

Report No. 99247-XK

Republic of Kosovo

Kosovo Power Project (Proposed, P118287) and Second Additional Financing Energy Sector Clean- up and Land Reclamation Project (P131539)

Inspection Panel Report and Recommendation

September 2, 2015

The Inspection Panel
Report and Recommendation
on
Request for Inspection

Republic of Kosovo: Kosovo Power Project (Proposed, P118287) and Second Additional Financing Energy Sector Clean-up and Land Reclamation Project (P131539)

A. Introduction

1. On June 12, 2015 the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) signed by citizens representing Shkabaj, Hade village, and Obiliq municipality (the “Requesters”) and three Civil Society Organizations based in Kosovo representing affected people.¹ The signatories to the Request designated Ms. Dajana Berisha of the Forum for Civic Initiatives (FIQ) as their representative.

2. The Request raises issues regarding activities supported under the Energy Sector Clean-up and Land Reclamation Project - Second Additional Financing (CLRP-SAF) and the proposed Kosovo Power Project (KPP). The CLRP-SAF supports the preparation of the Environmental and Social Impact Assessment (ESIA) for the proposed Kosovo Power Plant and the Bank’s monitoring of the resettlement of Shala neighborhood of Hade village, which is carried out through a Resettlement Action Plan (RAP) developed under the closed Bank-supported Lignite Power Technical Assistance Project (LPTAP). According to the Requesters, the resettlement of Hade village, along with the resettlement of additional families from other villages in the same area, is intended to facilitate the development of the proposed KPP. The Requesters submitted two attachments to the Request supporting their claims.²

3. The Panel registered the Request on June 30, 2015, and received the Management Response on July 31, 2015.

4. As stated in the Notice of Registration, the proposed KPP was the subject of a previous Request for Inspection received by the Panel in March 2012. The Panel determined the Request eligible but did not recommend an investigation for two reasons: (i) the KPP was in an early preparation stage and there were no other active Bank operations relevant to the concerns that could be reviewed by the Panel, and (ii) regarding resettlement issues, the Panel noted that the

¹ The Request was signed by three citizens representing the Shala community (displaced in 2006 and resettled in 2014 in Shkabaj/New Hade), the community still residing in Hade, and the community evicted in 2004 from Shala. The Request was also signed by the Initiative for Environment and Local Development, the Forum for Civic Initiatives (FIQ), and the Kosovo Civil Society Consortium for Sustainable Development (KOSID).

² The first attachment is a report titled “*Does the Kosovo Power Project’s Proposed Forced Displacement of Kosovars Comply with International Involuntary Resettlement Standards?*” by Dr. Theodore E. Downing (referred in the Management Response as the “Downing Report”), and the second is a communication between the Bank and a Kosovar civil society consortium regarding resettlement of citizens from Hade.

Resettlement Policy Framework (RPF) and the Resettlement Action Plan (RAP) for the Shala neighborhood of Hade were prepared with financing from the closed LPTAP, since at that time the Bank had not yet approved the CLRP-SAF. The relevance of this previous recommendation to the present case and the question of whether new evidence has been presented, is analyzed in Section E of this report.

5. In accordance with the Resolution establishing the Inspection Panel,³ the purpose of this Report and Recommendation is to make a recommendation to the Board of Executive Directors as to whether the Panel should investigate the matters alleged in this Request. The Panel's recommendation is based on its consideration of the technical eligibility of the Request and its assessment of other factors as reflected in the Panel's Resolution and its Operating Procedures.⁴

6. This document provides a description of the Projects that are the subject of the Request (Section B), a summary of the Request (Section C), a summary of the Management Response (Section D), and the Panel's determination of the technical eligibility of the Request and observations (Section E). The Panel's recommendation is presented in Section F.

B. Description of the Relevant Projects

7. **Energy Sector Clean-up and Land Reclamation Project - Second Additional Financing (CLRP-SAF).** The CLRP was approved on June 13, 2006 for an amount of SDR 3.8 million (USD 5.3 million equivalent). The Bank approved the first Additional Financing on June 28, 2007 for an amount of SDR 3.3 million (USD 4.6 million equivalent). The second additional financing (CLRP-SAF, the subject of this Request), was approved on May 10, 2013 for an amount of SDR 2.8 million (USD 3.9 million equivalent). The Closing Date of the CLRP-SAF has been extended to February 29, 2016 (see Table 1 below for the listing of different Bank-supported operations in the energy sector in Kosovo).

8. The CLRP-SAF has the following objectives: (i) address environmental legacy issues related to open dumping of ash on land from the Kosovo A thermal power plant belonging to the Kosovo Energy Corporation (Korporata Energjetike e Kosovës - KEK); (ii) enable KEK to make land currently covered by overburden materials available for community development purposes and to remediate the Kosovo A ash dump; and (iii) initiate structural operations within KEK for continued clean-up operations and environmental good practices in mining operations. The CLRP-SAF expanded the third item of the project's objectives to "*support KEK and [the Ministry of Environment and Spatial Planning] to implement continued clean-up operations and environmental good practices in the mining and energy sector.*" The CLRP-SAF finances: (i) air monitoring equipment to measure baseline air quality data; (ii) soil and water monitoring to collect data on current pollution baseline data in soil and water; (iii) the Environmental and

³ International Development Association (Resolution No. IDA 93-6), "The World Bank Inspection Panel", September 22, 1993 (hereinafter "the Resolution"), para 19. Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>

⁴ Inspection Panel Operating Procedures, April 2014. Available at:

<http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>

Social Impact Assessment (ESIA) for the KPP, which is proposed to be supported by the Bank through a Partial Risk Guarantee under the KPP; (iv) monitoring of the GoK's implementation of the RAP for the Shala neighborhood of Hade village; and (v) the International Panel of Environmental and Social Experts; and (vi) a low carbon growth study. Components (iii) and (iv) are of relevance to the Requesters' claims.

9. The LPTAP, which closed on December 31, 2011, was a technical assistance project aimed at preparing various social and environmental documents specific to energy sector development in Kosovo, including a Strategic Environmental and Social Assessment (SESA), a Draft New Mining Field Development Plan (NMFDP), and a Resettlement Policy Framework (RPF) for any resettlement to take place in the New Mining Field Zone (covering Sibovc mining field).⁵ The LPTAP also financed the RAP for the Shala neighborhood of the Hade village, situated in the New Mining Field Zone, based on the above-mentioned RPF. LPTAP also aimed at strengthening the GoK capacity to assess, monitor and regulate the environmental impacts of mining and power generation.

10. **Kosovo Power Project (KPP).** The proposed KPP, currently under preparation, aims at securing: (i) reliable energy supply for the Kosovo economy; (ii) energy affordability for citizens and businesses; and (iii) significant reduction of the environmental and social impacts of electricity generation. Key objectives of the project are to provide a long-term solution to electricity needs in Kosovo, and to introduce European Union standards of efficiency and environmental protection in the operations of the proposed new plant.

11. According to the 2011 Project Information Document (PID), the KPP would provide a Partial Risk Guarantee (PRG) to help replace the Kosovo A Power Station with a rehabilitated existing power plant (Kosovo B), the construction of Kosova e Re Power Plant (KRPP, also known as Kosovo C), and the development of a mine to meet the fuel needs of these plants.⁶

12. Management in its Response provides an updated project status by clarifying that components that were earlier under consideration through the proposed PRG, namely: (i) the rehabilitation of Kosovo B power plant; and, (ii) the development of the Sibovc lignite mining field, were dropped in early 2014. According to Management, the new power plant could be supplied with lignite from Sibovc (the New Mining Field).⁷ Management adds that the ESIA (financed by the CLRP-SAF) is studying alternative lignite mining locations to supply the KRPP.

13. According to the Management Response, the Ministry of Environment and Spatial Planning is finalizing the draft ESIA for the proposed KPP and related activities. All phases of the ESIA preparation process, including the draft ESIA, are expected to undergo extensive public consultations. Management notes that the decision to proceed with a Partial Risk Guarantee for the proposed KPP has not been taken and will depend on, among other factors, the economic,



⁵ The Panel notes that the Sibovc mining field, the area covered by the Zone of Special Economic Interest, and the area covered by the Draft New Mining Field Development Plan largely overlap.

⁶ Project Information Document (PID), Concept Stage, Kosovo Power Project, July 27, 2011, World Bank, p. 1.

⁷ Management Response, para. 21.

financial, environmental, and social assessment, and adherence to environmental and social safeguard policies.⁸

Table 1 – Overview of Bank’s Engagement in the Energy Sector in Kosovo

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
Bank-Financed Projects	<u>ESTAP*</u> (Approval April 2001 – Closing December 2002)		<u>ESTAP2</u> (Approval June 2003 – Closing September 2005)		Overlap between ESTAP2 & ESTAP3		<u>ESTAP</u> (Approval March 2005 – Closing June 2008)			<u>KPP</u> Project Concept Date January 2011 Project Information Document (PID) July 2011								
							<u>LPTAP</u> (Approval October 2006 – Closing December 2012)		<u>LPTAP-AF</u> (Approval June 2007 – Closing December 2012)									
						<u>CLRP</u> (Approval June 2006 – Closing December 2010 – Extended with CLRP-SAF)		<u>CLRP-AF Clean-up of Gasification Site</u> (Approval June 2007 – Closing December 2010 – Extended to match CLRP-SAF)			<u>CLRP-AF</u> (Approval June 2012 – Closing December 2014 – Extended to match CLRP-SAF)		<u>CLRP-SAF</u> (Approval May 2013 – Closing June 2015 – Extended to February 2016)					
Bank-Financed Outputs	<u>ESTAP</u> Energy Sector Study		<u>ESTAP2</u> Framework for private investment in the energy sector		<u>ESTAP3</u> - Mining sector strategy - Policy framework for communication, participation, for communities that may be affected by future projects.			<u>LPTAP</u> - SESA - RPF - Draft amendments to Law on Expropriation - Draft New Mining Field Development Plan - RAP of Shala neighborhood of Hade Village					<u>CLRP-SAF</u> - Supervision of RAP implementation and financing of RAP monitoring reports (ongoing)  - ESIA preparation (ongoing) 					

Source: Management Response and Inspection Panel
*ESTAP: Energy Sector Technical Assistance Project

C. Summary of the Request

14. The Request (attached as Annex I) allege several harms that the Requesters believe emanate from the Bank’s support, including the Bank-financed RPF, which sets the standard for

⁸ Management Response, page 7.

any expected resettlement, and the RAP for the ongoing resettlement of the Shala neighborhood and its monitoring. They also allege that harms could be exacerbated if not addressed adequately in the analysis and studies supported by the CLRP-SAF and conducted as part of the ESIA for the KPP.

15. **Loss of Land, Livelihoods and Well-being.** The Requesters state that they have and will suffer loss of land, livelihoods and well-being as a result of the Bank's non-compliance with its own policies "*in its technical assistance program to assist the Government of Kosovo to prepare a policy, regulatory and legal framework designed to forcefully resettle us to make way for a Bank financed New Coal Power Plant.*" They also state that by designing and implementing the resettlement of the Shala neighborhood of Hade village, the "*Bank's non-compliance has exacerbated the social risks*" to them and to the proposed KPP, as the latter "*is moving ahead without incorporating full involuntary resettlement planning and financial due diligence that should have accompanied a large scale involuntary resettlement.*"

16. The Requesters allege that the resettlement is taking place because Hade village is located in the Sibovc mining field (New Mining Field Zone) at the periphery of the Sibovc's southern mining field. The southern mining field is being expanded to extract lignite for the existing Kosovo A and B power plants and potentially for the proposed KRPP, for which the ESIA is under preparation under the CLRP-SAF.

17. **Forced Displacement.** The Requesters state that as a result of the Bank's "*improper technical assistance,*" parts of their communities have been forcefully displaced under a RAP that is not in compliance with World Bank policy or international standards. According to the Requesters, over the course of a decade this displacement has caused "*huge uncertainty*" in their communities as they suffered impoverishment, homelessness, food insecurity, landlessness, unemployment, and stress. The Requesters are concerned that in the future, other community members will experience the same harm of the displaced Shala community.

18. **Restrictions on Economic Development.** The Requesters also state that the Bank, under its technical assistance program, "*encouraged or assisted*" the Government of Kosovo to designate a Zone of Special Economic Interest to prepare for the proposed KPP. The Requesters state that this zone curtails their rights to land and economic development, and was enacted without carrying out an impact assessment, and without following due process (i.e., "*meaningful and timely notification and participation*"). They state that this zoning means "*effectively taking of our land, limiting our lives and livelihoods*" without compensation or restoration of livelihoods. According to the Requesters, this zoning is causing a "*depopulation*" of their area as they cannot accommodate their families or sustain their livelihoods. They argue that this zoning is part of a process of forced displacement which is in non-compliance with the Bank's Involuntary Resettlement Policy.

19. **Financial Burden.** The Requesters add that by failing to incorporate the objectives of the Involuntary Resettlement Policy, and by not providing "*sufficient investment resources*" to meet these objectives, the cost of the ongoing Hade resettlement and other potential resettlement under the proposed KPP is being passed on to the community members and to Kosovo "*ratepayers.*"

20. **The Downing Report.** The Request includes as an annex a report entitled “*Does the Kosovo Power Project’s proposed Forced Displacement of Kosovars comply with International Involuntary Resettlement Standards?*” dated February 2014 and written by involuntary resettlement expert Mr. Theodore Downing (referred in the Management Response as the “Downing Report”).

21. The report argues that impacted households are being forcefully displaced using a decade-old displacement strategy labeled as ‘the Stepwise Mining Expansion and Land Take’ or “SMELT strategy” The SMELT strategy slowly “amputates” parts of settlements, a few houses and sometimes a neighborhood at a time. It operates in densely populated areas, moving mining operations into close proximity to settlements, sometimes within a few hundred meters. According to this report, such a strategy favors mining interests over development by spreading investment costs for land acquisition throughout the lifespan of the mining field, and justifying forced displacement in the interest of public safety and health, “as a resolution to a problem that mining induced in the first place.”

D. Summary of the Management Response

22. Management in its Response (attached as Annex II) states that none of the Bank-supported projects in the mining and energy sector in Kosovo required resettlement. Hence, it argues that the harms mentioned in the Request do not result from Bank non-compliance with its policies and procedures or from the Bank’s technical advice. Management also states that the adverse impacts mentioned in the Request are not likely to result from the proposed KPP. Rather, the Bank’s support has helped improve Kosovo’s capacity to manage mining-related resettlement, leading to significant improvements in resettlement practices.

23. The Management Response states that the Requesters erroneously claim that ongoing and future mining activities are exclusively related to the proposed KPP. Management explains that mining is undertaken for the currently operational Kosovo A and Kosovo B power plants and “*will continue with or without the proposed KPP.*”⁹ It argues that the Request does not differentiate adequately between activities and responsibilities of the Government and the Bank. This includes the building restrictions resulting from the establishment of the Zone of Special Economic Interest.

24. Management agrees that past resettlement in Kosovo, pre-dating Bank engagement, caused adverse impacts on affected people. The Bank is engaging with the Government of Kosovo to help improve its practices and support capacity building. Management notes that the Request relates to (i) the manner and process of involuntary resettlement by the Government for mining activities in Kosovo; and (ii) restrictions on building and economic development for communities who live in the Zone of Special Economic Interest and who may be resettled in the future.

⁹ Management Response, page vii.

25. The Management Response refers to a June 2004 request from the Provisional Institutions of Self-Governance (PISG) related to the emergency evacuation of households under imminent threat of land subsidence caused by a legacy of poor mining practices. Management explains that, following this request, the Bank sent a two-person mission to Kosovo on July 4-5, 2004 to “*share the Bank’s experience in resettlement, provide policy advice, and assist in preparing terms of reference for resettlement consultants to be recruited by the authorities.*”¹⁰ According to Management, no further Bank missions occurred regarding the emergency evacuation.

26. According to Management, on November 3, 2004 the Government of Kosovo established a Zone of Special Economic Interest as part of broader Government decisions on phased mining of the lignite deposit in the New Mining Field (“*a large lignite mining area that includes the Sibovc South-West Mine which provides lignite to the two existing power plants [Kosovo A and Kosovo B] and which could also provide lignite to a proposed KRPP*”¹¹). Management explains that this decision predates the Bank’s involvement through the LPTAP.¹² The Zone of Special Economic Interest originally included the villages of Hade, Sibovc, Leshkoshiq and Cerkvena Vodice as well as the Municipality of Obiliq/Obilic. On March 13, 2009 the Government revised and enlarged this Zone to cover the entire New Mining Field. This decision became effective when the Government’s Spatial Plan was approved by the Kosovo Assembly in October 2011. Management states that the Bank did not finance technical assistance related to the Zone of Special Economic Interest. However, the ESIA for the proposed KPP is financed under the CLRP-SAF, and is “*reviewing the country’s relevant legal framework and assessing relevant issues, including issues from the establishment of the Zone of Special Economic Interest.*”¹³

27. In its Response, Management notes that under the closed LPTAP, the Bank financed the development of strategic documents intended to strengthen the country’s regulatory capabilities relating to environmental and social safeguards and to improve the capacity of the relevant authorities. Thus, the LPTAP supported the preparation of a Strategic Environmental and Social Assessment (SESA), the Draft New Mining Field Development Plan (NMFDP), and an RPF for the New Mining Field to ensure land acquisition and involuntary resettlement are consistent with OP 4.12. According to Management the preparation of the RPF included extensive consultations with local communities and key stakeholders. Management argues that since no resettlement resulted from a Bank supported project, the Bank has no obligation to supervise the RPF or its application.

28. Management explains that mining expansion was removed from the proposed Partial Risk Guarantee for the KPP.¹⁴ Therefore, contrary to what was envisioned in the RPF, the resettlement is no longer the responsibility of the private investor. This change in scope will require updating the RPF to clearly assign responsibilities among public entities. The updated

¹⁰ Management Response, page 7.

¹¹ Management Response, page 8.

¹² Management Response, page 63, No. 18.

¹³ Management Response, page 13.

¹⁴ Management Response states “*Earlier components of the proposed KPP (the rehabilitation of the Kosovo B plant, and the development of the Sibovc South lignite mine) were dropped from the proposed project by the KPP Project Steering Committee in early 2014, due to anticipated difficulties in securing the required financing,*” page 22, No. 1.

RPF will also incorporate lessons learned from the first application of the RPF to the Shala neighborhood resettlement. According to Management, the Shala RAP was also a technical assistance output financed under the LPTAP and was prepared in line with the RPF. At the request of the Government, the Bank is currently financing the monitoring of the Shala RAP implementation through the CLRP-SAF.

29. Management explains that the Shala RAP was based on comprehensive consultations with affected people, adding that this resettlement resulted from the lignite extraction required for the Kosovo A and B power plants. Under the CLRP-SAF two publicly disclosed monitoring reports were prepared by an international resettlement firm. These monitoring reports provide evidence that all 63 physically resettled families have received compensation, and that the 52 families who opted for a plot at Shkabaj, which is much closer to Pristina (5 km) than Hade (14 km), have received titles to their new property. As of July 2015, 48 construction permits had been requested and issued, 21 homes were under construction, and 12 families have moved into their new houses. According to Management, the living conditions at the new site are better as residents are no longer exposed to the impacts from the mining activities.

30. Management states that the challenges that arose during RAP implementation have been identified, brought to the attention of the Government, and are being addressed. Management adds that a Resettlement Completion Report is being prepared and will be disclosed. Management considers that the experience from the implementation of this RAP indicates areas for improvement for future RAPs, such as clarifications regarding the entitlement matrix, clearer timelines for resettlement, and a more detailed assessment of the implementation capacity of the Government.

31. Concerning the Downing Report, Management stated that it is one of the reference documents being analyzed as part of the ESIA process. Furthermore, the Management Response included an annex responding in detail to the claims made in the Downing Report.

32. Management also states that in April 2014 it learned that the GoK has committed to implement resettlement in Shipitulle and is making efforts to secure the services of an international resettlement firm to help prepare, implement, and monitor a new RAP for Shipitulle (which is located in the New Mining Field). In early July 2015, the Bank learned that the community of Grabovci i Poshtem, located on the external edge of New Mining Field, had expressed concerns about impacts associated with its proximity to mining operations, raising concerns about the issue of buffer zones and avoidance of impacts on communities located in proximity of the mining pit. Management stated that this is also being highlighted and assessed under the ESIA supported by the CLRP-SAF.

33. The Management Response refers to a potential new Bank-financed project, the Environmentally and Socially Sustainable Mining Project, which the Bank has been discussing with the Government since the decision was taken in 2014 not to privatize the mining field. This project could include the development of New Shkabaj public infrastructure (to prepare another 400-600 plots for the resettlement needs for the next 10-15 years) and capacity building, planning and monitoring for mining-related resettlement, economic growth and community

development in the mining Municipality of Obiliq/Obilic, as well as restoration of the depleted Bardh/Mirash Mines located outside the New Mining Field. To date, the Government has not formally requested the project.

34. Management concludes that “*lignite mining in Kosovo, with the resulting need for land acquisition and resettlement, is ongoing and will continue with or without the proposed KPP due to the lignite demand of the two existing power plants, Kosovo A and B.*” It adds that while the Bank has not decided whether to support the proposed KPP, if it does so, “*applicable resettlement issues would be addressed through appropriate safeguard instruments for the proposed project.*” Management expresses its belief that the Bank has made every effort to apply its policies and procedures and to pursue its mission statement.¹⁵

E. Panel Review of the Request and of the Management Response

35. Panel Member Zeinab Bashir Elbakri, Executive Secretary Dilek Barlas, and Senior Operations Officer Serge Selwan visited Kosovo from August 3 to 6, 2015. During the visit, the team held meetings with the Requesters, affected community members, Government officials of the Ministry of Finance and the Ministry of Environment and Spatial Planning, representatives of KEK, and representatives of the Municipality of Obiliq. The team also met with Bank staff in the Country Office, a representative of the European Union, as well as representatives of the European Bank for Reconstruction and Development (EBRD). The Panel expresses its appreciation to all of them for sharing their views and exchanging information and insights, and extends special thanks to the World Bank Country Office for assisting with logistical arrangements.

36. The Panel’s review is based on information presented in the Request, the Management Response, other documentary evidence, and information gathered during the site visit. The following review covers the Panel’s determination of the technical eligibility of the Request according to the criteria set forth in the 1999 Clarification (subsection 1),¹⁶ and observations on other factors supporting the Panel’s recommendation (subsection 2).

E.1. Determination of Technical Eligibility

37. The Panel is satisfied that the Request meets all six technical eligibility criteria in paragraph 9 of the 1999 Clarifications. The Panel notes that its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel’s assessment of the substance of the claims made in the Request.

38. Criterion (a): “*The affected party consists of any two or more persons with common interests or concerns and who are in the borrower’s territory.*” The Request was signed by three

¹⁵ Management Response, page 14.

¹⁶ “1999 Clarification of the Board’s Second Review of the Inspection Panel”, April 1999 (hereinafter “the 1999 Clarifications”) available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>

community members and three civil society organizations representing affected people. The Panel confirms that the Requesters live in the borrower's territory and are affected by Project activities. The Panel considers the requirement of paragraph 9(a) as met.

39. Criterion (b): *"The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester."* The Requesters assert, in substance, that the lack of compliance with Bank Policies, particularly with regards to involuntary resettlement, has resulted in loss of land and deterioration of livelihoods. Community members informed the Panel team of serious harms they suffer from by the way in which the resettlement is planned and implemented (timeline for the implementation of resettlement activities, lack of infrastructure and amenities, inadequate compensation and serious livelihood impacts, weak consultations and lack of a formal grievance redress mechanism, and unclear institutional responsibilities). They also informed the Panel that they are suffering from close proximity to mining activities and land use restrictions due to Bank's technical assistance and the proposed KPP that overlooked social and economic impacts and are generating adverse livelihood effects. The Panel is thus satisfied that the requirement of paragraph 9(b) is met.

40. Criterion (c): *"The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures."* The Panel has verified that the Requesters' concerns were brought to the Bank's attention on different occasions prior to filing the Request. The Panel is satisfied that this criterion has been met.

41. Criterion (d): *"The matter is not related to procurement."* The Panel is satisfied that the claims do not raise issues of procurement and hence this criterion is met.

42. Criterion (e): *"The related loan has not been closed or substantially disbursed."* At the time of receipt of the Request, as noted in the Notice of Registration, the CLRP-SAF was about 53% disbursed, and the KPP remains a proposed project.

43. Criterion (f): *"The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request."* The proposed KPP was the subject of an earlier Request for Inspection received by the Panel in March 2012. The Panel did not recommend an investigation of the Request at the time because of the early stage of the project preparation process and the absence of an ongoing Bank-supported operation relevant to the concerns raised in the Request. The Panel confirms, in the context of the current Request for Inspection, that there is new evidence and circumstances not known at the time of the earlier Request, including allegations of new and unmitigated harm under the CLRP-SAF.

E.2. Panel Observations Relevant to its Recommendation

44. In making its recommendation to the Board and in line with its Operating Procedures, the Panel considers the following: whether there is a plausible causal link between the harm alleged in the Request and the Project; whether the alleged harm and possible non-compliance by the Bank with its operational policies and procedures may be of a serious character; and whether Management has dealt appropriately with the issues, or has acknowledged non-compliance and presented a statement of remedial actions that address the concerns of the Requesters. The Panel records below its preliminary observations on the alleged harm and compliance, noting that in doing so, it is not making any definitive assessment of the Bank's compliance with its policies and procedures, and any adverse material effect this may have caused.

45. The Panel recognizes the important energy needs of Kosovo and that despite rapid demand growth, energy generation has continued to depend on two outdated and increasingly unreliable power plants (Kosovo A and Kosovo B). Therefore, in view of constraints in regional supply, Kosovo continues to depend on its lignite reserves, the third largest in Europe, to generate electricity.

46. During its visit, the Panel team witnessed three types of harms as it met with three groups of Requesters from the Hade village near the south-west corner of the Sibovc mining field. The first set of harms has been experienced by a group composed of community members who originally lived in the Shala neighborhood of Hade village and are being resettled to the resettlement site in Shkabaj (also called New Hade). The second group of harms is suffered by a group of community members who still live in Hade, but are impacted by the declaration of the Zone of Special Economic Interest. Finally, the Panel met with a third group of community members who have suffered harms as a result of being resettled on an emergency basis in 2004 by the United Nations Interim Administration Mission in Kosovo (UNMIK). The three different groups once constituted a single community in Hade village.

47. **Harms Resulting from the Shala Resettlement.** Community members resettled from the Shala neighborhood of Hade village to Shkabaj informed the Panel team of several harms they are suffering due to the way in which the resettlement has been planned and implemented.

48. *Resettlement timeline.* The Requesters told the Panel team about the significant and continuous delays in the resettlement process and its adverse impacts on their lives. They said that the resettlement process started in 2011. However, almost four years later, the affected community still does not have a viable resettlement site with functioning infrastructure in which they can build their houses. They explained that upon consenting to resettle, they signed a Tripartite Agreement with the Ministry of Environment and Spatial Planning and the Municipality of Obiliq in 2011; however, the resettlement followed neither the terms of this agreement nor the Resettlement Action Plan (RAP) financed by the World Bank.

49. The Requesters told the Panel team that since the resettlement site was not ready and excavations for mining were taking place within close proximity to their houses, they were relocated to temporary housing and provided with emergency rent and food assistance. They

explained that they have been living in temporary housing since 2011 or 2012, due to delays in the preparation of the resettlement site. Only in late 2014, did they receive their plots and started building their houses. The Panel understands that among 63 families that were physically resettled, 52 families chose to receive replacement land at the resettlement site in Shkabaj. To date, according to the community, 23 houses have been built and 11 families have moved into their new houses.

50. *Infrastructure and amenities.* The families who moved to the Shkabaj resettlement site complained about the incomplete infrastructure needed to sustain their daily lives, including sewerage, water and electricity. They showed the Panel team that they have to go through their neighbors' plots in order to reach electricity and water networks. They noted that the sewerage was not properly designed, since the pipes were of small size. According to them, this already resulted in clogging and flooding in two houses during the current rainy season. They also showed the Panel team the bad condition of the secondary roads at the site.

51. The community members also raised concerns about the unavailability of facilities, such as a primary school and dispensary near the resettlement site. They stated that their children have to walk a long way before reaching the neighboring school and noted their concern for the safety of their young children. They raised concerns about the uncertainty of having such facilities provided to them. They explained that a large number of the remaining families were hesitant to move to the resettlement site due to the lack of infrastructure and services and sense of community, which they feel has not been restored in the new site.

52. *Compensation and livelihood impacts.* Community members informed the Panel team that although the Municipality of Obiliq had offered Shkabaj as a resettlement site, they had to cover the monetary difference between the value of their plots in the Shala neighborhood and the value of the plot at Shkabaj (this difference is estimated at 12,500 Euros). They stated that compensation was awarded on the basis of land and asset valuation conducted in 2004 as per the 2011 Tripartite Agreement, but the amounts received neither reflected the real value of their assets nor did it account for any increase in the cost of construction material in view of the delay in receiving the assigned plots.

53. Community members also claimed that prior to resettlement, every household benefitted from a diversified source of income and livelihood, including revenues and subsistence from agriculture, as well as wages earned by one or more family members working at KEK. They informed the Panel that as part of the 2011 agreement, KEK was expected to recruit 20 community members. However, this part of the Agreement has not been fully implemented. They also stated that the plots received at Shkabaj are smaller than what they had in Shala. Hence, with the loss of their agricultural land, they lost part of their source of livelihood. They claimed that their livelihoods suffered as a consequence of this resettlement, and complained about the lack of accompanying livelihood restoration measures.

54. Community members also informed the Panel team that during their temporary relocation between 2012 until 2014, they were given food allowance and emergency assistance for rent. This assistance, in accordance with the Tripartite Agreement, was intended to continue until the

allocation of plots, the transfer of ownership and the completion of infrastructure at Shkabaj. However, the assistance was discontinued in April 2014 even though the resettlement site was not yet ready, and many households were still in their temporary rental housing.

55. *Consultations and formal grievance redress mechanism.* The Requesters complained about lack of consultations, especially in the current phase of the resettlement implementation whereby, according to them, “no one is listening to their problems.” They also noted a lack of information regarding progress in the resettlement process. They told the Panel that they were never informed of a grievance redress mechanism and have tried to raise their concerns with the Ministry of Environment and Spatial Planning, KEK, the Municipality of Obiliq and the World Bank on different occasions. Thus, “it is not clear to them where to communicate their problems.” The Panel notes that the lack of a formal grievance mechanism is one of the issues clearly mentioned in the RAP’s second monitoring report.¹⁷

56. *Institutional responsibilities.* The Requesters complained about the lack of clarity regarding the division of roles and responsibilities between the Ministry of Environment and Spatial Planning, KEK, and the Municipality of Obiliq regarding the implementation of various aspects of the resettlement process. The Panel team also observed this during its meetings with these institutions. According to the Requesters, this lack of clarity caused delays and adversely impacted affected community members and the resettlement process at large.

57. As mentioned above, the Management Response noted that the challenges of the Shala RAP implementation were identified in the monitoring reports and during Bank supervision. Management considered that they have been brought to the attention of the Government and are being addressed by the Government of Kosovo.

58. **Zone of Special Economic Interest.** The second group of harms relates to restrictions in construction of new structures, including expansion and improvement of existing houses within the Zone of Special Economic Interest, established because of the expansion of the Sibovc mining field. This group of Requesters lives in the remaining part of Hade village in the Sibovc mining field, near its south-west corner.

59. Community members complained about the impact the declaration of this zone is having on their livelihoods, overall welfare, including a trend towards depopulation. In addition, due to the proximity to the mining field, the people living in this area suffer from noise and other forms of pollution. According to community members, they can neither sell their houses nor accommodate their growing families due to restrictions on the use of their lands. They told the Panel team that because of the zoning, they expected to be resettled in accordance with a pre-established timeline for mining expansion. They told the Panel that they have been waiting for this resettlement to take place for a while and that their “*lives are frozen.*”

¹⁷ Resettlement Action Plan, Shala Neighbourhood, Hade Project, Kosovo, Monitoring Report 2, dated September 2014.

60. They stated that part of Hade village (the Shala neighborhood) had already been resettled to Shkabaj while they are still in this undetermined status in Hade village under this Zone of Special Economic Interest. They complained to the Panel that this has fractured their community.

61. According to the Management Response, the Government of Kosovo established the Zone of Special Economic Interest on November 3, 2004 through a Government decision on phased mining of the lignite deposit in the New Mining Field (Sibovc mining field) prior to the Bank's involvement in Kosovo. The Panel notes that the Sibovc mining field, the area covered by the Zone of Special Economic Interest, and the area covered by the Draft New Mining Field Development Plan (NMFDP) largely overlap. The zone originally covered the villages of Hade, Sibovc, Leshkoshiq and Cerkevna Vodice, and the Municipality of Obiliq. It was enlarged to cover the entire New Mining Field in 2009, which became effective with the approval in 2011 by the Kosovo Assembly of the Spatial Plan for the New Mining Field. According to the NMFDP settlements still located in the New Mining Field have an approximate population of 5,600 people.¹⁸

62. While visiting both Kosovo A and B plants and the associated mining activity, the Panel team was able to observe the proximity of the mining to settlements, but also the complexity of the situation in view of the construction of new structures in the Zone of Special Economic Interest. KEK officials told the Panel team that there was a growing number of speculative illegal constructions around the mining area built in violation of the restrictions on land use; KEK does not have the capacity to deal with this issue.

63. **Emergency Evacuation.** The third set of harms resulted from an evacuation of part of Hade village in 2004. This evacuation occurred as an emergency measure following threats of a possible landslide in the area caused by the expansion of mining activities. It was undertaken by UNMIK and included 158 families.

64. The representatives of this group complained about the resettlement process, the adequacy of the transitional assistance, and a general inability to restore their livelihoods since the evacuations occurred. They noted that they were still living in the temporary housing and in the absence of information on future prospects. They also informed the Panel that being part of Hade village, they too should have been resettled to Shkabaj. They claimed that although they were evacuated on the basis of an emergency, their land remained as it was eleven years ago.

65. According to the Management Response, these resettlement actions were not part of a Bank-supported operation. However, in response to a request from UNMIK, the Bank sent a mission to share its experience in resettlement and provide policy advice and assistance in preparing terms of reference for resettlement-specialized consultants to be recruited by the authorities. Management notes that in view of the Bank's continued engagement in the sector,

¹⁸ Final Draft New Mining Field Development Plan (NMFDP), December 2008, pages 3-4. According to the NMFDP no accurate official figures on population are available, since no population census has been made since 1981. However, it estimates the remaining population of Hade to be approximately 2,500, that of East Shipitulle to be 91, Lajthishte is estimate at 921, Sibovc at 1114, Dardhistë at 987. No estimates is provided for the village of Plementin.

the Bank encouraged the Government of Kosovo to resolve the outstanding issues of these resettled households.

E.3. Panel's Review

66. Energy has been a central pillar in the Bank's engagement in Kosovo since the country emerged from conflict in 1999 (see Table 1). In 2000, the Bank was requested to assist UNMIK to develop a long-term strategy for the energy sector.¹⁹ The Bank's active engagement started when the first Energy Sector Technical Assistance Project was approved in 2001. From 2003 onwards, the Bank's technical assistance included the development of a framework and support for attracting private sector investment into the energy sector.²⁰ The latest Country Partnership Strategy covering fiscal years 2012 – 2015, notes that *"the Bank will proceed with preparation of support for the KRPP/Sibovc investment through offering an IDA PRG [Partial Risk Guarantee] and possible complementary support from IFC and MIGA. WBG credit-enhancement support (including the PRG) would be offered on a non-binding, in principle basis (...)."*²¹

67. Under the LPTAP, the Bank financed several studies that are part of the preparation of the proposed KPP. The 2012 Management Response to the earlier Request for Inspection concerning the KPP, states that through the LPTAP, *"the Bank assisted the Government to develop a safeguards framework (...) for a proposed 2000 MW power generation project called 'Kosovo C'."*²² This includes the Strategic Environmental and Social Assessment (SESA) focusing on *"providing environmental and social safeguard support to facilitate the successful development and investments within the New Mining Field including the development of a new lignite mine and power station, in a manner consistent with international best practices in regard to the management of the social, economic, and environmental impacts of such developments."*²³ The Panel understands that since 2008, taking into account environmental, social, and financing concerns, a decision was made to reduce the size of the proposed power plant from 2000 to 600 MW to meet only domestic demand.²⁴

68. In parallel to the SESA, the LPTAP financed the Final Draft of the New Mining Field Development Plan (NMFDP), dated December 2008, which is *"a regional energy sector development plan, aimed at describing the spatial implications of the development of a new mine and associated power plants and setting the spatial planning cornerstones and framework for the*

¹⁹ Transitional Support Strategy for Kosovo, Progress Report, June 27, 2000, Page 10.

²⁰ See: Transitional Support Strategy of the World Bank Group for Kosovo. April 13, 2004. Annex IV. Page 3. (Energy Sector TA 2, US\$1.5 million. Approved in CY03); Interim Strategy Note for Kosovo for the Period FY06-FY07. Page 19; Interim Strategy Note for Kosovo for the Period FY08. Page 7 *"In 2007, urgent work to open a new mine has begun, requiring budgetary funding on a still higher scale. The government, with the support of the World Bank, is actively seeking private sector investment in both the development of the new mine and of an associated new clean-technology power plant"*; Interim Strategy Note for Republic of Kosovo for the Period FY10-FY11. Page 24.

²¹ Country Partnership Strategy for the Republic of Kosovo for the Period FY12-FY15. Page 24.

²² Management Response to Request for Inspection Panel Review of the Kosovo Power Project (Proposed), May 21, 2012, World Bank, p. 3 para 12.

²³ Strategic Environmental and Social Assessment, E 1367 Vol. 3, Kosovo C SESA, pages 1 and 2.

²⁴ Management Response to Request for Inspection Panel Review of the Kosovo Power Project (Proposed), May 21, 2012, World Bank, p. 3 para 12, footnote 6.

development activity.”²⁵ As noted in the Management Response, the Government’s Spatial Plan for the New Mining Field, approved in 2011 to analyze different development strategies for the New Mining Field and their technical, economic, environmental and social impacts, was directly informed by, among other inputs, the SESA and the NMFDP. The LPTAP also financed the Resettlement Policy Framework (RPF), which was the basis for the RAP for Shala neighborhood’s resettlement.

69. As stated above, the monitoring of the implementation of the Shala RAP is currently being financed under the CLRP-SAF. The CLRP-SAF is also supporting the preparation of an ESIA for the KPP. The Panel notes Management’s statement that if the Bank decides to support the proposed KPP, the mine providing the lignite to the KRPP would be considered a related activity and addressed as required under Bank policies.²⁶ Management adds that the ESIA is undertaking an analysis of environmental and social impacts as a result of this mining, including mitigation measures.²⁷ The ESIA is also expected to analyze the “*mining plan scenarios in terms of scale, locations and phasing of the new mine (...) for mine development plans and phasing (...) to establish a management plan for the mine zoning and identify possible impacts.*”²⁸ As noted earlier, even though mine expansion was dropped from the proposed KPP and will no longer be the responsibility of the private developer, KPP-related mine expansion and its environmental and social impacts will be handled by the public sector. The Management Response notes that the Bank has been discussing with the Government of Kosovo a possible Bank-financed Environmentally and Socially Sustainable Mining Project for this purpose.

70. The Panel observes that the resettlement and related social and economic impacts resulting from the expansion of lignite mining in proximity to settlements in Kosovo has been historically undertaken in a fragmentary manner. This has been recognized in the Management Response, which points to weaknesses in land acquisition and resettlement processes related to inadequate planning of mine development.²⁹

71. In view of the information gathered by the Panel in the field and its close review of relevant documentation, the Panel notes that the issues of harm raised in the Request are all of a serious nature. The Panel further observes that these harms can be plausibly linked to Bank technical assistance and other activities carried out over the last decade and in the context of direct and indirect activities that support the preparation of the KPP project for which, as mentioned above the Bank has committed to providing a PRG on a “*non-binding, in principle*” basis.

²⁵ Strategic Environmental and Social Assessment, E 1367 Vol. 3, Kosovo C SESA, page 2.

²⁶ Management Response, Para viii, page vii.

²⁷ Management Response, page 68, No. 22.

²⁸ Terms of Reference - Environmental and Social Impact Assessment (ESIA) For The Proposed Kosovo Power Project -comprising of (i) the development of a Lignite-Fired Power Plant (“Kosova e Re” Power Plant or KRPP) at Obiliq; (ii) the development of a new open cast lignite mine at Sibovc South; and (iii) associated infrastructure, such as electrical interconnections upgrades at Kosovo B substation, a potential water buffer reservoir and mine area where ash and gypsum will be disposed, p. 13. Available at:

http://mmph-rks.org/repository/docs/TOR-ESIA_978148.pdf

²⁹ Management Response, page 4.

72. Consequently, the Panel notes that the technical assistance and other activities financed by the LPTAP (namely the SESA, NMFDP, RPF, and Shala RAP) and by the CLRP-SAF (the KPP ESIA, and the monitoring of the implementation of the Shala RAP) as they relate to the Request, can be considered essential elements of project preparation for the proposed KPP. Furthermore, the ESIA considers the SESA and NMFDP (as well as other related documents) as key existing environmental and social studies for the purposes of the ESIA's assessment of the environmental and social aspects of the proposed power project. As clearly noted in the definition of "project" in the 1996 Review of the Resolution Establishing the Inspection Panel "[t]he word "project" as used in the Resolution has the same meaning as it generally has in the Bank's practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors."³⁰ Thus the preparation process for the proposed KPP falls within the mandate of the Panel.

F. Recommendation

73. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarification. In addition, and based on the observations noted above, the Panel has established the existence of a plausible link between the harm alleged in the Request and the projects, as required in the Panel's Operating Procedures.

74. The Panel therefore recommends to carry out an investigation of the alleged issues of harm and non-compliance with World Bank Operational Policies and Procedures with respect to the Bank-financed technical assistance and other activities as they relate to the Request and the process of preparation of the KPP. More specifically, the investigation will examine the Bank's potential non-compliance with respect to the resettlement of Shala Neighborhood of Hade village, and the alleged harms in the Zone of Special Economic Interest experienced by the Requesters.

³⁰ First Review of the Resolution Establishing the Inspection Panel: 1996 Clarification of Certain Aspects of the Resolution, paragraph on "Eligibility and Access". Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1996ReviewResolution.pdf>