

GEEREF/Akiira Geothermal Power Plant

Complaints SG/E/2020/08
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Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

GEEREF/Akiira Geothermal Power Plant

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Prepared by

Complaints Mechanism

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Complainants

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EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group has done something wrong, i.e. if a member of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group’s response have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as cited by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group’s activities and to project cycle-related policies and other applicable policies of the EIB.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

On June 3rd, 2020, an individual presenting himself as representative of the Lorropil Village, Nakuru County, Kenya (the Complainant) submitted a complaint to the EIB Complaint Mechanism (EIB CM). The Complainant raised concerns about forced evictions and displacement impacts in relation to the Akiira Geothermal Power plant (the Project). Following the initial desk review and assessment, the EIB-CM identified the main allegations to be further investigated:

1. Failure to prevent forced eviction in the project area
2. Failure to minimize and/or avoid negative impacts of eviction such as:
 - Deterioration of livelihoods;
 - Displacement and destruction of private property;
 - Declining access to health and education.

The Project is financed by DI Frontier Energy and Carbon Fund (hereinafter the “Fund”), a Sub-Saharan focussed renewable energy infrastructure fund, which received financing by the Global Energy Efficiency and Renewable Energy Fund (GEEREF). GEEREF is a Luxembourg incorporated SICAV-SIF ‘fund of funds’ advised by the EIB Group. EIB is also an investor in GEEREF.

Following the reception of the complaint, EIB-CM determined that the Complaint met the admissibility criteria. In line with art. 2.2 of the EIB-CM Procedures, the EIB-CM carried out an Initial Assessment. The objective of the Initial Assessment is to clarify the concerns raised by the complainant, understand the complainant’s position and the validity of the concerns raised as well as to determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation) to address the allegation or resolve the issues raised by the complainants.

The review of the initial documentation confirms that the allegations deserved further review to confirm that the EIB Group took all necessary actions to ensure that the Fund complied with the applicable standards.

Given the complex structure of the financing set up and the EIB Group’s role in GEEREF, the EIB-CM considers it appropriate to undertake a compliance review on the EIB Group’s due diligence and monitoring role vis-à-vis the Fund. EIB-CM reserves the possibility to further investigate to assess the severity of the livelihood impacts alleged by the complainant.

INITIAL ASSESSMENT REPORT

Complainant: Representative of Lorropil Village

Date received: June 3, 2020

Confidentiality requested: No

1. **THE COMPLAINT**

- 1.1. On June 3rd, 2020, an individual presenting himself as representative of the Lorropil Village, Nakuru County, Kenya (the Complainant) submitted a complaint to the EIB Complaint Mechanism (EIB CM).
- 1.2. The Complainant raised concerns about forced evictions and displacement impacts in relation to the Akiira Geothermal Power plant (the Project). The Complainant alleged that the eviction has negatively affected Lorropil community members by displacing them from land, destroying their private property, affecting their main source of livelihoods that sustain medical and school expenditures.
- 1.3. Details of the allegation:

Main allegations

1. **Failure to prevent forced eviction in the project area**
2. **Failure to minimize and/or avoid negative impacts of eviction such as:**
 - Deterioration of livelihoods;
 - Displacement and destruction of private property;
 - Declining access to health and education.

2. **BACKGROUND INFORMATION**

EIB GROUP'S PARTICIPATION

- 2.1. The GEEREF was initiated by the European Commission in 2005 and launched in 2008 with funding totalling EUR 132 mln from the European Union, the German Ministry for Environment, Nature Conservation and Nuclear Safety and Norway's Ministry of Development ('A shareholders'). In 2014/2015, 24 private investors committed an additional EUR 109 mln to GEEREF, with EIB also committing EUR 10 mln. The European Union later-on invested a further EUR 20 mln into GEEREF.

- 2.2. GEEREF is a *'fund-of-funds'* that is advised by the EIB Group, benefiting from the expertise of the European Investment Fund (as an advisor) and the European Investment Bank (as a sub-advisor). GEEREF invests in private equity funds focussing on renewable energy and energy efficiency projects in emerging markets. GEEREF currently invested in 15 funds across developing countries and emerging markets in Africa, Asia, Former Soviet Union, Middle East Latin America and Caribbean.
- 2.3. The advisory arrangement of the EIB Group was set to leverage the strengths of both EIB group institutions. Given the infrastructure and non-EU element of GEEREF, the EIB leads in the appraisal, investment monitoring, execution and has been delegated responsibilities from the EIF on E&S monitoring. In turn, EIF has the lead responsibility for risk, legal, compliance, mandate management, and reporting to investors, for which it has well-developed units and systems.
- 2.4. From the information provided by the EIB Services, GEEREF is a compartment of the "European Initiative on Clean, Renewable Energy, Energy Efficiency and Climate Change related to Development SICAV, SIF", an umbrella fund of funds under Luxembourg law. A Board of Directors is responsible for the management and administration of the umbrella structure. With regard to GEEREF, as first compartment of the umbrella structure, the Board has delegated the day-to-day and investment management to the Investment Committee. Each A shareholder can appoint one member to the Board. As of October 2020, the Board has four members. Each A Shareholder nominates one board member and Alter Domus, GEEREF's Central Administration, Transfer and Domiciliation Agent, nominates one board member. Finally, the European Commission appointed the EIF as trustee.
- 2.5. The contractual arrangement between GEEREF and the Fund provides for the application of, among others, EIB's Environmental and Social Standards (E&S Standards). Consequently, these standards are incorporated into legal agreements between GEEREF and its regional fund investments. These legal agreements oblige regional funds to apply, amongst others, EIB's E&S standards to their operations.¹
- 2.6. DI Frontier Energy and Carbon Fund (the Fund) is a Sub-Saharan focussed renewable energy and infrastructure fund. The Fund is managed by Frontier Investment Management. The Fund develops, constructs and operates more than 45 energy projects in Africa within hydro, geothermal, wind and solar PV with a total capacity of 750 MW.² The target size of the Fund was EUR 80 mln with a cap at EUR 100 mln concentrating primarily on Eastern Africa (Ethiopia, Kenya, Uganda, Tanzania, Zambia and Mozambique). Limited partners in the Fund include development finance institutions, such as GEEREF, CDC Group plc, and the Denmark based Investment Fund for Developing Countries (IFU) as well as three other private Danish institutional investors plus the management team of the Fund.

¹ GEEREF Prospectus, p. 53

² DI Frontier website: <https://frontier.dk/projects/>

An important aspect of the Fund's investment policy is to ensure that all projects are environmentally and socially sustainable. The Fund will adhere the following principles and standards:

Standard/ Convention	Perspective	Implication
UN Global Compact	General Conduct	Commitment to working with the overall principles of Global Conduct concerning human rights, labour, environment and corruption
UNPRI	Investor Responsibility	Commitment to working actively and openly with environmental, social and corporate governance issues.
Equator Principles	Sustainable project financing	Adherence to 10 principles of ensuring sustainable financing in project
IFC Performance Standards	Code of conduct	Standards for sustainable business behaviour in portfolio countries
Gold Standard/ CDM	Avoidance of negative environmental impacts in CDM projects	Obligation to conduct stakeholder engagement and environmental impact assessment in projects

- 2.7. The above-listed principles incorporate the CSR policy of IFU, which is based on the UN Global Compact, the Millennium Development Goals and the International Convention on Human Rights, Labour Rights and Environmental Climate. In case of discrepancy between the IFU CSR policy, CDC's investment code or EIB's Statement of Environmental and Social Principles and standards amended from time to time, and the above-listed, the highest common denominator will be applied in establishing the environmental/ ethical rules of the Fund.
- 2.8. The Fund is a substantial shareholder (37.5%) of Akiira Geothermal Limited (AGL). AGL seeks to develop and operate the Akiira Geothermal Project (the Project) which is located in the Rift Valley, south-western part of Naivasha lake, in Kenya and is adjacent to the Olkaria area. The Olkaria area is known for major geothermal potential. By 2022, the Project was expected to have a capacity of 70 MW in the first phase, with the option to increase up to 140 MW in the second phase.
- 2.9. Other shareholders in the project include Centum Investments Company (Kenya) and RAM Energy and Marine Power Generation (United States). In 2014, the Project received a USD 950,000 grant from the Overseas Private Investment Corporation (OPIC), as part of the President Obama Power Africa Programme.
- 2.10. The Project prospects covers an area of ~12,000 ha of land to develop and operate the plant and lies adjacent to the Olkaria geothermal field. In 2015, the Project informed its shareholders that the lawful owner of the land was Kedong Ranch Limited, and entered into a land purchase agreement. In 2019, the land title was transferred to the Project.
- 2.11. At the time of Environmental Social Impact Assessment (ESIA) investigations, land for the project area was vacant; however, a few semi nomadic settlements were located close to the project borders.

3. INITIAL ASSESSMENT

- 3.1. Following the admissibility of the complaint, in line with art. 2.2 of the EIB-CM Procedures, the EIB-CM carried out an Initial Assessment on the concerns raised by the Complainant. The objective of the Initial Assessment is to clarify the concerns raised, understand the complainants' position and the validity of the concerns raised as well as determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation) to address the allegations or resolve the issues raised by the complainants.
- 3.2. The EIB-CM initial assessment consisted of:
- A telephone interview with the Complainant;
 - A series of individual interviews with representatives of the EIF and EIB services involved in the GEEREF;
 - Review of EIB and GEEREF project documentation such as:
 - a. Environmental and Social Impact Assessment (ESIA), 2016;
 - b. Stakeholder Engagement Plan (SEP), 2014;
 - c. EIB-EIF Advisory and Sub-Advisory Agreements;
 - d. Limited Partnership Agreement (LPA) DI Frontier, 2011 (including side letters and schedule 8);
 - e. GEEREF Prospectus;
 - f. Other internal project documents.
- 3.3. Based on the Complainant's allegations, the EIB Environmental and Social Standards which appears to be relevant to this case are:
- Standard 1: Assessment and Management of Environmental and Social Impacts and Risks;
 - Standard 6: Involuntary Resettlement;
 - Standard 7: Rights and Interests of Vulnerable People.
- 3.4. In July 2020, the EIB-CM held a call with the Complainant. The purpose of the call was to obtain clarifications on the concerns raised in the letter submitted to EIB-CM. During the call, the Complainant explained that in November 2019, around 50 families of the Lorropil community were evicted by the Kenyan police from the land now licensed to the Project. The Complainant alleged that the police cleared occupants from the Project's land on two occasions without prior notice, contrary to what is required by Kenyan law. The Complainant also added that police authorities burnt structures of the occupants and displaced them with no access to remedy.
- 3.5. The Complainant also explained that members of the evicted community are Turkana and that they believe to be Indigenous People, having lived in the project area since before the project prospects started.

- 3.6. The Complainant also added that, as a consequence of the eviction, members of the Lorropil community are currently landless and with limited resources to maintain their livelihoods, or generate income to pay for school fees or medical expenses. The Complainant informed the EIB-CM that some community members had received assistance by the neighbours of RAPland community, a village built as a consequence of the resettlement process of the Olkaria I & IV geothermal project. The Complainant also mentioned that a delegation of the EIB Group visited the Project's site in December 2019, after the eviction took place.
- 3.7. Between July and August 2020, EIB-CM took part in meetings with EIB Group services concerned by the complaint with a view to better understand the role of the EIB Group in GEEREF. The following paragraphs reports the information provided by the EIB services as part of the initial assessment.
- 3.8. Due Diligence on the financial intermediary: From the information reviewed as part of the initial assessment, at the time of the issuance of the Request for Approval, confirmed that GEEREF incorporated the EIB E&S standards for all projects located outside the EU. EIB technical and environmental experts support GEEREF's appraisal of regional funds and review the E&S policies incorporated into the regional funds' legal documentation and that funds have adequate capacity to implement the E&S requirements. At the time of the GEEREF due diligence in September 2010, the EIB noticed that the Fund had neither an ESG team nor E&S procedures in place. The Fund however committed to adhere to the EIB Statement of Environmental and Social Principles and Standards, 2009 in all its operations. In 2011, the Fund informed GEEREF that a team of three ESG professionals had been hired and that the Fund had established an E&S management system (ESMS) and that it committed to implementing the EIB E&S standards in its operations. From the information provided by the EIB services, the ESMS was shared with GEEREF.
- 3.9. Monitoring / Eviction case: In the context of the eviction that took place on the Project's site, both EIB and CDC Group were informed by the Fund about the eviction. Based on the Fund's reporting to GEEREF the evictees, mainly practicing charcoal burning, were notified by the County authorities in June 2019.
- 3.10. EIB-CM took note that the risk of encroachment was already flagged in the Project's Environmental and Social Impact Assessment (ESIA), where a group of houses were identified in close proximity to the Project boundaries. The settlement was described as consisting of semi-nomadic groups from the neighbouring village of Oloropil³, who move depending on pasture availability and charcoal burning.
- 3.11. Potential risks of encroachment were already raised by the Fund in its reporting to GEEREF. The Fund reported that despite numerous warning from the Project', encroachers failed to vacate the land. Furthermore, the report states that the issue was devolved to the County Government, which determined that the encroachment was illegal and used its mandate to remove the structures.

³ EIB-CM noted that there is no mention of the Lorropil village in the Project's Environmental and Social Impact Assessment (ESIA). There is however reference of Oropil village, which seems to correspond to the eviction village.

- 3.12. In December 2019, EIB Services took a field trip to the ‘evicted’ area with the Project’s ESG officer. The visit was limited to an interaction with Akiira ESG manager and the EIB concerned services did not engage with the evictees or civil society organisations. The EIB also requested the Fund/the Project to provide evidence as referred in § 3.10.
- 3.13. At the same time, the EIB informed the Fund that the EIB may recruit a consultant to carry out an independent fact finding mission of the situation on the ground.

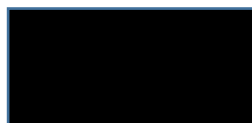
4. PROPOSED WAY FORWARD

- 4.1. Following the Initial Assessment of the complaint, the EIB-CM identified the following allegations as constituting the scope of the inquiry:

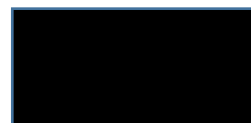
Scope of the Inquiry

1. **EIB Group’s failure to adequately assess and monitor the Fund’s capability to assess and monitor the effectiveness of the social management systems of its underlying investments, and ultimately the social impacts on the ground**
2. **EIB Group’s Failure to take appropriate actions vis-à-vis GEEREF in order to ensure that the Fund’s prevents and/or mitigate alleged negative impacts of eviction such as:**
 - Deterioration of livelihoods;
 - Displacement and destruction of private property;
 - Declining access to health and education.

- 4.2. Based on its initial assessment, EIB-CM concludes that the allegations deserve further attention with a view to verify that the EIB Group took all necessary actions in order to ensure that the Fund complies with the applicable standards.
- 4.3. Given the complex structure of the financing set up and the EIB Group’s role in GEEREF, the EIB-CM considers appropriate to undertake a compliance review on the EIB Group’s due diligence and monitoring role vis-à-vis the Fund.



1/12/2020



1/12/2020