

**COMPLAINTS MECHANISM**

SG/E/2020/08

EIF/E/2020/01

**GEEREF/AKIIRA GEOTHERMAL POWER PLANT  
KENYA**

26/07/2021

Conclusions Report



# GEEREF/Akiira Geothermal Power Plant (Kenya) Conclusions Report

26/07/2021

## **Complaint confidential**

No

## **External distribution**

Complainant

## **Internal distribution**

Management Committee  
Secretary General  
Inspector General  
Relevant EIB services  
Relevant EIF services

## **Disclaimer**

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 30 April 2021 representing the report's cut-off date. The conclusions are addressed solely to the EIB Group.

## **The EIB Group Complaints Mechanism**

The EIB Group Complaints Mechanism is a tool enabling resolution of disputes in case any member of the public feels that the EIB Group might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB Group to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may relate to EIB Group decisions, actions or omissions. This may include the environmental or social impacts of the EIB Group's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

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## GLOSSARY

AGL	Akiira Geothermal Limited
CIS	Community Investment Strategy
CLO	Community Liaison Officer
EIB	European Investment Bank
EIF	European Investment Fund
EIB-CM	EIB Group Complaints Mechanism Division
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
ESPS	EIB Statement of Environmental and Social Principles and Standards
EUR	Euro
GFO	Front Office Team
FUND	DI Frontier Market Energy and Carbon Fund
GEEREF	Global Energy Efficiency and Renewable Energy Fund
GEEREF Board	GEEREF Board of Directors
GEEREF IC	GEEREF Investment Committee
GoK	Government of Kenya
HA	Hectares
IAR	Initial Assessment Report
ILO	International Labour Organisation
IFU	Investment Fund for Developing Countries
LP	Limited Partners
LRF	Livelihood Restoration Framework
LRAP	Livelihood Restoration Action Plan
MW	Megawatt
PAP	Project-Affected Person

Project	Akiira Geothermal
Promoter	AGL
RAP	Resettlement Action Plan
RFA	Request for Approval
RPF	Resettlement Policy Framework
SEP	Stakeholder Engagement Plan
UNRPI	United Nations Principles for Responsible Investment

## Executive Summary

On 3 June 2020, the EIB Group Complaints Mechanism (hereinafter: EIB-CM) received a complaint from an individual presenting himself as a representative of Lorropil village in Kenya (hereinafter: the Complainant). The Complainant raised concerns about the failure of the Akiira One geothermal power plant (the Project) to prevent a forced eviction and its failure to address loss of livelihoods of the Project-Affected Persons (PAPs) in the project area.

The Project is partly financed by DI Frontier Market Energy and Carbon Fund (hereinafter the “the Fund”), a sub-Saharan-focused renewable energy infrastructure fund. The Global Energy Efficiency and Renewable Energy Fund (GEEREF), a compartment of the European Initiative on Clean, Renewable Energy, Energy Efficiency and Climate Change related to Development SICAV-SIF, invested in the Fund. GEEREF is advised by the EIB Group: the EIF in its role of Advisor and the EIB in its role of Sub-Advisor. Furthermore, the EIB is an investor in GEEREF and the EIF represents the European Union’s shareholding in GEEREF as Trustee for the European Commission.

Following the Initial Assessment concluded on 1<sup>st</sup> of December 2020, the EIB-CM identified the following allegations as constituting the scope of the inquiry:

- The 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.
- The EIB Group’s failure to take appropriate actions vis-à-vis GEEREF in order to ensure that the Fund prevents and/or mitigates alleged negative impacts of eviction, such as:
  - Deterioration of livelihoods.
  - Displacement and destruction of private property.
  - Declining access to health and education.

The present inquiry featured a certain degree of complexity due to a number of factors. Firstly, the EIB-CM had to assess the peculiarities of the GEEREF fund-of-funds financial structure and the fact that, in taking participations in renewable energy funds, GEEREF relies on the EIB Group as an investor (EIB) and Trustee for the European Commission (EIF). At the same time the EIB Group and in particular the GFO, as further detailed under section 3.2 of this Report, must monitor whether funds and underlying projects develop their own Environmental and Social Management System (ESMS) in compliance with GEEREF investment objectives and policies and the contractual arrangements between GEEREF and the investee funds.

Furthermore, the EIB-CM had to operate in the context of the COVID 19-related restrictions on travel and social gatherings; as such, it could not engage in a field mission and was therefore not in a position to arrange in-person meetings with the relevant stakeholders involved in this case. After conducting a review of the available information, the EIB-CM nonetheless reached the following conclusions.

*EIB Group's due diligence of the Fund*

Bearing in mind the EIB Group's advisory and sub-advisory roles, the EIB-CM notes that the EIB Group on behalf of GEEREF performed an assessment of the Fund's environmental and social capacity. From the information gathered during the inquiry, the EIB-CM acknowledges that the EIB Group adequately identified gaps in the Fund's environmental and social policies and requested the Fund to (i) develop a comprehensive environmental and social policy in line with the EIB Standards, and (ii) hire an environmental and social manager.

Furthermore, the EIB-CM notes that the EIB Group ensured that the contractual documentation between GEEREF and the Fund included several conditions, such as:

- Development and implementation of environmental and social policies in line with limited partners' requirements, including the EIB Standards;
- Development of an ESIA for all geothermal projects with capacity higher than 10 MW

The EIB-CM considers that the EIB Group's due diligence of the Fund adequately (i) assessed the Fund's environmental and social capacity and policy and (ii) ensured that any gaps with the EIB Environmental and Social Standards would be addressed as part of the contractual agreement between GEEREF and the Fund.

Based on the above, the EIB-CM concludes that the allegation concerning the EIB Group's failure to adequately assess 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, is not grounded.

*EIB Group's monitoring of the Fund's social performance*

The EIB-CM notes that since 2013 the Fund has provided the EIB Group with yearly updates on the environmental and social performance of the underlying investments. From the Fund's reporting to GEEREF, it results that, in regard to the main gaps identified during the EIB Group's due diligence, the Fund had hired an Environmental and Social manager in 2014 and had updated its environmental and social policies to ensure compliance with the standards of the limited partners (LP).

The EIB-CM also notes that since 2013 the Fund listed the IFC PS5 – land acquisition and resettlement – among the standards triggered in the Akiira project. When a project triggers IFC PS5, and also in line with the requirements of EIB Standard 6, the promoter shall carry out a socio-economic census and develop a Resettlement Policy/Livelihood Restoration Framework or a Resettlement Action/Livelihood Restoration Plan depending on the status of the project development and whether the project entails physical or economic displacement. Furthermore, a cut-off date shall be well documented, disseminated and reinforced throughout the project area with the intent, among others, to discourage opportunistic settlers to install and claim benefits.

When reviewing the information gathered as part of its inquiry, the EIB-CM was not provided with evidence to support that the Fund had developed or communicated to the EIB Group a RPF/RAP or an LRF/LRAP for the Akiira project.



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Whereas the above mentioned land planning documents are a necessary condition for the mitigation of social risks resulting from land-related impacts, the EIB-CM concludes that failure to draft a land-related planning documents for the Akiira project is not in line with the EIB Standards and the Fund's contractual requirements with GEEREF.

In this context, it is worth reiterating that under the working arrangement between the EIB Group and GEEREF, the EIB as sub-advisor shall allocate sufficient resources to perform the same standard of due diligence as it usually applies to its own operations. Furthermore, it is the role of the EIB Group to take immediate action when identifying potential breaches of contracts, adverse events or deficiencies that could adversely impact the investee funds' performance. In this regard, the EIB-CM notes that, while having received no information about the required RPF/LRPF for a project with land-related impacts, the EIB Group did not identify this deficiency and as a result did not request the Fund to address it during the course of the project development.

Furthermore, the EIB-CM notes that, when informed by the Fund about a risk of eviction in the absence of the above mentioned land planning documents in Q2 2019, the EIB Group did not monitor the eviction's compliance with the requirements of the EIB Standards.

Based on the above, the EIB-CM finds that the EIB Group's monitoring of the Fund's social performance did not timely identify (and act vis-à-vis) the non-compliance of the envisaged eviction on the project site. As a result, the EIB-CM concludes that the allegation that the EIB Group did not adequately monitor the Fund's social performance is grounded.

### *EIB Group's actions vis-à-vis the forced eviction*

The EIB Group informed the Fund of the outcome of GEEREF's enhanced monitoring in November 2020 and of a series of recommendations to be implemented by the Fund in order to restore compliance with EIB standards. From the information gathered as part of its inquiry, the EIB-CM finds that, although due to the COVID-19 pandemic it took more than one year since the eviction to complete the enhanced monitoring and communicate its outcome to the Fund; the recommendations to the Fund adequately address the project's social impacts. If timely and correctly implemented, the recommendations would mitigate the Fund's non-compliance with the EIB Standards and the contractual arrangements between GEEREF and the Fund.

During the last phase of the inquiry, GEEREF approved the Fund's request to increase its participation in AGL. The request included a budget covering, among others, the implementation of the social actions resulting from the enhanced monitoring and an implementation calendar to be fulfilled by the end of 2021.

Based on the above information, the EIB-CM concludes that the allegation concerning the EIB Group's actions vis-à-vis the forced eviction is not grounded. However, given the delay accumulated in tackling the non-compliance identified in the present inquiry, the EIB-CM considers appropriate to issue a suggestion for improvement to the EIB Group's concerned services concerning further enhanced monitoring of the Fund's social performance.

As a result, the EIB-CM's recommendation and suggestion for improvement are presented below.

**Table 1 – Summary of allegations, outcomes and suggestions for improvement**

Allegation	Outcome	Suggestions for improvement
<p>EIB Group's failure to adequately <b>assess</b> 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</p>	<p>No grounds</p>	<p>No</p>
<p>EIB Group's failure to adequately <b>monitor</b> 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</p>	<p>Grounded</p> <p>The EIB-CM recommends that the EIB Group ensure the timely involvement of environmental and social specialists in the performance of monitoring activities delegated by GEEREF to the EIB Group in its role of advisor/sub-advisor. This is crucial in order to ensure that non-compliances with GEEREF investment objectives and policy or the contractual arrangements between GEEREF and investee funds are promptly detected and addressed.</p>	<p>No</p>
<p>EIB Group's failure to take appropriate actions vis-à-vis GEEREF in order to ensure that the Fund prevents and/or mitigates alleged negative impacts of eviction such as:</p> <ul style="list-style-type: none"> <li>• Deterioration of livelihoods.</li> <li>• Displacement and destruction of private property.</li> <li>• Declining access to health and education.</li> </ul>	<p>No grounds</p>	<p>The EIB-CM suggests that the EIB Group services (i) engage in further enhanced monitoring of the implementation of the required actions within a reasonable timeframe and – based on such monitoring – (ii) report to GEEREF on the sustainability of the latter's investment in the Fund.</p>

# 1 BACKGROUND

## 1.1 The Complaint

- 1.1.1 On 3 June 2020, the EIB Group Complaints Mechanism Division (hereinafter: EIB-CM) received a complaint from an individual presenting himself as a representative of Lorropil village in Kenya (hereinafter: the Complainant). The Complainant raised concerns about the failure of the Akiira One geothermal power plant (the Project) to prevent forced eviction and related failure to address loss of livelihoods of the Project-Affected Persons (PAPs) in the project area.

## 1.2 EIB Group exposure

- 1.2.1 EIB Group involvement in the Project is through the Global Energy Efficiency and Renewable Energy Fund (GEEREF). GEEREF is advised by the EIB Group: the EIF in its role of Advisor and the EIB in its role of Sub-Advisor. (see Section 3.2 of this Report).
- 1.2.2 In 2013 the EIB invested EUR 10m as Limited Partner in GEEREF. The EIF represents the European Union's shareholding in GEEREF as Trustee for the European Commission (EC).

## 1.3 Global Energy Efficiency and Renewable Energy Fund (GEEREF)

- 1.3.1 GEEREF is a 'fund-of-funds' targeting renewable energy and energy efficiency funds in emerging markets. GEEREF was initiated by the EC in 2005 and launched in 2008 with funding from, inter alia, the European Union, the German Ministry for Environment, Nature Conservation and Nuclear Safety and Norway's Ministry of Development.
- 1.3.2 GEEREF focuses on funds targeting commercial and proven technologies including onshore wind, solar, geothermal, biomass and small hydropower as well as energy efficiency projects. Target geographies include emerging markets located in Africa, Asia and Latin America.
- 1.3.3 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 established under Luxembourg law. Its Board of Directors (GEEREF Board) is responsible for the management and administration of the umbrella structure. With regard to GEEREF, the GEEREF Board has delegated the day-to-day and investment management to the GEEREF Investment Committee (GEEREF IC).

## 1.4 DI Frontier Market Energy and Carbon Fund (the Fund)

- 1.4.1 DI Frontier Market Energy and Carbon Fund (the Fund) is a sub-Saharan-focused renewable energy and infrastructure private equity fund 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 more than 750 MW.<sup>1</sup> 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.<sup>2</sup>
- 1.4.2 In 2010, GEEREF made a commitment of EUR 10m to the Fund. The latter's investment period ended in August 2017 and its life is scheduled to end in August 2021. However, the Fund has the right to request an extension of one year renewable terms, a maximum of four times.

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<sup>1</sup> [About us – Frontier Energy](#)

<sup>2</sup> [SG/E/2020/08 – EIF/E/2020/01 Initial Assessment Report](#) [SG/E/2020/08 – EIF/E/2020/01 Initial Assessment Report](#)

## 1.5 Akiira One Geothermal Power Development

- 1.5.1 In 2013, the Fund started to invest in Akiira Geothermal Limited (AGL, the Promoter). The Fund has a shareholder participation of 37.5% in AGL. AGL is developing the Akiira One Geothermal Power Development (the Project). Other shareholders in the Project include Centum Investment Company (Kenya) and RAM Energy and Marine Power Generation from the United States.
- 1.5.2 The Project is a greenfield development located in Nakuru County and is one of the Promoter's first geothermal projects in Eastern Kenya. Following a pre-development phase<sup>3</sup>, financed by a convertible loan provided by the Fund and Centum, the Project is expected to be implemented in two phases:
- i. **Phase I:** exploration drilling, financed by equity provided by the Fund and Centum; and
  - ii. **Phase II:** drilling of production wells and construction of the power plant, financed by – among other sources of funding – the balance of the equity provided by the Fund and Centum.
- 1.5.3 The Project is currently in Phase I, which started with drilling of wells I and II in 2015. In November 2014, the Fund decided to invest in Phase I of the Project.

## 1.6 Socio-economic context and land matters in Kenya

- 1.6.1 The Project area is located in Kedong Ranch, located in the Kedong Valley, Kenya. The Kedong Valley is the ancestral land of Maasai semi-nomadic communities. In the 1960s, Turkana and Samburu communities started to migrate from North-West Kenya to the project area in search of work in Kedong Ranch. More recently, other communities, such as Borana and Somali herders, also moved to the valley to work in Kedong Ranch. Furthermore, internally displaced people, following the elections in 2013 and 2017, were given land to settle by the government of Kenya (GoK) on the western part of the Kedong Valley.
- 1.6.2 The prospect of the Kedong Ranch covers an area of around 12 000 ha of land to develop and operate the plant and lies adjacent to the Olkaria geothermal field. In recent years, the Kedong Ranch Ltd sold parcels of land for geothermal (the Akiira Ranch area) and other industrial developments such as the Standard Gauge Railway and the dry port. Maasai are concerned that these sales entail the loss of their ancestral rights to the land and progressive restrictions on access and use of the open plains and hills for grazing and settlement<sup>4</sup>.
- 1.6.3 At the time of the Kedong sale agreement with AGL, two informal settlements were identified close to the project area: 'Mlima Tatu' (or Area A), mainly comprising Turkana and Kikuyu communities, and 'Lorropil' (or Area B) mainly comprising Turkana and Samburu. Both settlements are composed of charcoal producers moving around the project area to stay close to their resources.

## 2 WORK PERFORMED

- 2.1 The scope of the EIB-CM's inquiry is defined in the Initial Assessment Report (IAR) issued by EIB-CM in December 2020. More specifically, the IAR identified the following allegations:
- i. 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.

<sup>3</sup> This phase included the establishment of the Project Company, preparatory studies and survey, engineering, design, procurement preparation, permitting and licensing process.

<sup>4</sup> <https://www.reuters.com/article/us-kenya-energy-newzealand-idUSKBN1GV00H>. Also, [The World Bank Inspection Panel, Kenya Expansion Project](#), Annex 2, Historical Background of the Maasai in the Olkaria Area, p. 53.

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- ii. EIB Group's failure to take appropriate actions vis-à-vis GEEREF in order to ensure that the the Fund prevents and/or mitigates alleged negative impacts of the forced eviction, such as:
    - Deterioration of livelihoods.
    - Displacement and destruction of private property.
    - Declining access to health and education.
- 2.2. The EIB-CM concluded that the allegations deserved further attention with a view to verifying that the EIB Group took all necessary actions to ensure that the Fund complies with the applicable standards. Therefore, given the complex structure of the financing set up and the EIB Group's role in GEEREF, the EIB-CM considered appropriate to undertake a compliance review of the EIB Group's due diligence and monitoring role vis-à-vis the Fund.
- 2.3 Due to the travel restrictions caused by the COVID-19 pandemic, the EIB-CM was not in a position to carry out an on-site visit. Therefore, as part of its compliance review, the EIB-CM reviewed the applicable regulatory framework as well as all relevant information on (i) the EIB Group's due diligence of the Fund, including a review of the latter's policies, (ii) the EIB Group's monitoring of the Fund's actions vis-à-vis the Project, and (iii) the EIB Group's advisory/sub-advisory role within GEEREF. This review was complemented by interviews with the EIB Group services involved in GEEREF.

### 3 APPLICABLE REGULATORY FRAMEWORK

#### 3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy<sup>5</sup> tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB Group<sup>6</sup>. Maladministration means poor or failed administration<sup>7</sup>. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities.<sup>8</sup>
- 3.1.2 The Policy specifies that the EIB-CM reviews the EIB Group's activities with a view to determining whether maladministration, attributed to the EIB Group, has taken place<sup>9</sup>.

#### 3.2 Role of the EIB Group

- 3.2.1 GEEREF is advised by the EIB Group. The GEEREF Board and the GEEREF IC at all times retain exclusive and ultimate decision-making powers. The EIB Group has no authority to decide whether or not to acquire or dispose of an investment for the account of GEEREF, or to take any other action relating thereto. The following paragraphs elaborate on the role of the EIB Group with regard to GEEREF.
- 3.2.2 The EIF acts as an advisor to GEEREF by fulfilling functions such as investment advisory, operational, monitoring and reporting services. The EIF appointed the EIB as sub-advisor, given the EIB expertise in the target geographies of GEEREF (see section 1.3.2 of this Report). The EIF, in its advisory capacity, retains responsibility towards GEEREF for the quality and efficiency of the services delegated to the EIB.
- 3.2.3 On the basis of the above-mentioned role, the EIB Group shall provide GEEREF with a number of services including:

<sup>5</sup> Available at: [https://www.eib.org/attachments/strategies/complaints\\_mechanism\\_policy\\_en.pdf](https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf).

<sup>6</sup> § 5.1.3 of the EIB Group Complaints Mechanism Policy.

<sup>7</sup> § 3.1 of the EIB Group Complaints Mechanism Policy.

<sup>8</sup> § 3.3 of the EIB Group Complaints Mechanism Policy.

<sup>9</sup> § 5.3.3 of the EIB Group Complaints Mechanism Policy.

- Identifying and evaluating through due diligence and providing the GEEREF IC with information on possible acquisitions, investments, sales, exchanges or other disposal of any potential investments.
  - Preparing the investment approval process.
  - Recommending to the GEEREF IC the purchase, acquisition, holding, exchange, sale or other disposal of particular investments by GEEREF, provided that the GEEREF IC shall have absolute discretion to determine on account of GEEREF whether or not to effect an acquisition or disposal of an investment recommended by the EIB Group.
  - Rendering advice and assistance to the GEEREF Board and the GEEREF IC to enable them to decide upon the follow-up, monitoring and analysing progress of investments acquired by GEEREF, and assisting in the valuations of investments from time to time.
  - Holding periodic meetings with the key managers and executives of the Regional Funds and direct co-investments GEEREF has invested in, including participation in the Regional Fund's committees approved by the GEEREF IC.
  - Delivering financial/management reports on investments as the GEEREF IC may reasonably require. These reports shall contain adequate information relating to the achievement of financial and non-financial performance targets. The reporting services shall also include specific reporting on developments and performance in accordance with GEEREF Policy Targets.
  - Implementing investment and divestment decisions taken by the GEEREF IC.
  - Adequately advising the GEEREF IC with a view to deciding any follow-up.
  - Monitoring and analysing progress of investments acquired by GEEREF, assisting in the valuations of investments from time to time.
- 3.2.5 The EIB Group shall allocate sufficient personnel resources to perform its role and undertakes to apply the same standard of due diligence and care as it normally applies to its own operations. The EIB Group allocated resources by creating the GEEREF Front Office Team (GFO). If necessary, the GFO may involve additional EIB services to fulfil its obligations.
- 3.2.6 The GFO is responsible for the screening of investment proposals. The objective of the screening process is to assess the likelihood of an investment proposal meeting GEEREF minimum requirements and thus decide whether or not to proceed with detailed due diligence of the investment proposal. When screening investment proposals, the GFO assesses whether the proposed investment strategy fits with GEEREF's investment objectives and policy parameters and identifies major risks and mitigants.
- 3.2.7 The due diligence performed by the GFO on screened-in investment proposals includes an analysis of the Fund's administration, reporting and control procedures, including reporting of non-financial aspects. Members of the GFO participate in due diligence mission(s) at the investee fund manager's premises, consisting of (i) interviews with the Fund management key team members, and, where appropriate (ii) on-the-spot visits of projects already identified or supported by the Fund management team. The scope of interviews also includes the Fund administration reporting on non-financial aspects.
- 3.2.8 The GFO assesses each transaction in relation to each of the four Policy Targets of GEEREF (see section 3.3 of this Report). The assessment shall consider, in relation to all Policy Targets, performance benchmarks as well as organisational parameters of a proposed investment on the basis of best practices. The GFO will monitor each fund's performance in respect of the Policy Targets.
- 3.2.9 The monitoring of investee funds is carried out by means of (i) analysis of the reporting package received from their managers; (ii) regular information exchanges with their management team; (iii) participations in their governance bodies; and (iv) monitoring of on-site visits to beneficiary projects. The scope and intensity of the monitoring activity in relation to individual investee funds

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is defined taking into account the degree of risk identified for each fund investment, based *inter alia* on the assessment of the four Policy Targets.

- 3.2.10 The GFO organises regular missions to the investee funds, which include in-depth interviews with the key members of the respective management teams and portfolio investments. The GFO has the responsibility to conduct, if necessary in coordination with other fund shareholders, at least one monitoring mission per year in order to verify the compliance of the investment with GEEREF objectives. In its reporting to the EIF, the GFO shall provide information relating to the achievement of non-financial performance targets in accordance with GEEREF Policy Targets.
- 3.2.11 During the lifetime of the Fund investments, the GFO may become aware of potential breaches of contract, adverse events or deficiencies that could adversely impact the investee funds' viability and performance. Examples of red flags identified at the investee fund level, requiring immediate attention and escalation by the GFO, are contractual breaches and indications of negligence. As soon as the GFO becomes aware of any red flag, it shall promptly report it, formulating a proposal on corrective actions to be undertaken towards the investee fund and consult the EIF operational services about it. The application of a given corrective action requires thorough judgement and would depend on the seriousness of the deficiency and attitudes/reactions of the Fund manager to remedying the deficiency.

### 3.3 GEEREF's Investment Objectives and Policies

- 3.3.1 The mission of GEEREF is to contribute to the expansion of renewable energy and energy efficiency projects, markets and services in developing countries and economies in transition, with the objective of increasing access to low carbon, secure and affordable energy and helping improve the economic and social circumstances of underserved or disadvantaged populations, encouraging sustainable economic development, while promoting the protection of the environment.
- 3.3.2 GEEREF's beneficiary projects are measured with respect to at least the following target indicators:
- *Clean Energy*: this key target level describes the contribution of beneficiary projects to projects in the fields of renewable energy and energy efficiency.
  - *Sustainable Development*: beneficiary projects are selected while considering their contribution to the enhancement of local and regional sustainable social development.
  - *Environment/Climate Change*: this target level describes to what extent beneficiary projects contribute to the preservation of the environment.
  - *Financial Leverage*: the financial target level describes the financial sustainability (e.g. profitability) of the beneficiary projects.<sup>10</sup>

The evaluation of the beneficiary projects vis-à-vis these targets is conducted yearly and reported in GEEREF's annual Impact report.<sup>11</sup>

- 3.3.3 It is the express purpose of GEEREF to support energy efficiency and renewable energy projects with a view to enhancing local and regional economic and social development. The mission of GEEREF is therefore not of a mere technological nature, but understands the support for technology in the framework of its developmental effects.
- 3.3.4 Under GEEREF, Regional Funds are established with the purpose of providing risk capital financing to beneficiary projects, which – among others – shall be set up with a view to enhancing and securing access to clean and renewable energy to underserved or disadvantaged populations in developing countries and economies in transition with a view to contributing to the strengthening of local social coherence, job creation and sustainable development.

<sup>10</sup> [Global Energy Efficiency and Renewable Energy Fund – Climate Funds Update](#)

<sup>11</sup> *Ibidem*. See also GEEREF Impact Methodology, 2017, available [here](#)

- 3.3.5 With regard to the environmental and sustainability issues surrounding renewable energy and energy efficiency projects, GEEREF requires Regional Funds to conduct an environmental and social impact study including meaningful and satisfactory public consultation and participation for geothermal projects involving over 10MW in new capacity.

## 3.4 EIB Environmental and Social Standards

- 3.4.1 The EIB Statement of Environmental and Social Principles and Standards (the EIB Statement) sets out EIB commitments and responsibilities in relation to sustainability. Through the Statement, the EIB seeks to ensure that, through its due diligence and monitoring efforts, operations outside the European Union directly or indirectly financed by the EIB are implemented in accordance with EIB requirements.<sup>12</sup>
- 3.4.2 The EIB Statement stipulates that the EIB will not finance projects which result in a violation of human rights<sup>13</sup> and that projects financed by the EIB shall comply with the EIB social standards, based on the Charter of Fundamental Rights of the European Union and international good practices.<sup>14</sup> According to the EIB Statement, social matters are assessed on a rights-based approach mainstreaming the principles of human rights law into practice through the application of the EIB Social Assessment Guidelines (i.e. EIB Standards)<sup>15</sup>.
- 3.4.3 The EIB Statement requires that projects outside the European Union are to comply with national legislation, including international conventions ratified by the host country, as well as EU standards. Where EU standards are more stringent than national standards, the higher EU standards are required, if practical and feasible.<sup>16</sup> In the case of co-financing projects outside the EU with other international public and private financial institutions, a common approach based on the Equator Principles or the safeguards of the World Bank may be followed.<sup>17</sup>
- 3.4.4 Finally, projects financed by the EIB are required to undergo an appropriate Bank environmental assessment, based on information provided by the promoter and other stakeholders.<sup>18</sup> Regardless of the need for a formal Environmental Impact Assessment (EIA), this assessment is carried out by the Bank itself, or by an intermediary according to the requirements of the Bank.
- 3.4.5 As indicated in the EIB-CM's Initial Assessment Report, the Environmental and Social Standards relevant for the 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 Groups
  - Standard 10: Stakeholder Engagement.
- 3.4.6 According to Standard 1, a comprehensive Environmental and Social Impact Assessment (ESIA) is carried out for certain types of projects including where an ESIA is required by national legislation or for projects where likely significant impacts on and risks for the environment, population, human health and well-being have been determined.<sup>19</sup> The ESIA should be consistent with principles contained in the EU EIA Directive and international best practices. Specific attention should be given to integrating impacts on human rights.<sup>20</sup>

<sup>12</sup> EIB Statement on Environmental and Social Principles and Standards, 2009, para 19 *et seq.*, p. 8

<sup>13</sup> *Ibidem*, Preamble, para 6, p. 10

<sup>14</sup> *Ibidem*, para 46, p. 17

<sup>15</sup> *Ibidem*, para 49, p. 18

<sup>16</sup> *Ibidem*, para 39, p. 16

<sup>17</sup> *Ibidem*, para 23, p. 9

<sup>18</sup> *Ibidem*, para 17, p. 12

<sup>19</sup> EIB Environmental and Social Standards, Standard 1, para 28

<sup>20</sup> *Ibidem*, para 11, p. 8



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3.4.7 Taking into account the findings of the ESIA, the promoter will develop and implement an environmental and social management plan (ESMP) that describes the mitigation of environmental and social impacts and risks of the project and includes compensatory and remedial measures to mitigate such risks.<sup>21</sup> The ESMP will be integrated within an Environmental and Social Management System (ESMS), outlining the set of management processes and procedures to identify, avoid, minimise, mitigate and offset any environmental and social impacts of the operations.<sup>22</sup> The promoter shall create an organisation to support the development and implementation of the ESMS; specific staff should be assigned to the ESMS implementation with clearly designated lines of responsibility and authority.<sup>23</sup>

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3.4.8 Pursuant to Standard 6, any person negatively affected by the project is eligible for compensation, livelihood restoration and/or other resettlement assistance. People who occupy land without formal or informal claims should be entitled for resettlement assistance if it can be proven that they occupy the land before a cut-off date (CoD). The promoter (or the competent government authority) shall establish and disseminate a CoD that is acceptable to the EIB. Persons who encroach the land after the cut-off date are not entitled to compensation or any other form of assistance.<sup>24</sup>

3.4.9 Should a project unavoidably require an eviction process, the promoter must demonstrate to the EIB that the process is unavoidable and that the eviction process will adopt a human rights perspective<sup>25</sup> based on international legal instruments that protect the human right to adequate housing, among others. More specifically, evictions shall be:

- carried out in accordance with international human rights standards, including with the procedural protections against forced evictions as outlined in General Comment 7 of the UN Committee on Economic, Social and Cultural Rights (CESCR);
- undertaken solely for the purpose of promoting the general welfare;
- reasonable and proportionate with regard to promoting the general welfare; and
- performed to ensure full, fair and timely compensation, rehabilitation and non-regression of rights including the right to an adequate standard of living.<sup>26</sup>

3.4.10 In relation to the instruments to prevent risks of forced eviction, the EIB requires that no involuntary resettlement or forced evictions shall take place before a comprehensive Resettlement Policy Framework (RPF) or Resettlement Action Plan (RAP) that is satisfactory to the EIB is in place.<sup>27</sup> The RPF/RAP are tools to provide adequate and effective legal or other appropriate remedies to any person claiming that his/her right to protection against forced evictions has been violated.

3.4.11 EIB Standard 6 corresponds to Performance Standard 5 (PS5) of the International Finance Corporation (IFC).

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<sup>21</sup> Ibidem para 42, p. 14

<sup>22</sup> Ibidem, para 49, p. 15

<sup>23</sup> Ibidem, para 50, p. 15

<sup>24</sup> Ibidem, Standard 6, para 34

<sup>25</sup> Basic Principles and Guidelines on development-based evictions and displacement, Annex 1 of the Special Rapporteur's report to the Human Rights Council on adequate housing as part of the right to an adequate standard of living (A/HRC/4/18). See [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>26</sup> The EIB Environmental and Social Standards, Standard 6, para 54, p. 49

<sup>27</sup> Ibidem, para 62, p. 50

- 3.4.12 Standard 7 sets out to avoid or minimise, or otherwise mitigate and remedy, potential harmful effects of EIB operations to vulnerable individuals and groups whilst seeking that these populations duly benefit from such operations.<sup>28</sup>
- 3.4.13 Vulnerable groups are population groups that suffer from discrimination, unequal access to rights, unequal access to and control over resources or unequal access to development opportunities. As a result, they may be poorly integrated into the formal economy, may suffer from inadequate access to basic public goods and services, may be excluded from political decision-making, and may therefore face a higher risk of impoverishment and social exclusion.<sup>29</sup>
- 3.4.14 As part of the Standard, the promoter will identify the individuals and groups who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts, be discriminated against or excluded from intended benefits in the given project context. Consultations should be integrated at each stage of project preparation and implementation. In affirming the human rights-based principles of participation, non-discrimination and transparency in engagement and consultation, the promoter will provide discriminated and affected vulnerable groups as early as possible with all the relevant information about the project (including an assessment of potential adverse effects and projected benefits of the project)

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- 3.4.15 Pursuant to Standard 10, the nature and extent of stakeholder engagement will reflect (i) the nature and complexity of the project and its stakeholders, (ii) the project risks and potential adverse impacts on individuals, communities and other affected stakeholders, and (iii) the sector.<sup>30</sup>
- 3.4.16 Stakeholder engagement, including disclosure and dissemination of information, will be planned for and carried out in line with the principles of prior, informed and free engagement and informed participation, in order to lead to broad community support by the affected communities and longer-term sustainability of the project's activities.<sup>31</sup> The promoter is required to disclose in a timely manner all relevant information to enable stakeholders to ascertain the project's risks, impacts and possible positive outcomes. The steps are documented in a Stakeholder Engagement Plan (SEP) that will guide how information is provided to relevant parties in a timely manner.<sup>32</sup>
- 3.4.17 The consultation process is part of the public commitment of the promoter. Where communities are affected by adverse impacts from a project, the promoter will undertake a process of meaningful consultation in a manner that provides the affected persons with opportunities to identify and express their views on project risks, impacts, and mitigation measures, and engage in a collaborative process with the project in responding to and addressing considerations raised.<sup>33</sup>
- 3.4.18 At project level, the promoter shall establish a grievance mechanism process. This constitutes a critical means for the early identification and remedy of undesirable or unforeseen impacts and other concerns arising out of the execution of the project. Its establishment promotes the affected persons' access to remedy and may facilitate resolution of such concerns and grievances linked to the promoter's environmental and social performance.<sup>34</sup>

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<sup>28</sup> Ibidem, Standard 7, para 4, p. 53

<sup>29</sup> Ibidem, para 9, p. 54

<sup>30</sup> Ibidem, Standard 10, para 11, p. 76

<sup>31</sup> Ibidem, para 17, p. 77

<sup>32</sup> Ibidem, para 32, p. 79

<sup>33</sup> Ibidem, para 35, p. 79

<sup>34</sup> Ibidem, para 45, p. 81

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3.4.19 Monitoring of the stakeholder engagement process shall be done as an integral part of the project's ESMS. Promoters are required to monitor the implementation of the SEP and the performance of the grievance mechanism and report on both.<sup>35</sup>

## 4. FINDINGS

### 4.1 EIB Group's due diligence of the Fund

4.1.1 In line with the role of the EIB Group outlined in Section 3.2 of this Report, the EIB Group on behalf of GEEREF performed a due diligence review of the Fund in September 2010.

4.1.2 The Fund's environmental and social capability and procedures were assessed in line with the GEEREF Policy Targets. The EIB Group categorised the investment in the Fund as expected to meet in most respects the Policy Targets, whereas the Fund would invest exclusively in energy-related (Clean Development Mechanism – CDM) projects, thus helping to conserve or substitute fossil fuels and reduce greenhouse gas emissions.

4.1.3 The EIB Group noted that, at the time of the due diligence, the Fund did not have an Environmental Manager in place and was finalising its environmental and social procedures with the support of IFU. The EIB Group also noted that the Fund would adhere to a set of international standards such as the UN Global Compact, the UNPRI, the Equator Principles, the IFC Performance Standards and the CDM Global Standards, while the targeted investments would be managed in line with the IFC Performance Standards.

4.1.4 As a result of its due diligence, the EIB Group concluded that, while the environmental and social impacts of most of the investments targeted by the Fund were limited with no significant residual effects, further development of the Fund's environmental and social procedures was required as a condition for GEEREF participation in the Fund. In this regard, the EIB Group suggested that GEEREF would also contribute to finalising the Fund's environmental and social procedures. Furthermore, the EIB Group noted that all contracts between the Fund and portfolio projects companies should contain obligations to ensure compliance with EIB Environmental and Social Policy and EU environmental directives.

4.1.5 In September 2010, a request for approval (RfA) for EUR 10m was submitted to GEEREF's IC. At the time of the RfA, the Fund's environmental and social procedures had not been yet finalised while the Fund had committed to hire an Environmental Manager in the next recruitment process.

4.1.6 Following the approval of the request, GEEREF and the Fund, together with other limited partners, entered into a Limited Partnership Agreement in August 2011. Based on the contractual arrangements between GEEREF and the Fund, the latter committed to make all investments in accordance with the environmental/ethical rules of the Partnership i.e. to ensure that all projects are environmentally and socially sustainable. To do so, the Fund confirmed that its contractual arrangements with portfolio companies will ensure the latter to comply with the Fund's environmental and social requirements.

4.1.7 As part of its undertakings vis-à-vis GEEREF, the Fund committed to adhere to the EIB Statement and ensure that stakeholders are engaged in a meaningful dialogue, in order to build support for efficient and timely project implementation. The Fund acknowledged that stakeholder concerns should be considered as early as possible in the project assessment process in order to reduce risks and provide for a timely resolution of conflicts.

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<sup>35</sup> Ibidem, para 51, p. 82

- 4.1.8 The Fund confirmed that each project shall be assessed against the social safeguards of the EIB, covering population movement, involuntary resettlement, the core labour standards of the ILO, the treatment of minorities, including indigenous peoples and gender issues, occupational and community health and safety, consultation and public participation and the United Nations Universal Declaration of Human Rights. In particular, the Fund committed to ensure that potential adverse effects and appropriate mitigating measures would be identified through a social impact assessment in cases involving, inter alia, resettlement, indigenous people and non-local labour and that, where the negative impact could be significant, appropriate actions would be taken to mitigate risks, ameliorate negative impacts and enhance positive effects.
- 4.1.9 The Fund undertook to perform, in addition to what is required by the national legislation, – environmental and social due diligence to ensure that potential risks and appropriate prevention, mitigation and compensation measures are identified through an environmental and social impact screening/assessment (ESIA), when relevant, including satisfactory and meaningful public consultation and participation. In line with the requirement referred to in paragraph 3.3.5 of this Report, an ESIA including satisfactory and meaningful public consultation and participation was considered necessary for geothermal projects involving over 10MW in new capacity.
- 4.1.10 The Fund also undertook that projects with significant negative social impacts or requiring resettlement, which cannot be mitigated satisfactorily, shall not be eligible.
- 4.1.11 Finally, the Fund committed to provide information as may reasonably be required by GEEREF to confirm the Fund's compliance with the environmental/ethical rules of the Partnership. The Fund undertook to use its best endeavour to ensure, whenever it is relevant, that, before the decision to make an investment or a divestment is taken, the following minimum information is provided to GEEREF:
- For new investments: a summary of the due diligence of each investment covering also the environmental/social matters (including a summary of the social/environmental assessment, highlighting main issues and mitigants and specific monitoring requirements).
  - For investments under management: an update of the progress and performance of each investment, covering among others compliance with environmental/social monitoring plans.
  - Information on compliance with the Fund's objectives and policies including social/environmental benefits and benefits to local livelihoods.
  - Indication of any social/environmental incident, including any environmental and social claim which could reasonably be expected to have any material adverse effect or a material adverse impact on the implementation or operation of the portfolio operations.

From the information provided by the EIB Group services, the above information is also provided to GEEREF, as part of the Fund's periodic reporting (see Section 4.2 of this Report).

## 4.2 EIB Group's monitoring of the Fund's social performance

- 4.2.1 GEEREF monitoring of the Fund's social performance is conducted on the basis of the annual environmental and social reporting prepared and submitted by the Fund and reviewed by the EIB Group in line with its role outlined in Section 3.2 of this report. The EIB-CM notes that relevant environmental and social information is also included in the Fund's quarterly reporting to GEEREF.

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- 4.2.2 In 2013, the Fund notified GEEREF that it had requested all project companies to conduct a full ESIA in line with the Fund's standards. In order to achieve this, the Fund hired a set of international environmental and social consulting firms to update, review and draft ESIA's for various projects in the pipeline.
- 4.2.3 In regard to Akiira, the Fund informed GEEREF that the Promoter had prepared a Phase I ESIA in 2012 on the basis of which Kenya's National Environmental Management Authority (NEMA) had granted an environmental licence in July 2013.
- 4.2.4 Furthermore, in order to ensure compliance with the Fund's standards, the Promoter had commissioned an international consulting firm to undertake a peer review and gap analysis of the Phase I ESIA, to be performed in 2014 in anticipation of the first well drilling activity. The peer review was expected to provide a full set of recommendations to upgrade the ESIA to the Fund's standards.
- 4.2.5 Prior to the peer review, the Fund had commissioned a high-level assessment of the ESIA. This showed that when GEEREF had started investing in the Fund, only two temporary shelters used for seasonal grazing were identified in the project area. Among the key areas for improvement, the assessment identified (i) community relations, in particular with the Maasai community and (ii) compliance of all project contractors with the Fund's environmental and social procedures.
- 4.2.6 The Fund also informed GEEREF that one of the limited partners was supporting the finalisation of the Fund's environmental and social procedures and that the Fund's environmental and social manager had been hired and was expected to start working in 2014. Another progress communicated to GEEREF was the integration of the Fund's environmental and social policy into the project cycles of all portfolio companies.
- 4.2.7 In 2014, the Fund confirmed to GEEREF that an environmental and social manager had joined the Fund's team and the latter had gained experience in assigning risk ratings to projects. With regard to project planning, feasibility and operational aspects of the projects, the Fund had gained substantial experience in working with IFC Performance Standards and had devoted much time to the improvement of ESIA's and Resettlement Action Plans related to portfolio projects.
- 4.2.8 The peer review was completed in early 2014; the Fund informed GEEREF that compliance gaps needed to be addressed by the Promoter before drilling
- 4.2.9 The Fund also informed GEEREF that the findings of the Phase I ESIA were disclosed in several formal and informal consultations with Maasai communities in the area. Albeit the Fund informed GEEREF that the involuntary resettlement standard (IFC PS5) would be triggered during the planning, development, design, construction and operation phases, the Fund did not report to GEEREF whether a resettlement policy/livelihood restoration policy framework (RPF/LRPF) or resettlement action plan/livelihood restoration plan (RAP/LRP) for the project was under preparation.
- 4.2.10 At the end of 2015, based on the results of the two exploration wells, the Promoter asked the same international environmental consultancy which had conducted the peer review of the Phase I ESIA to carry out an ESIA for Phase II of the Project, involving the construction of the power plant and the transmission line.
- 4.2.11 The Fund also informed GEEREF that the Promoter was carrying out extensive consultations with a range of stakeholders on a continuing basis due to the complexity of the stakeholder composition and the existing community dynamics in the project area. According to the Fund, the consultation process would be the basis for developing a more comprehensive Stakeholder Engagement Plan (SEP).
- 4.2.12 The Fund informed GEEREF that in 2015 the Promoter was entering into the implementation phase and that a Community Liaison Officer (CLO) had been hired to engage local communities

in the project area. The Fund explained that, during the exploration works, the Promoter had faced issues concerning the social impacts of the Project. In particular the Fund reported the presence of two recently resettled local communities (Rapland and Suswa), living close to the border of the large project area and experiencing discord on account of few available opportunities for employment due to the general feeling of ‘entitlement’ of the local communities on the Project

- 4.2.13 In response to the issues highlighted above, the Fund informed GEEREF that the Project’s CLO continued to engage with communities as part of the SEP’s calendar. Furthermore, the Promoter had set up four committees to address specific community relations issues. The Fund reported to GEEREF that the Promoter had succeeded in mollifying concerns and grievances emanating from the drilling activities.
- 4.2.14 In 2016, the Fund presented to GEEREF its Environmental and Social Management System (ESMS), referencing, among others, the EIB Environmental and Social Standards. The limited partners, including GEEREF, approved the Fund’s ESMS in December 2016.
- 4.2.15 From 2016 to 2019, the Fund reported that, while there had been limited progress on the Project for reasons outside the Fund’s responsibilities, the Promoter had continued to implement the ESMP measures listed in the Phase I ESIA, including enhanced consultations with local Maasai communities and had signed the land purchase agreement with the landowner, with the deed being drawn up in preparation for the issuance of a land title. From the information gathered as part of its inquiry, the EIB-CM notes that the ESIA for Phase II of the Project was not finalised.
- 4.2.16 In early 2019, the Fund informed GEEREF that the Promoter would resume exploration work and that it had been issued a land title by the Kenya Land Board. The Fund also informed GEEREF that from the end of 2018 until June 2019, around 40 occupants had invaded the project land. The Fund explained to GEEREF that the Promoter had on several occasions engaged unsuccessfully with the occupants by inviting them to vacate the land before being able to start the drilling works. Furthermore, the Fund informed GEEREF that the occupation was creating discontent over security issues with the neighbouring communities of Rapland and Suswa.
- 4.2.17 In May 2019, the Fund notified GEEREF that, as a consequence of the failed attempts and to avoid security issues with the neighbouring communities, the matter was reported to the Nakuru County Government which determined that the occupation was illegal. The Fund reported that the County Government issued a notice to vacate on 22 June 2019 and invited the communities to leave the site voluntarily in order to restore law and order in the area. The Fund informed GEEREF that the eviction took place successfully in November 2019.
- 4.2.18 The EIB-CM notes that the above mentioned process was not described in a planning document (whether a RPF/LRF or a RAP/LRP) and it lacked an established cut-off date.

### 4.3 EIB Group’s actions vis-à-vis the forced eviction

- 4.3.1 On the 3<sup>rd</sup> of November 2019, the EIB was made aware by Bankwatch of the eviction of inhabitants of Lorropil village. On 29 November 2019, following the eviction process, a representation of the EIB Group and other investors went on site to meet the Project environmental and social officer and the technical team. As a result of the field visit, GEEREF launched an enhanced monitoring process to:
- i. Assess the Project’s capacity in identifying social risks in the project area; and
  - ii. Understand whether the events were in violation of EIB Standard 6 (see Section 3.4 of this Report).

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- 4.3.2 The enhanced monitoring, which due to the COVID crisis was completed only in Q3 2020, concluded that:
- i. The Promoter's capacity to assess and manage social risks leading to the eviction was not fully compliant with the EIB Standards; and
  - ii. The eviction process in the project area was not fully compliant with the EIB Standards.
- 4.3.3 On the first point, the enhanced monitoring showed that the Project did not implement a full ESMS in line with the Fund's environmental and social policy, as claimed by the Fund in its 2016 reporting to GEEREF. Key social risks were (i) lack of identification and engagement with rural communities other than the Maasai, (ii) absence of a field social manager to work hand in hand with the CLO, and (iii) lack of implementation of the ESMP's requirements to assess the risks of influx. Furthermore, the Project had failed to produce a tool to guide the identification of potential eviction risks, such as the RPF and the RAP.
- 4.3.4 On the second point, the enhanced monitoring found that the three attempts to enforce the notice to vacate were neither documented by the local authorities nor shared with the Fund.
- 4.3.5 Based on the above findings, on the 3<sup>rd</sup> of December 2020, the EIB Group informed the Fund of the findings of the enhanced monitoring as well as of a number of recommendations to be implemented in order to remedy the non-compliance.
- 4.3.6 In the short term, it was recommended to engage a senior social expert to assist the Promoter with identifying any PAPs that should be taken into consideration in the resettlement implementation process. This task included:
- Reviewing past documentation assembled by the Promoter, Authorities, NGOs and consultants.
  - Based on the documentation, preparing a list of persons who were removed from the Promoter's land.
  - Preparing a Resettlement Policy Framework (RPF) for the Promoter.
  - Using the RPF and established environmental and social methodologies to determine whether any persons on the list qualify as PAP to be taken into consideration as per the Fund's environmental and social policies (including the EIB Standards).
  - In case it is determined that there are persons eligible for compensatory measures, advising the Promoter on practical methods for providing them.
- 4.3.7 In the longer term, the recommendations were:
- Preparing an updated social baseline.
  - Preparing an updated social impact assessment and an updated SEP.
  - Building a more inclusive Community Investment Strategy (CIS).
  - Assessing the characteristics of the current CLOs to determine whether there is a need to strengthen the CLO team in order to foster engagement with non-Maasai communities.
- 4.3.8 On 19 February 2021, the Fund informed the EIB Group that, to implement the recommendations, it had undertaken a number of actions including:
- Engagement with the EIB Group to discuss practical ways of implementing the recommendations.
  - Engagement with a consultant to discuss how (i) the recommendations can be implemented in a manner that takes due consideration of political, cultural and ethnic sensitivities and (ii) to identify and locate PAPs potentially eligible for compensatory measures including how to establish a comprehensive list of persons identified from sources such as the Promoter, NGOs and the local authorities.
  - Engagement with the Promoter's shareholders and employees including CLOs to ensure full alignment regarding remedial actions to be undertaken.

- 4.3.9 The Fund also informed the EIB Group that the Promoter was already undertaking a number of additional actions including support for a vocational training programme, support for scholarships to local youth, provision of emergency food relief during COVID-19 and recruitment of members of the community for jobs with the Promoter.
- 4.3.10 In April 2021, the Investors Board of the Fund approved a request for an increase of the Fund's participation in AGL. The request included a budget covering, among others, the implementation of the social actions resulting from the enhanced monitoring and an implementation calendar to be fulfilled by the end of 2021. The EIB Group reviewed these actions and found them consistent with the recommendations resulting from the enhanced monitoring. Based on the above, GEEREF approved the Fund's increased participation in AGL.

## 5. Conclusions

- 5.1 The present inquiry featured a certain degree of complexity due to a number of factors. Firstly, the EIB-CM had to assess the peculiarities of the GEEREF Fund-of-funds structure, including related governing bodies, and the fact that, in providing participations in renewable energy funds, GEEREF relies on the EIB Group as an investor (EIB) and Trustee for the European Commission (EIF). At the same time, the EIB Group and in particular GFO, as further detailed under section 3.2 of this Report, must monitor whether funds and underlying projects develop their own Environmental and Social Management System (ESMS) in compliance with GEEREF investment objectives and policies and the contractual arrangements between GEEREF and the investee funds.
- 5.2 Furthermore, the EIB-CM had to operate in the context of the COVID 19-related restrictions on travel and social gatherings; as such, it could not conduct a field mission and was therefore not in a position to arrange in-person meetings with the relevant stakeholders involved in this case.
- 5.3 The EIB-CM's conclusions on the allegations are presented in the paragraphs below.

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### *EIB Group's due diligence of the Fund*

- 5.4 Bearing in mind the EIB Group's role outlined in Section 3.2 of this Report, the EIB-CM notes that the EIB Group on behalf of GEEREF performed an assessment of the Fund's environmental and social capacity. From the information gathered during the inquiry, the EIB-CM acknowledges that the EIB Group adequately identified gaps in the Fund's environmental and social policies and requested the Fund to (i) develop a comprehensive environmental and social policy in line with the EIB Standards, and (ii) hire an environmental and social manager.
- 5.5 Furthermore, the EIB-CM notes that the EIB Group ensured that the contractual documentation between GEEREF and the Fund included several conditions, such as:
- Development and implementation of environmental and social policies in line with limited partners' requirements, including the EIB Standards.
  - Development of an ESIA for all geothermal projects with capacity higher than 10 MW.
- 5.6 The EIB-CM concludes that the EIB Group's due diligence of the Fund adequately (i) assessed the Fund's environmental and social capacity and policy and (ii) ensured that any gaps would be addressed as part of the contractual agreement between GEEREF and the Fund. Based on the above, the EIB-CM concludes that the allegation concerning the EIB Group's failure to adequately assess the Fund's capability to assess and monitor the effectiveness of the social



## GEEREF/Akiira Geothermal Power Plant

management systems of its underlying investments, and ultimately the social impacts on the ground, is not grounded.

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*EIB Group's monitoring of the Fund's social performance*

- 5.7 The EIB-CM notes that since 2013 the Fund has provided the EIB Group with yearly updates on the environmental and social performance of the underlying investments. From the Fund's reporting to the EIB Group, it results that, in regard to the main gaps identified during the EIB Group's due diligence, the Fund had hired an environmental and social manager in 2014 and had updated its environmental and social policies to ensure compliance with limited partners' standards.
- 5.8 As outlined in paragraph 4.2.7 of this Report, the EIB-CM acknowledges that the Fund was supporting the underlying investments by upgrading ESIA's and RAPs to meet limited partners' standards. Furthermore, in the case of Akiira, the EIB-CM takes note that the Fund duly informed the EIB Group that gaps identified in the ESIA for Phase I of the Project were addressed with the help of an international consultant.
- 5.9 The EIB-CM also notes that since 2013 the Fund listed the IFC PS5 – land acquisition and resettlement – among the standards triggered in the Akiira project. When a project triggers PS5, and also in line with the requirements of EIB Standard 6, the promoter shall carry out a socio-economic census and develop a Resettlement Policy/Livelihood Restoration Framework (LRF) or a Resettlement Action Plan/Livelihood Restoration Plan (RAP/LRP) depending on the status of the project development and whether the project entails physical or economic displacement. Furthermore, a cut-off date shall be well disseminated and reinforced throughout the project area with the intent, among others, to discourage opportunistic settlers to install and claim benefits.
- 5.10 When reviewing the information gathered as part of its inquiry, the EIB-CM found no evidence that the Fund had developed a RPF/RAP for the Project. Whereas the above mentioned land planning documents are a necessary condition for the mitigation of social risks resulting from land-related impacts, the EIB-CM concludes that failure to establish land planning documents for the Project is not in line with the EIB Standards and the contractual requirements with GEEREF outlined in paragraphs 4.1.6 - 4.1.10 of this Report.
- 5.11 In this context, it is worth reiterating the information provided in paragraph 3.2.5 of this Report with regard to the EIB's commitment – as sub-advisor to GEEREF– to allocate sufficient resources to perform the same standard of due diligence as it usually applies to its own operations. Furthermore, as described in paragraph 3.2.11 of this Report, it is the role of the EIB Group to take immediate action when identifying potential breach of contracts, adverse events or deficiencies that could adversely impact investee funds' performance. In this regard, the EIB-CM notes that, while having received no information about the required RPF/RAP for a project with land-related impacts, the EIB Group did not identify this deficiency and as a result did not request the Fund to address it during the course of the project development.
- 5.12 Furthermore, since Q2 2019 the Fund has provided the EIB Group with regular information on the activities on the ground, including the failed negotiations with occupants to vacate the land and the eventuality of an eviction process. The EIB-CM notes that, when informed about a risk of eviction in the absence of a RPF/RAP, the EIB Group did not monitor the eviction's compliance with the requirements of the EIB Standards described in paragraphs 3.4.9 - 3.4.11 of this Report.
- 5.13 Based on the above, the EIB-CM finds that the EIB Group's monitoring of the Fund's social performance did not timely identify (and act vis-à-vis) the non-compliance of the envisaged

eviction on the project site. As a result, the EIB-CM concludes that the allegation that the EIB Group did not adequately monitor the Fund's social performance is grounded.

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*EIB Group's actions vis-à-vis the forced eviction*

- 5.14 As described in Section 4.3 of this Report, the EIB Group informed the Fund of the outcome of GEEREF's enhanced monitoring and of a series of recommendations to be implemented by the Fund in order to restore compliance. From the information gathered as part of its inquiry, the EIB-CM finds that, due to the COVID-19 pandemic it took more than one year since the eviction to complete the enhanced monitoring and provide the Fund with recommendations to adequately address the Project's social impacts.
- 5.15 During its inquiry, the EIB-CM acknowledged the Fund's commitment to implement all recommendations by the end of 2021; however, the EIB-CM also noted that the Fund had not yet provided information on the implementation calendar and the mobilisation of the resources necessary for the implementation of the recommendations. During the last phase of the inquiry, the EIB-CM was informed of the commitment of budgetary resources to implement the recommendations as well as of the establishment of a schedule of implementing measures across 2021.
- 5.16 The EIB-CM welcomes this new information. However, the delay accumulated in tackling the non-compliance identified in the present inquiry justifies further enhanced monitoring of the Fund's social performance by the EIB Group. Such enhanced monitoring is instrumental to ensure that:
- (i) the implementation of the required actions within a reasonable timeframe is effectively and timely monitored throughout the implementation calendar and,
  - (ii) the EIB Group provides an informed advice to GEEREF on the sustainability of the continued investment of GEEREF in the Fund.
- 5.17 Based on the above, the EIB-CM concludes that the allegation concerning the EIB Group's actions vis-à-vis the forced eviction is not grounded. However, the EIB-CM considers appropriate to issue a suggestion for improvement to the EIB Group's concerned services.

## 6. OUTCOMES AND SUGGESTIONS FOR IMPROVEMENT

- 6.1 In line with the conclusions in paragraph 5.13 of this Report, the EIB-CM recommends that the EIB Group ensure the timely involvement of an environmental and social specialist resource in the performance of monitoring activities delegated by GEEREF to the EIB Group in its role of advisor/sub-advisor. This is crucial in order to ensure that non-compliances with GEEREF investment objectives and policy or the contractual arrangements between GEEREF and investee funds are promptly detected and addressed.
- 6.2 Based on its conclusions in paragraphs 5.16 of this Report, the EIB-CM suggests that the EIB Group's services (i) engage in further enhanced monitoring of the implementation of the required actions within a reasonable timeframe and – based on such monitoring – (ii) report to GEEREF on the sustainability of the latter's investment in the Fund.

**Table 2 – Summary of allegations, outcomes and suggestions for improvement**

Allegation	Outcome	Suggestions for improvement
<p>EIB Group's failure to adequately <b>assess</b> 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</p>	<p>No grounds</p>	<p>No</p>
<p>EIB Group's failure to adequately <b>monitor</b> 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</p>	<p>Grounded</p> <p>The EIB-CM recommends that the EIB Group ensure the timely involvement of environmental and social specialists in the performance of monitoring activities delegated by GEEREF to the EIB Group in its role of advisor/sub-advisor. This is crucial in order to ensure that non-compliances with GEEREF investment objectives and policy or the contractual arrangements between GEEREF and investee funds are promptly detected and addressed.</p>	<p>No</p>
<p>EIB Group's failure to take appropriate actions vis-à-vis GEEREF in order to ensure that the Fund prevents and/or mitigates alleged negative impacts of eviction such as:</p> <ul style="list-style-type: none"> <li>• Deterioration of livelihoods.</li> <li>• Displacement and destruction of private property.</li> <li>• Declining access to health and education.</li> </ul>	<p>No grounds</p>	<p>The EIB-CM suggests that the EIB Group services (i) engage in further enhanced monitoring of the implementation of the required actions within a reasonable timeframe and – based on such monitoring – (ii) report to GEEREF on the sustainability of the latter's investment in the Fund.</p>

Complaints Mechanism

26.07.2021

**Available remedy:**

Complainants who are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman<sup>36</sup>.

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<sup>36</sup> Available at: <https://www.ombudsman.europa.eu/en/home>.