

3 March 2017

European Investment Bank  
Japan International Cooperation Agency  
KFW Development Bank of Germany  
World Bank  
African Development Bank  
French Development Agency  
International Finance Corporation  
USAID / Power Africa  
US Overseas Private Investment Corporation

**RE: Intimidation of Indigenous Communities affected by Geothermal Projects in Kenya**

We, the undersigned organisations, call on the financiers of the Olkaria I, IV, and V geothermal projects to undertake immediate action and demand that the project promoter, Kenya Electricity Generating Company Limited (KenGen), withdraw all legal charges against Maasai community members who have raised concerns regarding these projects. We call on all financiers invested in geothermal development in the Olkaria area to respect the rights of indigenous peoples.

On 15 February 2017, KenGen filed charges to the High Court of Kenya in Nakuru against specifically targeted members of four Maasai villages who had been resettled in 2014 through the Olkaria I expansion and Olkaria IV development financed by the World Bank, European Investment Bank (EIB), the French Development Agency (AFD), Development Bank of Germany (KFW), and Japan International Cooperation Agency (JICA). Following resettlement, in 2014, representatives of the affected villages filed a complaint with the World Bank Inspection Panel and the EIB Complaints Mechanism regarding serious harms resulting from compliance failures in the resettlement process, many of which stem from the failure to apply relevant policies on indigenous peoples. The project affected persons entered into a mediation process in 2015 which produced a Mediation Agreement in May 2016.

In a letter dated 24 January 2017 community members from each of the four villages, including members of the Resettlement Action Plan Implementation Committee, Council of elders Advisory Committee, and the Ewangan Sinyati Welfare Society, drafted a letter to the NGO CEE Bankwatch Network, JICA, and several Kenyan government agencies. The letter expressed concerns with the lack of implementation of the mediation agreement for Olkaria I and IV as well as the 2013 Memorandum of Understanding (MOU) signed between the community and KenGen. Concerns included outstanding housing and compensation claims, inadequate land for grazing, lack of land titling, and inadequate infrastructure at the resettlement site.

The community members raised these concerns also in the context of the impending development of Olkaria V, financed by JICA, and located approximately 2.5 km from the resettlement area (“Rapland”) on the land from which one of the villages was resettled. Pastoralists from each of the resettled villages continue to depend on this land for grazing. In the resettlement, the communities were moved to land that cannot support pastoralism, despite this having been the dominant livelihood in the affected villages. While KenGen committed to

allowing the communities to continue to graze on their former lands, this commitment was never formally recorded. Today, the communities do not have enough land to maintain their livestock and are losing their herds. The development of Olkaria V further limits remaining land on which the communities' pastoralist livelihoods depend. Despite this serious threat, the Rapland communities are being excluded from meaningful representation in the Stakeholder Committee for Olkaria V, while villages much farther away from any impacts are being granted greater representation.

On 8 February 2017, community members raised these concerns in a public demonstration outside the Nairobi offices of JICA and KenGen.

On 15 February 2017, KenGen petitioned the court for issuance of an injunction against the 15 community members and the Welfare Society – the same community members who had signed the letter to CEE Bankwatch and JICA. KenGen cites receipt of a handwritten petition stating that community members will move back to their lands. It should be noted that the communities have taken no such action. KenGen asked the court for an injunction preventing the community members from dispossessing, alienating, or interfering with the company's quiet enjoyment of *two* parcels of land: the site of Olkaria V and the site of Cultural Centre, which is the land where the communities engage in cultural and tourism activities and which under the resettlement is to be titled in their name.

KenGen additionally pressed for the court to compel the community to accept the land titles being presented in the context of the Olkaria IV resettlement, despite the communities' concerns that the leasehold rather than freehold form of these titles will leave them in a precarious situation – requiring payment of an annual, revisable rent, and requiring permission for any significant changes to the land. Moreover, the duration of the leasehold remains unclear. Under Kenya's Community Land Act, communities may hold land through freehold title, and the communities have requested this solution.

KenGen petitioned that both injunctions be enforced by the local police. In its petition, KenGen alleged that it has fully complied with the MOU and the Mediation Agreement. This is despite the fact that the majority of the commitments in the Mediation Agreement are yet to be fulfilled. In fact, the World Bank on 16 February 2017 approved an Action Plan with a series of additional measures still to be taken by KenGen.

On 16 February 2017, the Court granted a temporary injunction against interference in KenGen's quiet enjoyment of the land at the two sites and authorized use of police enforcement. The community members are compelled to appear in court 16 March 2017. It is reported that KenGen has subsequently approached the community members named in the suit, offering to withdraw the suit on the condition that defendants sign a document which could potentially serve to waive their rights to the land in question.

We are deeply concerned that KenGen would initiate this punitive lawsuit against project affected persons in response to their legitimate expression of concerns regarding the project's continuing compliance failures.

We consider the company's suit a blatant form of intimidation and an attempt to silence the voices of the project affected persons. We request your prompt action to urge KenGen to withdraw the charges and to send a clear message that intimidation or reprisal against project affected persons who express criticism of a project financed by your institutions is unacceptable.

We additionally implore you to ensure full respect for the rights of indigenous peoples and full implementation of relevant operational policies, including free, prior and informed consent and consultation of the Maasai villages regarding any developments that will potentially impact them or the lands or resources to which they hold collective attachment. We urge you to take all necessary measures to ensure the projects are brought into full compliance with your policies, including by securing additional land for grazing, ensuring timely rehabilitation of infrastructure, facilitating the conveyance of legitimate freehold community land titles, providing full livelihood restoration, and establishing measures for equitable benefit sharing.

Further, processes for community engagement and dispute resolution should be strengthened, including through provision of legal resources and other measures to equalize power imbalances. Monitoring of project implementation and fulfillment of the Mediation Agreement and any Action Plans must be bolstered, including through engagement of the communities directly in project monitoring and reporting.

Signed,

Bank Information Center, USA

Bretton Woods Project

CEE Bankwatch Network, Central and Eastern Europe

Center for International Environmental Law (CIEL), USA

Counter Balance, Europe

Forest Peoples Programme, United Kingdom

Hakijamii, Kenya

Indigenous Concerns Resource Center, Kenya

Indigenous Cultural Conservation, Kenya

Indigenous Peoples National Steering Committee on Climate Change (IPNSCCC), Kenya

Jamaa Resource Initiatives, Kenya

Japan Center for a Sustainable Environment and Society (JACSES), Japan

Maa Civil Society Forum, Kenya

Mainyoito Pastoralists Integrated Development Organisation (MPIDO), Kenya

Narasha Community Development Group

Urgewald, Germany