

Report No. 71422-KE

The Inspection Panel 

Report and Recommendation

**KENYA: Energy Sector
Recovery Project and Additional
Financing**

July 25, 2012

The Inspection Panel
Report and Recommendation
On
Request for Inspection

**Republic of Kenya: Energy Sector Recovery Project and Additional
Financing**

A. INTRODUCTION

1. On May 10, 2012, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) relating to the original Kenya – Energy Sector Recovery Project and its subsequent additional financing – the Kenya Energy Sector Recovery Project Additional Financing (they are jointly referred to as “the Project”). The Request was sent by Mr. Peter Usher, on behalf of the Njumbi Road Residents’ Association (NRRA) (the “Requesters”). In addition to the Request, the Panel received several attachments. One of the attachments is entitled “*Submission*” and contains a further description of the Requesters concerns. Other attachments include a letter from the Chairman of the NRRA designating and authorizing Mr. Peter Usher to act on its behalf.
2. The Requesters’ concerns relate to the construction of an electric power substation located in Lavington, Nairobi. This substation is being constructed by Kenya Power and Lighting Company’s (KPLC) as part of the Project. The Requesters state in one of the attachments that they consider “*the development to be illegal, inappropriate, environmentally unsound and poses a danger to people living near the development.*”
3. The Panel registered the Request for Inspection on May 24, 2012. On June 25, 2012, Management submitted its Response to the Request for Inspection.

B. PROJECT

4. The stated objectives of the original project, as noted in the Project Appraisal Document, are to: “(i) *enhance the policy, institutional and regulatory environment for sector development, including private sector participation; (ii) support efficiency expansion of power generation capacity to meet the economy’s projected supply deficits by FY2006/07; and (iii) increase access to electricity in urban and peri-urban areas while improving the efficiency, reliability and quality of service to customers.*”¹
5. The original project has the following four components:
 - **Component A:** ‘Institutional and Capacity Building’, which aims at returning the KPLC to sound operational efficiency, improving financial performance, and strengthening regulatory enforcement ability under the law.

¹ Project Appraisal Document to the Republic of Kenya for an Energy Sector Recovery Project, June 10, 2004, (hereinafter, “PAD”) p. 7 para. 2.

- **Component B:** ‘Studies and Engineering Services’, which includes environmental and social impact assessment for Components C and D and design and supervision of the Project.
 - **Component C:** ‘Generation’, Olkaria II Power Plant Extension, which aims to meet an energy capacity shortfall by 2006/2007 through the addition of a generation component.
 - **Component D:** Distribution Upgrading, which aims to reduce losses, improve quality of supply, and reduce interruptions caused partly by overloaded transformers and lines. Additionally, this component aims to provide power to the peri-urban poor in the main cities and towns.
6. The original project received additional financing on April 2, 2009. The new objectives for Additional Financing are to “*meet a financing gap that will enable the project to meet its original objectives and to scale-up the project’s energy access program to enhance the project’s impact. In particular, the additional financing needs are for (a) cost overruns constraining the completion of the original project activities; (b) the need for credit re-allocation to facilitate implementation; and (c) scope for scale-up activities to strengthen the project’s development impact.*”
7. The Management Response states that as part of the Distribution component, the “*Additional Financing Credit finances six priority transformer substations in industrial and residential areas of Nairobi that are experiencing high electricity demand growth.*” It adds that the construction of the Lavington substation is one of these six substations. According to Management, “*this substation will have a 66 kV incoming sub-transmission line with several 11 kV feeder lines going out. The incoming 66 kV voltage will be stepped down through two 18/23 MVA transformers in the substation to 11 kV. The outgoing 11 kV lines will be stepped down to 240 V for household supply current by pole-mounted transformers which are located outside the substation close to residences.*”²

C. FINANCING

8. The Project is partly financed by an IDA Credit of US\$80 million, approved on July 13, 2004,³ and the additional financing is for US\$80 million. The European Investment Bank, the Agence Française de Développement, and the Nordic Development Fund also support the Project as co-financiers.⁴

D. REQUEST FOR INSPECTION

9. The claims in the Request for Inspection (see Annex I) relate to concerns about one of the six electric power substations in Nairobi, located in Lavington. They include concerns relating to the process whereby the substation site was selected (rather than an alternative site), the lack of consultations and of supervision. The Requesters are also concerned about the impact of the substation on the environment, on property values, on safety and on health.

² Management Response, pp. 3-4 paras 14-15.

³ PAD, p. v.

⁴ Management Response, p. 3 para. 10.

10. **Consultations.** The Requesters state that consultations have been inadequate. They contend that the assertions contained in the Environmental Impact Assessment (EIA) alleging that extensive consultation was undertaken with residents by the EIA consultant are “*fraudulent*”. They add that while the EIA annexes statements by two individuals allegedly support the KPLC development, the first denies this had taken place and the other is “*not even a resident of Lavington and has no knowledge of the plans.*” They further add that on the other hand, one hundred and fifty local residents, representing 100% of affected people, have signed a petition opposing the substation.⁵
11. **Environment.** The Requesters are concerned that the substation will change the ambience of the area which has been residential. They also claim that the KPLC development is taking place adjacent to a wetland designated as a riparian reserve, a water catchment area and a flood plain, and therefore, it is possible that the power substation contravenes the Water Act 2002 in relation to the protection of fragile ecosystems.⁶ Additionally, in one of the attachments to the Request, they raise concern of unacceptable noise levels and pollution resulting from the construction of the power station.⁷
12. **Environmental Assessment** The Requesters are of the view that rather than complying with OP/BP 4.01 on environmental impact assessment to help ensure that projects are environmentally sound and sustainable, “*the project is unsound, illegal and dangerous and that the World Bank was aware of this when it approved the project.*”⁸
13. **Alternatives Sites.** According to the Requesters, there are alternative sites for the substation, the closest being about 200 meters away. The Requesters ask that the Bank requires from KPLC to seek an alternative and a more appropriate site.
14. **Impact on Property Values.** The Requesters claim that the substation violates Nairobi City by-laws. They state that the site is reserved by existing legislation for residential property only. They add that accordingly, the construction of the substation, which is classified as a light-industrial complex, is illegal. They also claim that the value of properties within the vicinity of the project has comprehensively and negatively been affected.⁹
15. **Safety Concerns.** Requesters are also concerned about the risk of fire and explosion associated with the construction and operation of the substation. The Requesters note that “*Njumbi Road has experienced explosion and fire on a previous occasion when a KPLC transformer exploded. Severe damage to property and injury to residents occurred on that occasion.*” The Requesters note that a similar power station in the city also suffered an explosion. The Requesters say that residents “*fear of their lives*”, and KPLC has a poor reputation for efficiency and safety. The Requesters add that there is a requirement that for safety reasons there should be a buffer zone of not less than 200 meters between the station and the nearest human habitation. In this case the station shares a common wall with residences and the transformer is about 10 meters from the nearest bedroom.¹⁰

⁵ Request for Inspection, Submission to the World Bank Inspection Panel.

⁶ Request for Inspection, Submission to the World Bank Inspection Panel.

⁷ Request for Inspection, para. 3.

⁸ Request for Inspection, para. 4.

⁹ Request for Inspection, para. 3.

¹⁰ Request for Inspection, para. 3.

16. **Health Concerns:** The Requesters state that they are concerned with the effects of electro-magnetic radiation on human health. According to the Requesters, while the degree of risk is “*not fully quantified*”, the risks are claimed to include childhood leukemia and other serious illnesses. They add that by “*endorsing KPLC activities and by ignoring its responsibilities to safeguard human rights, it has put a community in jeopardy, placed people in danger and has destroyed their natural and human environment guaranteed within the Kenya Constitution.*”¹¹
17. **Supervision.** According to the Requesters, the World Bank has not inspected the site, and complaints made by the Association and residents have been ignored by the Bank Country Office. The Requesters raised a claim with the National Environmental Tribunal (NET) as soon as they found out about the construction, and they claim that the NET had issued a “Stop Order”, but construction was initiated and continued up until the present. They add that Bank officials should have carried out an investigation as soon as they became aware of the problem and interacted with the affected community. Instead, according to the Request, they behaved like a “*co-conspirator*” in this illegal and dangerous enterprise.¹²

E. MANAGEMENT RESPONSE

18. On June 25, 2012, Management submitted its Response (see Annex II) to the Request for Inspection. Management reviewed the issues raised in the Request relating to the construction of the substation and its potential environmental, health and safety impacts. However, Management notes that mitigation and safety measures “*appropriately*” address these concerns. Furthermore, Management believes the Requesters’ rights and interests have not been directly or adversely affected by any violation of Bank policies and procedures.¹³
19. Management believes that the concerns associated with the substation’s proximity to the Requesters’ residence illustrate the challenges of “*supporting development of essential infrastructure in a densely populated urban setting, such as Nairobi.*”¹⁴ Furthermore, Management states that development in such an urban environment, while serving the entire community, may adversely impact “*some residents more than others.*”¹⁵
20. **Consultations.** Management considers that “*the series of consultations undertaken by KPLC for the substation subproject is in line with Bank policy applicable to such projects, albeit with some delays. Management agrees with the Requesters that the initial consultations contained in the EIA are inadequate.*”¹⁶ Management also states that consultations were “*subsequently supplemented*” by more substantial ones.¹⁷
21. **Consideration of Alternatives.** Management states that for “*technical reasons, it is necessary that substations be located close to the demand centers they are to serve.*” It

¹¹ Request for Inspection, para. 3.

¹² Request for Inspection, para. 4.

¹³ Management Response, p. 4 para. 19.

¹⁴ Management Response, p. 4 para. 19.

¹⁵ Management Response, p. 5 para. 21.

¹⁶ Management Response, Annex 3: Note on the Environmental Impact Assessment of the Lavington Substation, para. 4 p. 32.

¹⁷ Management Response, p. 9 para. 38.

adds that KPLC used a “willing seller, willing buyer approach” resulting in five sale offers. While the other four were ruled out for technical and other reasons, the chosen site, Lavington, was “unavoidably close to a residence as is common in substations located in densely populated neighborhoods throughout the world.” Concerning a possible alternative site 200 meters away, Management states that according to KPLC, this site “is not suitable for the construction of a substation, due to the presence of a trunk sewer (...) located directly across the street from the substation” adding that the area across the street “is adjacent to upper-income residential homes as well as a fairly large informal settlement.”¹⁸

22. With regards to the “Stop Order” issued by the National Environmental Tribunal (NET), according to Management, this was based on a case filed by the Njumbi Road and Lavington Residents Association against the National Environmental Management Authority (NEMA) for their approval of the substation. Management adds that “NEMA, KPLC and the CCN [City Council of Nairobi] are named as respondents.” Management adds that “KPLC was notified of the appeal by a letter signed on behalf of the Chairman of the NET dated March 1, 2011,” and that the same letter “further stated that all works at the site must stop until the appeal is heard and determined by the NET (referred to by the Requesters as the “Stop Order”).”¹⁹
23. Management adds that in response to a request for clarification, KPLC informed the Bank “that in its considered legal opinion: (i) the order was invalidly issued because the NET was not properly constituted at the time the order was issued; (ii) the legality of the Stop Order is questionable; and (iii) the most expeditious and appropriate way to resolve any questions concerning the validity of the Stop Order is through the ongoing NET process itself.”²⁰ Management states that it is not in a position to opine on this issue of national law. However, in retrospect, Management considers that “it would have been prudent for the Bank to pursue this matter more proactively with KPLC at the time it came to the Bank’s attention. At present, in light of the reconvening of the NET and the advanced status of ongoing hearings Management considers it best to allow the NET process to run its course.”²¹
24. **Environment.** According to Management, “A more thorough screening of individual sites may have yielded more specific information earlier about the Lavington site, although the EIA Report subsequently confirmed that the site is not an environmentally important area.” Management adds that on June 8, 2012, the team met with the Water Resources Management Authority (WRMA) in Nairobi, “which confirmed that there is no gazetted wetland (protected area) in Lavington, or elsewhere in the Nairobi area.”²²
25. On the issue of noise, Management states that the main source of noise at the substation would likely come from the hum of the transformer. Management adds that “[t]he specifications require that the transformer and its auxiliary equipment operate without undue noise and that every care shall be taken in the design and manufacture to reduce noise to the level of that obtained in good modern practice. The noise level of the transformer shall not exceed 78 dB(A).” Management further adds that “given the

¹⁸ Management Response, Annex 1: Claims and Responses, pp. 28-29.

¹⁹ Management Response, p. 6 para. 26.

²⁰ Management Response, p. 6 para. 29.

²¹ Management Response, p. 7 para. 30.

²² Management Response, p. 8 para. 34.

*substation size, this sound level cannot be considered to be noise at the nearest residential house outside the substation.*²³

26. According to Management, the regulations of the National Environment Management Authority (NEMA)²⁴ are more onerous than the Bank's Guidelines on the subject, and require that sound levels not exceed 50 dB(A) and 35 dB(A) during daytime and nighttime, respectively. Management states that, as part of several recommendations it will make to KPLC (see further below), it will require that sound levels meet the NEMA regulation and that KPLC erect sound abatement barriers.²⁵
27. Management states that it will recommend to KPLC that an independent third party monitoring of noise levels during construction and operation of the Lavington substation takes place and that "*a competent laboratory/consultant*" measures noise levels at other selected substations, and to make these publicly available. Management also states that it will request KPLC to take remedial measures in case noise levels exceed permitted levels.²⁶
28. **Impact on Property Values.** Management states that it is "*unable to confirm the loss in real estate value referred to by the Requesters*" and notes the general difficulty of isolating or quantifying the effect of electricity connectivity infrastructure on adjoining properties. Management further states that the "*impact of development on the values of adjoining properties is not an issue dealt with specifically in the Bank's safeguard policies.*"²⁷
29. Notwithstanding, Management says that they will propose to KPLC to further explore, in consultation with stakeholders including Njumbi Road residents, measures to address the Project's visual impact e.g., through enhanced landscaping (such as planting of ornamental plants on the road frontage, raising the height of perimeter walls, etc.).²⁸
30. **Safety Concerns.** Management states that the technology in power substations has been "*known and tested*" and "*used for more than a century.*" Furthermore, Management states the Project "*observes the relevant safety regulations and follows international best practice.*"²⁹ Management adds that "*the risks related to construction and operation of a substation are considered to be moderate and manageable and are sufficiently addressed in the subproject's EMP [Environmental Management Plan].*" Management adds that the implementation of the EMP will be closely monitored by the Bank team.³⁰
31. Concerning the minimum clearances between transformers or circuit lines and residences, Management has verified that these are in line with applicable legal requirements, namely the standard of the International Electro-technical Commission (IEC), standard 61936-1 (section 8.7.2.1), which *stipulates that for the type of outdoor transformers in the Lavington substation the guide value for clearances between the transformers and a*

²³ Management Response, Annex 1: Claims and Responses, p. 26.

²⁴ According to Management, the related NEMA regulation is the "*Legal Notice No. 61 of 2009: Noise and excessive vibration control regulations, 2009.*"

²⁵ Management Response, Annex 1: Claims and Responses, p. 27.

²⁶ Management Response, pp. 13-14 paras. 50 and 58.

²⁷ Management Response, p. 14 paras. 56 and 57.

²⁸ Management Response, p. 14 para. 58.

²⁹ Management Response, p. 5 para. 22.

³⁰ Management Response, Executive Summary, p. vii para. 18.

*combustible building surface is ten meters.*³¹ Management adds that as far as the Lavington substation is concerned, *“transformers are more than five meters from the perimeter wall of the substation that also borders the nearest Njumbi Road residence and are at least 13 meters from the residence itself.”* Management states that it will recommend to KPLC that it construct a fire resistant wall along the perimeter of the substation bordering Njumbi Road residences, *“such a fire and blast resistant wall is recommended in the IEC standard 61936-1 when it is not possible to site transformers more than ten meters from combustible building surfaces.”*³²

32. Furthermore, Management states that it will examine jointly with KPLC *“how safety aspects in distribution network construction and operations can be further improved. This will include how security of such installations can be further improved.”*³³

33. **Health Concerns.** Management quotes from the World Bank Environmental, Health and Safety Guidelines that *“there is no empirical data demonstrating adverse health effects from exposure to typical EMF [Electric and Magnetic Field] levels from power transmissions lines and equipment.”*³⁴ These radiation emissions, according to Management, are *“expected to be well within internationally accepted exposure limited that have been adopted by most countries in the Organization for Economic Cooperation and Development (OECD), including the European Union (EU).”*³⁵ Management adds that the Guidelines further state that *“[h]owever, while the evidence of adverse health risks is weak, it is still sufficient to warrant limited concern.”* Management states that it *“will also ensure that independent third party monitoring of the radiation is carried out and the results made publicly available.”*³⁶

34. **Supervision.** In regards to the Bank’s responsiveness to the Requesters, Management notes that the Bank promptly followed up with KPLC following the April 2011 complaints from the Requesters and, *“obtained responses and documentation on the process of land acquisition and change of use.”* After receiving the Requesters’ complaints in March 2012, Management asserts that the Bank team visited the site and met with KPLC. Despite these instances, Management does acknowledge that the Bank team had primarily focused on addressing complaints with KPLC, as opposed to directly staying in contact with the Requesters.³⁷

35. **Framework Approach.** Management states that the Project *“adopts a framework approach, in which certain responsibilities for screening and assessing the environmental impacts of subprojects are delegated to KPLC. The capacity of the Borrower was deemed sufficient for it to prepare certain types of Category B EAs without the Bank’s prior review and approval.”*³⁸ According to Management this approach is consistent with the provisions of Paragraph 9 of OP 4.01, governing environmental assessment in sector investment lending

³¹ Management Response, Executive Summary, p. vii para. 18.

³² Management Response, p. 12 para. 46.

³³ Management Response, p. 14 para. 55.

³⁴ Management Response, p. 10 para. 43.

³⁵ Management Response, Executive Summary, p. vii para. 17.

³⁶ Management Response, p. 14 para. 58.

³⁷ Management Response, pp. 14-15 paras. 59-60.

³⁸ Management Response, p. 7 para. 31.

36. **Additional Measures** Management concludes that it “*has followed the guidelines, policies, and procedures applicable to the matters raised by the Request.*” Nevertheless, to improve project implementation and ensure that the mitigation measures spelled out in the EMP are effective, Management included a set of measures, as follows:³⁹

- Management will recommend to KPLC to build a fire and blast resistant wall along the perimeter of the substation bordering Njumbi Road residences, to a height reasonably agreed with the owners of existing residences on contiguous properties.
- Management will closely monitor the implementation of the EMP and will work with KPLC to further improve safety aspects in distribution network construction and operations.
- Management will examine in consultation with KPLC how the security of its installations can be further improved with a view to recommending specific enhanced security measures and implementing them.
- Management will ensure that mitigation measures are implemented as per the EIA/EMP during the remainder of the construction phase and subsequent operation.
- Management will recommend that noise levels meet NEMA requirements (Legal Notice No. 61, 2009). This may require that KPLC erect noise abatement barriers in the substation. Management will also recommend that KPLC engage a competent laboratory/consultant to measure noise levels at selected substations including the Lavington substation and to make these publicly available. Management will request KPLC to take remedial measures in case noise levels exceed permitted NEMA levels.
- Management will recommend to KPLC that arrangements be made for independent third party monitoring of EMR during operation and that the measurements be made publicly available.
- Management will propose to KPLC that a Stakeholder Committee be established to monitor the mitigation measures described in the EMP. Such Stakeholder Committee could meet with KPLC at regular intervals to discuss concerns related to the construction, operation, and maintenance of the substation, including possible remedial actions as appropriate.
- Management will propose to KPLC that enhanced landscaping (e.g., planting of trees and ornamental plants outside the perimeter wall, raising the height of the perimeter wall and other measures to make the substation less obtrusive) be undertaken in consultation with stakeholders including Njumbi Road residents.
- During supervision, Management will monitor adherence to the clearances specified for the line conductors.

F. PANEL REVIEW OF THE REQUEST AND MANAGEMENT RESPONSE

37. The Panel has carefully reviewed the Request and the Management Response. Panel Member Eimi Watanabe, together with Executive Secretary Peter Lallas and Senior Operations Officer Serge Selwan, visited Kenya between July 9 and 13, 2012. During its visit, the Panel team met with the Requesters, their representatives, other members of the Lavington community, World Bank staff in Kenya, KPLC officials, officials of the Ministry of Finance and other NGO representatives. The Panel's review is based on information presented in the Request, on the Management Response, on other documentary evidence, and on information gathered during the site visit, and meetings with Requesters and Bank Management.

³⁹ Management Response, p. 15 para. 62.

38. The Panel wishes to express its appreciation to all those mentioned above, as well as Washington based staff, for sharing their views and exchanging information and insights with the Panel. The Panel also wishes to thank the World Bank Country Office in Kenya for providing relevant information and assisting with logistical arrangements.
39. This review includes determination of the technical eligibility of the Request, according to the criteria set forth in the 1999 Clarification (see subsection F(a)), and the Panel's assessment of other factors to be taken into consideration when making a recommendation to the Board, as stipulated in the Resolution and the 1999 Clarification (see subsection F(b)).
40. **Scope of Panel's review.** In its assessments, the Panel focused on the framework, planning, design, and construction of the Lavington substation, one of the six substations in Nairobi to be financed by the Bank under the Additional Financing of the ESRP Project.

a. Determination of technical eligibility

41. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarification.
42. 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. It follows from this interpretation, that technical eligibility in and of itself would not be a sufficient basis for recommending an investigation.
43. Criterion 9(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 Panel confirms that the Requesters share common concerns with respect to the Bank's compliance with its policies and on issues of harm related to the Project. Furthermore, the Requesters reside in an area in Lavington that might be impacted by the Project. Hence, the requirement of paragraph 9(a) is met.
44. Criterion 9(b): *"The Request asserts 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 claim in substance that Bank Management has not complied with policy requirements relating to consultations, environmental assessment and supervision in its support for the substation financed under the Project, and that as a result the substation has been improperly located and constructed near their homes and will cause significant adverse effects and dangers for people living in its proximity. Thus, the requirement of paragraph 9(b) is met.
45. Criterion 9(c): *"The Request asserts that its subject matter has been brought to the attention of Management and that, in the Requesters' 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 Request was submitted with written evidence that the Bank's office in Nairobi was made aware of the concerns of the Requesters.

Management, in its Response, confirms receipt of these complaints which date as early as April 2011.

46. The Requesters have stated that it *“is a matter of much regret that complaints made by my Association and earlier by a resident (...) have been ignored by the World Bank Country Office. Bank Officials should have carried out an investigation as soon as they became aware of the problem and interacted with the affected community.”* Management also *“acknowledges that the Bank team has focused primarily on following up on the Requesters’ complaints with KPLC internally, rather than maintaining direct contact with the Requesters.”* Accordingly, the requirement of 9(c) is met.
47. Criterion 9(d): *“The matter is not related to procurement.”* The issues raised by the Requesters are not related to procurement. Hence, the requirement of paragraph 9(d) is met.
48. Criterion 9(e): *“The related loan has not been closed or substantially disbursed.”* The IDA credit for the Additional Financing closes on September 30, 2013, and at the time of registration was only 36% disbursed. Accordingly, the requirement of 9(e) is met.
49. Criterion 9(f): *“The Panel has not 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.”* This is the only Request for Inspection related to the Project. Therefore, the requirement of paragraph 9(f) is met.

b. Observations on other factors relevant to the Panel's recommendation

Allegations of harm

50. **Adverse effects from the siting of the substation.** As described in earlier sections of this Report, the Request raises a number of concerns relating to risks and adverse effects resulting from the site location of the Lavington power substation. These include concerns relating to noise pollution, health and safety, including risks from fire and explosion, and the negative impact of the substation on the environment of the community and property values. The Request refers to examples of accidents and damages caused by the explosion of transformers in their locality, which the Requesters cite as an example of insufficient maintenance that might also be the case in the future for the substation. It also expresses the concerns and fears of residents about potential effects of electro-magnetic radiation on human health due to the siting and proximity of the substation to nearby residents.
51. The Panel notes that Management, in its Response, states that the siting of the substation and distance to the nearest residence, do not violate relevant Kenyan standards, World Bank guidelines, or international norms pertaining to noise pollution, safety in relation to possible fire or explosion, and/or electromagnetic radiation. Nevertheless, the Panel is aware that environmental standards with respect to power transmission are subject to continuous scientific and public debate.
52. The Requesters, in meeting with the Panel team, stated that only the removal of the substation from the current location, which in their view was illegally sited, constitutes a satisfactory solution.

53. **Denial of a proper consultation process.** The Requesters believe that there were significant failures to carry out proper consultations with the affected people and the neighboring community at the stage in the process where this could have made a difference in critical project-related decisions. During its field visit, the Panel met with Requesters and a diverse group of residents who expressed a sense of frustration and indignation about the overall process relating to the siting of the substation, and in particular the absence of timely information dissemination and lack of consultation with them prior to the siting decision in their community. The Requesters informed the Panel that the first time they found out about the substation was when work was already being initiated on the premises. Some indicated that when they eventually were given the opportunity to express views, after having insisted upon a community meeting, these views were mischaracterized as being supportive of the substation when the opposite was the case. They stated that alternatives were available and that that KPLC should choose a site only after a proper consultation process. The Requesters also contend that the environmental assessment was not publicly disclosed, in a fundamental denial of their rights as affected citizens.
54. The Panel notes that Management accepts parts of the Requester's critique, and agrees that the initial consultations contained in the EIA process were inadequate, but is of the view that the situation was improved by supplementary consultations. The Bank's operational policy on environmental impact assessment (OP 4.01) requires that "*during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account*". The Request itself and the frustrations expressed by community members indicate deficiencies in the consultation process, which raise questions about the lack of Bank due diligence in assuring that core policy requirements were met in the EIA process. The Panel is of the view that this issue has to be reviewed both in the context of the "framework" approach applied by Management to the Project, and Management's response to the Request.

Issues of compliance with Bank policies

55. The Request contends that these harms could have been avoided if Bank Management had properly followed its policies and procedures. Several Requesters expressed the view that the Bank had taken an apparently "hands-off" approach which resulted in a "no-accountability" situation. They believe that this fostered a situation of "impunity" in which their concerns were simply being ignored. In their view, the EIA process managed by the KPLC was not carried out in a manner consistent with Bank policies.
56. The Requesters believe that the environmental assessment and consideration of alternative site locations failed to meet Bank policy requirements, resulting in an unsound and illegitimate basis for the decision on the site for the substation.
57. The Panel notes that the Management Response acknowledges certain shortcomings: that there were delays in the initial process of consultations, and that the consultation process for the EIA was inadequate. On the issue of siting, the Response states that Management recognizes that a "*more thorough screening of individual sites may have yielded more specific information earlier about the Lavington site (...)*"⁴⁰ Further, Management also

⁴⁰ Management Response, p. 8 para. 34.

acknowledges that the Bank team had primarily focused on addressing complaints directly with KPLC, as opposed to directly staying in contact with the Requesters. This may have aggravated the Requesters perception of Management’s “hands-off” approach.

58. The Panel notes that Bank policy, as described in Management Response, allows for adopting a “framework” approach in projects of this kind – i.e. sector-based financing of Category B subprojects. The capacity of KPLC was deemed sufficient for screening and assessing the environmental impacts of subprojects without the Bank’s prior review and approval. The Panel appreciates Management’s challenge with a project involving multiple components and subcomponents, as well as the desirability of respecting and applying the country’s procedures and processes to the extent possible. Nevertheless, the Panel is concerned that the way the “framework” approach has been applied may have been a contributing factor to a situation where Requesters feel that they have been denied access to an appropriate consultation process that would meet Bank’s own policy requirements.
59. The “framework” approach implies that problems that may constitute lack of compliance with Bank policy will have to be identified and addressed through the Bank’s supervision of the Project or through grievance mechanisms that enable people to voice their concerns. In this case, the Requesters approached the Bank’s Country Office, the National Environmental Tribunal and the Inspection Panel. While the Bank failed to acknowledge and respond to the Requester’s concerns in a timely manner, the National Environmental Tribunal had issued a “Stop Order” in the context of the construction of the Lavington substation.
60. In this context, the Panel notes the following regarding the Bank’s actions relating to the “Stop Order” on construction issued by the National Environmental Tribunal. Management became aware of the “Stop Order” only when informed of it by the Requesters. The construction activities continued after the issuance of the “Stop Order”. Management recognizes that *“it would have been prudent for the Bank to pursue this matter more proactively with KPLC.”*⁴¹ In addition, Management is of the view that, in light of the advanced status of ongoing hearings with the National Environmental Tribunal, it is best to allow the process to run its course. Management further states that it is *“not in a position to opine on this issue of national law.”*⁴²

Remedial actions proposed

61. The Management Response expresses its understanding of the concerns of the Requesters regarding the potential environmental, health and safety impacts that might arise from an electrical substation in an urban area, and notes the commitment of Management to ensure that the Project complies with all relevant environmental, health and safety regulations.
62. The Management Response has reviewed each of these factors against existing national, Bank and international norms, as appropriate, and concludes that it *“has followed the guidelines, policies, and procedures applicable to the matters raised by the Request.”* Nevertheless, in order to improve Project implementation and assure the effectiveness of mitigation measures spelled out in the Environmental Management Plan (EMP), the Response recommends a series of steps to mitigate and monitor potential impacts of the

⁴¹ Management Response, p. 7 para. 30.

⁴² Management Response, p. 7 para. 30.

substation, as described in paragraph 36 above. These address a range of issues, including fire risk, safety, security, noise, monitoring of radiation and public reporting, and visual appearance/landscaping. Management has informed the Panel that the implementing entity, KPLC, has agreed with these recommendations. Management also adds that the implementation of the EMP will be closely monitored by the Bank team.⁴³

63. The Panel wishes to record its appreciation for the forthcoming approach in the Management Response to the Request, including the recognition of actions they would have taken differently in hindsight. The Panel also notes the identification of measures that could help to address some of the potential impacts of the substation.
64. The Panel team raised these mitigation measures with the Requesters during its visit. The Requesters refused to consider the measures, since only the removal of the substation from the current location, which in their view was illegally sited, constitutes a satisfactory solution to them. The Panel team noted that the issue of conformity with national laws and regulations of the process leading up to the siting and construction of the Lavington substation is outside the purview of the Panel and is subject to the ongoing NET process.

G. Recommendation

65. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarification.
66. The Panel notes that the main concern of the Requesters is the legitimacy of the process that led to the siting and construction of the substation in their community, and its potential impacts. The solution they desire is the removal of the substation and consideration of alternative sites. The Panel notes that the issue of conformity with national laws and regulations of the process leading up to the siting and construction of the Lavington substation is outside the purview of the Panel and is subject to the ongoing NET process.
67. The Panel notes that Management has recognized certain shortcomings in relation to the process that led to the siting and construction of the substation. The Panel also notes that Management has made a number of commitments and recommended further actions to address some of the potential impacts of the substation, as described above. Management has confirmed that these actions have been discussed and are verbally agreed upon with the implementing entity. Management has also stated that the implementation of the EMP will be closely monitored by the Bank team.
68. Considering the above, the Panel does not recommend an investigation.

⁴³ Management Response, Executive Summary, p. vii para. 18.