

**AGREEMENT ON OLKARIA IV RESETTLEMENT MEDIATION**

**This agreement made on May 28, 2016, between:**

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

Stima Plaza, P.O. Box 47936. 00100 NAIROBI

represented by

(hereafter referred to as "KENGEN"),

and

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

**COMPLAINANTS' REPRESENTATIVES:**

(hereafter referred to as "the complainants")

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

(hereafter referred to as "RAPIC")

WITNESS THE FOLLOWING:

**Article 1**

WHEREAS:

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

AND

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

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

AND

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

## Article 2

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

### **KENGEN undertakes to:**

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

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

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

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

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

#### **3. Vulnerable PAPS**

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

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

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

### 5. Census

1. Convene clinic where the cases of those names submitted by the complainants will be re-examined, and a decision on the entitlement will be made on a case by case basis in the presence of KENGEN, GIBB, and EIB and World Bank representatives, by July 31, 2016. KenGen will announce the dates and venue of the clinic at least 2 weeks in advance to the community through RAPIC, the mediators and World Bank and EIB.
2. Commit to provide additional houses for eligible PAPs who were wrongly omitted, based on the outcome of the verification / examination mentioned above. KenGen to start the process for constructing such houses within 1 month after confirmation of names.
3. Commit to provide any cash compensation for eligible PAPs who were wrongly omitted, based on the outcome of the verification / examination mentioned above. KenGen to provide such compensation within 30 days after confirmation of names.

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

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

### 7. Ksh 500,000/-

*Acknowledges that the community has dropped this demand*

### 8. Profit sharing

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

### 9. Benefit sharing

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

### 10. Subsidised electricity

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

### 11 A. Youth empowerment and employment

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

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

1. Identify existing women businesses and suggest sustainable income opportunities and required support for RAPLand women to access those by July 31, 2016.

2. Identify training needs for women entrepreneurial activities in line with local market demands by July 31, 2016.
3. Develop and provide a training program for women based on the above by July 31, 2016.
4. Ensure representation of women in future SCC to facilitate communication on arising job opportunities by July 31, 2016.
5. Support community efforts to form and register a women's businesses group.
6. Engage with the Catholic Church and the AIC church to seek to create a partnership for RAPLand women by July 31, 2016.
7. Consider ideas on how to help orphans in the community.
8. Work with the community to help vulnerable PAPs secure the monthly government support by registering for this support.

#### **12. Water services**

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

#### **13. Roads**

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

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

*Settled as per # 1 above*

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

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

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

**16. Support for school**

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

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

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

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

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

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

**19. Chief's office**

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

**20. Commercial centre**

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

**21. Mosque**

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

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

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

**23. Grievances Redress Mechanism**

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

**24. RAPIC**

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

**25. Welfare Society**

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

2. Provide awareness training about the Welfare Society to the wider community by September 30, 2016.

#### **26. Transport**

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

#### **27. Cultural centre**

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

### **Article 3**

The **Representatives of the ResettledCommunity** undertake to:

1. Collaborate in good faith in the implementation of the measures hereby agreed.
2. Ensure that every project affected person (PAP) has access to the measures proposed and more specifically that the most vulnerable ones are given priority of access to all employment and capacity building programmes.
3. Submit proposals for the composition and implementation of an appropriate Grievance Redress Mechanism by June 30, 2016.
4. Submit to the mediators proposals to resolve the transport issue to be presented at the June 3, 2016 meeting.
5. Participate in all further discussions and meetings as may be convened and required to resolve the issue of maximising the availability of transport facilities for the community.
6. Collaborate in the preparation of measures leading to the empowerment and improvement of the governance of the Welfare Society and participate in the implementation of the necessary measures. such measures to include in particularattention to the holding of meetings, election of trustees to hold the community land, election of officials and the audit of accounts.
7. Incorporate in its constitution or other documents, restrictions on sale or charge of community land.
8. Seek legal and accounting advice to assist where required.
9. Consider additional PAPs from existing community sub-project committees for inclusion in RAPIC, if deemed necessary by the community.

10. Continue its negotiations with the County authorities to have RAPLand established as a sub-location.
11. Ensure that no one is living in the Cultural Center by June 3, 2016.
12. Disseminate the content of this agreement to the PAPs and outline their responsibilities at a public baraza, with the presence of the mediators, by June 10, 2016.

#### **Article 4**

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

#### **Article 5**

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

#### **Article 6**

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

#### **Article 7**

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

**ON BEHALF OF KENGEN**

**The Regulatory and Corporate Affairs Director**