you and the concerned parties (donors) the*

unequal power relations: “We are once again raising our voices as PAPS in need of your rescue from the powerful ones who are forcing us against the human rights.”⁸⁰ The Requesters claim they lack confidence and trust in their representatives on RAPIC. They also explain that the majority of Elders, who always remain in the village, were excluded from meetings or during which were not allowed to speak.⁸¹ According to the Request, the Project led to inter- and intra-community tensions, which are “creating a lot of vendetta in their families, stress and friction.”⁸²



Figures 4 and 5: Meetings with the men and the women of the PAP community

68. **Management Response.** According to Management the RAP itself and livelihood enhancement measures under the Project were developed through an intensive and participatory process beginning in 2010.⁸³ Management states that RAPIC is the Project’s consultation and participation mechanism and part of its Grievance and Complaints Handling Mechanism (GCHM), both launched in 2012.⁸⁴ Management explains that RAPIC allows individuals to seek redress and have their concerns reviewed and addressed. According to Management the GCHM incorporates aspects of Maasai culture.⁸⁵ The GCHM includes the Community Advisory Council (CAC), which is composed of two Elders per village who are knowledgeable about traditional systems, as the first level of complaint resolution, and RAPIC as the second level.⁸⁶ With regard to the alleged exclusion of the Elders, Management states their role was formally incorporated in the Project through the creation of the CAC. Management clarifies that, when negotiating to agree on the RAP and its implementation, inter- and intra-community tensions and disagreements did arise, but were resolved through consultations and negotiations with KenGen, or the GCHM, or both.

69. Management adds that, in 2011, Cultural Centre and the other three villages differed over the use of Cultural Centre after resettlement. Additional disagreements over the RAP process arose

voice of all PAPS and we are not ready to be resettled unless you give proper and convenient answers to the following 17 questions,” Letter from Cultural Centre to Regulatory Director KenGen dated July 24, 2014.

⁸⁰ Request for Inspection, Letter dated August 21, 2014.

⁸¹ Request for Inspection, Letter dated July 30, 2014.

⁸² Request for Inspection, Letter dated October 26, 2014.

⁸³ Management Response, page 3.

⁸⁴ Management Response, page 33.

⁸⁵ Management Response, page 8.

⁸⁶ The GCHM consists of four levels and allows individuals who disagree with a decision taken to raise a complaint and have it reviewed and corrected, where appropriate. The four levels are described below in paras. 81-83.

between some PAPs and Maasai groups outside the Project area. According to Management the latter issue was resolved by accommodating the non-local Maasai leaders in a Stakeholder Coordinating Committee to liaise with KenGen regarding (i) casual employment opportunities and (ii) issues outside the RAP pertaining to the Maasai community in the broader Naivasha area.

70. **Bank Policy.** The Involuntary Resettlement Policy (OP 4.12) requires PAPs to be meaningfully consulted and to have opportunities to participate in planning and implementing resettlement programs.⁸⁷ The Policy also states a draft resettlement plan must be made available at a place accessible to displaced persons and local NGOs, and in a form, manner, and language understandable to them.⁸⁸

71. Bank Policy calls for establishing appropriate and accessible grievance redress mechanisms, and the preservation of the existing social and cultural institutions of the displaced.⁸⁹ It also requires that social and cultural characteristics of the target population be taken into account, including formal and informal institutions, “*ritual groups*,” and community organizations relevant to the consultation strategy and to designing and implementing resettlement activities.⁹⁰

72. **Consultation and Participation.** The PAD states the consultations with the PAPs during the preparation of the 2009 RAP were sufficient to fulfill the requirement of “*meaningful consultations with affected persons and communities*.”⁹¹ According to the 2012 RAP, RAPIC is the mechanism the Project created to implement a social strategy for engaging beneficiaries in consultation and participation regarding Project plans and execution. It entailed negotiations and decision-making between representatives of PAPs, KenGen, and local government officials. The Panel notes that RAPIC is the mechanism used for consultation with PAPs, disclosure of the RAP, participation in the census validation exercise, decision-making regarding eligibility for resettlement assistance and compensation, choice of the resettlement site, approval of housing designs, alternative use of the transitional allowance, and other functions.

73. RAPIC is composed of five representatives elected from each of the four villages (of whom at least two from each village are women). It also includes a youth and a vulnerable group representative, as well as one representative of the Cultural Centre Management Committee and a Maasai Elder. The total number of community representatives on RAPIC is therefore 24. Staff of KenGen and the relevant line ministry representatives are also members of RAPIC.⁹² RAPIC is chaired by the Deputy County Commissioner and supported by a Secretary appointed from KenGen staff specifically designated to handle RAPIC administrative functions. RAPIC was presented to the Naivasha Deputy County Commissioner at a roundtable meeting held on April 30, 2012.⁹³ It was formally launched on June 11, 2012. The Panel considers RAPIC to be a well-intentioned effort to achieve broad representation of the PAPs – including women, youth, the elderly, and the disabled – consistent with Bank Policy.

⁸⁷ OP 4.12, para. 2(b).

⁸⁸ OP 4.12, para. 22.

⁸⁹ OP 4.12, para. 13.

⁹⁰ OP 4.12, Annex A, para. 6(b) (iv).

⁹¹ PAD (2010), page 155, para. 21.

⁹² Management Response, page 5, footnote 5.

⁹³ RAP (2012), page 10-2.

74. As early as December 2012 some PAPs expressed their distrust of RAPIC.⁹⁴ In a *baraza*⁹⁵ chaired by the Deputy County Commissioner and attended by the World Bank, the PAPs complained that RAPIC chairs and members did not report back to them on a regular basis.⁹⁶ The Panel notes that an adversarial relationship had evolved between KenGen and RAPIC vis-à-vis a group of PAPs and the Elders. The Panel’s experts consider the sidelining of the existing traditional, social, and cultural institutions of the PAPs as the root cause of the tension. Elders told the investigation team they lacked trust in RAPIC and feel powerless to influence the resettlement process because “*they are not listened to.*”

75. The Panel notes that RAPIC includes some members who belong to a group of wealthier, educated, multilingual PAPs who seem to have more influence than other PAP representatives.⁹⁷ The Panel also notes that serving on RAPIC are university-educated government and implementing agency officials. As a result, there could be opportunities in RAPIC for some groups to exercise undue influence over others.

76. The Panel also notes that RAPIC is a novel mechanism, unfamiliar to Maasai culture, one which does not sufficiently accommodate the traditional authority structure of the strongly male, age-graded Maasai society.⁹⁸ Although it included one Elder, the RAPIC structure in essence bypassed the traditional authority of the Maasai – the Elders – in whom the community invests legitimate powers of decision-making and conflict resolution. Age-grades and their differing socioeconomic, political, juridical, and spiritual roles in Maasai culture are not acknowledged in the RAPs, and this negatively affected the design of the resettlement planning and implementation processes. The Panel believes the RAPIC structure had the unintended consequence of marginalizing the Elders of each village and their traditional role and authority, instead of incorporating them into the resettlement process. The Panel notes that making good use of the traditional role of the Elders could have helped balance the power relationships within RAPIC.

⁹⁴ World Bank BTOR on acceptance of land by PAPs, December 21, 2012.

⁹⁵ Management Response defines *baraza* as a “*public meetings including all PAPs and other stakeholders*”, page 8.

⁹⁶ World Bank BTOR for the DC’s Public *Baraza*, Dec. 17, 2012.

⁹⁷ Annexes of the ESIA (2010). The Panel notes that 51 percent of household heads and spouses had no education, while 22 percent had some level of primary education, 12 percent had some level of secondary education, eight percent had some level of technical training at a technical training institute, and only three percent had attended university.⁹⁷ Data show an additional four percent did not provide any information.

⁹⁸ For example, women traditionally do not participate in meetings when men are present and youth traditionally do not speak when Elders are present.



Figure 6: The investigation team at a RAPIC meeting

77. The Panel notes most consultations were performed in Swahili, while most resettlement-related reports were disclosed in English. The Panel experts' review of the available baseline data shows the great majority of adult Maasai PAPs are effectively monolingual in Maa language even if they have some knowledge of Swahili.⁹⁹ The PAP community has very low educational achievement and pursues mainly pastoral livelihoods in remote rural rangelands. Experts point out that Maa is a Nilotic language with considerable tonal complexity and a unique grammatical structure that differs significantly from Swahili.¹⁰⁰ Swahili language does not include many nuances possessed by Maa language on issues important to the PAPs, including land, livelihood, livestock, and ecology.¹⁰¹ The Panel therefore believes reliance on Swahili in consultations with the local community was not conducive to meaningful consultations.

78. The apparent lack of effective communication between RAPIC and the PAP community, and the omission of Maa language from the consultation and disclosure processes, may explain why community members seemed unaware of various aspects of the resettlement. Such aspects

⁹⁹ The ESIA (2010) does not provide baseline data on language fluency, but provides basic information on ethnicity of household heads and education levels. Much of the data in the Annexes of the ESIA (2010) are in raw format, so tabulations and analyses were done by the investigation team. The ethnic breakdown of PAP households shows 86 percent Maasai, 4 percent Samburu (close relatives of the Maasai who also speak Maa as their main language), and 10 percent from other groups (including Turkana, Kikuyu, Kisii, Luo, and Teso). Approximately two-thirds of Kenyans speak Swahili, but usually as a second language to their native vernacular tongue. The majority of Kenyans who do not speak Swahili live in isolated, ethnically homogenous communities where formal education opportunities are sparse (See Githoria, Chege (2010): Kenya: Language and the search for national identity. In Simpson, Andrew, eds. *Language and National Identity in Africa*. Pages 235-251. Oxford: Oxford University Press, page 236).

¹⁰⁰ Mol, Frans (1972): *Maa: A Dictionary of the Maasai Language and Folklore*. Nairobi: Marketing and Publishing, Ltd.

¹⁰¹ For example, if one looks at important Maa terms for cattle or grass, Swahili has just one word to describe each: *ngombe* for cattle and *nyasi* for grass. Maa language, in turn, has more than 15 words to distinguish different type of cattle depending on age, sex, color(s), and size; and more than 20 words to describe grasses depending on size, stage of growth, coarseness, color, texture, and species (Mol, Frans, 1972).

include a description of the different levels of the grievance mechanism, information that furniture was not to be provided to RAPland houses, that the identification pictures taken of PAPs did not guarantee they would receive houses, and that there would be costs and responsibilities associated with maintaining houses and the community water supply.

79. The Panel notes that by creating the Stakeholder Coordinating Committee¹⁰² on March 14, 2012 the Project responded to the need to include the wider Maasai community, thereby mitigating intra-community tensions. The Panel further notes the creation of this Committee was adequate and timely. According to Management's Response the broad mandate of the Stakeholder Coordinating Committee is to liaise with KenGen on behalf of the Maasai community in the broader Naivasha area, with regard to (i) casual employment opportunities and (ii) issues relating to the environment outside the RAP.

80. **Grievance Complaints Handling Mechanism (GCHM).** In September 2012 the Project created the Community Advisory Council (CAC), which includes two Elders from each of the four villages. According to the 2012 RAP, the CAC "*will advise the PAPs and RAPIC on matters of transfer of title to the PAPs*" and will "*assist in advising the RAPIC on other culture issues such as handling of graves.*" The 2012 RAP adds "*the full Council of Elders in each of the three settlements will be actively involved in the proposed Grievance and Conflict Handling Mechanism.*" The 2012 RAP describes the village-level Council of Elders¹⁰³ as a first step in the Grievance Complaints Handling Mechanism (GCHM), after which an unresolved grievance is elevated to RAPIC.¹⁰⁴

81. The GCHM includes three other levels. The second level is RAPIC itself (which may present a conflict of interest since decisions are taken by RAPIC). The third level is an agreed upon "*independent external arbiter, e.g. The Kenya Institute of Arbitration, or, as suggested by the PAPs, NGOs such as the International Community Rights Organisation (ICRO) or representatives from the group of lenders such as the World Bank, to be contacted by RAPIC, through its Secretary.*"¹⁰⁵ The fourth level is the Kenyan judiciary. The Panel notes that despite problems PAPs encountered, there is no evidence PAPs utilized the inventory of GCHM tools. The investigation team was told by Requesters, who were made aware of the grievance mechanism, they did not use it because they lacked trust in it.

82. In the course of this investigation the Panel heard about alleged threats and instances of retaliation in relation to the Panel's investigation process. During its field visit the team met a person with a connection to the Request who feels strongly his remunerated position was terminated as a result. None of the Project or local officials the investigation team met appeared

¹⁰² According to the Management Response, the Stakeholder Coordinating Committee (SCC) is composed of a group of Maasai Elders 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.*" Following several consultations with all stakeholders, it was agreed that the SCC and other communities of Maasai in the greater Naivasha area would participate in the SCC, and that the PAPs would remain the "*custodians and decision makers for the Olkaria IV RAP.*" See Management Response, page 5-6.

¹⁰³ Elders hold both ritual and political power in Maasai society; the term "Council of Elders" was a creation of the government and has been adopted by government and now by Maasai communities.

¹⁰⁴ RAP (2012), page 9-3.

¹⁰⁵ RAP (2012), page 9-3.

aware of this, but KenGen acknowledged that RAPIC urged PAPs not to complain externally prior to raising their concerns through the GCHM.¹⁰⁶ They indicated the person concerned had resigned in writing from his position. However, this person refutes having resigned. The investigation team was unable to obtain the written resignation and could find no conclusive evidence concerning the resignation. The Panel takes allegations of retaliation or intimidation against Requesters most seriously and notes the importance of the right of people affected by World Bank projects to express their concerns openly and without fear of retaliation. The Panel notes, however, that while the facts in this instance remain unclear, key stakeholders are cooperative, and expect that they will be able to resolve the issue.

83. **Compliance Finding.** The Panel considers the establishment of RAPIC to be a well-intentioned effort to achieve broad representation of the PAPs, 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.

¹⁰⁶ KenGen June 2015 Memorandum, page 25.

Chapter 4 – Socioeconomic Impacts of Resettlement

84. This Chapter examines allegations of impoverishment resulting from resettlement to RAPland. It analyzes the adequacy of the resettlement site, including infrastructure and amenities. It addresses impacts on the livelihoods of the PAPs and issues of livelihood restoration.

A. Adequacy of Resettlement Site, Infrastructure, and Amenities

85. **Request.** The Requesters express concern that KenGen relocated the community in August 2014 before the communal land-title to RAPland was provided to the PAPs, which they claim was not as originally agreed. They explain that they knew of a court case pertaining to the resettlement site, and ask about the implications of moving to RAPland without official documents.¹⁰⁷ The Requesters assert they were moved before the infrastructure works at the resettlement site were completed and explain that, in a meeting with KenGen and the World Bank in August 2014, the PAPs were informed electricity would be connected three months after resettlement.¹⁰⁸ The Requesters believe the terms of the MoU between the PAPs and KenGen have not been fulfilled.¹⁰⁹

86. According to the Requesters the type of housing built at the resettlement site poses challenges to the PAPs' traditional lifestyle and family structure. The Requesters explain that *“if you visit you will find some families sitted [sic] on stone and lying on cottons, cow hides on the floor as mattresses.”*¹¹⁰ They were moved into *“three halls houses (Sitting room, and two bed rooms but empty)”*¹¹¹ without any furniture for sitting and sleeping or other standard house requirements. This is *“completely killing [their] cultural believes, spirits of togetherness as One Community (family)”* and has *“stressed them and sadden them a lot and there are families which are almost to collaps due to poverty [sic].”*¹¹²

87. The Requesters believe they were relocated because of health impacts resulting from the geothermal plant operation. They raise concerns about drilling activities taking place close to the resettlement site and ask *“is this not the same poisonous H₂S that we are supposedly being moved away from?”*¹¹³ The Requesters claim the community is *“totally opposed to the new drilling sites.”*¹¹⁴

88. **Management Response.** Management explains in its Response that the transfer of land-title to the resettlement site is in progress. It refers to a meeting on September 5, 2014 held by KenGen to receive feedback from the PAPs on their situation after relocation. The main concerns

¹⁰⁷ Request for Inspection, Letter dated June 30, 2014.

¹⁰⁸ Request for Inspection, Letter dated August 21, 2014.

¹⁰⁹ Request for Inspection, Letter dated June 30, 2014. The Director of the Oloorkaian Maasai Cultural Centre, in a letter to KenGen, asks the following: *“Why are you in a hurry to resettle us before everything is done?”* Letter dated July 24, 2014.

¹¹⁰ Request for Inspection, Letter dated October 26, 2014.

¹¹¹ Request for Inspection, Letter dated October 26, 2014.

¹¹² Request for Inspection, Letter dated October 26, 2014.

¹¹³ Request for Inspection, Letter dated June 30, 2014.

¹¹⁴ Request for Inspection, Letter dated June 30, 2014.

raised were lack of water at community water points and the need to improve the condition of RAPland's roads.¹¹⁵

89. Management asserts the layout and spacing of houses at the resettlement site were designed in close consultation with the PAPs, and their preferences and wishes were taken into account. The four PAP villages wanted to be moved together and to have houses allocated according to family clusters. They also expressed their wish to have their houses scattered, reflecting the pre-project situation. Management pointed out *“that the agreed resettlement package between the PAPs and Ken Gen includes the provision of housing and assistance by KenGen to move furniture and assets to the new houses. The resettlement houses were never intended to be provided fully furnished.”*¹¹⁶

90. **Bank Policy.** Bank Policy on Involuntary Resettlement (OP 4.12) indicates preference should be given to land-based resettlement strategies for displaced people whose livelihoods are land-based. These strategies need to be compatible with the cultural preferences of the PAPs and prepared in consultation with them.¹¹⁷ Resettlement plans should include measures to ensure displaced persons are *“offered choices”* and *“provided with technically and economically feasible resettlement alternatives.”*¹¹⁸

91. The resettlement plan needs to take into consideration legal arrangements for regularizing tenure and transferring titles to resettlers.¹¹⁹ According to the Policy the timing of resettlement is linked to the implementation of the project's investment component to ensure displacement does not occur before the elements necessary for resettlement are in place.¹²⁰ The Policy requires infrastructure and public services be provided as needed to improve, restore, or maintain accessibility and levels of service for the displaced people.¹²¹

1. Resettlement Site and Land-title

92. The 2012 RAP indicates more than 90 percent of the PAPs had opted for land-for-land compensation within the Naivasha District.¹²² The PAPs' preference was for a resettlement site near their existing locations and close to employment opportunities at KenGen and Cultural Centre. Since 2009 at least seven possible resettlement sites were considered.¹²³ The RAP states negotiations between KenGen and community representatives led to an agreement on the size of land to be awarded to the PAPs, covering 1,700 acres.¹²⁴

¹¹⁵ Management Response, page 19.

¹¹⁶ Management Response, page 13.

¹¹⁷ OP 4.12, para. 9.

¹¹⁸ OP 4.12, para. 6(a) (ii).

¹¹⁹ OP 4.12, Annex A, para. 12(d).

¹²⁰ OP 4.12, para. 10.

¹²¹ OP 4.12, para. 13.

¹²² RAP (2012), page 13-1. The investigation team was told the PAPs felt they had been treated like squatters on their ancestral lands for many years. They expressed their belief that receiving land title was essential as it would help secure their identity and culture as Maasai for generations to come.

¹²³ RAP (2009), page ii. See also, RAP (2012), Annex 5. The RAP lists the following alternative resettlement sites presented for consideration during consultations with all stakeholders in 2009: (i) Kedong Suswa, (ii) Sanctuary, (iii) Ndabibi, (iv) Moi Ndabi, (v) site identified as L.R. No. 1381: Government of Kenya, (vi) Mai Mahiu, and (vii) Maiella.

¹²⁴ RAP (2012), page 13-1.

93. After eliminating different potential resettlement sites for different reasons, KenGen identified a site known as Akira Ranch belonging to a company called Kedong Ranch Limited. KenGen conducted due diligence and determined there were no claims to this site.¹²⁵ The PAP leaders visited the site on December 15 and 16, 2012, and in the afternoon of December 16 KenGen participated in a *baraza* with PAPs of all four villages to secure their acceptance of the site. The PAPs gave their unequivocal acceptance to the land¹²⁶ but did not want to sign the agreement prepared by KenGen until reviewing and discussing it among themselves. On December 21, 2012 representatives of the four PAP villages signed this agreement. Further analysis of the impacts of the site selection on the livelihoods of the PAPs is included in section B below on Livelihood Restoration.

94. On July 1, 2013 the PAPs and KenGen entered into a formal MoU by which they agreed resettlement would occur only when land tenure was secured through a communal land-title.¹²⁷ By August 13, 2014, with the land-title still not secured, the PAPs and KenGen amended the agreement to allow resettlement prior to obtaining this title.¹²⁸ KenGen committed in the amendment to process the title deeds within six months from the date of relocation. The PAPs were resettled between August 21 and September 2, 2014.

95. The delays in securing the land-title were due to a court injunction restraining the seller, Kedong Ranch, from “*selling, charging, disposing off and/or otherwise interfering with suit property.*”¹²⁹ Bank Management explained to the investigation team that KenGen had proceeded with construction on the resettlement land despite the injunction because they believed there would be enough land available to resettle the Maasai, irrespective of the outcome of the court case.

96. A court order set the date for an *interpartes* hearing on February 5, 2015. The investigation team learned that court hearing took place on January 31, 2015, ruling in favor of Kedong Ranch.¹³⁰ KenGen informed the investigation team the title transfer had started. This was confirmed by a local government official who said the transfer process was expected to take one to three months.

97. The Requesters are deeply concerned about when, or whether, they will receive the land-title and whether they might be moved again, since they still do not officially own the land. In June 2015, KenGen informed the Panel that it intends to transfer the title-deed immediately after it is

¹²⁵ RAP (2012), page 8-3.

¹²⁶ World Bank BTO on Acceptance of Land by PAPs on 21 December 2012, page 1.

¹²⁷ MoU signed between KenGen and the PAPs, page 7, para. 3(f) and page 8, Table 1.

¹²⁸ Amendment No. 1 to MoU signed between KenGen and the PAPs, page 2, para. 4(c).

¹²⁹ In the High Court of Kenya at Nakuru, Civil Case number 21 of 2010 in the matter of LR 8396 (I.R. NO. 11977) in the matter of the Limitation of Actions Act. (CAP. 22, Laws of Kenya).

¹³⁰ Republic of Kenya in the High Court of Kenya at Nakuru, Civil Case Number 21 of 2010. Decree issued at Nakuru on February 5, 2015. According to a Requester, the Plaintiffs had filed an Appeal on procedural grounds. World Bank Management informed the investigation team that no appeal was filed within the legal timeframe and therefore KenGen was no longer restricted from transferring the title. The Requesters also informed the investigation team that another court case with Maasai as Plaintiffs was pending in the Nakuru High Court, involving, on the Defendants’ side, KenGen, the Ministry of Energy, and several other parties.

issued in its name. It added that the process of issuing the land-title in KenGen's name is at the National Land Commission and is expected to be completed within the next two to three months.¹³¹

98. Additionally, the Requesters expressed anxiety and concern that, just as they had been resettled to RAPland, new geothermal developments would require them to move again in the future. The investigation team observed during its site visit to RAPland that there were several drilling and scoping activities in the area. The team asked KenGen about the potential for future commercial developments and their impacts on the community, and KenGen informed the team it was committed not to relocate the community again. They also informed the Panel that exploration drilling activities are low noise and have zero release of steam or gases. They added that emission and noise control technology has improved and thus any area of impact would be smaller, and that power plants can be placed as far as four kilometers from a well. The Panel notes the serious concern regarding potential health and noise impacts to the resettled community if new geothermal expansion materializes in the vicinity of RAPland.

2. Housing and Other Infrastructure

99. The newly-built residential houses in RAPland are composed of two bedrooms, a living space, and an outside kitchen. Not far from the houses are latrines. These structures are made of masonry and have cement floors. During its field visit the investigation team noted that many PAPs were satisfied with their new houses. Others, however, raised concerns regarding the cultural compatibility of the houses with the specific Maasai lifestyle and culture.¹³² The Requesters told the investigation team “*RAPland made collective people into individualistic people.*”

100. The investigation team observed that the houses are designed to standards unfamiliar to the rural Maasai people, who are accustomed to dwellings made of wood, cow dung, and mud. Traditional Maasai dwellings (*enkaji*) are easily and cheaply subdivided or expanded to accommodate changes in household composition. The RAPland houses, however, are built of expensive, manufactured materials which make modifications, maintenance, and repairs costly. The Panel experts note that a culturally-appropriate house for traditional Maasai would reflect the design of an *enkang*¹³³ having fenced-off *kraals* for different types of livestock: cattle, goats/sheep, and calves. Multiple families may reside in an individual *enkang* and shelter their herds together at night in these *kraals*. The current layout of housing in RAPland does not allow for flexibility and maneuverability in terms of the number of rooms, their size, or location. Several people complained about the limited number of rooms.¹³⁴

¹³¹ KenGen June 2015 Memorandum, page 7.

¹³² The Panel's experts note that traditional Maasai houses (*enkaji*) are frequently built by women, and recovered with mud and thatch every five to 10 years. While the Maasai's cattle herds move during much of the year, especially in the dry season, the community is largely sedentary. The Maasai in the area would traditionally rebuild their houses in the same general location and would not move more than a few hundred meters, if at all.

¹³³ The Maasai *enkang* (a fenced cluster of houses) is commonly referred to today as a *manyatta*. *Manyatta*, strictly speaking, refers to a ceremonial village (cluster of dwellings) used during male age-set rituals.

¹³⁴ The 2012 RAP shows inconsistencies in the size of houses to be provided to the PAPs. It states households would be provided with a “*four roomed masonry house*” and a separate kitchen (RAP (2012), page 8-4). However, it also refers to KenGen's earlier resettlement scoping report, which states modern houses would be constructed, each with three bedrooms (Appendix 4, Environmental Scoping of the Resettlement, page 3). Finally, the drawing design of



Figures 7 and 8: Traditional Maasai house (*enkaji*) and RAPland house

101. The Panel also notes that the choice between alternative masonry house designs or traditional *enkaji* houses was considered.¹³⁵ The RAP of 2012 identified three alternative house designs with different combinations of corrugated iron roofs, cement floors, and either masonry or iron sheet walls, but the option of a traditional and/or improved *enkaji* house was not offered by the RAP.¹³⁶ The RAP included the drawings of the selected design and suggested that “*in-depth*” discussions be held with “*a representative group of households before discussion with the entire community*”¹³⁷ indicating the selected alternative had not been widely consulted with the PAPs. The Panel notes that PAPs were not given a choice among alternatives on an individual household basis. One alternative was selected for all. KenGen noted that PAPs negotiated, redesigned and approved the houses “*without any cultural additions.*”¹³⁸ According to some PAPs, they had not been involved in the decision-making process. The Panel’s experts note that best practice in resettlement requires that each PAP households be given choices among housing solutions and desirable improvements to their traditional housing. Such options might have been attractive to households that wanted to maintain traditional ways of living.¹³⁹

the houses, which is also part of the RAP, shows the houses would include one living space and two bedrooms (Appendix 6). This drawing design was later confirmed in the MoU signed between KenGen and the PAPs.

¹³⁵ KenGen (2012), Environmental and Social Impact Assessment Study Report for the Proposed Construction of Houses and Other Facilities for Resettlement of Olkaria IV Project Affected Persons at Olkaria Domes, Naivasha District, page 61.

¹³⁶ RAP (2012), page 8-4.

¹³⁷ RAP (2012), page 7-5.

¹³⁸ KenGen June 2015 Memorandum, page 27.

¹³⁹ Examples could include impermeable roofing, movable interior walls, pit latrines that can be relocated when full, sustainable cooking technology, water to standpipes near house clusters, etc. Best practice shows: (i) in a project in Costa Rica, seven different house options were given to each PAP household involving distinct designs and construction materials (see: Partridge, W. L. (1993): *Successful Involuntary Resettlement: Lessons from the Costa Rican Arenal Hydroelectric Project*. In *Anthropological Approaches to Resettlement*, edited by M.M. Cernea and S.E. Guggenheim, pages 351-374. Boulder, Colorado: Westview Press (1993); (ii) in the Zimapan Hydroelectric Project in Mexico, PAP households were each given four different house options involving distinct designs and construction materials; in the Aguamilpa Hydroelectric Project in Mexico, PAPs were given the option of improved house materials such as tin roofs rather than traditional palm thatch, while keeping the existing Huichol Indian adobe/wood house materials for the remainder of the structure (see: Guggenheim, S. E. (1993): *Peasants, Planners, and Participation: Resettlement in Mexico*. In *Anthropological Approaches to Resettlement*, edited by M.M. Cernea and S.E. Guggenheim, pages 201-228. Boulder, Colorado: Westview Press), and (iii) in Colombia, a project allotted

102. The PAPs expressed concern about the quality of the houses and the safety of family members. The Panel observes that, since the community had never lived in such structures or had access to electricity before, some training regarding the maintenance of this type of housing and information regarding the dangers of handling electricity might be required. The Panel found no evidence that the cost of house maintenance and other recurring costs, such as for electricity, had been properly conveyed to the community.

103. The PAPs raised their concern to the investigation team about the poor condition of the roads to and within the resettlement site. A September 2012 mission report states the main access road to the site had been completed and the site could now be accessed by vehicles, except during rains. The road leads directly to the site of the school, health facility, and social hall.¹⁴⁰ The March 2013 RAP Implementation Status Report states the construction of an internal all-weather road network was ongoing.¹⁴¹ In its June 2015 Memorandum, KenGen informed the Panel that the road works will commence in the first week of July 2015, and will be completed by February 2016.¹⁴²

104. The PAPs informed the investigation team there was a water shortage at the resettlement site. According to them, water is sometimes unavailable at the water kiosks for several days.¹⁴³ This was confirmed by Bank Management.¹⁴⁴ In a meeting with the team KenGen acknowledged water supply is an issue due to the drought. As a long-term intervention, KenGen is now pumping three times as much water from a lake and told the team that, in addition to the rainwater tank for each house, there are four water kiosks in RAPland, two of which usually have water, and one of these is located next to the school. KenGen fills these kiosks with trucks when the water supply drops. The Panel appreciates KenGen's efforts to address the shortages described by providing emergency water supply with tank trucks and by constructing eight water troughs for cattle, instead of the four originally planned.

105. During its field visit the investigation team heard a claim that a mosque should be constructed in RAPland. In a January 2013 RAPIC meeting this issue was discussed and it was

each PAPs serviced plots - water, electricity, sewers, etc. - upon which they constructed their own houses of variable designs and combinations of materials. (See: Molina Prieto, C. and Morales, I. V. (2000): *En Búsqueda de un Lugar Dónde Habitar*. In *Reasentamiento en Colombia*, edited by W. L. Partridge, pages 37-76. Bogotá, Colombia: World Bank, UN High Commissioner for Refugees, Corporación Antioquia Presente, and Office of the President, Government of Colombia. 2000).

¹⁴⁰ World Bank, Enhanced Safeguards Implementation Support for the Kenya Electricity Expansion Project (KEEP) –P103037, Olkaria IV: Launch of the Grievance and Complaints Handling Mechanism Community Advisory Council (CAC); Agreement on Subdivision of the Resettlement Land among the PAPs Villages; Formation of the Land Registration 'body' and the issue of Cultural Center Land (2012), page 1.

¹⁴¹ World Bank, RAP Implementation Status Report as at March 31, 2013, page 1.

¹⁴² KenGen June 2015 Memorandum, page 13.

¹⁴³ In October 2013 some RAPIC members raised the issue that KenGen had not discussed the distance to the water points with the community, and expressed their fear that the water points might be too far from the houses. Observation of the AFD-led Mission on Sept. 26, 2013; AFD-Led Joint Mission (AFD, KfW and EIB) to Olkaria on September 26, 2013. During the payment of cash compensation to different categories of PAPs, the PAPs expressed concern about the great distance of two clusters of houses from water points. World Bank BTOR from Mission to Observe Payment of Cash Compensations to Various Categories of PAPs, August 18, 2014.

¹⁴⁴ World Bank BTOR to follow up on how PAPs were settling down after the relocation. September 5, 2014.

agreed there had never been a mosque in the former settlements.¹⁴⁵ The Panel notes, however, that a mosque was anticipated in a letter from KenGen in December 2009 stating it was “*agreed with the PAPs*” that KenGen “*shall provide the necessary infrastructure in the resettlement area such as residential housing, schools, health centre, social hall, church, water, roads, church [sic], and mosque.*”¹⁴⁶ The investigation team noted that, although there was no mosque in any of the original four villages, the distance to the mosque used for worship by some community members increased significantly due to the relocation. Providing a mosque in RAPland could have been an opportunity to address the concerns of added transportation costs and inconvenience claimed by these PAPs.

106. **Compliance Findings.** The Panel finds Management’s failure to ensure that displacement of the PAPs 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).

107. The Panel finds the housing solution offered to the PAPs, 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 PAPs, they are inconsistent with the cultural preferences and lifestyles of others.

B. Livelihood Restoration

108. **Request.** The Requesters claim the resettlement is leading to impoverishment, families are undergoing a change in lifestyle from moderate to poor, and some families are “*almost to collapse [sic] due to poverty.*” They assert “*poor ones, orphans & widows*” were excluded from compensation, the Project has created stress in the community, and it has neither restored nor improved their livelihoods.¹⁴⁷ Furthermore, the transitional assistance of 35,000 KSh the PAPs received “*has been diverted to electricity connection.*”¹⁴⁸ The Requesters contend the PAPs did not agree to this.

109. The Requesters claim former residents of the Cultural Centre village are now far from their customers and sources of income. They explain they must now pay about 30% of their earnings for transportation or walk two hours to get to work. As a result, some PAPs have resorted to renting houses closer to Cultural Centre. Accordingly, they believe this situation has led to added cost and impoverishment.¹⁴⁹

110. **Management Response.** Management believes the livelihoods and social and economic wellbeing of the PAPs have improved as a result of the Project’s resettlement. Management argues

¹⁴⁵ World Bank BTOR on RAPIC Meeting on a Number of Pending Issues that the PAPs wish KenGen to Conclude on. January 11, 2013, page 2.

¹⁴⁶ Letter from KenGen Managing Director to National Environment Management Authority, dated December 17, 2009. This letter was copied to the World Bank and the PAPs.

¹⁴⁷ Request for Inspection, Letter dated October 26, 2014.

¹⁴⁸ Request for Inspection, Letter dated August 21, 2014. 35,000 KSh is the equivalent of 360 US Dollars (Rate of June 09, 2015).

¹⁴⁹ Request for Inspection, Letter dated October 26, 2014.

“pastoralism is the main livelihood source of the PAPs”¹⁵⁰ and explains that the Project has constructed eight livestock watering troughs and one cattle dip; these facilities did not exist in the former villages. Management adds that the PAPs are planning to charge non-PAPs for use of the cattle dip.¹⁵¹

111. According to Management all compensation was based on transparent criteria. Their Response includes a table listing the different categories of PAPs and their respective compensation as laid out in the RAP and agreed in the MoU signed between the PAPs and KenGen.¹⁵² Management explains that, as part of a negotiated agreement, KenGen and the PAPs agreed to use the 35,000 KSh¹⁵³ transitional allowance to connect their individual houses to the electricity infrastructure. Management acknowledges that some PAPs, mainly from Cultural Centre, were temporarily burdened with additional commuting costs between RAPland and their workplaces. Management explains that KenGen purchased a bus, which the PAPs currently lease to a private firm while “two privately-owned minibuses (“matatus”) are providing transportation to the PAPs.” Management therefore believes the Project adequately addressed this issue.¹⁵⁴

112. As to the concerns regarding evictions, Management points out that a dispute over a Maasai settlement on Ng’ati Farm had been ongoing for more than 20 years and resulted in a final court decision in 2009 awarding the Maasai approximately 25% of the land on the basis of adverse possession. The farm’s owner obtained an eviction order for other parts of the property and in mid-July 2013 a number of Maasai families were forcibly evicted from their homes. During these evictions 247 houses were destroyed. According to Management, Ng’ati Farm is not part of the Olkaria I or IV power plant areas. However, 13 PAP households, comprising 74 individuals, were caught up in the evictions. Management explains the World Bank expressed its concerns to the Government, which compensated the affected households.¹⁵⁵

113. **Bank Policy.** Bank Policy on Involuntary Resettlement (OP 4.12) recognizes that resettlement, if unmitigated, “often gives rise to severe economic, social, and environmental risks: production systems are dismantled [and] people face impoverishment when their productive assets or income sources are lost.”¹⁵⁶ It adds that involuntary resettlement may cause severe, long-term hardship and impoverishment unless appropriate measures are “conceived and executed as sustainable development programs,” and that displaced people should be assisted to improve or restore their livelihoods to pre-displacement or pre-project implementation levels, whichever is higher.¹⁵⁷

114. According to the Policy, projects should include measures to ensure that displaced people get compensation at full replacement value for losses of assets.¹⁵⁸ The Policy states that, for losses that cannot easily be valued or compensated (e.g., access to grazing), attempts need to be made to

¹⁵⁰ Management Response, page 4.

¹⁵¹ Management Response, page 4.

¹⁵² See: Management Response, pages 14-15.

¹⁵³ 35,000 KSh is the equivalent of 360 US Dollars (Rate of June 09, 2015).

¹⁵⁴ Management Response, page 20.

¹⁵⁵ Management Response, pages 6-7.

¹⁵⁶ OP 4.12, para. 1.

¹⁵⁷ OP 4.12, para. 2.

¹⁵⁸ OP 4.12, para. 6(a) (iii).

establish access to “*equivalent and culturally acceptable resources and earning opportunities.*”¹⁵⁹ Displaced persons must be provided land having “*productive potential (...) at least equivalent to the advantages of the land taken.*”¹⁶⁰ When adequate land is unavailable, this “*must be demonstrated and documented to the satisfaction of the Bank.*”¹⁶¹

115. To achieve the objectives of OP 4.12 particular attention must be paid to vulnerable groups, including the poor, landless, elderly, women, and children.¹⁶² Regarding those with no recognizable legal right to claim the land they occupy, resettlement assistance in lieu of compensation for land, and other assistance, are required.¹⁶³ The Policy also requires, where necessary to achieve its objectives, measures including “*moving allowances,*” to ensure displaced persons are “*offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living.*”¹⁶⁴

1. Socioeconomic Impacts

116. **Pastoralism and Productive Potential of RAPland.** In accordance with Bank Policy the Project budgeted and planned for compensation on the basis of “land-for-land.” The “land-for-land” principle is a positive, development-oriented, compensation option for involuntary resettlement of rural populations. Similarly, the principle of budgeting project investment resources to improve standards of living in the form of better schools, roads, access to electricity, more hygienic conditions, community social halls, and provision of health services is an excellent model consistent with Bank Policy.

117. The Panel notes the populations of three of the four displaced Maasai villages (Olo Mayana Ndogo, Olo Nongot, and Olo Sinyat) are mainly pastoralist, with cattle providing subsistence security (milk, meat, and blood) as well as cash income (sales of animals, milk, meat, and hides). According to the socioeconomic baseline survey conducted by GIBB Africa, in 2009 there were some 5,400 cattle and more than 18,000 goats and sheep in these three villages.¹⁶⁵ In the fourth village (Cultural Centre) livestock plays a secondary role, but 30 PAP households nevertheless had 191 cattle and 1,031 goats and sheep.

118. Typically Maasai residence units (*enkang*) have a common fence around the outside and separate, fenced-off *kraals* within for cattle, calves, goats, and sheep (see above). During the rainy season cattle often graze on pastures near residential areas, which allows cows to be milked early in the morning and minimizes herding work. During the dry season (September-March) calves and some milk cows are kept near the *enkang* and milked for daily consumption by the family, while the other cattle are moved to seasonal pastures. Pastoralist cattle herds typically comprise 60 percent or more cows (mature female animals) because they are managed more as dairy (milk)

¹⁵⁹ OP 4.12, para. 6(a) (iii) and footnote 11.

¹⁶⁰ OP 4.12, para. 11 and para. 6(b) (ii).

¹⁶¹ OP 4.12, para. 11.

¹⁶² OP 4.12, para. 8.

¹⁶³ OP 4.12, para. 16.

¹⁶⁴ OP 4.12, para. 6(c) (i).

¹⁶⁵ RAP (2009), Volume II, Annex 9, Livestock Number at Household Level for PAPs.

herds than as commercial beef enterprises.¹⁶⁶ Goats usually graze near households throughout the year, but sheep migrate during the dry season. In the dry season the younger men move cattle, and in some cases sheep, over long distances in search of pasture and water.¹⁶⁷

119. The Panel observes that the Project does not document comparative analysis of the suitability of alternative sites for pastoralism. The Panel notes that, according to GIBB Africa, the indicators used for the carrying capacity of the land for livestock were based on a wider area than the specific RAPland site. The investigation team observed during its field visit that the pasture available on the 1,700 acres is very poor and the topography includes steep ravines and gullies scoured by seasonal flashfloods. The Panel experts noted that, unless investments to improve the land's productive potential are made, most of the resettled Maasai cannot maintain milk cows, calves, and sheep close to their homes, mainly due to the poor pasture and unsuitable topography.

120. A recent Strategic Environmental Assessment (SEA) of the area conducted for KenGen confirms there was no adequate assessment of the suitability of RAPland for livestock production and pastoralism generally. The Panel observes that the SEA states “*there is little information on the intensity of grazing, potentially overgrazed areas and availability of land in and around the programme area, so this impact has not been adequately addressed in the ESIA and RAPs prepared to date.*”¹⁶⁸ The SEA adds the “*main weakness of the RAP was the lack of a sustainable grazing strategy, including the areas used by each community on wet and dry years, the intensity of the grazing, the carrying capacity of the environment etc.*”¹⁶⁹

121. The Panel notes that when the World Bank accepted the 1,700-acre resettlement site as equivalent to the 4,200 acres of land affected by Olkaria IV, it was assumed the PAPs could continue to graze cattle in parts of the acquired area unoccupied by Project facilities.¹⁷⁰ The Panel notes the equivalence requirement stipulated in the Bank's Involuntary Resettlement Policy is to be evaluated on the basis of the land's “*productive potential.*”¹⁷¹

122. The Panel believes RAPland cannot be considered equivalent in quality to the land where the PAPs lived previously. The failure to take pastoralism into account when designing the resettlement operation, especially having sampled the numbers of animals owned by PAP households, renders the Project culturally and economically problematic for the Maasai community.

¹⁶⁶ Little, Peter D., D. Debsu, and W. Tiki (2014): How pastoralists perceive and respond to market opportunities: The case of the Horn of Africa. *Food Policy* 49, pages 389-397.

¹⁶⁷ According to the Panel's experts, Maasai customary usufructuary rights to the grazing lands and water sources have been recognized and respected by both government and private landowners for decades.

¹⁶⁸ SEA (2015), page 26.

¹⁶⁹ SEA (2015), page 29. See also, page 391: “*local communities have complained that pasture in the areas developed by KenGen is more difficult to access and that there is less pasture in total, and (...) there might be conflicts (...) if the grazing areas of different communities overlap or if farmers and pastoralist communities are expected to share the same area. The relocation of several communities on the same area can potentially lead to overgrazing.*”

¹⁷⁰ RAP (2012), para. 1-5.

¹⁷¹ See OP 4.12, para. 11 and para. 6(b) (ii).

123. The Panel notes that while relevant, livelihood-related data were gathered by GIBB Africa, these appear not to have influenced (i) resettlement site choice or (ii) design of income-generation schemes either ensuring continuation of existing activities or introducing new ones. The data also show that in the three PAP villages where pastoralism is most important (Olo Nongot, Olo Sinyat, and Olo Mayana Ndogo) 30 percent of PAPs who owned more than 100 cattle could be classified as wealthy pastoralists in Maasai terms.¹⁷² In terms of Tropical Livestock Units (TLUs), average household herds are 14.97 TLUs per capita,¹⁷³ which demonstrates the community is heavily dependent on livestock for their livelihoods when compared to other pastoral economies in Kenya, including other Maasai communities.¹⁷⁴

124. The Panel experts note that, had the Project properly assessed rangeland conditions in RAPland, it could have considered some options enabling the PAPs to cope with the difference in grazing land quality.¹⁷⁵ Had the Project taken measures to improve the productivity of the land, its size would have been of secondary importance and equivalence would have been met as it is measured in terms of the carrying capacity of the land to maintain livestock. Since there were no investments to increase productivity to meet the requirements of the Policy, the area should at least have been the same size as the pre-displacement land.

Vulnerable PAPs (Below the Poverty Line, Landless, Women, Disabled, and Children)

125. **Below the Poverty Line.** The poor are especially vulnerable to the negative effects of resettlement. The Panel experts note that wealth in the PAP community can reasonably be measured by cash incomes and livestock assets. Data on these indicators are provided in the Annexes to the 2010 ESIA, which allow poverty levels to be determined relative to the common poverty measure of US \$1 per day or its equivalent in cash expenditures. Among 106 PAP households for which cash income and livestock ownership data are available, 28 percent are considered very poor, with the largest concentration of these in Cultural Centre.¹⁷⁶ The poorest households are often headed by women or non-Maasai, and they could be owners of a house and/or land, or tenants.

¹⁷² This section is based on analysis of the data provided in Annex J, ESIA (2010).

¹⁷³ A TLU is a common conversion unit used for calculating herds with different livestock species. As defined here, 1 TLU = 1 head of cattle or 10 goats and sheep.

¹⁷⁴ McPeak, John, Peter D. Little, and Cheryl Doss (2012): *Risk and Social Change in an African Rural Economy: Livelihoods in Pastoralist Communities*. London and New York: Routledge; B. Butt. Seasonal space-time dynamics of cattle behavior and mobility among Maasai pastoralists in semi-arid Kenya. *Journal of Arid Environments* 74 (3), pages 403-413.

¹⁷⁵ According to the Panel's experts, such options could have included range restoration work such as anti-erosion structures, grass planting, fodder/feed planting using irrigation and fertilizers, rotational grazing, and tree planting. Until productivity is improved, supplies of fodder/hay could be provided to PAP households to compensate for the lack of grazing for sedentary milk herds and calves. The Project could have also looked at other nearby areas where the PAPs could graze their milk cows/calves and other animals. Such measures could have been discussed with the PAPs as well as with a trained Range Ecologist.

¹⁷⁶ For a pastoralist household with an average of six to seven members, which approximates the PAPs' average household size, a herd of 15 TLUs (12 cattle and 30 goats/sheep) or fewer would be considered very poor. Those households with fewer than 15 TLUs and/or per capita cash income of less than \$1 per day can be considered to be very poor and highly vulnerable to shocks, including those associated with relocation. The statistics in these paragraphs were derived from analyses of data in the annexes to the ESIA (2010).

126. **Landless.** A second category of PAPs includes those who owned a house but have no ownership to the land and are therefore ineligible to receive a house in RAPland. These PAPs received cash compensation to rebuild their houses and reestablish their livelihoods elsewhere. According to Management the compensation for this category of PAPs consisted of a “*lump sum cash payment at full replacement cost of [their] residential house*”¹⁷⁷ and a moving allowance. GIBB Africa explained they conducted the initial valuation of the houses according to Kenya’s Land Acquisition Act, and valued each structure at between 5,000 KSh¹⁷⁸ and 15,000 KSh.¹⁷⁹ KenGen, however, also considered land value as a factor and therefore decided higher replacement amounts should be given to the PAPs. The investigation team was informed that the PAPs in this category received compensation of 126,000-186,000 KSh¹⁸⁰ for their structures.

127. During its field visit the investigation team heard testimony from affected people claiming the amounts received were insufficient,¹⁸¹ and the cash compensation did not equal replacement value. On different occasions the team asked about the costs of buying land in the surrounding areas and building houses comparable to those the PAPs had previously. The team was told the cost of a housing plot a few kilometers out of Naivasha, upon which a PAP could build a traditional Maasai house (*enkaji*), was substantially higher than what the PAPs received as compensation. The Panel believes this rendered the PAPs vulnerable and placed some of them at risk of impoverishment, even if they had not been poor before. The PAPs informed the team the level of cash compensation was not determined through consultations, and was disclosed to them only in August 2014, a few weeks before they had to relocate. The investigation team was told some PAPs were originally from other groups, such as the Turkana and Samburu, and had been in the Project area since the 1990s.

128. The investigation team inquired about the Ng’ati Farm evictions of June 2013. As discussed in Management’s Response, a dispute over a Maasai settlement on Ng’ati Farm had been ongoing for more than 20 years.¹⁸² While a court order awarded the Maasai part of the Ng’ati Farm land, the Maasai allegedly failed to leave other parts of the farm. According to the documents, negotiations took place prior to the evictions, and failed because the Maasai insisted that Ng’ati Farm match the compensation offered by KenGen under the Olkaria IV Project, which was refused. After the evictions were carried out, the World Bank expressed its concern to the Government, visited the site, and confirmed that 13 households covered under the RAP were adversely affected. The Bank mission documented that the event had no direct relation to the Project, as the evictions were carried out by a private entity for reasons unrelated to the Project. The mission report adds that Management believed it was appropriate to encourage the Government and KenGen to find an interim solution for the 13 PAP households.¹⁸³ Consultations between the Government of Kenya and various stakeholders took place and it was agreed these 13

¹⁷⁷ Management Response, page 14.

¹⁷⁸ 5,000 KSh is the equivalent of 51.4 US Dollars (Rate of June 09, 2015).

¹⁷⁹ 15,000 KSh is the equivalent of 154.3 US Dollars (Rate of June 09, 2015).

¹⁸⁰ 126,000 KSh is the equivalent of 1,296 US Dollars and 186,000 KSh is equivalent to 1,913 US Dollars (Rate of June 09, 2015).

¹⁸¹ See also: Letter to World Bank from Former Residents of Oloolkarian Maasai Cultural Centre and Olo Mayana Ndogo – Olkaria, Kenya, undated.

¹⁸² Management Response, pages 6-7.

¹⁸³ Actions by the Bank, KenGen, and the Government of Kenya on the Narasha Evictions of July 16, 2013, page 2. Document received from Management on May 5, 2015.

households would be resettled as part of the Olkaria IV RAP and would be compensated accordingly. The investigation team was told the Government awarded them a minimum of 50,000 KSh in compensation to cover their loss of property.

129. **Women.** A third category of vulnerable PAPs are women, especially widows and single mothers. According to Project documents the Panel experts estimated 20% of the displaced people include vulnerable widows, single mothers, and/or female-headed households.¹⁸⁴ The team believes a disproportionate number of those removed from eligibility for resettlement assistance in the 2013 validation exercise were among the most vulnerable (widows, widowers, single mothers, and one-person households) which, as mentioned above, lends credence to the Requesters' claim that some of the most vulnerable were impoverished by the resettlement. Several persons in this category were declared ineligible for resettlement assistance in 2013 on grounds that they had migrated into the affected villages recently and/or did not own a house or did not have land rights.

130. During its field visit in March 2015 the investigation team heard stories of very poor widows who had been tenants but were given neither housing options nor cash compensation beyond 2,000 KSh.¹⁸⁵ The widows told the team they had been left on the roadside with their children and personal belongings. Some returned to the abandoned Cultural Centre village to seek shelter, while others stayed with friends or relatives in RAPland. The investigation team visited the houses of the widows who had returned to Cultural Centre and witnessed their extreme poverty. When the team inquired about this with KenGen staff it was told there were eight widows (who could be originally from Suswa and Narasha) at Cultural Centre and two in RAPland. The widows informed the team that some of them had houses in 2009.

¹⁸⁴ See also Olkaria I and IV Geothermal Power Generation Project (2012): The Final Census Report, Table 3: Number of Male and Female PAPs by Type of Household, page 10.

¹⁸⁵ 5,000 KSh is the equivalent of 51.4 US Dollars (Rate of June 09, 2015).



Figure 9: Elderly woman still living at the Cultural Centre village

131. **Disabled.** The fourth category of vulnerable PAPs met by the investigation team is the disabled. During the eligibility mission the Panel met a disabled woman whose new house was located on a hilly lot lacking easy access to the road or the latrine. During the investigation mission two months later some construction was underway to improve the situation, but the woman could not explain what the plans were. In June 2015 KenGen informed the team the works included grading and flattening the area for easier movements and realigning and paving the path from the house to the latrines.¹⁸⁶ She said she had been a shopkeeper in her old location and had received cash compensation to restart the shop. She explained, however, that she used this cash to buy basic furniture and for a taxi ride to the hospital. She did not think she would be able to restart her shop and worried about her ability to earn an income. Her elderly, vision-impaired mother said there were many days when they could not afford food.

132. **Children.** As to claims of children dropping out of school, the Panel learned a Welfare Society was established to assist poorer community families in distress from loss of employment, severe illness, death of a breadwinner, etc. The Welfare Society later expanded its program to pay 50% of school fees for children of poor families that could not afford them. The other families are expected to cover school fees on their own, provided they are able to re-establish their income-generating activities in RAPland.¹⁸⁷

¹⁸⁶ KenGen June 2015 Memorandum, page 19.

¹⁸⁷ Maasai have some traditional mechanisms for assisting the poor, especially through gifts and loans of livestock. However, the Welfare Society is not a traditional institution. In addition to the above-mentioned tasks, it manages revenues earned from leasing the bus, makes decisions about mini-bus purchases, and distributes funds to PAPs. Some PAPs questioned the management of funds by the Society and the decisions associated with the bus.

133. As the Panel was conducting its investigation it learned that on April 6, 2015 a teenage girl from Narasha primary school drowned in an injection well for water pumped from the new plant at Olkaria I. The Requesters informed the Panel they had complained to the Bank in January and March to press KenGen to conduct ESIA reports on the wells drilled between homesteads. The community believed the well poses risks to children and fencing it off was insufficient. KenGen's own investigation into the drowning incident determined that the area was enclosed with a chain link perimeter fence and a steel gate was to be guarded by security personnel day and night. KenGen concluded however that, at the time of the April incident, the gate was unlocked and the guard absent. On May 5, 2015 Management informed the Panel that, in accordance with the SEA, the safety protocol would be reviewed and corrective measures recommended after identifying systematic and capacity gaps. Meanwhile KenGen officials met with the family to express their condolences and attended the funeral, to which KenGen made a financial contribution.

134. The investigation team heard reports from PAPs of adverse impacts on the livelihoods of the most vulnerable, including food shortages, distress sales of cattle to meet subsistence needs, and loss of income due to fewer opportunities to sell handicraft to tourists. The Panel notes the PAD, while containing important assessments and analyses of various risks (such as to governance, financial management, etc.), did not analyze social risks, specifically those associated with failure to restore PAP livelihoods that could lead to impoverishment.¹⁸⁸ KenGen informed the Panel in June 2015, that it has made deliberate efforts to address concerns related to vulnerable PAPs, this includes the identification of vulnerable PAPs, an internal meeting to discuss possible assistance, and a planned meeting with the vulnerable PAPs to discuss their expectations and proposals for sustainable and suitable assistance.¹⁸⁹

135. As noted above, pasture available in RAPland is very poor and, without investments to improve the productive capacity of the resettlement site, PAPs dependent on pastoralism are likely to sell cattle out of distress, have declining incomes, and suffer diminished livelihoods. 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. The Panel stresses the urgent need to consider alternative means of generating income.

Tourism and Decrease in Income-Generating Opportunities (Cultural Centre)

136. The Panel notes the Cultural Centre village was a tourist attraction partly because it represented a living Maasai settlement in which visitors could observe traditional Maasai homes, livestock, and domestic life. The Panel also notes that, of those who depend on Cultural Centre for their livelihoods, men work mainly as tour guides to the lower Ol Njorowa Gorge and Hells Gate National Park, and women sell handicrafts to tourists. Today Cultural Centre is mostly vacant due to the relocation to RAPland. The Panel notes the Project documents do not seem to have addressed the effects of the vacant village on tourism and on the livelihoods of this community.

¹⁸⁸ The PAD identifies the potential for social unrest related to community relocations and the loss of land/incomes as a social risk. It adds that, to mitigate such risk, KenGen has developed a RAP “*through extensive consultation with communities and fair and equitable compensation agreements.*” PAD (2010), page 27.

¹⁸⁹ KenGen June 2015 Memorandum, pages 17 and 18.

137. The Project assumed livelihoods of PAPs dependent on tourism would not be adversely affected if transportation is provided between Cultural Centre and RAPland by using the 60-seater bus.¹⁹⁰ The Panel notes the decision of the PAPs to lease the bus to a private company because they could not afford maintenance and operating costs, including purchasing fuel, hiring an experienced driver, paying insurance, etc. The Panel perceives the decision to lease the bus as a wise business decision made with the expectation that lease income will be used to purchase, operate, and maintain minibuses – first for Cultural Centre, the most affected village, and subsequently one each for Olo Mayana, Olo Nongot, and Olo Sinyat. The purchase of the first minibus was anticipated in March 2014 but is now expected in June 2015. The Panel believes that many people from Cultural Centre have suffered loss of revenue and resulting impoverishment during the 10 months since resettlement.

138. The Panel believes the Project cannot be faulted for failing to ensure transportation to maintain access to jobs, since it provided the community with a 60-seater bus. However, it has failed to ensure suitable assistance for the operation and maintenance of this bus during a transition period lasting until PAPs' livelihoods are restored.

2. Livelihood Restoration Opportunities

139. As noted earlier the Project appears to have underestimated the importance of pastoralism for the PAPs' livelihoods. Management agrees in its Response that "*Pastoralism is the main livelihood source of the PAPs.*"¹⁹¹ The 2010 ESIA conducted by GIBB Africa states "*the cultural environment of the project site is mainly influenced by the Maasai community living in the project area. They are pastoralists and keep cows, goats and sheep as the main source of their livelihood.*"¹⁹² The investigation team noted that income diversification (multiple streams of income) is quite important for PAP household welfare. Nevertheless, dependence on income generated from their traditional pastoralist ways remains central to their livelihoods. The PAPs indicated to the investigation team their concerns about the future of pastoralism and grazing in RAPland. This also appears in the minutes of some community meetings.¹⁹³

140. The Panel notes that the data gathered by GIBB Africa relating to the sociocultural characteristics of PAPs appears not to have prompted the design of income-generation schemes to ensure continuation of existing activities or to introduce new ones. An important missing element is the need to take into account the different, socioeconomic responsibilities of the men of late-teens to middle-adulthood which remove them from the villages to tend cattle on far distant ranges for most of the year. The GIBB Africa baseline study in 2009 provides a comprehensive set of data as called for in the Involuntary Resettlement Policy, except it did not cover the entire PAP community. The Panel experts note that failure to incorporate all relevant socioeconomic data in resettlement design is not an uncommon problem; sociological data are easily collected but require specialized social expertise to utilize them and make socially sound design decisions.

¹⁹⁰ Kenya Electricity Expansion Project (KEEP), IDA Credit 4743-KE. IDA Implementation Support Missions. December 17-19, 2013. January 11 and February 10, 2014. Aide Memoire, page 21.

¹⁹¹ Management Response, page 4.

¹⁹² ESIA (2010), page 3-47.

¹⁹³ For example, the Olo Sinyat community voiced concerns that "*the resettlement terrain is not conducive.*" See: Minutes of a meeting at Olo Sinyat, February 24, 2012, page 4.

141. The Panel notes another issue closely related to livelihood restoration where the Project did not anticipate the consequences of a seemingly benign decision. During a RAPIC meeting it was proposed and agreed with the PAPs that they would use the transitional allowance to cover the cost of connecting PAP houses in RAPland to the national electricity grid. This allowance is an Involuntary Resettlement Policy requirement to support and assist the PAPs restore their livelihoods and standards of living during a reasonable transitional period after relocation, in addition to other compensation. The Panel considers that, while that allowance seems small (35,000 KSh per household),¹⁹⁴ it was needed to support the PAPs, especially the more vulnerable ones, during the transition period until their livelihoods were restored. The Panel found no valid justification for Bank acceptance to the use of the transitional allowance for electricity connections instead of for its intended purpose.

142. Subsequently the SEA reported PAP complaints that 35,000 KSh was insufficient to help in their transition. PAPs requested the amount be increased to enable them to secure food for three months while finding other means of generating income at the new site, and a figure of 300,000 KSh was considered to be adequate.¹⁹⁵

143. During its visit the investigation team inquired about possibilities for training PAPs in new means of income-generation. KenGen informed the team of a capacity-building program for members of RAPIC and different community committees, including training in management skills, community development, accounting, and civic issues. The Panel also learned of training to identify community-owned projects specific to the different villages (e.g. allowing the Cultural Centre village to formulate a vision specific to tourism). In the same discussion KenGen emphasized the RAP did not create a situation where people required new income-generation schemes to sustain their previous livelihood standards or improve them, contrary to the Panel's findings above.

144. According to documents the investigation team received in the field KenGen offered PAPs employment. KenGen stated that "*during the construction phase of the RAP many PAPS from the four villages benefitted from casual employment from the construction sites*" and the women from the Cultural Centre village "*secured a contract to cook for workers at construction sites.*"¹⁹⁶ KenGen informed the investigation team that, by January 2015, 11 PAPs were working for them on a permanent basis and in 2014 they had hired another nine people on three-year contracts. KenGen mentioned that between 2010 and February 2013 there were 21 PAPs on shorter-term contracts (three months). KenGen added that during the construction phase there had been many more temporary jobs, and they had encouraged their contractors to hire PAPs. However, the PAPs expressed widespread disappointment with the actual availability of such opportunities.

145. KenGen also explained it is providing annual scholarships to four children from the community. The best of the children in primary school are sponsored for secondary school, and

¹⁹⁴ 35,000 KSh is the equivalent of 360 US Dollars (Rate of June 09, 2015). The transitional allowance was awarded to "*assist in logistical costs for the move to the new areas of residence.*" See RAP (2012), page 8-13.

¹⁹⁵ SEA (2015), page 390.

¹⁹⁶ KenGen June 2015 Memorandum, page 33.

the best in secondary school, for university. Upon graduation these students will automatically be offered positions at KenGen. The Panel welcomes this program.

146. In this context the Panel notes the World Bank’s Involuntary Resettlement Sourcebook – Planning and Implementation in Development Projects, which emphasizes that “*resettlement plans should be conceived as development opportunities.*” It points out that “*a narrow emphasis on compensation for lost assets or mitigation of adverse impacts leads planners to overlook significant development opportunities.*” It further states that “*with careful and participatory planning, opportunities can be identified for the affected people to derive project-related benefits or to capitalize on opportunities to improve their incomes or productivity.*”¹⁹⁷ The Sourcebook considers that project-related benefits typically include “*access to resources, employment in the project, or a share of its revenues.*” It holds that such opportunities can directly contribute to the restoration of income streams.¹⁹⁸

147. The Panel believes prospects remain for investing in improvements to the productive capacity of RAPland, and in schemes for alternative income-generation. The Panel is confident opportunities for Project-related benefits can still be considered and implemented, and these could help restore livelihoods as required by Bank Policy.

148. The Panel notes that KenGen acknowledges the above-mentioned livelihood related concerns, in its June 2015 Memorandum, and mentions that it “*has pledged to undertake a post relocation survey*” in order to determine the overall effects of relocation on the PAPs. KenGen adds that it has already taken steps to restore and enhance PAPs livelihoods.¹⁹⁹

149. **Compliance Findings.** The Panel finds the insufficient attention and assistance to vulnerable PAPs, who require particular consideration, are in non-compliance with OP 4.12 (paragraph 2c and paragraph 8).

150. 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 the lack of investments in RAPland to improve its productive potential and in livelihood restoration measures, is adversely affecting PAPs’ 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).

¹⁹⁷ World Bank, Involuntary Resettlement Sourcebook – Planning and Implementation in Development Projects, 2004, page xxvii.

¹⁹⁸ World Bank, Involuntary Resettlement Sourcebook – Planning and Implementation in Development Projects, 2004, page 171.

¹⁹⁹ KenGen June 2015 Memorandum, pages 19 and 20.

Chapter 5 – Supervision and Monitoring

151. This Chapter discusses the Bank’s supervision of Project implementation and the Project’s monitoring of the resettlement activities and particularly the socioeconomic situation of the PAPs.

152. **Request.** The Requesters explain the community agreed to move to allow geothermal expansion, and they relied on the Bank’s promise to monitor closely the resettlement process which, the Requesters claim, has not been done.²⁰⁰

153. **Management Response.** Management responds that it closely monitored the design and implementation of the resettlement process “*through enhanced safeguards and RAP implementation support with over 30 missions from October 2011 to November 2014.*” It adds that two missions were conducted since resettlement to assess how the PAPs are settling in after relocating to RAPland.²⁰¹

154. **Bank Policy.** The World Bank Policy on Involuntary Resettlement requires the Borrower to monitor and evaluate adequately activities set forth in the RAP, and that the Bank “*regularly supervises resettlement implementation to determine compliance with the resettlement instrument.*”²⁰² Throughout project implementation the Bank is required to supervise the implementation of the resettlement instrument ensuring that the requisite social and technical expertise is included in supervision missions.²⁰³ The Policy further requires that, for highly risky or contentious projects involving significant and complex resettlement activities, an “*advisory panel of independent, internationally recognized resettlement specialists*” be engaged to advise on all resettlement aspects, from the design to the monitoring of implementation.²⁰⁴

155. Bank Policy also states that as part of the required socioeconomic studies the census survey should be conducted to cover, *inter alia*: a description of the displaced households’ production systems, the magnitude of expected losses, the extent of physical or economic displacement, and information on vulnerable groups or persons. This should be supplemented with means to update information on the displaced people’s livelihoods and standards of living at regular intervals so the latest information is available at the time of their displacement.²⁰⁵

156. **Panel Observations and Analysis.** The Panel notes the Bank’s efforts in conducting numerous supervision missions to the Project area, beginning in October 2010 and continuing throughout (“*over 30 missions*”).²⁰⁶ The Panel also notes that the composition of the Project’s staff changed between the design and implementation phases of the Project. Some significant shortcomings were flagged in 2009 when the first RAP was reviewed. However, the Panel notes that some of these important issues were not followed up during Project implementation.

²⁰⁰ Request for Inspection, Letter dated October 26, 2014.

²⁰¹ Management Response, page 18.

²⁰² OP 4.12, para. 24.

²⁰³ Bank Procedures on Involuntary Resettlement, BP 4.12, para. 15.

²⁰⁴ OP 4.12, para.19, footnote 23.

²⁰⁵ OP 4.12, Annex A, para. 6(a).

²⁰⁶ Management Response, page 18.

157. The Panel notes that Bank supervision failed in several instances to identify or assess adequately key problems arising in the context of Project implementation that were of critical importance to the PAPs, including livelihood restoration, the lack of support measures for the most vulnerable PAPs, and the consequences of diverting the transitional allowance. The Panel believes there was insufficient capacity among the Project's staff to deal with the complex issues arising out of these resettlement activities.

158. The Panel also notes the absence of an effective, participatory monitoring system for ensuring that PAP communities are benefitting and livelihoods are not harmed. The PAD provides a risk matrix to identify country-level, sector-level, and project-level risks (including governance, political, financial and other risks), as well as mitigation measures. Among these "*social unrest related to community relocations and loss of land/incomes*" is identified as a moderate-to-substantial risk,²⁰⁷ but this is the only reference to a risk associated with resettlement in the matrix. The PAD states that to mitigate this risk KenGen developed a RAP for the generation component of the Project.²⁰⁸ It also states that the three objectives of the RAP are to "*(a) identify the impacts expected from the resettlement of PAPs; (b) recommend plausible mitigation measures; and (c) establish mechanisms to monitor the implementation and efficacy of proposed mitigation measures.*"²⁰⁹

159. This conceptualization and analysis of the risks associated with involuntary resettlement is too narrow and does not adequately reflect the World Bank's global knowledge and experience.²¹⁰ Impoverishment is the major risk confronted in involuntary resettlement, and is attributable to one or more of the following social impacts: loss of land, loss of jobs, loss of home, marginalization, food insecurity, increased mortality and morbidity, loss of common property and services, and disruption of social support networks.²¹¹

160. Regrettably, despite the robust design of the monitoring system proposed by GIBB Africa²¹² and the PAD's claim that the Project "*will provide quarterly impact reports on resettlement activities,*"²¹³ the Bank failed to insist upon monitoring the execution and efficacy of the risk mitigation measures. Supervision missions only intermittently reported on the status of these measures, and did not systematically track their evolution.

161. Under Bank Policy, for "Category A" projects such as this one, an Independent Evaluation Panel (IEP) with internationally-recognized resettlement expertise is normally engaged to advise on all aspects of the project relevant to the resettlement activities.²¹⁴ The Project envisioned recruitment of an IEP, which was appointed in April 2012, with "*extensive expertise and experience in: Social analysis, specifically in the context of Africa Region; Political and*

²⁰⁷ PAD (2010), pages 27-29, Table 6: Critical Project Risks.

²⁰⁸ PAD (2010), page 28, para. 85 and Table 6: Critical Project Risks.

²⁰⁹ PAD (2010), page 155, para. 20, Annex 10: Environmental and Social Safeguard Policy Issues.

²¹⁰ See Cernea, M. (1997), *The Risk and Reconstruction Model for Resettling Displaced Populations*. The World Bank, Environmentally Sustainable Development Studies and Monographs Series.

²¹¹ See Cernea, M. (1997), *The Risk and Reconstruction Model for Resettling Displaced Populations*. The World Bank, Environmentally Sustainable Development Studies and Monographs Series.

²¹² RAP (2012), page 11-6.

²¹³ PAD (2010), page 26, para. 80.

²¹⁴ OP 4.12, para. 19, footnote 23.

*institutional analysis; Consultations and stakeholder participation.*²¹⁵ This IEP, composed of two members of an engineering consultancy company was deemed non-performing and their contract was subsequently cancelled in 2014. A replacement was engaged in March 2015. KenGen indicated to the Panel that it has instructed the new IEP to come up with recommendations that will help correct the shortcomings in this RAP implementation and inform future endeavors.²¹⁶

162. Therefore the essential function of the IEP to provide advice from internationally-recognized experts in the design and preparation of resettlement operations which are complex and sensitive was not fulfilled. While a baseline was conducted and socioeconomic benchmarks were established by GIBB Africa for part of the PAP community in 2009, as mentioned above, this data was never updated to cover the entire group of PAPs, nor was an adequate system established to allow Management, KenGen, or RAPIC to monitor the livelihood situation of the PAPs. The Panel therefore notes the insufficient evidence to support Management’s statement that “*implementation of the RAP has restored the livelihoods of the PAPs to at least the level before resettlement or better.*”²¹⁷ The Panel believes the absence of a comprehensive baseline and an adequate resettlement monitoring system makes it difficult to evaluate the status and eventual outcome of the implementation of the RAP.

163. In summary, an effective monitoring system would have enabled the Project to monitor indicators related to the socioeconomic wellbeing of the PAPs. This would have provided information on the restoration of income; the need for introducing new income-generating activities; continued or disrupted access to education; distress sales of assets or cattle, or purchases of new assets or cattle; utilization of available, affordable health care services, and so forth. Nearly one hundred possible socioeconomic indicators were suggested by GIBB Africa in the 2012 RAP,²¹⁸ together with a proposed matrix of baseline data, annual updates, and end-of-project results. The Panel found neither evidence of a decision to select indicators, nor records of systematic monitoring of such indicators.

164. **Compliance Findings.** The Panel finds the Bank’s inadequate supervision of the Project’s resettlement activities, and its insufficient monitoring (based on updated sociological data) of PAPs’ 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).

²¹⁵ RAP (2012), page 10-4.

²¹⁶ KenGen June 2015 Memorandum, page 34.

²¹⁷ Management Response, page 8.

²¹⁸ RAP (2012), Appendix 7, Sample list of Socio-Economic Indicators.

Chapter 6 – Conclusions

165. With these concluding remarks the Panel wishes to share reflections on its main findings in light of the different perspectives held by stakeholders on the resettlement implemented by the Project, as well as on the way forward in seeking to redress harm and to learn for the future.

166. In order to form a solid understanding it is essential to acknowledge several dimensions of complexity surrounding this Request. One concerns the history of the Maasai going back to colonial times, including their legal rights to land they have occupied for centuries. Another deals with the ongoing change (more apparent in some communities than in others, and varying among people within the same community) in the traditional lifestyle and income sources of the Maasai in Kenya's evolving economic landscape. Additionally, there are challenges and intricacies of involuntary resettlements wherever they take place. Unless properly implemented, such resettlements can cause harm to people, especially the most vulnerable, not only temporarily but also for the long-term.

167. From the outset the Panel noted two sets of statements by the PAPs and by the authorities respectively, demonstrating good will and a disposition to work through difficulties. First, the PAPs consistently and genuinely expressed their understanding of the value of the Project "*in the national interest of Kenya.*" The investigation team heard no exception to these statements. Second, the Government of Kenya and KenGen officials unswervingly and sincerely expressed their commitment to making this resettlement a model for the future. They recognized this was a new approach, never before implemented by them on this scale. They were open to learning valuable lessons for the future, realizing this would not be the last resettlement in the Kenyan energy sector.²¹⁹

168. The Panel heard articulations of the expression "*the project should not harm the people and the people should not harm the project.*" Has this been borne out? Undoubtedly there has been harm to some among the approximately 1,170 people affected by the resettlement, especially those in the most vulnerable groups, such as widows and households headed by single women, and in too many of the poorest families, which constitute an estimated 20 percent of the households. On the other hand there was no evidence of harm to the Project. People were resettled to land which was less suitable for them than their older habitats and they moved in time for the start-up of the new geothermal plants, even before all amenities such as reliable water supplies and a completed road system were in place at the resettlement site. KenGen's resettlement budget increased to a level significantly higher than originally planned, and this demonstrates their commitment to make this resettlement work. Whether this budget was sufficient or put to the best possible use are important questions that might benefit from separate analysis.

169. The ambition of the Ministry of Energy and KenGen, as the implementing agency, to create a good model for involuntary resettlement is laudable. The Panel also believes KenGen officials attempted their best, for they are well aware successful resettlement is the right thing to do and

²¹⁹ KenGen stated that by the end of the Panel's work, KenGen will have a "*much improved understanding and knowledge of its development partner's policies, expectations and mandate, with regard to dealing with communities that host its projects.*" See KenGen June 2015 Memorandum, page 34.

also would be in their longer-term business interest. Positive features of their approach include the following, even though there were issues surrounding the application of each of them: (i) the land-for-land principle (instead of mere cash compensation for land); (ii) the upgraded infrastructure such as solidly built, larger residential houses with latrines and electricity, a school, clinic, churches, roads, and water supply, and (iii) the involvement of elected representatives from all villages, including those representing women, youth, and disabled, in the RAPIC structure.

170. The Panel found that inexperience led to certain mistakes in both the planning and implementation phases. It was to be expected that, despite the good will on behalf of the affected community and KenGen, implementing resettlement for the first time with limited knowledge and experience would be challenging. The Panel found the guidance from the World Bank was inadequate and deficient due to capacity constraints. The Panel ultimately concludes that the Bank failed to bring to bear its rich, global experience with practical application of its safeguard policies. The absence of internationally-recognized experts on resettlement during implementation, as required by policy, had far-ranging implications in this regard. Relevant advice throughout the process would likely have yielded positive results as the Panel found KenGen highly responsive, an opinion shared by the World Bank Country Office. The Panel notes in this regard, that KenGen expressed that it “*unreservedly appreciated*” the work of the Inspection Panel and the EIB-CM. It adds that it “*embraced the process as a learning platform*”, which “*adequately prepared the company for its many upcoming projects that are going to involve community engagement processes.*”²²⁰

171. A number of assumptions proved to be incorrect or misguided, and offer lessons for future resettlements:

- That the Maasai community in the Project area is not indigenous and that, in any case, the application of the Bank’s Indigenous Peoples Policy would have made no difference to the PAPs in this case. The Panel concluded that the PAPs would have been better off under the Indigenous Peoples Policy framework.
- That the PAPs were moving to nearby land of the same quality as the land they were leaving, thereby imposing little or no socioeconomic or cultural change, which led Management to believe no livelihood restoration program would be needed. The Panel established that RAPland was inferior to the old land. The largely pastoralist community had difficulty keeping animals near their homes in RAPland. There were no programs in place to invest in greater productive potential of the new land, and no help to generate alternative income for PAPs, whether pastoralists or dependent on other sources of income. Putting such programs in place would have made a difference, especially to the most vulnerable.
- The inattention to the important role of traditional Massai authority structures – the Elders – who felt sidelined. The Panel found that including one representative of the Elders in RAPIC and creating the CAC, both in 2012, were not enough.
- The reliance on signatures of RAPIC members as proof of acceptance by the community-at-large or an indication that everything was in order. This included critical elements such as validation of PAPs following the censuses, house design, and the substitution of the transitional allowance for electricity hook-ups. The Panel found that RAPIC was a well-intentioned construct to involve representatives of different groups

²²⁰ KenGen June 2015 Memorandum, page 33.

of society. However, power imbalances between the community and the authorities, as well as within the community, were such that agreements fell short of protecting the most vulnerable.

- The ability of people, the majority of them illiterate, to take unfamiliar decisions about a dramatically different lifestyle. This includes, for example: (i) the successful negotiation to get a more expensive, bigger bus, without full understanding of its operating costs, or without consideration of alternatives such as obtaining several smaller buses instead; (ii) the anticipation of possible social and cultural implications of the new houses or, (iii) the economic consequences of future maintenance costs of these houses and other amenities in RAPland.
- That the most vulnerable households could manage without a cash transitional allowance (following the decision to divert this to the electricity hook-up).

172. Most observers would be impressed by the new houses in RAPland which are of good suburban quality, and many may feel people given such expensive houses should not complain, that these houses represented adequate benefits, and that the lives of their occupants must have improved compared to where they were before. The Panel visited RAPland houses with new cars parked outside, with satellite dishes on the rooftops, modern furniture, and electronic equipment inside, and met many occupants who were happy with their houses and who had clearly benefited from the Project. However, this did not hold true for all PAPs, and this Report focuses on those households that suffered harm. There were definite signs of impoverishment of some of the most vulnerable people even in their new houses, and certainly of other PAPs who were not resettled to RAPland and had not been adequately compensated.

173. During the investigation, the Panel discovered significant communication issues, creating radically different understandings of what had been decided or agreed, and why. Whether this could be attributed to language problems in the absence of using the Maa language, the failure to adequately disclose critical documents, issues of representation, or other reasons, the fact remains this caused major confusion and contributed to mistrust towards the authorities, as well as tension within the community.

174. Among good-practice approaches and related Bank Policies that were not followed, or could have been followed more rigorously, several stand out. They constitute lessons for the future:

- The use of the affected peoples' language, in this case the Maa language, in the conduct of the census and other consultations with the community, including in written documentation, such as the RAP and census results.
- Inclusion of traditional structures of authority, specifically the group of Elders.
- Presentation of wider options to PAPs, for example with regard to housing construction types, materials, and size, to fit different preferences better.
- Implementation of necessary livelihood restoration programs.
- Establishment of a comprehensive baseline of key socioeconomic indicators covering all PAPs, and a monitoring system to assess progress in achieving resettlement goals throughout execution of the resettlement plan and to permit adjustments as needed.

175. Another factor of relevance and special interest to the PAPs is an expected new Kenyan law regarding the benefit sharing of certain commercial investments. While this is part of the

national context, had this Maasai community been identified as Indigenous it would have been good practice to consider how the community would share in the benefits of the Project.

176. KenGen, the World Bank, and others should profit from the findings of a newly re-appointed, independent evaluation panel and an end-of-project resettlement audit. The Panel is, however, concerned about the ability of these two efforts to function optimally in the absence of a complete baseline of socioeconomic indicators of the affected people. The Panel stresses the requirement to monitor livelihood restoration of all Project-Affected Persons effectively, including those who only received cash compensation.

177. Meanwhile, under EIB-CM's stewardship, there is an agreement between PAPs and KenGen to proceed with mediation in order to resolve some of the problems resulting from the resettlement. The process of mediation will seek to restore the trust between the affected community and Project authorities as well as within the community. It will also aim to provide redress of outstanding issues considered important by the parties. A first scoping mission by the EIB-CM took place May 14-18, 2015. The EIB-CM had bilateral consultations with the interested parties/groups with the aim of framing the design of the mediation process. The mediation meetings are expected to start in early July 2015.

178. Finally, the Panel stresses that involuntary resettlement is inherently complex. The problems encountered by the Project are similar to those found in other World Bank projects over the past two decades.²²¹

179. Even with the best of intentions, as possessed by the stakeholders in the Project, and the best of planning (not necessarily evident throughout this Project and in any event always challenging), developments following resettlement must be closely monitored and corrective action taken as needed. This Report is published 10 months after the resettlement. While protection of the PAPs, especially the most vulnerable, should have been more thoroughly provided throughout the resettlement process, it is not too late to redress harms. In order for this resettlement to become a model there must be dialogue, action, and an open mind to learn lessons. With this, a successful resettlement model could be in sight.

²²¹ The Bank's internal review includes three reports ("which reviewed over two decades of World Bank projects involving possible resettlements") and an action plan, all available at <http://www.worldbank.org/en/news/press-release/2015/03/04/world-bank-shortcomings-resettlement-projects-plan-fix-problems> (accessed on June 08, 2015).

Annex A: Table of Findings

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 PAPs	The Panel finds the identification of PAPs (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 RAPIC to be a well-intentioned effort to achieve broad representation of the PAPs, 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.
Adequacy of Resettlement Site and Infrastructures and Amenities	<p>The Panel finds Management’s failure to ensure that displacement of the PAPs 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 PAPs, 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 PAPs, they are inconsistent with the cultural preferences and lifestyles of others.</p>

<p>Livelihood Restoration</p>	<p>The Panel finds the insufficient attention and assistance to vulnerable PAPs, 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 the lack of investments in RAPland to improve its productive potential and in livelihood restoration measures, is adversely affecting PAPs’ 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).</p>
<p>Supervision and Monitoring</p>	<p>The Panel finds the Bank’s inadequate supervision of the Project’s resettlement activities, and its insufficient monitoring (based on updated sociological data) of PAPs’ 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).</p>

Annex B: Historical Background of the Maasai in the Olkaria Area²²²

1. Issues of Maasai land rights in Olkaria and surrounding areas of the Naivasha Sub-County in Nakuru County are complex and have deep historical roots. Beginning in the early nineteenth century the entire central Rift Valley – from south of Lake Naivasha, including what is now the Olkaria Sub-Location,²²³ to Lake Baringo and the nearby plateaus in the north – were part of a vast grazing land controlled by the Maasai. By the nineteenth century Maasai control stretched from what is today central Tanzania to northern Kenya. Lake Naivasha was particularly important for the Maasai because it is one of the few freshwater lakes in the Rift Valley that both humans and livestock can use (most of the other nearby lakes are highly alkaline, soda lakes unsuitable as drinking water for humans and livestock). The nearby Longonot Mountain also held significant religious and ritual importance for the Maasai.

2. The pastures surrounding the Lake Naivasha basin, including Olkaria, were heavily used by the Maasai and their herds until they were displaced from the area by European settlement and farms in the twentieth century. As researchers point out, “*Naivasha was traditionally Maasai land (...) as it provided a permanent supply of water for their livestock.*”²²⁴ In fact, different historical accounts of the Maasai suggest that what is now Nakuru County, including Naivasha Sub-County and Olkaria Sub-Location, was the “*traditional heartland*” of Maasai territory.²²⁵

3. The onset of colonialism in 1895 and initial Maasai encounters with British administrators were marked by mistrust and conflict. As early as 1895 the Maasai resisted British advancement into their Rift Valley territories.²²⁶ The subsequent settlement of European farmers in the early 1900s radically changed Maasai control of grazing lands and did little to improve relations between the British and the Maasai. Formal treaties between the Maasai and British in 1904 and 1911 created northern and southern reserves for the Maasai and resulted in largescale movements of the Maasai out of the central Rift valley, including Naivasha.²²⁷ The first move was from the Nakuru and Naivasha areas to the Laikipia Plateau in 1904, followed by another move seven years later to lands just south of Naivasha. This second move was precipitated when the colonial government also designated Laikipia District for European settlement. Maasai leaders supported by British

²²² Olkaria is the most common spelling for the Project’s location, although the correct Maa spelling would be ol karia or ol-karia.

²²³ In the current administrative structure of Kenya, a sub-location is the lowest administrative unit with the Location being the next level up. The PAPs live in Olkaria Sub-Location of the Hell’s Gate Location. In Kenya’s administrative structure, a sub-chief heads a sub-location and reports to the location chief.

²²⁴ Chege, Ruth W., I. Tarus, and D. Nyakwaka (2015): Lake Naivasha, the Maasai and the British in the making of Naivasha Town, 1850-1911. *Journal of International Academic Research for Multidisciplinary* 3(1): 142-162, page 143.

²²⁵ King, Kenneth (1971): The Kenya Maasai and the protest phenomenon, 1900-1960. *Journal of African History* 12 (1): 117-137, page 118.

²²⁶ Waller, Richard (1976): The Maasai and the British 1895-1905: The Origins of an Alliance. *Journal of African History* 17:529-553, page 543.

²²⁷ Ibid.

lawyers unsuccessfully tried to invalidate the 1911 treaty in the colonial courts of Kenya, and the Maasai were moved to designated Maasai reserves south of Nakuru and Naivasha.²²⁸

4. It is estimated that, by the 1910s, the Kenyan Maasai had lost more than 50 percent of the land they once controlled.²²⁹ European farms and ranches were established in the vacated areas. Small pockets of Maasai remained in the Naivasha area, often working as hired herders on commercial ranches, and many Maasai continued to graze their cattle seasonally in Naivasha, as well as use the area for rituals and collecting important cultural properties, such as ochre²³⁰ (red and white clays critical to Maasai rituals and dress). Just prior to Kenya's independence in 1962 Maasai leaders unsuccessfully tried to reach agreement with the British that the lands lost in the 1904 and 1911 treaties be returned to them when colonialism ended. Upon the 100-year anniversary of the 1904 treaty Maasai leaders initiated another campaign to have their lands returned, in this case Laikipia ranches owned by foreigners, Kenyans, or land companies that had acquired them after independence. The Maasai argued that the 99-year leases of the ranches had expired and they should be allowed to reoccupy the area. The petition eventually ended up in the Kenyan courts, where judicial proceedings ruled in favor of the ranch owners on the basis that colonial era land leases were for 999 and not 99 years.

5. Four events in the post-colonial era further complicate the issue of land and land tenure in the Naivasha area. First, the purchase of Maasai ancestral lands from European settlers by land companies and agricultural enterprises in the 1960s and 1970s, which the Maasai hoped and felt should be returned to them. Most important for this current investigation is the Kedong Ranch of approximately 75,000 acres that PAPs and other Maasai communities and their herds rely on for grazing. Ng'ati Farm is another case and, although only few PAPs (13) reside there, it is also used for the grazing and settlement by a larger number of Maasai. Multiple legal cases by the Maasai have been initiated to reclaim these two large parcels of land. In the Ng'ati case, a court settlement in 2000 "*awarded the Maasai 4,207 acres out of 16,000 acres of the Ng'ati farm on the basis of adverse possession.*"²³¹

6. A second land-related event affecting the PAPs in the area was the establishment of Hell's Gate (6,800 ha) and Longonot National Parks (5,200 ha) in 1984, which forced the resettlement of several current PAP households without any compensation.²³² It also excised some of the best grazing lands from the Olkaria Maasai and forced the community to seek alternative settlement areas and pastures.²³³

²²⁸ Hughes, Lotte (2005): Malice in Maasailand: The historical roots of current political struggles. *African Affairs* 104/415, 207–224, page 208.

²²⁹ Ibid.

²³⁰ The Maa word *karia* means red ochre (clay), which indicates the importance of red clay in the area.

²³¹ Management Response, page 6.

²³² Field Interviews with Maasai community Elders and Maasai NGO. Also see page 1,127 in Nicholas O. Mariita (2002): The impact of largescale renewable energy development on the poor: environmental and socio-economic impact of a geothermal power plant on a poor rural community in Kenya. In: *Energy Policy* 30 (2002) pages 1,119-1,128.

²³³ Field Interviews with Maasai community Elders. In addition, ecological research in the Lake Naivasha Basin highlights that the best remaining savanna grasslands in the area are found in Hells Gate National Park, see K. V. Mavuti and D. M. Harper (2005): The ecological state of Lake Naivasha, Kenya. Turning 25 years research into an effective Ramsar monitoring programme, page 31. <http://www.oceandocs.org/handle/1834/2127> (accessed May 11, 2015).

7. The third important occurrence in the area is the establishment of the geothermal industry beginning in the 1980s, which removed additional land from grazing and other uses by the Maasai.²³⁴ The current Olkaria project envisioned that, even after resettlement, Maasai herders would maintain access to their existing grazing lands.

8. Finally, the introduction of a new Kenyan Constitution in 2010 mandating the formation of a National Land Commission (NLC), established in 2012, was another important land-related event. The new Constitution specifically highlights the right of communities to hold and control lands and resources: “*Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest (...) land that is—(i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines.*”²³⁵ The NLC has several tasks, including the mandate “*to initiate investigations, on its own initiative, or on a complaint, into present or historical land injustices, and recommend appropriate redress.*”²³⁶ The recent National Land Policy (2009) that recommended the formation of the NLC notes that “*issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest dwellers, and pastoralists) and vulnerable groups will be addressed. The rights of these groups will be recognized and protected.*”²³⁷ The national land policy in Kenya also notes that “*pastoralism has survived as a livelihood and land use system despite changes in lifestyles and technological advancements. This tenacity of pastoralism testifies to its appropriateness as a production system.*”²³⁸

9. Interviews with members of the PAP communities show that many were aware of recent changes in national legislation that draw attention to historical events negatively affecting pastoral communities such as the Maasai and the legal recognition of community rights to communal grazing. Given the history of land in Naivasha, and Maasai areas generally, land issues remain the major concern of most Maasai communities and their leaders both in the PAPs’ area and other Maasai locations.²³⁹

²³⁴ It is estimated that the Olkaria III geothermal plant reduced the Maasai community’s land by eight square km, Mwakio Tole and Colleagues (2000): Environmental Impact Assessment: Olkaria III Geothermal Power Plant, page 98. http://www.miga.org/documents/Kenya_OrPower4_C-EIA_2000_Report.pdf (accessed on May 1, 2015).

Olkaria IV reduced it by another 4,200 acres or approximately 17 square km.

²³⁵ Kenya, Government of (2010): *The Constitution of Kenya*. Nairobi: National Council for Law Reporting with the Authority of the Attorney General, page 44.

²³⁶ National Land Commission of Kenya, Mandate and Functions of the Commission, <http://www.nlc.or.ke/about/mandate-overview/>, (accessed on April 29, 2015).

²³⁷ Ministry of lands, Republic of Kenya (2009): Sessional Paper No. 3 of 2009 on National Land Policy. Nairobi: Government printer, page x.

²³⁸ Ibid, page 42, para. 180.

²³⁹ International Work Group for Indigenous Affairs (IWGIA) (2011): Update—Kenya, IWGIA, (accessed on March 28, 2015); Ole Koissaba, Ben (2014): Campaign Update: Kenya-Maasai Protest Against New Land Concessions for Geothermal Extraction in Kenya, July 7, Cultural Survival <http://www.culturalsurvival.org/news/campaign-update-kenya-maasai-protest-against-new-land-concessions-geothermal-extraction-kenya> (accessed on March 31, 2015).

Annex C: Context for Benefit Sharing from Commercialization of Natural Resources in Kenya

1. In the course of this investigation PAPs continuously raised concerns about lack of benefit sharing from geothermal energy production. They asked that a percentage of revenues earned go directly to benefit the community for now and future generations.²⁴⁰
2. In discussions with Government officials, Panel experts learned a need had arisen to share with counties the revenues generated from exploiting resources in such counties. The Constitution, through a devolution process, recognizes county authorities and stipulates that the State “*shall ensure sustainable exploitation, utilisation [sic], management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.*”²⁴¹ However, diverse stakeholders still have different perceptions of what benefits or percentages should be attributed at the various levels (Government of Kenya, County Government, and local community), as well as differing perceptions of how to define a “local community.” According to Government officials the Constitution established the deadline for the enactment of benefit sharing laws as five years from the date it took effect.²⁴²
3. According to local leaders the Government and Parliament in Kenya are currently considering several bills relating to benefit sharing with local communities who reside in areas of energy production or mineral and other resource extraction. This includes a Natural Resources (Benefit Sharing) Bill²⁴³ and an Energy Bill,²⁴⁴ which could have relevance to the PAPs in the Olkaria Project area. The proposed Natural Resources (Benefit Sharing) Bill requires that benefit sharing occur between “*resource exploiters, the national government, county governments and local communities (...) in a fair and equitable manner.*” It defines the term “local community” as “*people living in a ward within which a natural resource is situated and are affected by the exploitation of that natural resource.*” Although the draft bill does not identify geothermal resources in its initial list of natural resources, it notes the possibility to “*extend the application of this Act to any other natural resource not specified.*”²⁴⁵
4. At the time of writing this Report the Energy Bill was at the office of the Attorney General for redraft and part of the discussion revolved around different formulas (percentages) for the sharing of revenues between the Government of Kenya, the County Government, and the local

²⁴⁰ Minutes for the Meeting held at Simba Lodge on November 5, 2009 to discuss the Proposed Resettlement Action Plan of the Project Affected Person, page 2.

²⁴¹ See: The Constitution of Kenya (2010), page 47, para. 69(1) (a),

<https://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf> (accessed on June 19, 2015).

²⁴² See: The Constitution of Kenya (2010), page 165, para. 261(1) and Fifth Schedule, Legislation to be Enacted by Parliament, page 178.

²⁴³ Republic of Kenya, Kenya Gazette Supplement No. 137 (Senate Bills No. 34), the Natural Resources (Benefit Sharing) Bill, 2014, Nairobi, September 12, 2014 (the “Natural Resources (Benefit Sharing) Bill, 2014”), http://kenyalaw.org/ki/fileadmin/pdfdownloads/bills/2014/NaturalResources_Benefit_Sharing_Bill_2014.pdf (accessed on June 01, 2015).

²⁴⁴ Republic of Kenya, Draft Energy Bill, 2014, (the “Draft Energy Bill, 2014”), http://www.ketraco.co.ke/news/2014/Energy_policies.html (accessed on June 01, 2015).

²⁴⁵ Natural Resources (Benefit Sharing) Bill, 2014, pages 589-590.

community. The draft Energy Bill provisions apply to every entity “*importing, exporting, generating, transmitting, distributing, supplying or using electrical energy.*”²⁴⁶ Furthermore, it provides five percent of revenues to local communities; “*five per centum shall be paid to the local community through the county government within the boundaries of which the licensed areas or geothermal resources are or were exploited.*”²⁴⁷

5. According to the World Bank the Government of Kenya has also prepared a draft Petroleum Bill to be submitted to Parliament in August 2015. The draft Petroleum Bill also stipulates shares will be apportioned among the Government of Kenya, County Government, and local community. This bill defines “local community” as “*a sub-county or sub-counties.*”²⁴⁸ The World Bank-financed Kenya Petroleum Technical Assistance Project²⁴⁹ also supports the development of revenue-sharing mechanisms and establishment of a sovereign wealth fund.

6. Panel experts note that the Project could have introduced benefit sharing arrangements as a way to enhance social sustainability, in line with international best practice in the extractive industry and as the World Bank has advocated in the past.²⁵⁰ The Panel experts also note that Bank Policies distinguish between the rationale for benefit sharing in the context of involuntary resettlement and benefit sharing with an Indigenous community. The Bank’s Involuntary Resettlement Sourcebook considers the sharing in the revenues of a project as means to restore income streams. However, in the context of the Indigenous Peoples Policy, in the case of commercial development of natural and cultural resources, sharing in the revenues of a project is of greater importance. The Policy requires due process for arrangements whereby the Indigenous community would equitably receive benefit from the commercialization of natural resources in the territory to which they claim collective attachment.²⁵¹

²⁴⁶ Draft Energy Bill, 2014, article 3, page 23.

²⁴⁷ Draft Energy Bill, 2014, article 112(3) (a), page 66.

²⁴⁸ Kenya, Government of (2015): Petroleum (Exploration, Development and Production) Bill, page 10, [http://www.energy.go.ke/downloads/Petroleum%20\(Exploration.%20Development%20&%20Production\)%20Bill,%20202015.pdf](http://www.energy.go.ke/downloads/Petroleum%20(Exploration.%20Development%20&%20Production)%20Bill,%20202015.pdf) (accessed on June 19, 2015).

²⁴⁹ The Kenya Petroleum Technical Assistance Project (KEPTAP) was approved on July 24, 2014, <http://www.worldbank.org/projects/p145234?lang=en> (accessed on May 13, 2015).

²⁵⁰ See <https://openknowledge.worldbank.org/bitstream/handle/10986/18290/624980NWP0P1160ns00trusts0and0funds.pdf?sequence=1> (accessed on May 13, 2015).

²⁵¹ See for example: B. Ole Koissaba (2015): “*An Alternative Approach to Multinational Investments Among Indigenous Communities,*” May 12, 2015, “*Creation of an emergency fund to finance an urgent mediation process between KenGen, the community and other stakeholders. Activities to be funded will include community organization, knowledge and skills transfer, research on alternative livelihoods, strengthening of Indigenous leadership and governance structures; and institutions, facilitate processes for an enabling environment for benefit sharing as opposed to the current approach where local communities are given one time compensation. This process should be led by Indigenous peoples’ experts. This fund should also be used to support local communities to hire experts to undertake monitoring of all processes.*” At <http://www.culturalsurvival.org/news/alternative-approach-multinational-investments-among-indigenous-communities> (accessed on May 13, 2015).

Annex D: Memorandum of Understanding with EIB-CM



28 April, 2015

Memorandum of Understanding

Between

The World Bank Inspection Panel

And

The European Investment Bank Complaints Mechanism

**on cooperation regarding complaints received in relation to the
Kenya Electricity Expansion Project**

1. The World Bank Inspection Panel (the Panel) and the European Investment Bank Complaints Mechanism (EIB-CM) intend to cooperate in certain aspects of their respective work on complaints received pertaining to the Kenya Electricity Expansion Project (the Project), a project which is co-financed both by the World Bank and the European Investment Bank. This memorandum of understanding (MOU) sets forth the elements of this cooperation, which focuses on the sharing of information between the Panel and the EIB-CM within the limits set by confidentiality obligations arising from any applicable rule of law or conventional undertaking in carrying out their tasks under their respective mandates and processes. This cooperation is intended to promote efficiency so that each entity can carry out its work in an effective manner, consistent with each's mandate. The nature of cooperation described below is feasible and desirable given the respective mandates of the institutions and the similar nature of the matter which is subject to their respective processes. At all times, the cooperation between the Panel and EIB-CM shall be subject to the policies and procedures of their respective institutions, and in particular the protection of confidential information, business secrets and access to information. This Memorandum does not create legal relations between the Parties or impose binding obligations upon them.

General

2. The Panel is conducting an investigation, authorized by the World Bank's Board of Executive Directors on February 13, 2015, into whether the Bank observed its policies and procedures during the design, appraisal and supervision of the Project and related harm. The Panel's investigation will be conducted with respect to issues such as land titling, identification of Project Affected People (PAPs), livelihood restoration measures, grievance mechanism and indigenous peoples. It will also report on any relevant steps and actions taken by Bank Management or the EIB-CM during the course of the investigation to address the issues of harm and compliance relating to the concerns raised by the Requesters.

3. The EIB-CM is conducting an investigation, in line with its Principles, Terms of References and Rules of Procedures on issues related to the implementation of the Resettlement Action Plan. The EIB-CM is cooperating with the Panel with respect to the findings of its investigation on the issues listed in paragraph 3 and will seek for complementarities when feasible and appropriate, without prejudice to arrive independently to its own conclusion. The EIB-CM is also applying a problem solving approach, concerning the issues related to restoration of economic livelihood and the effectiveness of the grievance redress mechanism, by providing independent facilitation services to foster the dialogue between the complainants and the existing project organizational structures with the attempt to build trust and address the concerns raised.

Consultants and facilitators

4. The Panel and the EIB-CM will share the Terms of References (the "ToR") of any consultant and/or independent facilitator hired to assist with their respective processes.

Field visits

5. The Panel and EIB-CM will send a representative to participate in their respective field visits whenever appropriate.

Sharing of information

6. Consistent with their respective mandates and requirements, the Panel and EIB-CM will seek opportunities to share information, particularly relevant technical information, gathered during the course of their work.

7. It is understood at all times that, the Panel and the EIB-CM, will apply their own policies and procedures of their respective IFIs (the World Bank and the European Investment Bank) in their respective work. It is also understood at all times that each entity will arrive independently at their own conclusions.

8. The sharing of information will be adapted to the fact that there may be differences in the timing of the processes of the two mechanisms.

Confidentiality

9. The cooperation and sharing of information between the Panel and EIB-CM shall be subject to the confidentiality and disclosure of information requirements of each respective mechanism as well as comply with data protection rules. While technical information may be shared among the two mechanisms, this and all other information gathered and produced by consultants and facilitators shall otherwise remain subject to all applicable confidentiality requirements and disclosure of information, including those specified in the respective terms of reference and letters of appointment or contracts.

Modifications, Unforeseen Circumstances

10. The Panel and the EIB-CM enter the above arrangements in good faith and in a spirit of cooperation, in support of their respective missions and mandates. Both entities appreciate that unforeseen circumstances or other factors might arise that pose difficulties in relation to one or more of the elements noted above.

11. Accordingly, each entity considers that the above elements should be applied with a degree of flexibility to allow for change and adjustment as may be needed. Any such changes or adjustments should be considered and carried out in a spirit of cooperation and consultation.

Entry into Force and Termination

12. This Memorandum enters into force at the time of its signature and terminates when both the Panel and the EIB-CM declare the case closed.

For the EIB-CM



Felismino Alcarpe
Head of Division
Complaints Mechanism
European Investment Bank

For the Inspection Panel



Dilek Barlas
Executive Secretary
Inspection Panel
World Bank

Annex E: Biographies

Panel Members

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

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

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

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

Anthropology from Hull University and received her M.A. and B.A. in Sociology from the American University in Cairo.

Jan Mattsson was appointed Member of the Inspection Panel in November 2014. A Swedish national, he brings to the Panel more than three decades of experience in the public and private sectors as well as academia. Jan Mattsson's prior career has included operational field work, policy advice, program management, and leadership roles in the United Nations where he established robust systems for results-based management, transparency, and accountability. Throughout his career he has demonstrated the ability to engage and build trust with multiple stakeholders around complex issues, risk management, and innovation. He is passionate about social justice and behavioral ethics.

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

Expert Consultants

Peter D. Little is an anthropologist and currently Professor and Chair of Anthropology and Director of the Development Studies Program, Emory University. He received his Ph.D. and M.A. degrees in anthropology from Indiana University. Previously he was Professor and Chair of Anthropology at the University of Kentucky and a Visiting Researcher at Kyoto University, Oxford University, and the University of Nairobi. For more than 30 years Dr. Little has directed applied research and policy-related programs on pastoralism, food security, indigenous peoples, poverty, and natural resource management in several African countries, but with primary emphasis on the drylands of Kenya, Ethiopia, and Somalia. During this time he has been a consultant and advisor to the United Nations Food and Agriculture Organization (FAO), the World Bank, the International Livestock Research Institute, the US Agency for International Development, the International Institute for Environment and Development (England), Department for International Development (DfID) (U.K.), the Japan International Cooperation Agency (JICA), and several other agencies and foundations.

Since 1984 he has served on evaluation and project design teams for more than 15 rural and agricultural development programs in sub-Saharan Africa funded by a range of development agencies and governments. He has authored/co-authored more than 100 journal articles, book chapters, and research reports and written or edited/co-edited 10 books on international development, pastoralism, and political economy.

William L. Partridge is an anthropologist specializing in involuntary resettlement. He received his Ph.D. and M.A. degrees in social anthropology from the University of Florida. He recently retired from Vanderbilt University where he was Professor of Anthropology and Professor of Human and Organizational Development. He is former Chief, Environment and Social Development Division, Latin America and the Caribbean Region, of the World Bank where he was responsible for guiding compliance with environmental and social safeguards policies.

Dr. Partridge is the author and/or editor of numerous books, journal articles, research reports and technical publications on involuntary resettlement, indigenous peoples, sociocultural analysis in project design and other aspects of international development. He has served as a consultant for the Inter-American Development Bank, the United Nations High Commissioner for Refugees, the US Agency for International Development, the Asian Development Bank, the World Bank, and private sector development companies as well as several developing country governments.

Annex F: About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people likely to be affected by the projects it finances. Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”²⁵² The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having failed to comply with its own operating policies and procedures.

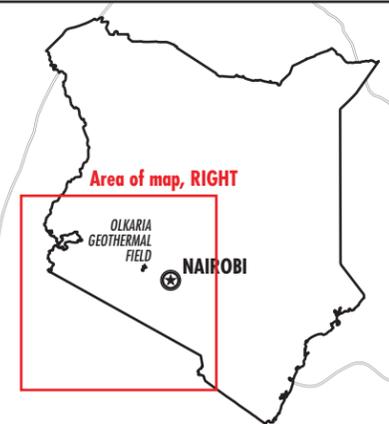
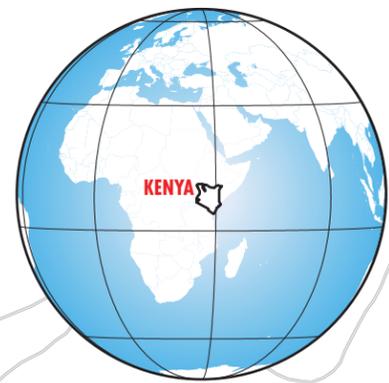
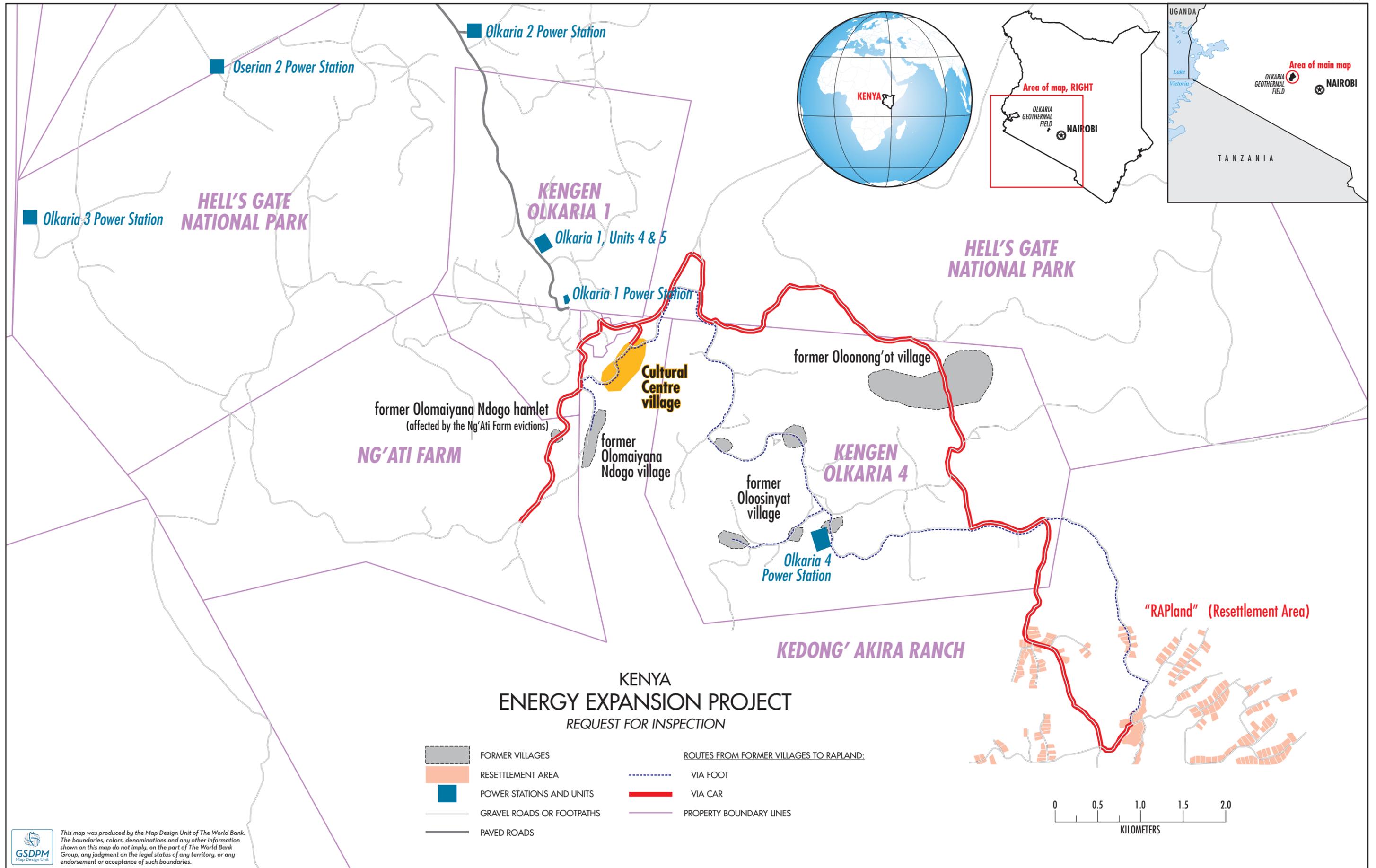
Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

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

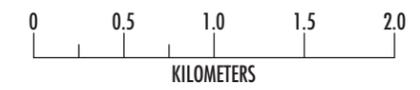
²⁵² International Development Association (IDA) Resolution No. 93-6.

Annex G: Map (IBRD 41337)



KENYA
ENERGY EXPANSION PROJECT
 REQUEST FOR INSPECTION

- | | | | |
|--|---------------------------|--|-------------------------|
| | FORMER VILLAGES | | VIA FOOT |
| | RESETTLEMENT AREA | | VIA CAR |
| | POWER STATIONS AND UNITS | | PROPERTY BOUNDARY LINES |
| | GRAVEL ROADS OR FOOTPATHS | | |
| | PAVED ROADS | | |



This map was produced by the Map Design Unit of The World Bank. The boundaries, colors, denominations and any other information shown on this map do not imply, on the part of The World Bank Group, any judgment on the legal status of any territory, or any endorsement or acceptance of such boundaries.