

TO: Executive Secretary, the Inspection Panel
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Washington, DC 20433
USA

Attn: Gonzalo Castro De La Mata,
Dilek Barlak,
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12TH June 2015

Prishtine, KOSOVO

WESTERN BALKANS

We, citizens of Hade (Old and New) and Obiliq, Kosove respectively Haqif Shala,(Shkabaj) Ragib Grajcevci (Old Hade), Avni Grajcevci (Obiliq) have, are and will suffer loss of our lands, livelihoods, and well-being as a result of the World Bank's non-compliance with its own policies in its technical assistance program to assist the Government of Kosovo prepare a policy, regulatory and legal framework designed to forcefully resettle us to make way for a Bank financed New Coal Power Plant. The Bank's non-compliance has exacerbated the social risks both to us and their proposed project by designing and implementing, in the case of Shala, an involuntary resettlement that will circumvent the required planning and due diligence. As a result, the proposed KPP project is moving ahead without incorporating full involuntary resettlement planning and financial due diligence that should have accompanied a large scale involuntary resettlement.

As a result of the Bank's improper technical assistance, parts of our community have been forcefully displaced by a resettlement action plan that is not compliant with international standards and Bank policies. The Bank's concealment of this noncompliance has masked the need for corrections. It creates a false certainty in the Government that they are in compliance with international standards. It creates huge uncertainty in our communities – as we watch for over a decade our neighbors who we have witnessed undergo impoverishment, including homelessness, food insecurity, landlessness, insecurity, unemployment, and stress. We are informed that the Shala forced displacement will be our future forced resettlement.

The Bank encouraged and provided the Government to prepare for the KPP financing by providing technical assistance, including very specific technical recommendations. Among these, the Bank encourage or assisted the Government of Kosovo designate a area of special economic interest area [zone], within which our rights to economic and land development are left in limbo, effectively taking of our lands, limiting our lives and livelihoods without compensation, restoration of livelihoods, due process, meaningful and timely notification and participation. The impact of this step, done in the name of a preparation for a Bank financed project and with their technical assistance, has triggered negative regional social and economic impact without an impact assessment, avoidance, mitigation, planning or financing. It is causing a depopulation of our area because we cannot accommodate our families and grow our livelihoods. This is part of the process of forcing a displacement without compliance and attention to the objectives of Bank involuntary resettlement policy.

The Bank failed to inform Kosovo or the affected Kosovars that the proposed involuntary resettlement does not comply with its policies, including incorporation of its objectives (OP 4.12 ¶ 2) that call for an involuntary resettlement in which

(a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.^{2, 3}

(b) Where involuntary resettlement is unavoidable, resettlement activities should be conceived and executed as sustainable development programs,

providing sufficient investment resources to give the persons displaced by the project the opportunity to share in project benefits. Displaced persons should have opportunities to participate in planning an implementing resettlement programs.

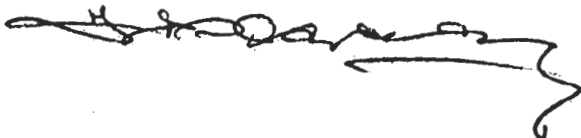
(c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to beginning of project implementation, whichever is higher.

Failure to incorporate these objectives, including not providing "sufficient investment resources" to meet these objectives, reduces the overall costs of the KPP at our expense or the expense of our fellow Kosovo ratepayers. As has happened in previous Hade displacements, full consider of these required objectives are not being programmed or financed. The economic, social and stressful burden of the KPP is put on our backs.

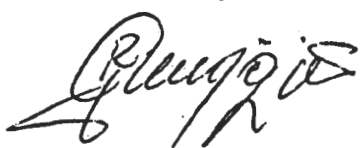
We request the Inspection Panel to recommend to the World Bank's Executive Directors to carry out an investigation on these matters.

Kind Regards,

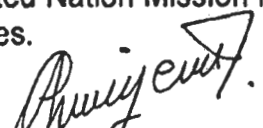
Haqif Shala, Head of Shala community displaced in 2006 and resettled in late 2014 Shkabaj/New Hade
0037745897788



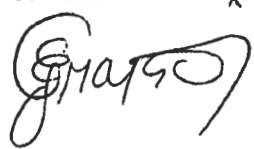
Ragip Grajcevci, Head of the Community still residing in Old Hade
0037744298215
Old Hade, Obiliq Community, Kosova



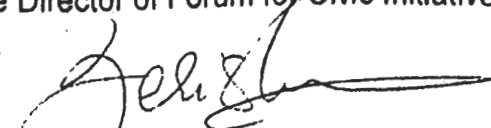
Avni Grajcevci, Head of the Community evicted in 2004 from Shala neighborhood, imprisoned in 2004 for 12 days for refusing to leave his house, while police forces of UNMIK (United Nation Mission in Kosovo) demolished his house and a couple of other houses.
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Does the Kosovo Power Project's Proposed Forced Displacement of Kosovars Comply with International Involuntary Resettlement Standards?

Dr. Theodore E. Downing¹

**Commissioned by The Kosovo Civil Society Consortium for Sustainable
Development - KOSID
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Figure 1. A Conveyor belt moves lignite from the open pit (right) to the Kosovo A power plant (top center). The community of Hade (left center) is scheduled for forced displacement. The bulldozed remains of earlier displacements are to the right of road (right, lower center). Photo T.Downing

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Executive Summary

The Government of Kosovo is taking preparatory actions to involuntarily displace over 7000 people to make way for an open pit lignite mine as part of the Kosovo Power Project (KPP). Does this preparation comply with the international involuntary resettlement standards (OP 4.12, PS5, PR5, OECD, and Equator Principles) that must be met for the project to obtain international financing? This report finds it does not.

World Bank Management misdirected the Kosovo agencies and lawmakers into preparing a noncompliant legal, policy, and institutional scaffolding to guide the anticipated displacement.² The Government willingly complied. Multiple mistakes were and continue to be made. First, as prerequisite for their Board's approval, The Bank's Operational Policy on Involuntary Resettlement (OP 4.12) requires a resettlement plan. In very limited situations, this due diligence may be relaxed and substituted with an abbreviated, resettlement policy framework. This shortcut is not applicable and a resettlement plan for the entire displacement is not being prepared. Second, the preparation overestimated the institutional capacities of the Government. Third, the preparations fail to align the project with the international policy's prime objectives of assuring involuntary resettlement is a development project, with livelihood restoration, benefit sharing, meaningful consultation and participation. Fourth, lacking focus on the primary objectives, the costs of involuntary resettlement are seriously miscalculated and underestimated, raising investment costs, thereby delaying the profitability phase of the overall KPP. Prudent applicants for the private concessionaire, financiers, government, civil sector and those threatened with displacement should request a recalculation of a fully compliant involuntary resettlement component for the lifespan of the project. These costs should be folded into a revision of the projects' overall investment costs.

Fifth, the uncertain structure of project financing also creates downstream, political risks for the government, planting the seeds that will exacerbate existing civil discord and political unrest. Costs overruns to complete the resettlement will be paid out of rate increases, not by government or the private concessionaire, leading to future conflicts between Kosovo electrical ratepayers and those being displaced.

Sixth, after millions of dollars in technical assistance, this analysis shows the proposed resettlement policy framework is little more than a weakly disguised, cash compensation plan that closely follows the failed patterns of the former government-owned mining company.

In sum, Bank Management and Government are responsible for constructing an unreliable safeguard scaffolding that will cause delays and added costs to the KPP project. Their poor decisions have increased, rather than decreased the financial, environmental, social and health risks to Kosovars, their Government, investors and, foremost, those threatened with forced displacement.

² This report was commissioned by the Institute for Development Policy and KOSID (<http://www.kosid.org/>).

The Risk

1. The World Bank is helping the Kosovo Government prepare a \$58 million Partial Risk Guarantee (PRG) for the construction of an estimated US\$2B 600-megawatt lignite coal-based power plant and its associated mining infrastructure to replace aged power plants.³ The proposed Kosovo Power Project (KPP) requires an expansion of an open pit mining operation. The expansion will cause a sizable and complex forced displacement of over 7,000 people living on 16 km² of land in 26 agricultural settlements, mostly in the rural Municipality of Obiliq, close to the capital of Pristina.⁴ For this small municipality (~32,300 in 2007), this is a sizable relocation, roughly equal to those displaced to Serbia and Montenegro during the recent war.⁵
2. While fellow Kosovars are redefining their futures in a dynamic new country, the lives of those in the path of the project are filled with risks and great uncertainty. They hear reports that they will be forced from their homes and lands; how and when is uncertain. In 2004, they witnessed police dragging neighboring citizens from their homes, their worldly goods stored in a municipal warehouse, and their homes bulldozed. Nine years later, they know that those displaced have not moved into new houses, their livelihoods have not been restored, and their families are being raised in limbo - refugees not to war, but to development. Will their children no longer run in the farm fields but live for almost a decade in temporary apartment houses? Will their sources of making a living be gone? Will they be powerless, dependent on others for their livelihood?
3. In pre-Independence times, Korporata Energjetike e Kosovës (KEK), the state owned company, stripped-mined the countryside, leaving huge pits and mountains of overburden and backfill where communities, farms, and houses once thrived. KEK routinely used the power of nationalization to remove communities, as mining expansion dictated.⁶ Rural farmers in the way were moved into urban apartment houses, and were sometimes offered jobs in the power plant.
4. Ostensibly, the Government of Kosovo is committing to a different path, privatizing the KEK, Kosovo claims its forced displacement will follow international financial intermediary and human rights standards in the proposed involuntary resettlement. The Kosovo Civil Society Consortium for Sustainable Development (KOSID) asked me to determine whether the steps being taken by the Government and international donors are aligned with international involuntary resettlement standards and to determine the likely

³ The IFC, MIGA, and EBRD are likely collateral financial syndicators. The project may be phased as two 300 megawatt plants, a factor that influences the involuntary resettlement plans.

⁴ The settlement pattern makes it difficult to state how many communities will be displaced. Some communities have recognized neighborhoods or *mahalas*. The Vattenfall assessment (2005) concluded that the new Sibove-Field the largest quantity of at least three villages and nine settlements with their population will be affected. Four communities are to be displaced (Hade, Sibove, Shipitulle, and Leshoshiq (Lajthishte) and a fifth, Dardhishte (Krushec) may be displaced if its environmental conditions cannot be improved. These settlements will be directly or indirectly affected by the construction and operation of mine, generating units, the transfer and disposal of ash, mining and transport of coal as well as the transmission and distribution of electricity

⁵ UN estimated 8,615 displaced of whom 635 returned by 2003. The World Bank LPTAP ESSAS – Draft Final SESA. P. 209.

⁶ Annex II. Management Response to Request for Inspection Panel Review of the Kosovo Power Project (Proposed). May 21, 2012.

outcomes of the proposed involuntary resettlement for not only the displaced, but also Kosovo civil society as whole.

5. The international policies approach view involuntary resettlement as more than just land acquisition and different from nationalization or expropriation. Unlike the forced displacement by conflict or natural disasters, project-induced forced displacement is intentional, programmed, and managed. It is a choreographed, slow, and risky dance that

...if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.⁷
6. This preamble forewarns of what involuntary resettlement specialists call the **resettlement effect**, a cluster of well-documented risks over and above the loss of land. The effect triggers a tsunami of likely outcomes, including joblessness, homelessness, loss of livelihoods and income-earning assets, marginalization, increased food insecurity, loss of common land and resources, increased health risks, social disarticulation, disruption of formal educational activities, loss of sacred sites, threats to cultural identity, disappearance of mutual self-help mechanisms, and the loss of civil and human rights.⁸ Certain groups – elderly and women – are more vulnerable to these displacement-induced risks. In sum, a forced displacement may generate “new” poverty as opposed to the “old poverty” that peoples may have suffered before displacement.⁹
7. The resettlement effect is not inevitable. The Bank’s warning is conditional: counter-development may be avoided and mitigated if safeguard steps are taken. The purpose of the international policies is not simply land acquisition or cash compensation to make way for the project. The policies call for avoidance and, where not feasible, minimizations of the effect by exploring alternative project designs. They call for sustainable development programs for project-affected peoples (PAPs), providing them with sufficient investment resources to share in project benefits. They call for meaningful consultation and participation in which affected peoples play an active role in planning and implementing the resettlement programs. And they call for restoration and improvement of lost livelihoods and living standards (See objectives ¶ 83-117).¹⁰
8. This combination of known risks of the resettlement effect and the special circumstances heightens the need for close international and national scrutiny beyond that commonly given

⁷ The World Bank Operational Policy on Involuntary Resettlement OP 4.12.

⁸ Forced displacement increases the risks of human rights violations as defined under the UN Guiding Principles on Internal Displacement (1998).

⁹ Theodore E. Downing 2002b. [Avoiding New Poverty: Mining-induced displacement and resettlement](#). London: International Institute for Environment and Development.

¹⁰ Kosovo has agreed to follow both the IFC Performance Standards and The World Bank Operational Policies, this paragraph summarizes the higher of the combined standard.

to a project related to internationally financed involuntary resettlement. For good reason, The Bank classified the KPP as of one of its most environmentally and socially risky, a Category A.

Those in the Way

9. The EuropeAid study concluded that the resettlement of villages in the proposed New Mining Field is the major obstacle for the exploitation and that there were no other governmental restrictions for the coal mine.¹¹ Recognizing and in preparation for the Kosovo Power Plant financing, The World Bank provided technical assistance to Kosovo to align its land acquisition policies and institutional capacity with international standards for involuntary resettlement.
10. As part of this technical assistance, the Bank earmarked part of its 2008, US\$ 10.5M Lignite Power Technical Assistance Project (LPTAP) funds for a Strategic Environmental and Social Assessment (SESA). From Jan-Mar 2008, the SESA surveyed 1,580 households in nine project-affected villages, including seven likely to be resettled. Fifty-seven community meetings and eight focus groups supplemented the survey.^{12 13}
11. The survey offers a glimpse of what will be dismantled to make way for the KPP. The area is punctuated with well-established settlements, lying among the rolling hillsides with old neighborhoods named after extended families (*mahalas*). Over half of the 14,986 hectares in the New Mining Field (NMF) are agricultural, with the remaining in forest (16%), residential (11%), wasteland or ash dumps from previous mining (10%), zoned for mining (7%), and the power plant areas themselves (1%).¹⁴ Most is privately owned (6,677 ha), but a substantial portion is communal (3,854 ha).¹⁵ The municipality of Obiliq is more densely populated than the Kosovo average (304 persons/km²), very young (average age of 24 in 2008), and mostly ethnic Albanians. Literacy is high and most have completed secondary school (38.9%).¹⁶
12. The survey also discovered a diverse, complex local economy, with unemployment being higher than the national average. Only a fifth were employed (20.9%), another fifth were housewives (19.4%), and the remaining economically active population unemployed

¹¹ European Agency for Reconstruction. Preparation of a mid term plan for existing coal mines and a main mining plan for the development of the New Sibovc Mine: Final Report. Main Mining Plan for New Sibovc Mine. Part I Basic Investigations. Prepared by Vattenfall Europe Mining AG. June 24, 2005. Page 58. EUROPEAID/I16986/D/SV/KOS.

¹² SESA Meetings took place in Hade, Lajthishte, Dardhisht, Grabovc, Shipitullc, Hamidid, Obiliq, Crkvenc, Vodica/Janjine Vode, Palaj/Mirash, Sibovc and Plemetin.

¹³ The Consortium (the Consultant) led by Environmental Resources Management (ERM) Italy and supported by ELC Electroconsult and CSA Group Ltd was commissioned by the Kosovo Lignite Power Technical Assistance Project (LPTAP) of the Ministry of Energy and Mining of Kosovo (MEM), to undertake the assignment "Environmental and Social Safeguards Services for Private Sector Participation in the Development of new generation capacity, related transmission and the development of the Sibovc Lignite Field" between July 2007 and July 2008.

¹⁴ The Spatial Plan for the Special Economic Interest Area "New Mining Field". MESP, March 2011, p. 39.

¹⁵ Draft Final SESA Report: A Report on the Environmental and Social Safeguard Services for Private Sector Participation in the Development of New Generation Capacity, Related Transmission and the Development of the Sibovc Lignite Field. May 2008.

¹⁶ Annex D, LPTAP Consolidated Report (Draft). Prism Research, April 2008, pdf page 523.

(16.5%). Of those employed, a declining proportion (13.6%) worked at the power company KEK. Irregular income from many sources was commonplace and varied between households. For example, only 4.5% of households reported income from the sale of smoked meat, but this activity provided these households half of their total income. A quarter of all residents earned extra income from cutting wood. The sale of fresh meat accounted for a third of their total income. Social assistance and pensions provided some with income (6.3% and 17.4%), as did remittances. Renting is rare; with less than one percent of the households renting their yard and even fewer their arable lands (0.3%).

13. With such limited employment and irregular income, land plays a critical role in people's livelihood. Perhaps more important than the estimated 12.3% of supplemental cash it provides, land provides the people with a significant source of livelihood and food security. Households were found to earn a livelihood in a variety of ways. Most households produce food (97.8%), raise animals (87.0%), or cultivate industrial plants (80.0%) for their own consumption on their land. Grain and livestock production is common. Over half of households reported owning arable land and fields (Lajthishte 65.9%, Sibovc 63.3%, and Shipitulle 92.0%), grasslands, forest, and pastures. In Shipitulle, 84.0% of households also owned forests, forming another source of income. Commercial agriculture was less common, with a fifth of the households reporting some income from the sales of industrial plants (20.0%), fodder (9.8%), and crops (1.9%). Households used 62.5% percent of pastures and 64.8% of the arable land for subsistence agriculture, thereby buttressing their food security. Households take productive advantage of their semi-urban, agricultural environment by gaining financially from the sales of coal and wood for household heating, dairy products, and meat.¹⁷ In Sibovc, for example, selling of smoked and fresh meat contributed almost half of the household income. The survey did not consider other income and subsistence-producing activities that appear to be taking place within household lots.
14. Nonetheless, the limited income opportunities and land-based subsistence still did not provide sufficient support for many vulnerable peoples. Twenty-three percent reported that they did not have enough money to buy food, and 16% considered themselves as living "hand to mouth," meaning they are below the poverty line.
15. The risk of social disarticulation is higher in relatively well-established communities such as these.¹⁸ The SESA found a "high degree of trust and mutual helpfulness" within the communities a social asset that is likely to be disrupted in a forced displacement. Interviews with Hade residents revealed well-established spatial and temporal routines that will undergo irreparable psycho-socio-cultural disruption.
16. The survey did not consider the instability of land tenure that exacerbates a forced resettlement, particularly while previous social property of the former regime is being privatized or reorganized. On 20 February 2004, the cadastral agency reported that 10,244 of Obiliq's 10,482 hectares are rural. Of those, 4,667 were social property and 5,757 were

¹⁷ Ibid. page 520.

¹⁸ Theodore E. Downing and Carmen Garcia-Downing. 2009. Routine and Dissonant Culture: A theory about the psycho-socio-cultural disruptions of involuntary displacement and way to mitigate them without inflicting more damage." IN *Development and Dispossession: The crisis of forced displacement and resettlement*. Edited by Anthony Oliver-Smith. School for Advanced Research Press. Santa Fe.

private property.¹⁹ In the NMF, it appears that much of what will be taken will be what remains of the earlier social property tenure. With social property being redefined. This means that many of those being displaced are gaining livelihoods from usufruct or customary rights on what was/is social property. For example, Hazari reports that Hade resettlement delays are due to property issues: out of 70 properties, only 22 have been registered and evaluated in accordance with provisions of the Expropriation Law.²⁰ The lack of assessment of tenure or usufruct rights to social property, even for subsistence purposes, adds significant uncertainty to post-displacement livelihood restoration and improvement.

17. Even without the mandatory full census of the project-affected peoples, the SESA survey leaves no doubt that this Category A project will involve high, multiple-level involuntary resettlement risks. In 2008, The World Bank recognized this situation. In their report on the lignite power technical assistance program they conclude:

The new Sibovc mine is a massive intervention into the spatial structure of the area. Land transformation and re-establishment of spatial structures is a long process, which will take several decades. The mining will remove all villages in the mining field, which will leave a completely different spatial structure and settlement relation in the future. There is a risk that the area in the mining field is further losing [sic] economic vigor and social fabric. It will be of essence to provide to the population in the area a clear [sic] on the timing of things to come and a perspective for their lives elsewhere.²¹

The Hade Legacy: The SMELT method of involuntary resettlement

18. The KPP is planning to forcefully displace those in the way by using the same displacement strategy that it has used for decades. I shall call this the **stepwise mining expansion and land take** strategy, or **SMELT**. Unlike hydropower displacements that forcefully relocate entire villages at once, the KEK mining slowly amputates parts of settlements, a few houses and sometimes a neighborhood at a time. Operating in a densely populated area, areal photos show this *SMELT mining development strategy* has been to move mining operations in close proximity to settlements, sometimes within a few hundred meters.
19. As the face of the pit moves closer and closer to a settlement, life for the inhabitants on the outskirts of town becomes more and more intolerable with increase noise, dirt, contamination and health risks. Operations clatter on through the night. Property values – that must be paid in future expropriations – decline. Ultimately, living conditions becomes so miserable that some people ask to be displaced. The risk of subsidence increases, providing the company further reason for hastening expropriation and displacement. In the past, this has permitted an “emergency” forced displacement. The strategy leaves a distinct footprint on the land (Figure 1). Mining operations are expanded (bottom to top), neighborhoods are threatened with safety risks, justifying their forceful displacement (Fig.

¹⁹ Assessment of Property Rights in Kosovo. USAID. 1 March 2004. <http://usaidlandtenure.net/kosovo/assessment-of-property-rights>

²⁰ Besnik Haziri, The Resettlement Process in the Lignite Mining Areas of Kosovo. Master of Science Degree Program in Energy & Resource Development Final Report February 23, 2010. Rochester Institute of Technology. American University in Kosovo.

²¹ Draft Sibovc Development Plan, Annex B. 2008.

- 2). The area immediately above the yellow line and the white road was once part of the Hade community comparable to that above the road.
20. The SMELT displacement strategy favors the Company's interest, spreads the investment costs for land acquisition throughout the lifespan of the mine, and allows the company to justify a forced displacement in the interest of public safety and health, a resolution to a problem that the mine created in the first place. It uses the mining operations to intimidate and threaten those in the way.



Figure 2. SMELT Strategy threatens the outskirts of Hade (upper half of photo).

21. A 2004-05 emergency eviction in the community of Hade casts a shadow over plans for future involuntary resettlements by the proposed project. For over a decade, the forced resettlement of Hade, a small town immediately adjacent to the north side of the Bardh-Mirash mine, has been deemed critical to several scenarios for the KPP.²² KEK had used the SMELT pattern for removing those in the way of their operations before the conflict. As a result of earlier mismanagement of the operation, the mine benches were shortened until lignite coal was being extracted from almost underneath the southern edge of the town. In 2002, a major mudslide threatened the town's southernmost neighborhoods (Figure 1).
22. In response, the United Nations Interim Administration Mission in Kosovo (UNMIK) and Provisional Institutions of Self-Government (PISG) ordered an emergency evacuation, bypassing the expropriation process normally used by KEK (UNMIK's order 2004/6 of March 29, 2004).²³ Between March and July, they planned, inventoried, surveyed land,

²² European Agency for Reconstruction. Final Report of the Preparation of a midterm plan for existing coal mines and a main mine plan for the development of the new Sibovc Mine 24 June 2005. EuropeAid/116986/D/SV/KOS.

²³ The Draft Final SESA report noted that to increase the short-term output from the mine, the benches had been shortened until lignite coal was being extracted from almost underneath the edge of the mine. Environmental and Social Safeguard Advisory Services for Private Sector Participation in the Development of New Generation Capacity, Related Transmission and the Development of the Sibovc Lignite Field. www.crm.com. May

- conducted questionnaires, established compensation and valuation norms, and developed short and long-term resettlement options. Between November 2004 and February 2005, 158 families (664 people) were forcefully evicted. In May and June 2005, about 22 families that had refused to move voluntarily were forcibly evacuated to pre-identified shelters, and their houses were bulldozed. Their belongings were stored in the Municipality warehouse. Our March 2013 visit found that the families are still in two temporary apartments in Obiliq. An inspection of a planned relocation site at Shkabaj found the site uninhabited with unfinished infrastructure. The fate of the remaining evicted households remains unclear. Displacees claimed that their food subsidies were being terminated.
23. The mine's intention to expropriate an even larger area, including the rest of Hade, was telegraphed to the remaining inhabitants of Hade and others in the new mine field's larger footprint. The government's intention was made even as the eviction was taking place. UNMIK and provisional government (PISG) declared a "Zone of Special Economic Interest" that significantly restricted the rights of families to use their property. Residents of Hade, Sibovc, Leshkooshiq and Cerna Vodice villages of the Municipality of Kastriot were ordered to stop new construction or construction of additional floors for the indefinite future in anticipation of possible mining needs (MESP Executive Order No. 4/119 dated 11/3/2004).
 24. This nationally publicized and unfinished forced eviction raises doubts among the Kosovo civil sector as to the Government and KEK's abilities to involuntarily resettle over 35 times as many households to make way for the KPP. Resistance has hardened. This report assesses that ability and legal and institutional changes that have taken place since 2004 to assure future resettlements comply with international involuntary resettlement policies.

A Legal, Policy, and Institutional (LPI) Structure

25. A World Bank pre-identification mission for the proposed project visited Kosovo amid the Hade eviction. They recognized that the Government's "emergency procedure" approach to involuntary resettlement was unacceptable and noncompliant with international financiers policies (OP/BP 4.12 and IFC PS5).²⁴ They arranged and financed technical assistance to hastily build a new and acceptable **legal, policy, and institutional structure (referred throughout this paper as the "LPI structure")**.²⁵ The structure is exogenous to Kosovo, a product of almost a decade of expatriate policy advice and financing, primarily from the World Bank.²⁶

2008. Prepared by Environmental Resources Management, the trading name of ERM Italia, Pdf, page 608.

²⁴ Main Mining Plan for New Sibovc Mining – Technical Planning, Part II. 2005, pages 44-45.

²⁵ The Inspection Panel. Annex 1, Management Responses p. 22. In Review of the Kosovo Power Project (Proposed). May 21, 2012.

²⁶ In July 2004 the Bank responded to the provisional government's (PISG) request for urgent advice on involuntary resettlement (July 4-5, 2004) followed up with a pre-identification mission for the proposed Kosovo Lignite Mining and Energy – Social and Environmental Support Project in 2005 (later morphed into the LPTAP). The Bank was not directly involved in the Hade evictions or resettlement. It was forced to deal with this and other resettlement issues as part of its Lignite Power Technical Assistance Project, which aims to assist Kosovo in developing an effective framework for private sector participation in the energy sector, by ensuring, amongst other things, environmentally friendly and socially sustainable sector development. The first mission prepared the terms of reference for resettlement

**Table 1: Legal, Policy and Institutional Structure (LPI)
for Involuntary Resettlement in Kosovo**

1. Key Planning Studies, <ul style="list-style-type: none"> - EuropeAID Investigation (2005) - Social assessment (SESA) of the likely area of impact and a Draft Sibovc Development Plan (2008) - Draft Sibovc Development Plan (May 2008)
2. Special Constitutional Provisions for Mining (5 June 2008),
3. Law of Expropriation (8 May 2009),
4. Refined "Area of Special Interest" Policy and a Spatial Plan (SP) defining the rights and entitlements of those who will be expropriated and resettled by the NMF (2009 to 2011)
5. Kosovo Resettlement Policy Framework (KRPF) for land acquisition for the NMF (13 March 2009)
6. Model Resettlement Action Plan for Shala (a model RAP) (Dec 2011)

26. The LPI structure is designed to shape the legal obligations, responsibilities, entitlements, and financial liabilities of those to be displaced, government agencies, and a yet-to-be designated private, international concessionaire component.
27. All six elements of the LPI structure are part of a lengthy, complex, national plan that has scheduled to privatize the state owned KEK (Table 1).²⁷ Let's look at each one. First, a series of studies, most funded by The World Bank through a technical assistance grant helped provide data and policy development assistance to the fledgling project. The LPTAP arranged a planning document entitled the Draft Sibovc Development Plan (May 2008)²⁸

consultants and offered recommendations on how to deal with the Hade emergency situation. By 2006, the Bank Management concluded there were "no existing adequate legal and institutional framework (policies, institutions, and legislation and regulation) to handle resettlement, either in the proposed lignite extraction area or more." To address this shortcoming, The Bank funded the LPTAP to assist the GoK in drafting legislation and regulations – the aforementioned legal and regulatory framework - to assure that future infrastructure developments will meet international standards. In short, the Bank owns the legal and policy framework.

²⁷ John A. Gould, Privatization and Political Institution Building in Kosovo and Bosnia & Herzegovina. ND. IREX and US State Department Research Report.

²⁸ The Draft SDP document was prepared by a consortium led by ERM (Italy) and supported by ELC Electroconsult and CSA Group Ltd under the World Bank funded project "Environmental and Social Safeguards Services for Private Sector Participation in the Development of new generation capacity, related transmission and the development of the Sibovc Lignite Field" which was commissioned by the Kosovo Lignite Power Technical Assistance Project (LPTAP)

that builds on the 2005 pPEAID document and lays out further plans for future spatial development, including the aforementioned SESA survey.

28. Second, less than four years after the Hade evictions, the new Constitution (effective 5 June 2008) circumscribed what would otherwise be a Kosovar's fundamental right from the arbitrary taking of private property (Chap II, Art. 46). The Republic reserved the right of expropriation if authorized by law, and it is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest.²⁹ Article 122 designated natural resources, including mining, to be of "special interest" to the Republic, meaning they shall enjoy special protection in accordance with law. Special protection means the state may limit owners' rights if they are considered to be of special interest to the Republic. Owners are to be immediately and adequately compensated for such limitations (Chapter IX, Article 122).³⁰
29. Third, the Law of Expropriation of Immovable Property (Law 03/L139, 8 May 2009) details the rules and conditions for taking a person's ownership of or other rights to immovable property, including their right to prompt payment, compensation, and legal remedies (12 Chapters with 47 Articles). Without defining specific values, Ministry of Economy and Finance sets compensation at market value, excluding the cost or value of any improvements to the property, constructed or enlarged facilities, trees and crops subsequently planted, or change in market value after the published cutoff date (Art.15). Challenges to expropriation decisions may be made in the court of competent jurisdiction (Art. 35). The land acquisition policies in the Constitution and Law of Expropriation focus on compensation, not livelihood loss, restoration or improvement.
30. The fourth LPI component, the Spatial Plan for an Area of Special [Economic] Interest - New Mining Field :2010-2020+ (see ¶ 10 – 17),³¹ was prepared by an inter-ministerial working group and completed in 2011 (MESP executive Decision No. 10/22 of 6 July 2011), and it may or may not have been approved³² by the Kosovo Assembly on 7 October 2011.^{33 34} The Spatial Plan (SP) refines the provisions of the 2004 UNMIK decision 4/119

under the Ministry of Energy and Mining of Kosovo (MEM). The Draft SDP is interlinked with the Strategic Environmental & Social Assessment (SESA) for the power generation and mining development which was prepared in parallel by the above ERM consortium under the same World Bank funded project for LPTAP

²⁹ Note that, unlike other Constitutions, provisions were not made for "just compensation." Disputes arising from this act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

³⁰ Article 122 (2) [Use of Property and Natural Resources] "Natural resources such as water, air space, mineral resources and other natural resources including land, flora and fauna, other parts of nature, immovable property and other goods of special cultural, historic, economic and ecologic importance, which have been determined by law to be of special interest to the Republic of Kosovo, shall enjoy special protection in accordance with law. Limitations on owners' rights and other exploitation rights on goods of special interest to the Republic."

³¹ The Plan's unwieldy title sometimes includes "economic interest" and is also referred to as the ZIVE.

³² The MESP issued a press release (<http://mmph-rks.org/sq/Lajmet/Aprovohen-cdhe-dy-dokumente-te-rendeshime-nga-Kuvendi-i-Kosoves-145>).

³³ Draft SDP and the SESA were both prepared by a consortium led by ERM (Italy) and supported by ELC Electroconsult and CSA Group Ltd under the World Bank funded project "Environmental and Social Safeguards Services for Private Sector Participation in the Development of new generation capacity, related transmission and the development of the Sibovc Lignite Field" which was commissioned by the Kosovo Lignite Power Technical Assistance Project (LPTAP) under the Ministry of Energy and Mining of Kosovo (MEM).

to create a Zone of Special Economic Interest around the proposed new mining field (NMF).³⁵

31. The SP lays out a scenario for the future of 55,000 inhabitants living in a 143-km² area, including the 16 km² for the NMF.³⁶ The plan estimates that 6,320 people in four municipalities (Obiliq, Kosov, Vushtrri, Gillogovc) will be relocated, with another 13,360 indirectly affected (Figure 1). The precision estimate of the number to be relocated is puzzling, since this work was done without the demographic and livelihood information of the SESA survey.³⁷ The SP defines the general rights and entitlements of those who will be expropriated and resettled - justifying, through a planning document, the removal or disruption of people and non-energy related economic activities within and near the NMF to be in the national interest.
32. The Plan envisions – but does not provide – a two phase involuntary resettlement plan, an overall aim (objective), nine specific goals, and allocating responsible and implementation authority for 51 short/mid/and long term tasks for the projects aim (i.e. objectives) to plan and control the relocation process and development of more settlements.
33. The SP deviates from the principles of Kosovo's Spatial Planning Law (Law 2003/14 of 03.07.2003) that advocates for national sustainable development (Art. 3a), promotion national improved quality of life and well balanced settlement pattern (Art. 3e), and harmonization with ongoing European spatial development principles and plans (Art. 3f). Moreover, the SP does not follow an integrative, multi-use, multi-sectorial strategy for spatial planning as defined by the European Spatial Development Perspective.³⁸
34. The Plan, however, does list involuntary resettlement impacts as a secondary criteria to be considered when siting of the new power plant. The SP assumes the area will have a single purpose: energy development. Rather than explore all viable alternative project designs and trade-offs designed to minimize adverse social and economic impacts from land acquisition or restrictions on land use, the SP maximizes lignite production. Specifically, it ignores alternative coaling strategies that were put forth in the 2005 European Agency for Reconstruction multivolume study of proposed lignite exploitation options. Instead,

³⁴ Spatial Plan: Area of Special Interest – “New Mining Field”. MESP. “Institute of Spatial Planning. October 2011. Pristina, page 12.

³⁵ The MEM used the Spatial Planning Law (no. 2003/14, as amended) as the legal basis for the decision.

³⁶ The Zone covered several cadastral zones of the municipalities of Kastriot/ Obiliq, Fushe Kosove, Vushtrri and Drenas and draft a special plan for the area of special interest. The Spatial Plan for the Zone of Special Economic Interest “New Mining Field” was issued as an executive decision on 6 July 2011 (Decision No. 10/22) and then adopted by the Kosovo Assembly in October 2011. However, this investigator was unable to confirm whether the Assembly had actually adopted the SP.

³⁷ Vattenfall Europe Mining AG. Deutsche Montan Technologie GmbH “The Main Mining Plan for New Sibovc mine”, June 24 2005. [Doc 22, p 199]. Energy Projects in Kosovo, Sept 2011. KOSID. “Resettlement will be necessary mainly due to the coal mine field development aspect of the project, but also from the new power plant and related facilities and infrastructure. There are 20 towns and villages in the Lignite Power Project area. According to the SESA (2008), most of the communities are located close enough to the existing mines and power plant sites to be substantially affected by the environmental pollution that they generate. The population of Obiliq municipality is around 32,300. The average population density is 304 persons per km² (higher than the Kosovo average of 193 per km²)

³⁸ Approved by the Informal Council of Ministers of Spatial Planning of European Commission in Potsdam in 1999.

restoration of its dismantled agricultural resources and dismembered and dislocated human settlements is scheduled for post-coaling, up to three decades from now.

35. The same month in 2009 that the MESP started to prepare this spatial plan, the Minister approved the fifth component of policy, legal, and institutional structure, **Kosovo Resettlement Policy Framework (KRPF)**.³⁹ Reaffirmed in 2011, the KRPF creates a 30-year, compensation framework for land acquisition for the KKP, including the NMF that the Government and the World Bank claim is “consistent” with international standards (OP 4.12 and PS-5).⁴⁰ The KRPF gives principles and objectives, public and private sector responsibilities, eligibility and entitlement criteria, a compensation matrix, cut-off dates, principles for the evaluation of land and assets, public consultation and grievance procedures for land acquisition without once mentioning “involuntary resettlement.” The framework includes a five-page outline of some of the elements of a resettlement action plan taken from the Annex A of the World Bank’s policy. In contrast to the detail of its entitlement matrix, the KRPF postpones setting timetables and budgets until future RAPs are drafted.
36. The KRPF distributes institutional responsibilities for implementation, monitoring, and oversight, defines a grievance process, and delegates the Government’s right of expropriation to the yet-to-be designated private concessionaire. The concessionaire implements the RAP, pays cash compensation, develops new residential sites and, if applicable, offers land-for-land options. The MESP reviews the RAP. An Independent Grievance Commission for Claim Review is financed by and includes a representative of the Company, its duties to be specified in the RAP.
37. The KRPF also defines an entitlement matrix for individuals losing land, housing, employment, businesses and vulnerable people, but avoids planning for extended families or entire communities. Landowners losing land who have full legal title and recognized owners w/out legal title, and those who fled as a result of the war, are given the option of either alternative plots on future, rehabilitated mining land or cash compensation as well as compensation for lost assets. Those without titles must regularize or have an affidavit from neighbors validated by the municipality to be eligible. Recognized owners with or without formal title are offered the option of replacement housing that satisfies “basic standards for social housing regardless of the condition or value of the lost property or cash compensation. In all cases, the Company pays for transaction costs.”⁴¹

³⁹ The Resettlement Policy Framework (RPF) will apply to all resettlement associated with the proposed KPP as per an executive decision (02/57) was adopted on 13 March 2009 (Decision No. 10/22).. Government Decision of the Ministry of Energy and Mines 02/57 on 13 March 2009, then later adopted by the Government of Kosovo on 6 July 2011 Decision No. 10/22).

⁴⁰ Consistent is not the same as “compliant” – the legal requirement of these policies when incorporated in project agreements. Selection of elements of a policy, for example, would be consistent but, if other elements are ignored, it would not be compliant.

⁴¹ The entitlement matrix states that full time employees who lose their jobs because of expropriation of their employer’s premises, tenants, non-owner residential occupants, business premise owners, non-owners are compensated for fixed periods ranging from 3 to 6 months.

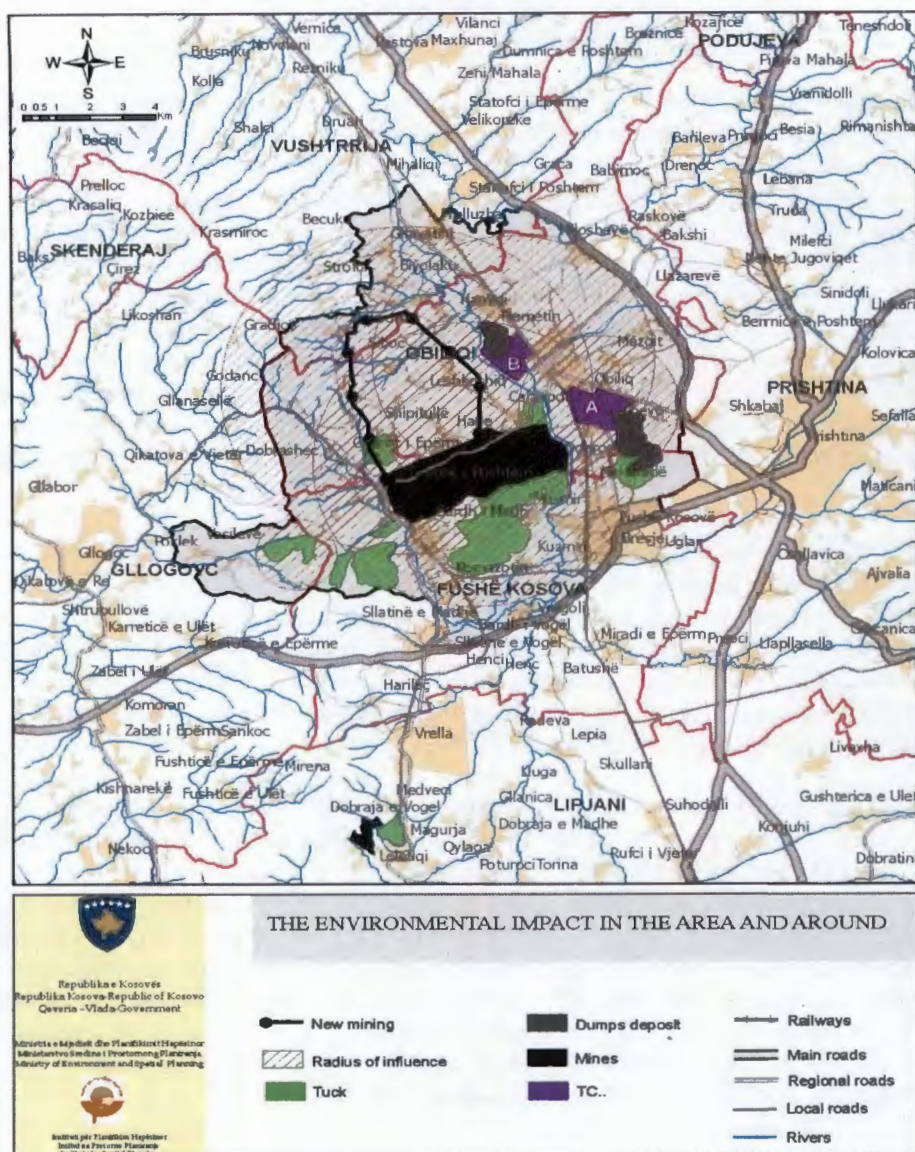


Figure 3: Spatial Plan for the New Mining Area and its surroundings

38. The KRPF delegates the powerful right to invoke the Government's expropriation authority approval of the resettlement to a yet-to-be-determined private concessionaire who will trigger the need for development of Resettlement Action Plan or Plans (RAP/s) under this KRPF. This framework is meant to guide the development of the initial RAP for the Lignite Power Project as well as future RAPs developed in regard to that and other projects." The project company is responsible for preparation of a Resettlement Action Plan (RAP) subject to public comments and the MESP approval.

39. Together, the KRPF and the SP create a policy framework that facilitates the use of the pre-independence, SMELT, incremental expansion-expropriation for taking land in the New Mining Field displacement.
40. The sixth LPI structure element is the Shala Resettlement Plan. As the mine crept northward, KEK initiated the expropriation of some households in a neighborhood on the southwestern corner of Hade known as Shala (Decision No. 08/66 from 29 May 2009). The MESP expanded KEK's request to expropriate to include the acquisition of the entire neighborhood of 320 full-time residents (63 households) and the properties and immovable assets of approximately 30 more non-residents. The Shala resettlement is meant to demonstrate to the Bank Board and other lenders the Government's ability to comply with international standards in anticipation of the KPP.⁴²
41. Unlike previous KEK expropriations, Shala has a resettlement action plan (RAP) that references many of the IFC PS 5 and The World Bank OP 4.12 guidelines. The RAP's objectives are to comply with Kosovo Law and international best practices, set an example for future displacements, drive this process by consultation and participatory planning, compensate with replacement value and, at a minimum, restore livelihoods to ensure sustainable benefits, provide "modern replacement assets" and enable community continuity.

An Unreliable Scaffolding

42. By the summer of 2013, all six elements of the legal, policy and institutional structure were in place. The Kosovo Government and their foreign advisors⁴³ believed that they had moved beyond the heavy handed, land acquisition methods of the former political regime.⁴⁴ They also claimed that their KRPF reflects general international human rights standards.⁴⁵

"Land and acquisition for future expansion of the lignite mine and associated power plant development is governed by a Resettlement Policy Framework (RPF), which was developed under the previous LPTAP activity, and has been adopted by Government. A Resettlement Action Plan (RAP), based on the KRPF, has been prepared for the people to be affected by lignite mining in the Shala area of Hade village to **facilitate immediate and pressing lignite fuel requirements**; this RAP will also serve as practical guidance

⁴² The US \$ 8.5 M Lignite Power Technical Assistance Project (LPTAP 2006-2011) supported the preparation of the Project by financing, a Resettlement Policy Framework (RPF) and the RAP for part of Hade village.

⁴³ The Resettlement Policy Framework (RPF) and the Draft Law on Expropriation for the Public Interest was developed under an World Bank funded, LPTAP contract with Hunton & Williams with IPA.

⁴⁴ Annex B to DRAFT FINAL SESA REPORT Environmental and Social Safeguard Advisory Services for Private Sector Participation in the Development of New Generation Capacity, Related Transmission and the Development of the Sibovc Lignite Field. Prepared by ERM Italia S.p.A. May 2008.

⁴⁵ The MESP recognizes the expropriation and displacement will lead to loss of land, housing, businesses, employment, and heritage and cultural services and argues that the KRPF reflects OP4.12 and PS5 in March 2011 The Spatial Plan for the Special Economic Interest Area 'New Mining Field' page 92.

for future implementation of the mining plan as well as any land acquisition needed for future power plant and associated facilities.⁴⁶

43. The Bank uncritically accepted the Government's claim that the NMF Shala RAP and resettlement (beginning in December 2011) not only complied with its involuntary resettlement standards, but that it would be the model for future RAPs of unspecified thousands who would be displaced.⁴⁷ Bank Management signed off on the release of the Government's final ESIA terms of reference and the project entered the preparation phase of the Bank's project cycle. Kosovo approved a short list of 4 bidders and began seeking a contractor for the KPP Environmental and Social Scoping Study (ESSS), which will be the basis for the required Environmental and Social Impact Assessment (ESIA).⁴⁸
44. Close examination reveals that the Kosovo Government, with the Bank's help, has built an unstable scaffolding for a involuntary resettlement that places the Bank, the Government, the concessionaire, the lenders, the project affected peoples, and sustainability of the project at risk. Specifically, the Government and Bank a) used the wrong involuntary resettlement policy instrument, b) failed to incorporate the primary objectives of the international involuntary resettlement policies, c) overestimated institutional capacities of those responsible for implementation of the resettlement, d) grossly underestimates the costs of the involuntary resettlement, and e) has planted the seeds for future civil conflict and political risks.⁴⁹

Selection of the Wrong Policy Instrument

45. **The first weakness of the KPP is that the Bank and Government have selected the wrong policy instrument for the involuntary resettlement.** As a condition of appraisal, The World Bank requires an involuntary resettlement plan (RP) conforming to its operational policy.⁵⁰ For a large-scale involuntary resettlement, preparation of this RP instrument is a laborious, complex, costly and time consuming task. The World Bank projects between 1995 and the present have completed several hundred RAPs).⁵¹

⁴⁶ Terms of Reference for Environmental and Social Impact Assessment of the Proposed Kosovo Power Project, 2013. The ESIA is being funded out of the Additional Financing of the Clean up and Land Reclamation Project.

⁴⁷ The World Bank Integrated Safeguards Data Sheet: Concept Stage of 2 August 2011 states "Government has prepared an OP 4.12-compliant Resettlement Policy Framework (RPF). The RPF was publically consulted in January 2011 and was recently adopted by the Government. The RPF is intended to guide current and any future resettlement that may be envisaged in the New Mining Field Zone. The Government is also in the process of preparing a RAP for the Shala neighborhood of Hade Village."

⁴⁸ Draft Terms of Reference for Environmental and Social Impact Assessment from the proposed Kosovo Power Project, March 2013. The ESIA is being funded out of the Additional Financing of the Clean up and Land Reclamation Project.

⁴⁹ KOSID earlier contention that the KRPF and associated documents developed under the LPTAP did not fulfill the requirements laid out by the OP4.12 to avoid, minimize and fully compensate for the involuntary resettlement that KPP will cause is supported. Report and Recommendations Kosovo Power Project (proposed) Republic of Kosovo. The World Bank: The Inspection Panel. June 20, 2012. Page 19.

⁵⁰ OP 4.12, ¶ 17a, 25, and Annex A, ¶ 2-21.

⁵¹ A database of over 500 examples of RAPS is available on www.displacement.net

46. Bank policy permits, on special circumstances, the use of a different involuntary resettlement instrument, called a “Resettlement Policy Framework” (**WBRPF**). A WBRPF is used for sector investment or financial intermediary operations.⁵² All steps on involuntary resettlement in the KPP indicate that Management and the Government are claiming this exemption to the requirement to prepare a full resettlement plan for the KPP. The maneuver became obvious with the final release of the terms of reference for the ESIA in 2013, which incorrectly informs bidders that the Kosovo Resettlement Policy Framework and the Shala RAP are evidence of the proposed project compliant with the World Bank’s operational policy. The use of the wrong policy instrument is the first of six perilous weaknesses in the KPP involuntary resettlement scaffolding.
47. A World Bank RPF is not applicable to the KPP. The more comprehensive instrument, the Resettlement Plan, is intended for discrete infrastructure projects.⁵³ A full resettlement plan has 19 mandatory elements of which 7 have an additional 33 sub-elements. The resettlement framework requires only 13 elements. When an abbreviated WBRPF is prepared, the Government’s implementing agency is required to submit a resettlement policy framework prior to project appraisal that conforms to the Bank’s overall operational policy (see OP 4.12, [Annex A](#), ¶ 23-25). The project’s implementing government agency must agree, in the legal documents, to screen subprojects to assure the Bank that it is consistent with its policies.
48. The Bank does less due diligence when this special exception to its safeguard policy is allowed.⁵⁵ Such delegation of responsibility and the use of a WBRPF may only be granted if the implementing agency has demonstrated adequate institutional capacity to review resettlement plans and ensure their consistency with this policy.⁵⁶ Such is the case, for example, for mature governments that have demonstrated past institutional capacity in involuntary resettlement policy and processes. Management due diligence on the KPPF was lacking: the quality and comprehensiveness of the Kosovo resettlement policy framework falls far short of those developed by other Bank projects in this region.⁵⁷
49. Consequently, no reference is made in the ESIA for the preparation of a full resettlement plan for the project, a most unusual omission for a project that intends to displace thousands of people. The TOR leaves uncertain whether or not additional RAPs, apart from the Shala model, will need to be prepared. In the place of a RP, the LPI structure transfers the responsibility for preparing and executing future RAP to the concessionaire as an option (they may prepare a RAP) not a policy requirement.

⁵² OP 4.12 ¶ 22 and 25. An abbreviated resettlement action plan is an option for displacements of less than 200 people and is inapplicable to the KPP.

⁵³ OP 4.12, ¶ 27.

⁵⁴ Another option, something called a process framework is prepared for projects involving restriction of access to parks and protected areas (OP 4.12 ¶ 17c), and is inapplicable to this discussion.

⁵⁵ For example, the World Bank’s RPF only requires its client to estimate, to the extent feasible, the total population to be displaced and the overall resettlement costs, whereas the full RP requires a census of all project affected peoples and more, and a resettlement action plan (RAP) for the project.

⁵⁶ OP 4.12 ¶ 30.

⁵⁷ Compare, for example, the KPPF to that prepared for Armenia. 2014. *Resettlement policy framework*. Armenia. <http://documents.worldbank.org/curated/en/2014/01/18804463/armenia-social-protection-administration-ii-project-resettlement-policy-framework>

50. World Bank reviews have found that projects relying on Resettlement Policy Frameworks have lower success rates for mitigating impacts and are less well supervised than projects with resettlement plans.⁵⁸ The Bank study recommends that if an investment relies on an RPFs for approval, its management needs to invest proportionally greater resources in supervising these projects to help the client implement them well.
51. Substituting a resettlement policy framework for a RP violates multiple provisions of the Bank's involuntary resettlement policies. The KPP is not a package of unrelated government ministry projects or programs.⁵⁹ Nor is the Bank lending to a financial intermediary who is investing in multiple sector subprojects.⁶⁰ KPP is a single project at a single site, with a single concessionaire. The KPP requires a full draft resettlement plan conforming to OP 4.12, its Annex, and IFC PS5 before appraisal (see [Annex A, paras. 23-25](#)), not the Kosovo RPF and with the Shala RAP as an example that should be used for the displacement of thousands of future Kosovars.⁶¹
52. It would be disingenuous to claim that the many KPP tasks are subprojects of a sector or a financial package and thus fall under OP 4.12, ¶ 17a. Such a claim would mock the Operational Policy's architecture and intent; any single purpose project sidesteps the safeguard policy by claiming the project's tasks are actually subprojects.
53. The newly formed Kosovo government cannot demonstrate its experience or capacity to oversee a Bank-compliant RPF, particularly while they are overseeing two previous, incomplete, noncompliant involuntary resettlement and hundreds of people living in temporary housing in the project area (Shala and the 2004-05 displacement). And Bank Management does not have studies showing their model RAP at Shala is restoring lost and disrupted livelihoods.
54. In its rush to start the KPP, Bank Management is misleading the fledgling Government of Kosovo into believing that its hastily constructed LPI framework might be sufficient to allow the KPP to slip through the involuntary resettlement policy loophole. Management reinforced this illusion by uncritically incorporating the Shala RAP in its Finance Agreement and then omitting the need for a full resettlement policy from the terms of reference for the ESIA.⁶²

⁵⁸ IEG, *Safeguards and Sustainability Policies in changing World: An Independent Evaluation of World Bank Group Experience*, The World Bank, Washington D.C., 2010, p. 38.

⁵⁹ Cf. OP4.12, ¶ 26, and Annex A, ¶ 23-25.

⁶⁰ OP 4.12 ¶ 27.

⁶¹ The Bank requires that a satisfactory resettlement plan or an abbreviated resettlement plan that is consistent with the provisions of the policy framework be submitted to the Bank for approval before the subproject is accepted for Bank financing. (OP 4.12, ¶ 30). An argument might be made that the Shala RAP is a "draft" plan, but that exposes the KPP to claims that it is out of compliance since this plan fails to provide for even a modicum of housing security and restoration of lost livelihoods.

⁶² IDA Credit 5240-XK Finance agreement summary states "MESP shall be responsible for Continuous Schedule 2, section I. D. 4 implementation of the Resettlement Action Plan and shall ensure that resettlement undertaken for the Shala neighborhood of Hade village is in accordance with the provisions and procedures contained in the approved RAP." The World Bank Project paper on a proposed second additional financing credit in the amount of SDR 2.8Million and second restricting (grant) to the Republic of Kosovo for the Kosovo Energy Sector clean-up and Land Reclamation Project, March 28, 2013.

Failure to Incorporate the Four Primary Policy Objectives

55. The scaffolding's **second major flaw is that its legislative, policy and institutional framework (LPI) does not incorporate The World Bank's four primary policy objectives** and the primary objectives of sibling involuntary resettlement policies, such as the IFC PS5, Equator Principles.^{63 64} Taking a different route, the KRPF sets a different primary objective: minimization of land acquisition and displacement in the development of necessary infrastructure and activities. It selectively incorporated parts of the Bank's objectives, allowing them to claim they are "consistent" with the Bank's objectives.⁶⁵ A closer examination reveals that consistent does not mean compliant.

Avoidance, Minimization or Exploration of Alternative Project Designs Objective

56. The first primary policy objective is that involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.⁶⁶ In the preparation of other energy sector projects, such as hydroelectric power, estimates are made of how many people may be displaced and power generated at different heights of a dam, and a less than maximum output chosen to minimize the human impact. The KPP has not adjusted its mining planning, designs or operations to avoid or minimize involuntary resettlement.
57. Finally, project planning showed a preference reaching targets that set lignite production ahead of mitigating the impacts of involuntary resettlement. Viable, alternative project designs that would have minimized forced displacement were rejected in favor of the siting of future motorways and a slight improvement in coal quality.⁶⁷ Resettlement was one of 12 criteria considered in the evaluation of 6 mining development alternatives; the process chose the option involving the most extensive involuntary displacement (Sibovc Variant 1.1) over an option that involved no resettlement (Variant 2). Government selected the scenario that with 10% higher quality coal and a higher annual yield (Annex 2).⁶⁸ The rejected variant would have caused less human and environmental disruption. Specifically, Variant 2 (the D-Field) would have avoided all resettlement, with less overall environmental impact but

⁶³ OP 4.12 ¶ 2.

⁶⁴ The KPP has agreed to follow both The World Bank and the IFC involuntary resettlement standards. The two are nearly identical. IFC PS5 states: PS5 involuntary resettlement policy objectives are to 1) avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs, 2) avoid forced eviction, 3) anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by a) providing compensation for loss of assets at replacement cost and (b) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected, 4) To improve, or restore, the livelihoods and standards of living of displaced persons, and 5) improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites [emphasis added].

⁶⁵ The KRPF states that "Where displacement or the loss of economic assets and means of livelihood are unavoidable, the objective of this policy is to ensure that affected people can improve or at the very least recover their standard of living and livelihoods in the shortest possible time", an objective that is not operationalized in the policy itself.

⁶⁶ OP 4.12, ¶ 2a.

⁶⁷ European Agency for Reconstruction. EUROPEAID/116986/D/SV/KOS. Preparations of a mid term plan for existing coal mines and a main mining plan for the development of the New Sibovc Mine: Final Report. Main Mining Plan for New Sibovc Mine. Part I Basic Investigations. Prepared by Vattenfall Europe Mining AG. June 24, 2005

⁶⁸ EuropeAid Main Mining Plan Sibovc, Part III, Environmental Impact Study. 2005, Page 77-102.

would have disrupted a proposed motorway route. It did carry risks in connection with phenols from an earlier project.⁶⁹ Another rejected scenario would have delayed resettlement of the largest population scheduled for relocation for decades (Variant 1.2). Four years later, the Spatial Plan considered these alternatives again, but the least-resettlement scenario was not considered.⁷⁰

58. Examination of the engineering planning documents revealed the Bank and Government were aware that less profitable, alternative mining development scenarios would mitigate, if not avoid altogether the need for extensive involuntary resettlement. In the 2005 Main Mining Plan for the Sibovc mine, the European Agency for Reconstruction report by Vattenfall Europe Mining recognized that the resettlement is the main obstacle to exploitation of the mine. Noting the problems at Hade, they concluded:

If closely following this requirement and considering the Hade resettlement situation, as problematic KEK should develop a small mine into the Southern area of Sibovc with shortened coalface, i.e. to bypass Hade. Variant 2 demonstrates that the Sibovc field could be opened up from the Southwest part a small compact mine without the resettlement of the entire Hade village. Such mine would be sufficient to feed the existing power plants. In this variant with bypassing of Hade, maximally up to approx. 10 mt/a [metric tons/annum] could be mined economically.⁷¹

59. Within that area, the plan also adopts the SMELT model of mining operations, land acquisition, maximizing lignite production and the cost of dismantling living communities. A significant, obvious and missing step in compliance with this primary objective would be to consider the advantages and disadvantages of reprogramming an early fully safeguard compliant involuntary resettlement as opposed to a 30 year SMELT like displacement. This project-design option has not yet been done.
60. To the contrary, at Shala, the MESP and KEK offer a self-serving misinterpretation of the avoidance-minimization-explore alternatives objective. Rather than avoiding resettlement, the Shala RAP declares that there is no alternative except involuntary resettlement because the neighborhood is within 200 meters of the edge of the mine and at risk of subsidence, in violation of the Law of Mines and Minerals provision calling for a buffer zone.⁷² The disappearance of the buffer zone and the violation of law was a consequence of KEK mining operational decisions, not those facing displacement.

⁶⁹ A proposed D-Field would have avoided all resettlement of this project but disrupted a proposed motorway. See EAR 2005, page 61.

⁷⁰ Spatial Plan 2011, page 117.

⁷¹ Main Mining Plan for New Sibovc Mine, Part I of Preparation of a Mid-term Plan for existing Coal mines and a Main Mining Plan for the Development of the New Sibovc Mine. Part I Basic Investigations Main Mining Plan for New Sibovc Mine – Basic Investigations, Part 1. EAR-Project: EuropeAid/116986/D/SV/KOS

⁷² Ibid. Shala RAP, page 33.

Scenarios considered for the KPP NMI development.¹

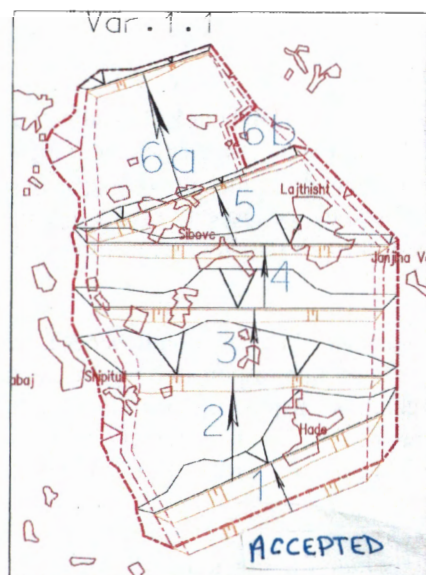


Fig. 7.2-1 Var. 1.1 (Development from South to North)

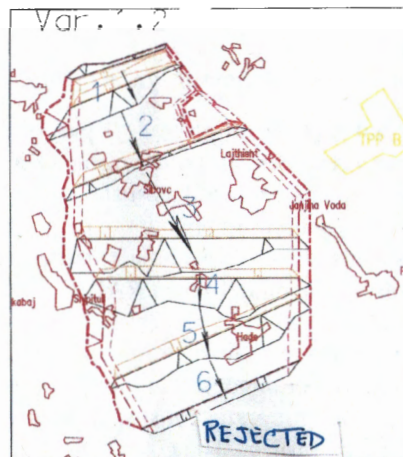


Fig. 7.2-2 Var. 1.2 (Mine Development from North to South)

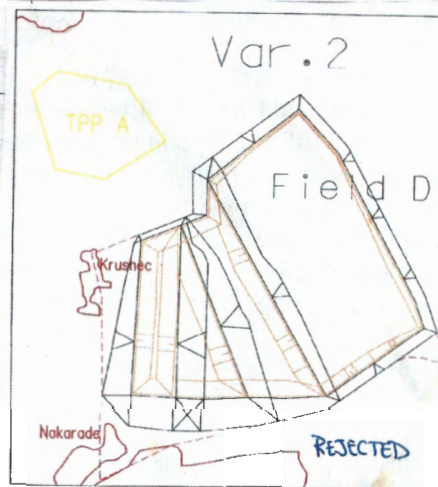


Fig. 7.2-3 Development D Field - Var. 2

¹ EuropeAID Main Mining Plan Sibovc, Part III, Environmental Impact Study, 2005, Page 77-102.

Figure 4. Accepted and Rejected Scenarios for Mining Expansion

61. While more humane than the forced evictions of their neighbors in 2004-05, the displacements at the Shala neighborhood did not involve exploration viable alternative project designs. From the perspective of this primary objective, Shala displacement is not much better than the 2004-05 in Hade operation. Mocking the avoidance/minimization primary objective, the Shala RAP claims to be minimizing resettlement by boasting it is only taking “a part” of the neighborhood. They are full aware that the SMELT strategy will continue and another neighborhood’s displacement will follow.

62. Meaningful evaluations of alternative, compliant coaling scenarios also must wait for realistic calculation of resettlement costs (see ¶ 142 to 145 for this challenge).⁷³

Resettlement as a Development Project Objective

63. The second primary objective⁷⁴ is part of key international standards, including the involuntary resettlement policy of the OECD.⁷⁵ Involuntary resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. This objective is not addressed in any of the LPI policies, the institutional structures, or the model Shala RAP.
64. These benefits are distinct from a project's broader social and economic benefits accruing to the nation or overall community or a company's corporate responsibilities.⁷⁶ Sustainable, benefit-sharing programs must specifically target those displaced, hopefully over the lifetime of the project. The costs for replacement of land, lost housing and infrastructure should not be tabulated as a benefit, since compensation for what is lost is neither development nor a benefit.
65. Nor is does "sharing in the benefits" mean gift giving. Caution must be exercised not to confuse the proposed US\$ 10 million community development fund referenced in the Spatial Plan and EISA as meeting the resettlement benefit-sharing obligation.⁷⁷ This corporate responsibility fund is not targeted to the displaced, but designated to "help the community to improve their lives, improve social and physical environment in (sic) their training and participation in decision-making process."⁷⁸ The Spatial Plan is clear that the community fund is for around 55,000 people in the NMF area over a 20-year period. This works out to an average of US\$9.09 per person, per year.⁷⁹
66. The simple earmarking a fund or amount is also not a development project. The Bank, including IFC, has extensive experience in benefit-sharing programs that was not brought into this project preparation. These require careful study and planning for assuring a sustained flow of benefits to the displaced. Benefit-sharing programs among the vulnerable segments of the displaced population must be carefully designed, executed, and monitored to avoid causing internal strife and counter-development. Conceiving and executing sustainable development programs is only possible with intensive community engagement

⁷³ EuropeAid Economic and Financial Analysis. Prepared by Vattenfall. June 24, 2005 page 19.

⁷⁴ OP 4.12 ¶ 2(b)

⁷⁵ Likewise, the OECD DAC sets as the primary objective of OECD DAC adopting policy guidelines for resettlement activities is to ensure that project designers and implementers follow the best practices in such situations so that the population displaced by a project receives benefits from it and is re-established on a sound productive basis (OECD 1992, page 6).

⁷⁶ An often-repeated mistake in involuntary resettlement projects is for the mining company to claim that the infrastructure it has replaced, such as roads, schools or clinics are benefits to the displaced.

⁷⁷ Ibid. Spatial Plan, MESP.

⁷⁸ Assuming a 20 to 30 year project that displaces between 6000 and 8000 people, with no adjustment for inflation.

⁷⁹ In contrast, if the fund were restricted to PAPs, which in the current plans, it is not, the fund would average between US\$41 to US\$83 per person, per year (recall, no one knows how many people are to be displaced).

and listening to the PAP's needs. What is and is not development is measured by the community's yardstick.

Meaningful Consultation Objective

67. Research and experience have shown that the successful accomplishment of the other primary objectives is not possible without meaningful consultation and participation. The international policies also require, as a third primary objective, that resettlement activities be implemented with appropriate disclosure of information, consultation, and informed participation of those in the way.⁸⁰ This standard strengthens the project-affected-people's (PAPs) voice, mitigates conflict, and constrains government and concessionaire's unilateral actions. It also adds time and costs to the involuntary resettlement process.
68. The guidelines clearly detail the expected process.⁸¹ Displaced persons should be meaningfully consulted and have opportunities to participate in planning and implementation of resettlement programs.⁸² More rigorous consultation and participation is required for projects with strong impacts.⁸³ The consultation process must be in-depth, iterative,⁸⁴ providing affected communities with opportunities to express their views on project risks, impacts and mitigation measures. The client (e.g. Government and/or concessionaire) is required to consider and respond to the consultations.⁸⁵ During the Environmental Assessment (EA) process, the client is required to consult with project-affected-groups and local NGOs, disclosing relevant material in a timely manner prior to consultation in a form and language that are understandable and accessible to the groups being consulted. The disclosure should include project objectives, description and potential impacts. The EA report, including its resettlement planning, should be made available in a public place, accessible to the project-affected-groups (PAGs) and local NGOs.⁸⁶
69. Moreover, consultations must also begin early - in the identification phase and continue throughout the project cycle and it should be based on the prior disclosure and dissemination of easily accessible, relevant information. The consultation must be transparent, objective, meaningful, carried out in a culturally appropriate local language and be tailored to their decision-making process. Special provisions have to be made to consult with and hear the needs of disadvantaged or vulnerable group(s) prior to consultation, including arranging the format of the consultation to assure it is accessible and understandable to them.⁸⁷ The consultation must be free of external manipulation, interference, coercion, or intimidation. The process should also capture both men's and women's views, concerns and priorities about impacts, mitigation mechanisms and benefits,

⁸⁰ IFC PS 1 and OP 4.01

⁸¹ Recent amendments to this law have cut time for grievance, challenges, and public comment (Law 03/L-205, of 28 October 2010).

⁸² OP 4.12, ¶ 2b.

⁸³ The World Bank and IFC safeguard standards do not state that project affected peoples must consent to resettlement. There is growing international pressure to obtain prior informed consent which is being a part of United Nations standards.

⁸⁴ PS 1 ¶ 41

⁸⁵ PS 1, ¶ 30.

⁸⁶ Environmental Assessment OP 4.01, ¶ 15.

⁸⁷ OP 4.01 ¶ 14.

- where appropriate. And, the policy states that this consultation and participation process should be documented and lead to the client's incorporating into their decision-making process the views of the affected communities on matters that affect them directly.
70. Consultation and participation is not to be misinterpreted as a one-way presentation by the client of their proposed plans. It means the project incorporates community views on proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Measures must be taken to avoid or minimize risks as well as adverse impacts on the affected communities and will inform those affected about how their concerns have been considered.
 71. Apart from this detailed mandate for consultation and participation with the affected communities, the client must demonstrate procedures for meaningful consultations with communities, local authorities, and, as appropriate, nongovernmental organizations (NGOs), and it specifies grievance mechanisms.⁸⁸ In addition to requirements in the preceding three paragraphs, Category A projects, like the KPP have additional requirements.⁸⁹
 72. With its checkered history of conflict and unsuccessful involuntary resettlements, Government and Management should have placed this primary objective front and center in the project. A procedure to meeting these provisions is supposed to be laid out and approved by the Bank during the identification phase of the project.⁹⁰ Unfortunately, the KPP project paid minimal attention to the meaningful consultation, participation and grievance standards. While evidence of meetings was provided, the LPI structure and Shala model resettlement should have left some footprint. It does not.
 73. The Kosovo Resettlement Policy Framework with its proposed outline of a RAP devote less than a page public consultation and grievance procedures, listing topic headings.⁹¹ And the model Shala resettlement action plan did not include the process detailed above. Instead, the focus is upon their land acquisition through compensation objectives.
 74. Grievances are permitted to challenge land valuations but a process was not provided for recognizing claims to legal rights to land, including claims that derive from customary law and traditional uses, a requirement to avoid hampering the improvement of livelihoods lost by too narrowly defined eligibility.⁹²
 75. The KPP project is being designed to avoid substantive consultations with the project affected people until after Board presentation. The stepwise substantial involuntary resettlement sidesteps policy compliance and does not incorporate the views of those in the way and modify the plans set forth in the LPI before appraisal and presentation to the Board. As currently designed, the three decades long project will stretch out consultations and

⁸⁸ OP 4.01 ¶ 14.

⁸⁹ In addition, for a Category A project, the borrower must provide for the initial consultation a summary of the proposed project's objectives, description, and potential impacts; for consultation after the draft EA report is prepared, the borrower provides a summary of the EA's conclusions. The borrower must also makes the draft EA report available at a public place accessible to project-affected groups and local NGOs (OP 4.01 ¶ 16).

⁹⁰ Environmental Assessment OP 4.01, ¶ 14.

⁹¹ Resettlement Policy Framework for Land Acquisition for the New Mining Field Zone. MESP. 2009.

⁹² OP4.12, Annex A ¶7f.

participation to each small expansion of the project, sliver by sliver, neighborhood by neighborhood, as coaling advances. A properly managed mine should know where and when the next land acquisition will take place, thereby allotting adequate lead time for meaning consultation. Unfortunately, the KPP plans calls for a consultation to be delayed until each incremental expansion. In so doing, a substantial involuntary resettlement sidesteps policy compliance and does not incorporate the views of those in the way and modify the plans set forth in the LPI before appraisal and presentation to the Board. Since no RAPs will be done until after project approval, the project avoids the need to accommodate to the needs and desires of those in its path.

76. The LPI structure also lacks provisions for the civil sector monitoring of the effectiveness of consultation, participation and grievance process, as occurs in other Bank investments. The civil sector and those being displaced have no way of telling whether or not the Shala consultation and participation process has met policy objectives, since it has not been monitored or evaluated. Internal bank reports were requested and kept secret.
77. Lack of attention to the consultation objective is also evident at the Shala neighborhood displacement. The Government and World Bank claim this will be an example of a world-class resettlement process that will serve as an example for future Kosovo NMF resettlements. Closer examination shows this to be a hyperbole. Although claiming it will be a consultation-driven resettlement planning process, the on-the-ground actions are not aligned with the broad scope of the international guidelines. Between January and August 2011, KEK and MESP report they held four open house meetings in which they summarized the resettlement planning process.
78. Community input at these meeting was limited by the way the input was structured ahead of time. Input was invited on whether to resettle the neighborhood in part or as a whole, compensation entitlement packages, procedures, and designs for the new community, replacement housing, and the option of the affected people accepting temporary resettlement.⁹³ Livelihood restoration was not part of these consultations, but was planned to take place after the RAP's publication.⁹⁴ Nor were those at the meetings informed of the correct objectives of an internationally compliant involuntary resettlement. Consequently, those being displaced were not meaningfully informed. The time allotted was truncated, offering the displaced only a few weeks possible consultation.
79. The problem was tested in a public meeting that I held with about 100 Hade project affected peoples, including those from Shala. Offering a brief overview of the international standards, I asked how many had been informed of the these and the risks. One person, the local assemblyman, raised his hand. After years of consultations and preparations for compliance with the policies, this lack of awareness indicates poor communication.
80. At Shala, the MESP and KEK misused the notion of community consultation to justify waiving of an involuntary resettlement policy's objectives – that of assuring housing with secure tenure is provided to those displaced at the time they are removed (see ¶ 68). Some of these consultations were focused on convincing the PAPs to accept unprecedented, measures that are unacceptable in the international standards, including agreeing to live in

⁹³ Resettlement Action Plan: Shala Neighborhood. Project Hade: MESP. 2011.

⁹⁴ Ibid: page 11.

temporary housing until the resettlement site was finished (see ¶132). This shows a complete lack of understanding of this objective that, in its full force, is not yet part of the KPP.

81. The limitation of project planning to compensation rather than development, benefit-sharing and livelihood restoration has prevented the Government, Bank Management and those to be displaced from considering the innovative methods being developed to reach the primary objectives. One example. In Japan, sustainable, long term, benefit-sharing arrangements have been used to avoid expropriation altogether. Those displaced and their heirs who were unable to recover their land-based livelihoods receive profit sharing through long-term lease payments for the lifetime of the project. This allowed them to retain ownership of their land and receive a future income stream from its lease.⁹⁵ This model could be applicable to open pit mining.

Improvement of Livelihoods and Living Standards Objective

82. The Bank's fourth primary objective is crucial to a successful involuntary resettlement. Projects must assist displaced persons in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms and in the shortest possible time, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher (emphasis added).⁹⁶ This standard is intended to reduce the chances that those in the path of the project will be impoverished as a result of the project, an unacceptable and unnecessary outcome for an internationally financed development project.
83. The objective has two elements: livelihood and standards of living. 'Livelihood' is the capacity to gain a sustainable living from a wide range of natural and social resources.⁹⁷ It is not limited to wages or commercial ventures. In contrast, living standards refers to access to goods and services relative to others. The two concepts are quite different, in that living standard may be raised by owning a newer home or television without an improvement in livelihood..
84. Restoration of livelihoods is more challenging. This requires more than payment for land acquired and the transaction costs, it demands reestablishing a sustained, income flow and a capacity for wealth accumulation.⁹⁸ The assumption that merely paying for land acquisition restores or improves livelihood is unsupported by Bank experience and four decades of research.⁹⁹ Compensation is not enough.
85. Neither Government nor the Bank can calm ignorance of the above issues. Six years ago, Bank consultants who prepared the draft Kosovo resettlement policy framework

⁹⁵ Michael Cernea. Compensation and Benefit Sharing: Why resettlement policies and practices must be reformed. Water and Science Engineering, March 2008, Vol. 1, No. 1, 89-120, see page 106.

⁹⁶ OP 4.12, ¶ 2c, I add emphasis to make it clear the burden falls on the project, not those displaced.

⁹⁷ IFC PS 5, OP 4.12, including Annex A.

⁹⁸ OP 4.12, 3(a)iii. iii) The policy covers the loss of income sources or means of livelihood, whether or not the affected persons must move to another location. Some factors, like trees and fresh water, may take years to recover.

⁹⁹ Michael Cernea. Compensation and Benefit Sharing: Why resettlement policies and practices must be reformed. Water and Science Engineering, March 2008, Vol. 1, . 1, 89-120, see page 106.

acknowledged livelihoods risk issue, concluding that the project had to move beyond the traditional Kosovo approach to involuntary resettlement stating:

It is important to emphasize that the impacts of land acquisition involve much more than the loss of housing. In the first place, given that the affected areas are largely rural, it *could result in a significant loss of livelihoods*. The results of the consultations suggest that there are high levels of unemployment and under-employment in the area; this means that people depend on their farmland for a significant part of their subsistence and cash income. This makes resettlement particularly difficult, since international standards rightly require affected families to be compensated for the loss of their livelihoods and/or subsistence. In addition the land take for the mines and power plant may affect some small businesses and result in people losing employment. [Emphasis added]¹⁰⁰

86. Their concerns have gone unheeded. The Kosovo LPI structure does not comply with OP 4.12's livelihood restoration objectives by:

1. Ignoring mandatory livelihood restoration and improvement steps.¹⁰¹
2. Setting more restrictive definitions of who is eligible for benefits than Bank policy.
3. Restricting the livelihood impact area to a narrow footprint, basically the house and house lots of the displaced.
4. Setting a more restricted definition of what is and is not livelihood.
5. Unduly limiting what lands are available for rebuilding and improving livelihoods.
6. Placing restrictions on the selection of a resettlement site that does not provide space for rural agricultural livelihood reconstruction or improvement.
7. Offering fewer land-for-land livelihood restoration options than are provided for wealthier Kosovo landowners whose lands are expropriated under the Expropriation law.
8. Proposing unfeasible, nonviable livelihood restoration options.
9. Lacking specific provisions for financing livelihood restoration.
10. Leaving cash compensation as the only real alternative.
11. Failing to address the livelihood improvement and restoration objectives in the model involuntary resettlement at Shala neighborhood in Hade.

As the future of thousands of Kosovo citizens are in the balance, it is worth considering each in more detail.

87. Missing mandatory steps. OP4.12 and its annex mandate multiple elements for livelihood recovery and improvement (Table 2). These include avoidance and minimization of displacement and conceiving the displacement as a development project, estimation of the

¹⁰⁰ Revised Resettlement Policy Framework. Lignite Power Technical Assistance Project. Legal and Regulatory Advisory Services. Submitted to LPTAP Project Office, Pristina, Kosovo. By Hunton and Williams LLP. April 2008: Page 18.

¹⁰¹ OP 4.12, Annex A ¶ 2 thru 21.

scope livelihood losses, based on a full census of all project affected peoples¹⁰², identification of who and what is at risk, analysis of the gaps between the Bank and local policies, identification of instruments and measures to bridge this gap, analysis of the institutional capacity of agencies responsible for displacement, identification of vulnerable groups or persons, studies of land tenure and transfer systems, studies of social interaction and institutions, and other social support systems that might be disrupted by the project, and more. The LPI structure mentions some of these elements, the full census, estimations, assessments, and analyses are missing. And they were not operationalized into procedures or practice, as might be expected in the case of the model involuntary resettlement at Shala.

88. Restrictive eligibility. The KRPF and the Shala RAP sets more restrictive, eligibility criteria for restoration and improvement of livelihoods than the international guidelines, thereby limiting the project's responsibility for land-based restoration of livelihoods. Displacees must have recognized legal rights or claims to the land they occupy or use to be eligible for livelihood restoration. This is not a requirement under OP4.12. Nor are legal rights easy to document in a newly formed government.
89. Eligibility is further restricted to those who are fully affected and who can pass a three-point test. They must a) depend on their affected farmland, pasture or forestland for a significant part of their livelihood of subsistence, b) not own or occupy other viable holdings and c) have legal title to the land or who are recognized as having full, unchallenged rights of ownership, are given two options.¹⁰³ Those passing this test may either receive an alternative plot on rehabilitated land with compensation for other lost assets (barns, outbuildings, permanent crops, etc.) or cash compensation for land and other assets, plus transitional costs (transport, legal fees, loss of crops or earnings). All others receive only cash compensation.¹⁰⁴ This is much more restrictive than international policy and effectively excludes most project-affected-people from livelihood restoration. On the ground, these restrictions make it unlikely that livelihood restoration will take place.
90. Restrictive Project Footprint. Use of a restricted project footprint underestimates livelihood disruption. Under Bank guidelines, baseline studies (Table 2) are supposed to determine the standard characteristics of displaced households including their livelihoods (description of production systems, labor and household organization, production levels, income derived from both formal and informal economic activities) and standards of living (including health status of the displaced population), the magnitude of the expected loss – total or partial – of assets, and the extent of displacement, physical or economic.
91. LPI structure changes this procedure, redefining the 1600-hectare impact area into much smaller project footprints surrounding the house lots to be resettled. This methodology excludes livelihood activities, limiting the livelihood impact area to the areas immediately adjacent to the house lots. The Shala resettlement action plan limits the project's responsibility to livelihood activities reliant on affected immoveable assets or access in

¹⁰² The 2008 SESA was a survey that identified generic issues, but is unacceptable as a baseline livelihood census.

¹⁰³ The KRPF states it offers three options in the text but only two appear on the compensation matrix?

¹⁰⁴ This includes land owners whose property are partially affected – meaning the remaining areas are viable, tenant farmers or sharecroppers, renters with formal tenancy, known owners occupying property belonging to people who fled during the last war in Kosovo

narrowly defined Project Footprint, excluding the livelihood support contributions of surrounding areas (Figure 5).

92. More restrictive definition of livelihood. The Shala RAP claims that there is no evidence of the inhabitants gaining an income from “commercial agriculture.” The RAP survey reported that no households in Shala take part in “agriculture for profit”, but they also report that two-thirds of the displaced supplement their household’s livelihood with fruits or vegetables grown on their land, all for household consumption (2011 socio-economic survey).
93. In the international involuntary resettlement policies, land based livelihood systems are not limited to commercial agriculture. This overly restrictive criterion excludes subsistence food and fuel.¹⁰⁵ A full analysis of this question must also determine the land-based benefits to the displaced derived from the agricultural surroundings within the context of a rapidly transforming land tenure in which land ownership, especially socially owned enterprises are being redefined. Aerial photos and the SESA survey show the need for assessment of the importance of the agricultural land surrounding the project footprint to the displaced. The lost, equivalent nutritional value from these land-based subsistence production, if it had to be purchased, may exceed the 20% Bank threshold. Such restrictions make a difference on-the-ground. Shala households employ a range of different livelihood strategies, including casual labor, government and family support and complementary subsistence agricultural activities, and paid employment.



Figure 5. Project Footprint of the Shala Neighborhood defined by RAP.

¹⁰⁵ Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing. Michael Cernca and Hari Mohan Mather. 2007. Oxford University Press.

94. The RAP further restricts the need for livelihood restoration by narrowing the definition of livelihood to mean only wage employment, cash earned, or commercial agriculture within the project footprint area. While wages play a crucial role in two-thirds of the Shala neighborhood - 93 households, other sources of livelihood play an important role in this mixed economy. However, nineteen households receive financial assistance via remittances from family members abroad, pensions and social assistance payments. Ten households identified remittances as their sole source of income. About the same number of households cultivate other crops outside the household garden or orchard. The livelihood restoration and improvement objective requires a full analysis of all livelihood sources and actions to avoid loss of livelihood.
95. Limitation of land replacement options. The KPP shows no intention to offer a viable land-based, livelihood restoration option. The MESP preselected a resettlement site that is supposed to accommodate the thousands of NMF project displacees. The planning documents admit ¹⁰⁶specifically that the new settlement, New Hade-Shkabaj, will have sufficient space for accommodating the housing demand of Hade population but does not provide space for rural agricultural activities.¹⁰⁷ Initial planning recommended locating additional resettlement sites with opportunities for many of the affected households engaged in agricultural activities.¹⁰⁸ This critical, livelihood restoration recommendation was subsequently abandoned.
96. The LPI structure restricts the livelihood restoration options far beyond that found in international policy, limiting the project cost to land acquisition. Even here, project investment costs are shifted to the municipality. The Spatial Plan assumes those displaced must be resettled on limited amount of Obiliq municipality land rather than on land purchased in the open market or on agricultural cooperatives and social property that has been privatized.¹⁰⁹ Without a viable site that permits a land-for-land option, the only option of lost land-based livelihoods is cash-compensation.
97. Abandonment of land-based strategies. If the KPP initiative is to privatize,coaling, why the insistence on involuntary resettling people on public lands and avoidance of purchasing land-for-land options on private land? The World Bank management knew that they had used land-for-land purchases of private property in other projects. And they know that OP 4.12 does not limit a land-for-land option to local, public lands.¹¹⁰ And, they know that a decision to abandon land-based strategies in a forced displacement must be made to the satisfaction of the Bank. It cannot be assumed. Exceptions to land-based strategies are permissible only if sufficient land is not available at a reasonable price. In that case, non-land-based options built around alternatives for employment or self-employment should be provided in addition to land compensation for land and other assets lost.

¹⁰⁶ The Spatial Plan notes that "Municipal Assemblies areas affected by the project do not have enough public property to a destination of construction because the land are owned by the former cooperatives and agricultural combines that are now privatized and are owned by individuals since the period of 99 years, and also the properties public utilities are in smaller quantities than many requirements that must be offered residents." Page 92.

¹⁰⁷ Draft Sibove Development Plan. May 2008, page 473 and LPTAP Draft Report May 2008.

¹⁰⁸ The World Bank/ LPTAP ESSAS, Draft of the Spatial Development Plan 26 May 2008, page 37.

¹⁰⁹ MESP Spatial Plan, page 92.

¹¹⁰ For example, the Zimapan Dam livelihood restoration program in Mexico purchased a private, irrigated ex-Hacienda for those displaced.

98. By restricting the land-for-land options, the LPI structure transfers the resettlement cost for those who are losing their land-supported livelihoods from the project (and concessionaire) to the municipality and the project affected peoples, forcing thousands to be forced into a compensation only option, and severely reduces their chances for restoring livelihoods. This is a planned train wreck.
99. Fewer land-for-land options than are provided in law for wealthier landowners. Although the KPP displacement is taking hundreds, perhaps thousands of parcels, it does not provide the land-for-land options that are available, in law, to a wealthier landowners with 20 or more parcels. The Law on Expropriation provides, in one instance, stronger protections against loss of livelihoods than the KRPF and its Shala model RAP which individualize the takings. For larger takings (more than 20 parcels) the Expropriation Law provides for in-kind compensation by means of land-for-land (Art. 16). The Government may provide immovable property having a value that is equal to the compensation owed, or it may offer some combination of cash and property (Art. 16). This policy perversion is also consequence LPI approaching land acquisition as individual, cash property acquisition, not the dismantling of a socially, economically, and ecologically community livelihood systems.
100. Unfeasible livelihood restoration options. The Bank requires a project provide the displaced with “economically feasible options”.¹¹¹ For persons whose livelihoods are found to be land-based, priority should be given to provide them with replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost.¹¹² At first glance, the LPI structure appears to comply. The KRPF states that people with full legal title to land affected by the mining or power projects shall be offered either an alternative plot on an area of land rehabilitated from the large area of overburden dumps that presently belong to Kosovo Electricity Company (KEK) (“land for land”), or cash compensation sufficient to acquire another plot of land of equivalent area and quality to the affected plot.¹¹³
101. Closer examination reveals this proposed land-for-land option is not economically, technically, or logistically feasible for livelihood restoration. There is simply not enough cost-effective rehabilitated areas available at the time the involuntary displacements take place. Current overburden dumps do not provide sufficient replacement for the 1600 hectares to be lost to the NMF. The best project estimate is that 212 hectares will be rehabilitated once coaling is finished – 20 to 30 years later. The South Field with about 600 hectares shows the most potential, but it is not part of the plan. Other dumps are unsuitable for resettlement or agriculture.¹¹⁴
102. And even if the project were capable of absorbing the costs of years of so-called “temporary” support of housing AND livelihood, human factors intervene. Will a

¹¹¹ OP 4.12 6(a)2.

¹¹² International Finance Corporation, Performance Standard 5, ¶ 27.

¹¹³ Pre-Feasibility Environmental Impact Assessment: Kosovo Energy Sector Clean up and Land Reclamation Project. Final Draft. May 2, 2006 (Doc 15) KRPF, Doc 016, Page 13

¹¹⁴ Kosovo Energy Sector Clean-Up and Land Rehabilitation Project KEK. 2 May 2006, p. 60 states KEK’s 2006 land rehabilitation proposal notes “the post cleanup ASF site on D-Field will likely not be a green field suited for unrestricted subsequent use, e.g. resettlement or agriculture. This owes partly to the (suspected) phenol contamination, whichever degree it may eventually prove to be, partly to the (confirmed) former underground mine works, likely to cause stability and subsidence problems.” s

dependent population accustomed to subsidies be willing to return to work? How will the estimate 212 hectares of rehabilitated land be distributed among those who are losing sixteen hundred hectares of a renewable resource, mostly pluvial farmland will be removed for accessing nonrenewable lignite.

Table 2. Mandatory, but Missing Livelihood Restoration and Enhancement Steps.

The Kosovo Legal, Policy and Institutional Structure is missing the following steps for Compliance with World Bank Policy (OP 4.12, incl. annex A)

<ul style="list-style-type: none"> Avoidance and minimization of displacement, critical steps to avoid livelihood destruction. See ¶ OP 4.12 ¶63-67. 	<ul style="list-style-type: none"> Information on public infrastructure and how they will be affected.
<ul style="list-style-type: none"> Analysis of the institutional capacity of the agencies responsible for the displacement to assure responsibility and financing for livelihood and living standard improvement. Ibid. ¶8 	<ul style="list-style-type: none"> Identifying information on vulnerable groups or persons for whom special provisions may have to be made and provisions for updating this information at regular intervals during the displacement so that the latest information is available at the time of displacement. OP 4.12 ¶8
<ul style="list-style-type: none"> Preparation of a baseline to determine the scope of livelihood loss and who and what is at risk. ¶ OP 4.12 Annex A, 6(a)2 Specifically, a socioeconomic study and full census (<u>not</u> a sample survey).¹¹⁵ 	<ul style="list-style-type: none"> Conceiving resettlement as a development project, a precondition to livelihood improvement. OP 4.12 ¶ 68-71
<ul style="list-style-type: none"> Analysis of the gaps between local laws covering eminent domain and the bank resettlement policy, including providing mechanisms to breach such a gap and any legal steps required to assure the effective implementation of resettlement activities. Ibid. ¶ 7. 	<ul style="list-style-type: none"> Studies of the patterns of social interaction, institutions, and cultural characteristics, including social networks and social support system, and how they will be affected by the project. Ibid. ¶ 6(b)ii
<ul style="list-style-type: none"> Studies describing land tenure and transfer system, including an inventory of common property, natural resources from which people obtain their livelihood and sustenance, non-titled based usufruct systems (including grazing and use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area. OP 4.12 Annex A, ¶ 6(b)i 	

¹¹⁵ The census determines current occupants of the affected area, standard characteristics of displaced households including their livelihoods (description of production systems, labor and household organization, production levels, income derived from both formal and informal economic activities) and standards of living (including health status of the displaced population), the magnitude of the expected loss – total or partial – of assets, and the extent of displacement, physical or economic.

103. Have sufficient funds been set aside to cover this back-end cost? EuropeAid estimated little less than 100 m€ (2005) to recover 18% (212 hectares) of cultivatable land lost to the New Mining Field, or a slightly less than 500,000 per hectare or .15 Euro/ton of coal.¹¹⁶ No adjustment was made for inflation. Donor studies point out that such reclamation is technically complex and leaves an area of agricultural land deep inside the pit, next to a new lake, that would be unsafe for reestablishing nearby human habitation. Will people be willing to compute a long distance to work fields? What type of agriculture is feasible? No studies were found showing the new lands will have the same or better potential than those lost. Given these uncertainties, it is disingenuous to offer those being displaced with either cash compensation or the promise of rehabilitated land. This leaves them no other option. This is, in reality, a compensation only option lightly covered with a veneer that appears to be the Bank operational directive.

Restoration and Improvement of Living Standards, including Housing.

104. International policies and process also assure the project restores and improves not only livelihood, but also living standards. While the concept of living standards involves many components, a strong indicator is the restoration and improvement of the fundamental human right of housing. At the onset, all those being displaced have relative good quality housing. Rather than comply with international standards, the KRPF institutionalizes a lower standard, restricting the eligibility and favoring cash compensation of people who are displaced from their existing houses.
105. Those being displaced are offered a housing restoration choice, which turns out to be no choice, comparable to the false choices offered for replacement land (see ¶ 96. The policy offers the displaced either a “basic standard replacement” or cash compensation at replacement cost. This option is only offered to recognized owners who have fully unchallenged, titled rights to the property and to homeowners who fled the area as a result of the last war. Tenants with formal tenancy agreements get compensation (6 months rent), squatters get a transitional and compensation (3 months rent). The standard replacement house may be of less value to the displaced than the lost asset. And, the resettlement area lacks its infrastructure of the previous house site. This leaves cash compensation as the only “choice.”
106. The LPI’s outcomes are not much better than those received by the 2004-05 Hade displacees. Government invented a new substandard rule that mocks the purpose of the consultation standard. They claim: “it is possible – given the timelines of this Project – that an alternative to direct relocation to the Shkabaj resettlement village (for eligible households) may be agreed by community.”¹¹⁷ Bank Management witnessed the MESP and KEK discuss this situation with the affected community members for more than a year. The Shala RAP states:

¹¹⁶ Technical Planning. Main Mining Plan for New Sibovc Mine, EAR Project: EuropeAid. Part II, section 12.5. 2005. The 99 m€ includes a half-million € needed for leveling, soil preparation, and farm road construction].

¹¹⁷ Resettlement Action Plan: Shala Neighborhood Hade Project Kosovo. Prepared for the Kosovo Energy Corporation Prepared by the Project Hade Office, Ministry of Environment and Spatial Planning rePlan Inc. 2011. Page 9.

all resident households who have elected to move to replacement plots in the resettlement village will receive assistance with the identification of temporary accommodations and be entitled to a rental allowance. This assistance will be available to eligible households up to 4 months after access to replacement plots (for construction) is given, dependent on seasonal conditions. Resident households who elect to receive cash compensation and acquire new accommodations elsewhere will be eligible for a rental allowance up to 4 months.¹¹⁸

Nothing in international policy condones the displaced waiving the international standards, particularly if they have not been meaningfully disclosed.

107. By 2013, nearly all of those displaced in the 2004-5 and the Shala are neighborhood resettlements remain in temporarily housed in multistory apartments and are receiving public assistance to hold their families together. At the model RAP of Shala, displacees received some compensation in October 2011. By March 2013 the Shala community was still not been relocated to a new site at Shkabaj. Replacement housing, plots and infrastructure at Shkabaj were not ready for the commencement of construction at the conclusion of individual negotiations. Both displaced groups are living temporary housing in the same high rise apartment. Many worried that this assistance might stop, leaving them helpless and perhaps homeless.
108. The housing security standard is rarely ignored in Bank-related involuntary resettlements, if for no other reason that it is a highly visible indicator of project failure. The KEK and the Government of Kosovo should be embarrassed that all the displacements associated with this mine have failed to meet this fundamental standard.
109. Compensation-Only Method. In place of livelihood restoration and improvement analysis, planning and programs, the LPI structure offers displaced people unfeasible restoration options, leaving cash compensation as the only choice. As no resettlement community or plots or rehabilitated land was available, this is a false choice – just like that of offering non-existent, reclaimed land. Cash compensation for housing is the only option.
110. The Government and project proponents might erroneously claim that compensation-only is meets the standards. OP 4.12 clearly states that cash compensation may be appropriate *under special circumstances*: where a) livelihoods are land based but the amount taken for the project is a small fraction of the affected assets and the residual is economically viable b) active markets for land, housing and labor exists, displaced persons use such a market and there is sufficient supply of land and housing; or c) livelihoods are not land-based. Land-based, as a general principle, means cash compensation is acceptable if the land taken constitutes less than 20% of the total productive area.¹¹⁹
111. These special conditions are inapplicable to the NMF displacement because a) the land takes are significant, leaving no economically viable residual, b) the land market is immature and in transition, and c) the extent to which livelihoods are land-based is undetermined since the project has done insufficient due diligence. Although a Bank compliant detail census has not been done, the MESP claims that over half of the 14,986 hectares in the New Mining

¹¹⁸ Ibid. Page 9.

¹¹⁹ OP 4.12, Footnote 18.

Field (NMF) are agricultural, with the remaining in forest (16%), and residential (11%).¹²⁰ The SMELT methodology only focuses on the residential areas.

112. The success or failure of the primary objective for livelihood restoration and improvement is measured by performance. Have the livelihood and living standards been restored and improved? The Spatial Plan and the KRPF are moving a semi-urban, rural population into an urban-like housing area must create landlessness and risk livelihood loss, making a livelihood restoration effort fundamental to avoiding impoverishment and meeting the international standards. They set a formula for compensation, eligibility, and cut-off dates proclaimed to be unalterable – set for decades in the future to be the same as those of the Shala model resettlement.¹²¹ This decision assures future project failure. Whether or not the compensation was more than adequate will not be determined. The only beneficiary of this In so doing, the KPP concessionaire and Government are attempting to terminate their legal obligations and liabilities to the displaced, sidestepping this international objective.
113. On the ground: Shala. The most convincing proof that the LPI structure will be unable to comply with this primary objective is evident in the model displacement at Shala. The victims of the 2004-05 Hade forced displacement have been joined by those displaced from the Shala neighborhood, many housed in the same “temporary” apartment house, living on public assistance. Under the KRPF, cash compensation has been distributed many years ago. The livelihood and living standard changes are not being monitored. It is also evident that major lost assets, like housing and agricultural resources have not been replaced.¹²² Five years later, I walked the empty streets and incomplete infrastructure of Shkabaj, devoid of people, structures with only wooden stakes marking house lots.
114. In sum, the LPI structure replaces the restoration of livelihood and living standards with cash compensation, ostensibly limiting the government and the concessionaire’s cost and liabilities. The structure does not set a baseline or targets for assessing whether livelihood and living standards have or have not been restored or improved. It does not provide for ongoing monitoring and evaluation of the process, such that mid-stream corrections might be made. It arbitrarily terminates the obligations. Rather it assumes the work is over at arbitrary cutoff points. Finally, the LPI assumption that its proposed compensation is sufficient to restore livelihoods is not just untested, it is false.

Overestimation of the Institutional Capacities

115. The LPI scaffolding’s **third weakness: it overestimates the institutional capacity of those responsible for directing and overseeing the involuntary resettlement.** The World Bank

¹²⁰ The Spatial Plan for the Special Economic Interest Area “New Mining Field”. MESP, March 2011, p. 39.

¹²¹ For example, the KRPF and Shala RAP offer short-term provisions those losing their employment as a result of the acquisition or closure of their places of work. They are arbitrarily provided with at least six months salary (based on average earnings over the year prior to closure of the employer’s business). A one-time payment of Euro 1,000 will be given to assist with skills training or job search expenses to people in regular full time employment and in regular part-time employment.

¹²² IFC PS5 states “replacement cost is defined as the market value of the assets plus transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. Market value is defined as the value required to allow Affected Communities and persons to replace lost assets with assets of similar value. The valuation method for determining replacement cost should be documented and included in applicable Resettlement and/or Livelihood Restoration plans (see paragraphs 18 and 25).”

Group, in PS5 and OP4.12, requires competency in program administration to assure compliance with their involuntary resettlement standards. This review found reasons to be concerned about the institutional capacities of all four stakeholders involved in the KPP – the government, the civil sector, World Bank management and the private sector concessionaire.

116. A compliant analysis of the institutional capacity should include a) the identification of agencies responsible for resettlement activities and NGOs that may have a role in project implementation, b) an assessment of their institutional capacity, and c) any steps that are proposed to enhance the institutional capacity of agencies and NGOs responsible for resettlement implementation and d) steps needed and taken to bridge the gaps between the national and international standards.¹²³ Of particular importance to the KPP, the responsible institutions (in this case, the Government and the private concessionaire) must show the capacity to identify and prepare relocation sites for which a combination of productive potential, locational advantages, and other factors at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources.¹²⁴ Thus far, only half of step “a” has been taken, since no Kosovo NGO has been incorporated as part of the project.
117. Government. Special circumstances threaten compliance with the institutional capacity objective. Kosovo declared its Independence in February 2008 and is still within its post-war reconstruction phase, with new ministries, laws, and regulations. Land tenure is undergoing extensive restructuring, and its rural land market is relatively new (see ¶ 16).¹²⁵ These new agencies face organizational challenges. USAID found that property registration suffers under the burdens of inefficient traditional practice, government inertia, a history of unfair practices and conflict, and a poor system of implementation and enforcement.¹²⁶ And the U.S. Department of Commerce warns that:
- The [Kosovo] government has not achieved positive results in the World Bank’s “Doing Business” indices, lags behind other countries in the region in economic surveys, and has not established a simplified, unified business licensing and registration process. Despite good intentions, the government has not yet made meaningful judicial reforms, strengthened contract enforcements, or completed land registration and titling procedures.¹²⁷
118. The KPP seriously challenges Kosovo’s key agencies. KEK is the government organization with the most experience in mining-related, land acquisition and displacement and resettlement. The Project intends to dismantle KEK, de-institutionalizing this

¹²³ OP 4.12, Annex 8 ¶8. An example might be viewed in the institutional gap analysis prepared for an Armenian Resettlement Policy Framework. Armenia. 2014. *Resettlement policy framework*. Armenia. <http://documents.worldbank.org/curated/en/2014/01/18804463/armenia-social-protection-administration-ii-project-resettlement-policy-framework>

¹²⁴ OP 4.12 ¶12a.

¹²⁵ Kosovo: Property Rights and Resource Governance. 2011. USAID.

¹²⁶ Booz Allen Hamilton. AgCLIR. Kosovo Commercial, Legal and Institutional Reform Diagnostic of Kosovo’s Agricultural Sector. USAID. 2009.

¹²⁷ Doing Business in Kosovo: 2012 Country Commercial Guide for U.S. Companies. US Commercial Service, Department of Commerce.

- knowledge. It is uncertain whether or not key staff will be retrained in the international standards.
119. The other official loci of knowledge, Ministry of the Environment and Spatial Planning (MESP) will be responsible for approving and monitoring the private concessionaire's implementation of the RAP and receiving public comments.¹²⁸ MESP is unprepared to deal with thousands of new KPP-NMF project-affected-peoples. Its small staff is aware of, but untrained in international compliant involuntary resettlement standards and methods and has other national responsibilities. This staff has been unable to resolve the ongoing, legacy issues in the two unfinished, involuntary resettlements in Hade neighborhoods.
120. Civil sector. A sizable cohort of displacement and resettlement specialists will be necessary to plan and implement this sizable involuntary resettlement that is expected to take thirty or more years. Despite the strong professional capacity of educated, talented Kosovars, there is no such training or preparation in involuntary resettlement within the country. This makes it likely that more expatriates will be used. The KPP makes no provisions, as are found in other Bank sponsored, involuntary resettlement projects, for the training and funding of independent NGOs to monitor compliance to national and international guidelines.
121. The World Bank. The Bank must also have institutional capacity for its oversight and development roles. Its Energy Sector recently boasts "it brings together a full suite of direct and market-based financing instruments combined with deep sector knowledge and the ability to prepare projects with balanced outcomes for all."¹²⁹ In Kosovo, Bank knowledge and ability is not evident from this review of the preparatory work of this project.
122. Management also departs from Bank due diligence procedures that require a project developer to prepare the ESIA for each of the separate subprojects subject to national legal requirements. This procedure allows the private sector entity to gain experience and ownership of the project. In their haste to speed up the project, Management truncated this process. They are planning to bring before its Board a project that was somewhat prepared by international and national experts, not the concessionaire. The project will be handed over to the private concessionaire during preparation, for execution and financing.
123. The Concessionaire. Estimation of the institutional capacity is more uncertain because a key player is not yet on the field – the concessionaire. According to project design, the private company (also known as the "investor" and "project company") has a pivotal place in the involuntary resettlement in more than 18 parts of the involuntary resettlement.
124. Specifically, the Company will i) have the right to invoke the Government's expropriation authority that may trigger a need for a RAP under the KRPF. It will ii) pay all costs of the Resettlement Plan. In all this responsibilities, the Company is to follow the international

¹²⁸ Government Decision No. 05/147 of 05/10/2010.

¹²⁹ World Bank. 2013. *Toward a sustainable energy future for all : directions for the World Bank Group's energy sector*. Washington DC ; World Bank. <http://documents.worldbank.org/curated/en/2013/07/18016002/toward-sustainable-energy-future-all-directions-world-bank-group%C2%92s-energy-sector>.

standards, “such as OP 4.12 and IF/Equator Group PS-5.”¹³⁰ Moreover, it is responsible for: iii) preparing the RAP for each “project” that requires an expropriation and resettlement that is compliant with internationally accepted standards, iv) conducting a full census of affected peoples, v) valuating affected properties and assets, including searches of the land registry vi) signing contracts with the affected families, pay for public consultations, vii) setting aside US\$10 million for a Community Development Fund, paying cash compensation, including all transaction costs for takings, or make provisions for land-for-land options, viii) paying the costs of reviewing claims of ownership for those who lack full titles, ix) negotiating with the mortgager for transferring the mortgage to a new property acquired by the landowner x) paying the costs of regularizing the title to lands that were originally acquired through irregular transfer, xi) developing new resettlement sites, xii) and implementing the RAP.

125. The Company will also xiii) employ a small team of experts to explain the difference between cash compensation and the land-for-land option. For each RAP, xiv) the Company is responsible for setting up, defining the procedures, financing and being a member of an Independent Grievance Commission. If the affected party opts to purchase alternative plots, the Company shall xv) review the proposed purchase, to ensure the land and other assets have been correctly valued and that documents are in order and there are no outstanding disputes over boundaries, It shall also xvi) pay for the land, transferring the title directly to the affected landowner. In the event of a delay in availability of resettlement housing – such as the case of Hade 2004-5 and Shala, xvii) the Company will provide the affected household’s rental accommodation and subsistence as required. And xviii) during resettlement, the project company is charged to identify and allocate resources to secure adequate shelter and services for vulnerable households.
126. Early on, the World Bank consultants who were preparing the draft KRPF were concerned that the private sector concessionaire might lack the capacity to conduct this large involuntary resettlement. They recommended the prequalification of the shortlist of concessionaires should explicitly require the consortia that are competing for the project to demonstrate their capacity in the field of land acquisition and resettlement and should ask for a specific proposal to address these issues. They suggested this aspect of the project receive an appropriate score in the evaluation of proposals.¹³¹
127. Although the criteria for selecting the pre-qualified bidders for the KPP are held secret by the Bank and the Government, the terms of reference (TOR) of the ESIA offers a glimpse of the selection process. To begin, the concessionaire was not informed that the national RPF does not comply with the standards required by the project’s international financiers – meaning the concessionaire will have to bridge the gap. The ESIA states that a Resettlement Policy Framework (KRPF), which was developed under the previous LPTAP activity, and has been adopted by Government, governs the land acquisition for future expansion of the lignite mine and associated power plant development. The bidder is told that a Resettlement Action Plan (RAP), based on the KRPF, prepared for the people to be affected by lignite mining in the Shala area of Hade village will serve as practical guidance for future

¹³⁰ MESP. Resettlement Policy Framework, March 2009 under heading “Institutional Responsibilities”.

¹³¹ Hutton and Williams, April 2008 (doc 042).

- implementation of the mining plan as well as any land acquisition needed for future power plants and associated facilities.
128. Close examination of the earlier drafts of the ESIA showed further evidence of the Government downplayed involuntary resettlement risks. The ESIA asks for a 20% sample survey of those to be displaced, omitting the need for a definitive full census as required by international policy.¹³² Despite reference to the IFC PS5, the common standard for private sector investment, the consultant is directed to follow the less specific involuntary resettlement standard, OP 4.01 and OP 4.12. Also, despite health impact issues identified in previous studies, the consultants were directed not to undertake a specific health survey. Nor is there a requirement for an analysis of the risks facing those to be displaced.
129. A warning in the draft ESIA TOR was removed from the final ESIA – namely that “past experience with resettlement in the area, particularly the partial resettlement of Hade in 2004 has made local communities distrustful of the resettlement process as consultation and transparency were lacking.” Moreover, the investor is told that he “may” (it does not say “will” be required to enter into other RAPs as needs arise (e.g., future villages or infrastructure rights-of-way),¹³³ all of which must be fully consistent with the KRPF prepared for New Mining Field and meet acceptable international standards for compensation. He is not told that Kosovo’s preparation may not follow the Bank’s policies.
130. Nor does the ESIA inform the Concessionaire that the MESP faces a major structural problem. Its key policy in the project, KRPF, is not deeply embedded into Government. The Kosovo Resettlement Policy Framework is a ministerial regulation approved by an MESP minister that has not been approved by the Assembly nor is it binding on other Ministries. Does the MESP have the political muscle to enforce its ministerial mandate on more powerful ministries when contentious involuntary resettlement issues surface?
131. Finally, the timing for the proposed displacement is exceptionally short. Vattenfall Europe Mining, with considerable experience in land acquisition and community resettlement estimated that the NMF resettlement would take ten to twelve years to carry out a normal planned resettlement.¹³⁴ The KKP expects involuntary resettlement to take place in just a few years and is willing to leave those displaced in temporary housing.

Underestimation of Forced Displacement Costs

132. The scaffolding is extraordinarily unreliable on a critical, fourth primary objective – budgeting and financing.¹³⁵ Bank policy requires that a plan include tables showing

¹³² Given the diversity of livelihood strategies discovered in the 2008 sample survey, the proposed 20% sample survey is insufficient to identify anticipated socio-economic impacts and baseline characteristics need to mitigate adverse impacts, enhance of positive impacts, and identify community development opportunities and priorities. For this reason, the standards call for a full census of the project affected peoples, not a survey.

¹³³ The ESIA also lowers a critical standards, stating involuntary resettlement plans were option (“may” rather than “shall”) for future project land acquisitions.

¹³⁴ Main Mining Plan for New Sibove Mine: Final Report. June 24, 2005. Prepared by Vattenfall Europe Mining AG. European Agency for Reconstruction. Page 235.

¹³⁵ OP 4.12, Annex A. Involuntary Resettlement Instruments, ¶ 20.

itemized cost estimates for all resettlement activities, including allowance for inflation, population growth. The cost breakdowns should also include timetables for expenditures; costs of grievance procedures; sources of funds; and arrangements for the timely flow of funds, and funding for resettlement, if any in areas outside the jurisdiction of the implementing agency.¹³⁶

133. A Resettlement Plan without financing is incomplete, unlikely to be properly executed, and highly likely to meet the other primary policy objectives. To avoid this happening, early in project preparation, the policies require detailed plans including itemized costs, timetables, and method of financing for all resettlement activities. This did not happen. KPP planning documents offer ample proof the project is maximizing lignite production without trying to avoid and/or minimize its resettlement impacts (see discussion of avoidance in this report). The project has not made it clear whether or not the Bank will i) finance an involuntary resettlement component of the main investment or ii) opt for a free-standing project with appropriate cross-conditionalities, processed and implemented in parallel with the investment that causes the displacement.¹³⁷ It appears this major omission occurred because the Bank and Government followed the wrong policy framework.
134. An analysis by the European Agency for Reconstruction's consultant, Vattenfall Europe Mining AG, determined that the resettlement costs are very important to the KPP's overall economic and financial assessment and performance. Their modeling projected at least a decade delay before noticeable profitability (Figure 6 and 7). Infrastructure expenditures for involuntary resettlement and land acquisition should be carefully calculated and front-loaded. The amount of front-loading that may move over six thousand rural people is critical to overall financial modeling, which likewise is likely to be critical to the sustainability and performance of the project. The trade-off: the more front-loading, the longer the time for profitability
135. Unreliable guestimates. The trade-off has been made in favor of more profitability. The plan is to ignore the avoidance primary objective and displace most of Hade first, and then backload the remaining displacement costs. The Project will face unknown, future project liabilities with each incremental, quasi-emergency resettlement.

¹³⁶ OP 4.12, Annex A, ¶ 20 including footnote 6.

¹³⁷ OP 4.12 Para. 33.

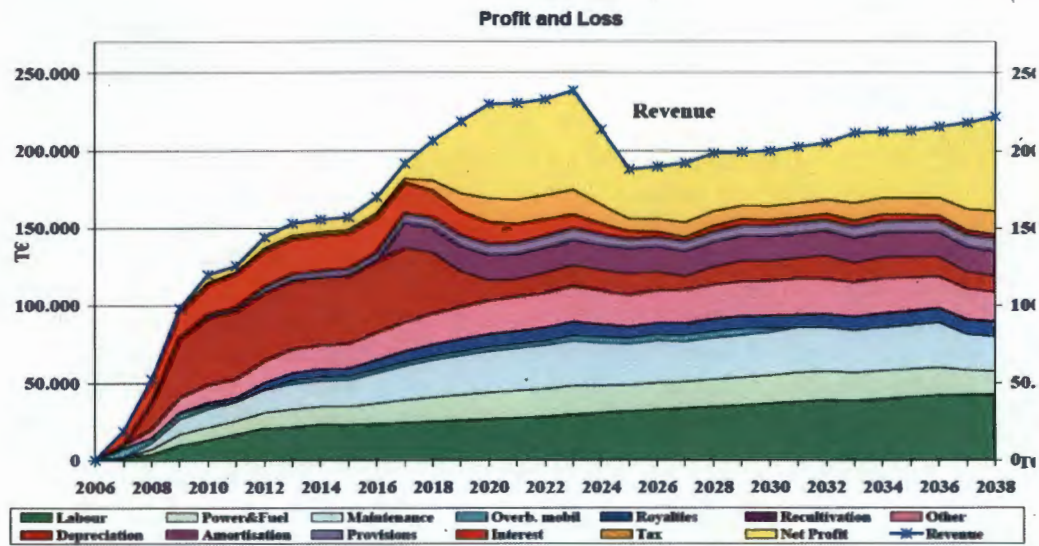


Fig. 2.4-4 Profit and loss

Figure 6: Profit Loss Model of the KPP investment prepared by EuropeAid

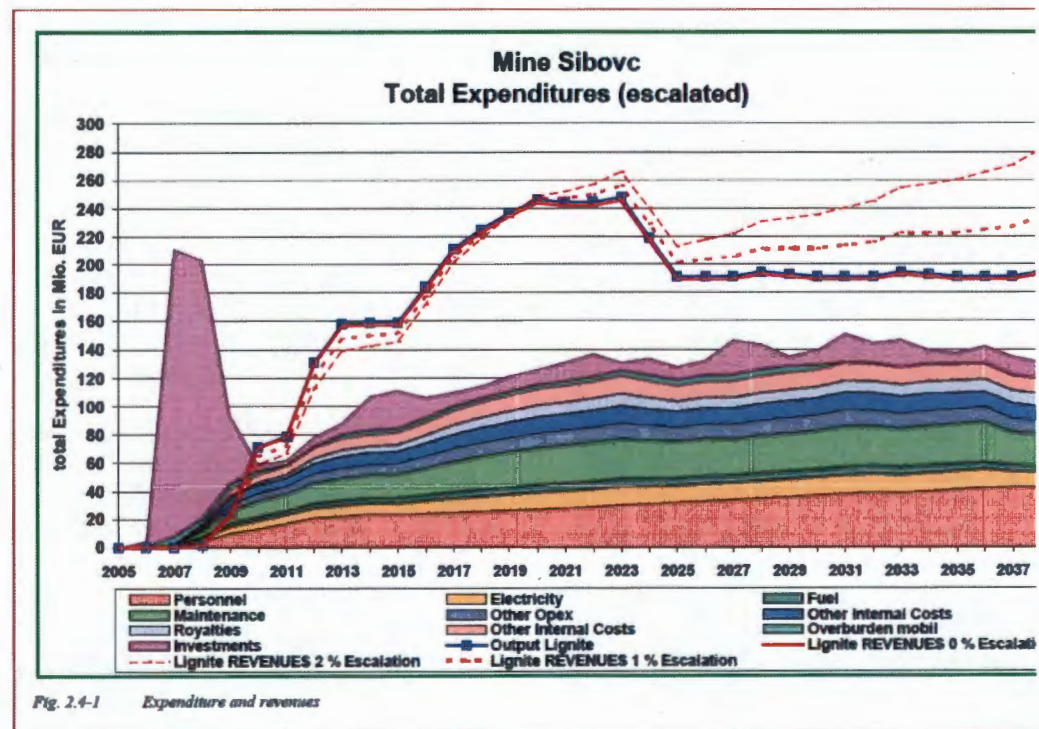


Fig. 2.4-1 Expenditure and revenues

Figure 7: Front-loading of KPP Investment in Total Expenditures by EuropeAid.

136. Three years later, in a one page budget, Hunton and Williams Consultants increased the overall budget to 180-200 m€ and increased the estimated affected households to 1500 and the costs to 120K €/household.¹³⁸ Their revision excludes payments for lost farmlands and public infrastructure. These revised budget and population estimates were not incorporated into the KRPF.
137. In 2011, Kosovo made its first attempt to budget for an involuntary resettlement of Shala, a budget they incorrectly believed was “consistent with” international guidelines. A review of the Shala model RAP finds it ignores the guidelines. It offers a one page of narratives that does not calculate its budget, lacking tables, detailed itemizations, and timetables. Prepared by the MESP, it estimates costs to displace 63 households with 320 full-time residents at 211,111 €/household for a total of 13.3M €. ¹³⁹ The so-called budget list and verbally describes six budget “items” - cash compensation for land, crops and structures, construction of resettlement site, administration, other benefits, and a 10% contingency. No further priorities or breakdowns of this estimate is provided. “Other benefits” is supposed to cover a non-itemized list, ¹⁴⁰ including livelihood restoration and community development initiatives, vulnerable assistance measures, and maintaining the displaced population in a “temporary” status. ¹⁴¹
138. Notwithstanding this non-compliance, the ESIA shows little concern to refine or update the budget guesstimates before Board presentation. Estimates of engineering costs, in contrast, have been detailed. Should the project proceed as currently described, the costs of the resettlement plans will not be determined until after a future decision by the concessionaire to request land expropriation that is necessary for the next phase of mining operations.
139. Some Reasons for Uncertainty. Lacking budget and financing information, it is hard for investors, government, the civil sector, or those facing displacement to figure out what is going on. Whether from the perspective of compliance or project planning, these estimates are untrustworthy due to unreliable outdated population estimates – a major component of all compliant involuntary resettlements. Apart from this flaw; the budgets themselves appear to be underestimates. None of the budgets are fully aligned to the international standards primary objectives, especially livelihood restoration, benefit sharing, or viable land-for-land replacements. Training for livelihood restoration is listed in the Shala RAP, but not the actual costs of livelihood restoration and livelihood improvement costs.
140. Further underestimation is evident in some of the project’s unrealistic assumptions that: i) the displacement is a rural to urban housing relocation project, ii) household dynamics for the past 8 years and the next 20 years will remain static, and iii) land does not provide a livelihood or even supplement the livelihood of those being displaced (contradicting the

¹³⁸ Revised Resettlement Policy Framework. LPTAP Project Office. Prepared by Hunton and Williams April 2008. Page. 34.

¹³⁹ This amount is adjusted quarterly for inflation and currency fluctuations.

¹⁴⁰ Mobilization and reestablishment allowance for all physically displaced households, the transportation costs for all project affected households, the costs of temporary displacement (if applicable), the costs of the livelihood restoration and community development initiatives and the costs of the vulnerable assistance measures.

¹⁴¹ Noting , Heike Mainhardt-Gibbs, Kosovo Lignite Power Project: Resettlement Costs (Dec. 2011)

2008 survey findings). Significantly, no budget estimates of the costs of the many (?) SMELTs and RAPs will be needed in the two or three decade project.

141. Beyond these unrealistic assumptions, it is unclear who pays for major expenditures. In Shala RAP assigns the purchase of additional lands required by an urban resettlement community for infrastructure and facilities (i.e. the Shkabaj resettlement site) to “compensation” costs. Shkabaj is primarily Obiliq municipal land, suggesting an inter-governmental transfer and/or private land purchases. Either or both ways, the accounting needs transparency and accountability, particularly since the Shkabaj site has remained undeveloped for sometime. And, in an even less reliable guesstimate, after lamenting the lack of information need for a proper estimate, Mainhardt-Gibbs grossly underestimated resettlement costs by applying an 11% of project cost multiplier or 33 3M €. ¹⁴²
142. Compliant, specific budgeting reduces downstream misunderstandings and conflicts. One obvious conflict is between agency overhead to administer the involuntary resettlement and those receiving benefits. Understandably, the ancillary agencies and the private concessionaire desire to recuperate their costs. Under the LPI structure, Government assign its own administrative costs, the proportion of which is either undisclosed or undecided and it assigns the budget for those displace. Without itemized clarification of the allocations misunderstandings between these and other interested stakeholders are guaranteed.
143. Such decisions add significant uncertainty and undefined liabilities to KPP financing that are likely to change the project’s IRR. The involuntary resettlement component must be calculated as a distinct, investment line item.¹⁴³ Alternatively, recalculation using the Bank’s mandatory process (OP 4.12 and Annex A) will significantly increase initial project investments and delay the profitability timeline. Using the correct modeling, the overall project profitability might be improved by using energy development alternatives or adopting mining operations scenarios that do not require extensive involuntary resettlement.
144. The consequences of this underestimation, externalization and ambiguous work stretch beyond the proposed project. The incomplete, noncompliant work is giving the Bank Board incomplete and biased information, reducing its ability to compare the KPP to other international projects or possible Kosovo energy alternatives. In the area of involuntary resettlement, Management and Government have structured the preparation of this project to give the KPP an unjustified, competitive advantage in bank project selection, i.e. in hydropower projects, The Bank routinely estimates the full displacement costs at the beginning of the project cycle. The full involuntary resettlement costs of the KPP remain uncertain and largely unknown.

Planting the Seeds of Future Political Risks and Civil Conflict

145. The due diligence policies and procedures encode the Bank Board’s and Management’s collective wisdom and experiences. This due diligence is particularly relevant for countries

¹⁴² Shala RAP, page 66.

¹⁴³ Current financial modeling folds land acquisition and involuntary resettlement costs into the project’s initial investment costs, that include all necessary payments for the start of coal production, the purchase and rehabilitation of heavy equipment, belt conveyor systems and auxiliary equipment, the claim of land and the resettlements including their compensation measures. European Agency for Reconstruction, 2005, VattenFall. Economic and Financial Analysis. page 13.

such as Kosovo, with incomplete or inadequate legal frameworks and a recent history of involuntary resettlement failures.¹⁴⁴ This review has shown that due diligence steps specified in the involuntary resettlement safeguards have been misread, avoided, ignored and abandoned. Management did not bring this value-added knowledge to the KPP. The fledgling Government has limited experience with international standards. And civil society's experience with an acceptable involuntary resettlement was etched into the culture by the land acquisition practices of the KEK.

146. If nothing changes, the outcome will be either i) a noncompliant involuntary resettlement in which either those in the pathway of lignite production partially pay the costs of their fellow Kosovar citizen's electricity. Or, additional funds will be needed to avoid that perverse outcome. And no matter what the outcome, the time between now and the outcome will be filled with political conflict, disaccord, lost time and opportunity. Knowing and nudging the present toward a more civil future is the shared responsibility of government and civil society.
147. This weak scaffolding will also spark civil conflict and create political risks. These include exposure to charges of human rights violations, unresolved potential legacy issues, and other project related displacements that have been ignored or excluded. This increases the potential for another Inspection Panel complaint, and the setting of the stage for a likely conflict between Kosovo ratepayers and those being displaced.
148. The project is likely to violate international human rights.¹⁴⁵ For the United Nations and many international organizations, the financial involuntary resettlement and related safeguard policies are an imperfect, but essential rudimentary human rights policies. As it becomes evident that, after all the international assistance given this project, the Bank and the Government both ignored the involuntary resettlement standards. Both are exposed. Moreover, steps have been taken to assure that terms for the future, forced resettlement of thousands of Kosovar citizens will be negotiated behind closed doors – between the concessionaire, the Government, and the financiers. These steps will take place without their awareness, participation, and consent. Under Bank confidentiality rules, some negotiation documents may never be made public. Elements of these secret agreements may direct the destiny Kosovars who are forcefully displaced and be alleged as human rights violations.
149. Legacy issues. In a rush to press forward, legacies of past involuntary resettlement decisions remain. The chosen scenario for mining operations depends on quick completion of the forced resettlement of Hade, a community with two neighborhoods with ongoing resettlements. Many questions remain. What happens to Hade families from Shala and the earlier 2004-05 neighborhoods whose resettlements are both incomplete and noncompliant?¹⁴⁶ Will government or the private investor or neither, mitigate the risks they face and pay the full costs? Will these legacy displacees receive the same protections as those under the KPP Bank financed project? Dare the Bank approve a project in which the

¹⁴⁴ Initial comments by civil society organization on the World Bank's Safeguard Policies Review and Update (November 2012)

¹⁴⁵ On many dimensions, not to be analyzed in this report, these standards fall short of international human rights standard, such as the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

¹⁴⁶ Inspection Panel Report, 2012, ¶88.

residences of the unfinished Hade displacements fall under different entitlements, policies and rights, totally aware that under their technical guidance, the legacy displacees are being impoverished? Is the Board ready to accept this clear example of counter-development? The insistence of keeping entitlements equal, found in the Shala RAP, only exacerbates the tensions between those who have been displaced and those who will be displaced.

150. The Kosovo Government seems uncertain about the fate of the forced displacement legacies, changing its mind in 2013 about who is responsible for these legacies during the drafting of the ESIA. An earlier draft assigned this responsibility for the Shala displacees to the investor, then the final ESIA, shifted responsibility from the investor back to the government.¹⁴⁷ This encourages likely cross-claims as to inequitable treatment of Government vs. the Concessionaire-KPP project displacees.
151. To resolve this problem, the RPF attempts to lock into the project a parity provision in which the entitlements of all future NMF affected peoples will not exceed those set out for the Shala resettlement will not work. Shala is not aligned with international standards. This builds into the KPP a non-compliant, substandard provision. Alternatively, the KPP must improve its commitments to Shala and, arguably the 2004-5 Hade displaced, in order to avoid violation of its own RPF policy. Who will fund and be responsible for this additional Government responsibility?
152. Another, ignored, on-going involuntary resettlement. A second legacy question concerns a larger, project related involuntary resettlement that the preparations for the KPP triggered. Kosovo – with the Bank technical assistance – restricted non-energy related economic and population growth in the proposed project area.¹⁴⁸ Government designated 14,986 hectares in a Zone of Special Economic Interest exclusively for mining activities, affecting directly or indirectly 55,000 people living in the zone's 26 settlements.¹⁴⁹ Within this area, construction of new housing in the period before the relocation process is considered illegal constructions and not to be compensated.¹⁵⁰ The restrictions directly impacts and costs, limiting compensation in future land acquisitions over the next 30 years.
153. Restrictions of land use, such as this, are addressed in the international standards. The IFC's PS5 and the Equator Principles state that resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or

¹⁴⁷ Specifically, the Draft ESIA stated, with regard to the Resettlement Policy Framework (RPF) and prepared a Resettlement Action Plan (RAP) for the Shala Neighborhood of Hade village (Shala RAP): “**The investor of the proposed Power Project will either: (i) assume responsibility for completion of the Shala RAP from the date of transfer or (ii) enter into a new RAP, fully consistent with the Government's Shala RAP and in conformity with the RPF, from the date of transfer.** The investor may also be required to enter into other RAPs as needs arise (e.g., future villages or infrastructure rights-of-way), all of which must be fully consistent with the RPF.” In contrast, the final draft states “The Government has prepared and endorsed a Resettlement Policy Framework (RPF) and prepared a Resettlement Action Plan (RAP) for the Shala Neighborhood of Hade village (Shala RAP) **and the Government of Kosovo and KEK have the responsibility for the Shala resettlement.**” (Emphasis added).

¹⁴⁸ The 2004 UNMIK decision 4/119 to create a Zone of energy development use, Special Economic Interest around the proposed new mining field (NMF). The MEM used the Spatial Planning Law (no. 2003/14, as amended) as the legal basis for the decision. The 2011 Spatial Plan finalized this regulatory taking.

¹⁴⁹ 2005 estimates.

¹⁵⁰ Spatial Plan, 2011. The municipality may grant exceptions on a case-by-case basis, an open invitation to favoritism and potential corruption.

restrictions on land use that result in physical or economic displacement.¹⁵¹ The LPI policies are creating serious uncertainty for those living in the NMF zone. The displaced are being asked to freeze their household dynamics and economic development while they wait decades for an emergency evacuation. Those who build housing for their children and newlyweds in their family risk not being compensated and are breaking the law. Such actions undercut the respect for law. Unconfirmed data indicates there may be material losses coming from the depopulation and de-capitalization of the NMF.

154. Projects with adverse social and economic impacts from a restriction of land use are considered involuntary resettlements under IFC PS5 and private sector Equator Principles. In this situation, a primary objective of the project should be “to anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.”¹⁵² This has not been done. The argument might be made that the Kosovo government, not the Bank, made the restrictions on land use. However, there is ample documentation showing Bank Management and their advisors were actively designing, supporting and financing the legal, institutional and policy framework for an involuntary resettlement.¹⁵³
155. Planning for this project recognized, but then ignored likely public health related displacements, adding another level of uncertainty in terms of the scope and costs. The SESA warned that apart from the NMF, other resettlements would be necessary mainly for land acquisition for the new power plants and related facilities and infrastructure and to mitigate environmental pollution hazards.¹⁵⁴ Bank consultant reports and The World Bank’s Inspection Panel have repeatedly warned of public health and safety threats to the village of Dardhishte people located next to the active tip of Kosovo A ash dump, between the Mirash mine and Kosovo A power plant.¹⁵⁵ And the SESA stated that another 330 families in the town of Plemetin will need to be relocated because their houses are within the 1,000m buffer zone for the new power plant. Other adjacent populations may also be at risk, particularly from the major community concern for health.¹⁵⁶ The SESA states “Health is a major community concern and one that needs to be addressed in more detail. And the ESIA blindfolds the project to the seriousness of these issues by directing the consultants to provide general information about the type of health implications which are typically

¹⁵¹ PS5 Guidance Note 4 on Land Acquisition and Involuntary Resettlement, Jan 1, 2012

¹⁵² Ibid.

¹⁵³ PS5 Guidance Note 4 on Land Acquisition and Involuntary Resettlement, Jan 1, 2012, GN 20.

¹⁵⁴ Draft Final SESA Report: Environmental and Social Safeguard Advisory Services for Private Sector Participation in the Development of New Generation Capacity, Related Transmission and the Development of the Sibove Lignite Field. May 2009, ERM Italia S.p.A. Consulting, 2008, p. 93

¹⁵⁵ Draft Sibove Development Plan, 26 May 2008. Appendix B, page 20, the KRPF, and The Review of the Kosovo Power Project (Proposed). May 21, 2012. ¶ 71).

¹⁵⁶ Ftn 17 of LPTAP ESSAS Draft Final SESA Report. 2008d. “Although no formal health studies to quantify the specific effects attributable to the ash tips have yet been undertaken, evidence suggests the problems are extremely widespread including recorded deaths of cancers of the respiratory system of individuals living in the immediate vicinity of the tip.” (p. 33) Specifically, this ... “it is recommended that further study is carried out to understand the current health situation in the communities surrounding the project site and identify if and how the project impacts upon this. A study of the local community health impacts of this project must be done.”

connected with lignite-fired coal plants, but “not undertake a specific health surveys other than the health issues which will be integrated in the social-economic-cultural assessment.” This is unquestionably, intentional and inexcusable negligence.

156. High probability of an Inspection Panel (IP) Complaint. Responding to a formal complaint from Kosovo’s civil society, the IP assessed that, at this early stage in the Project preparation process and prior to the start of the ESIA for the Project, there were no key Bank activities or decisions relevant to the concerns raised in the Request with respect to the Project that could be reviewed by the Panel as a matter of policy compliance.¹⁵⁷ The Panel did not recommend at that stage an investigation of whether the Bank has complied with its operational policies and procedures. It stated those affected have recourse to future request. Their recommendation is based on certain understandings, including that the Bank will assess the implementation of all resettlement activities related to the proposed KPP project, which includes the resettlement from Hade village, to ensure compliance with Bank policies before the proposed financing for the KPP is submitted for approval to the Boards.¹⁵⁸ With the ESIA released and little progress shown, the Panel’s understanding is incorrect, increasing the likelihood of another Complaint.
157. Likely Conflict between Displacees vs. Utility Customers. Bitter seeds bear bitter fruit. The proposed financing of the KPP plants the seeds for future national civil discord and political risks. Without additional funding and considerable work, the project cannot meet international standards. The privatization model protects the concessionaire from absorbing additional involuntary resettlement costs. The private investor may, however, pass cost overruns to ratepayers, through a public process. This structure will pit Kosovo citizens, the ratepayers, against those who are being displaced.¹⁵⁹ In a national forum, the politically weak displacees will lose. With a history of public protests against electrical rate increases, it is unlikely that ratepayers will be sympathetic or wish to pay for international compliance.¹⁶⁰ Those responsible for this underfinancing and subsequent conflict - the government and the financiers - along with the private concessionaire may all step back and watch the conflict, clear of any responsibility for a problem that should have been solved from the beginning.

14 February 2014

¹⁵⁷ The Inspection Panel, Report and Recommendation Republic of Kosovo. Kosovo Power Project (proposed) June 20, 2012.

¹⁵⁸ Ibid.

¹⁵⁹ ESIA 2013.

¹⁶⁰ To the disadvantage of the displacees, false claims will be made that the Kosovo government was compliant with international standards.

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February 5, 2015

Dear Ms. Berisha,

Comments on Dr. Downing's Involuntary Resettlement Report

Once again, I thank you for the invitation to the public dissemination of Dr. Theodore Downing's resettlement report on February 3, 2015. As indicated to you in my e-mail of February 2, 2015, please find below some reactions to this report.

In fact, we already reviewed Dr. Downing's report in February 2014, when it was first made public, and it has been included as a key document for analysis as part of the *Environmental and Social Impact Assessment* (ESIA) process, currently under way for the Kosovo Power Project. But I should like to take this opportunity to share with you some brief observations on the resettlement report.

First, in July 2011, the Government of the Republic of Kosovo officially adopted a *Resettlement Policy Framework* (RPF) for the New Mining Field (Sibovc), which is aligned with international standards. This RPF specifies clearly that site-specific *Resettlement Action Plans* (RAPs) be prepared for each stage of mine expansion that involves the need for resettlement. Currently, different mine development alternatives exist for the expansion of the New Mining Field (Sibovc), which is estimated to contain sufficient reserves until the year 2046. Mine expansion plans may be modified over time, affecting the land acquisition needs.

The first phase of expansion of the New Mining Field (Sibovc) required the resettlement of households from the Shala Neighborhood in the Hade Village and, in 2012, based on the RPF, the Government developed a *Resettlement Action Plan* (RAP)¹ for this purpose. Resettlement is ongoing and monitored by an international resettlement firm. The first monitoring report², indicating progress at the New Hade resettlement site and identifying some challenges, was published in April 2014. A second report will be published in the near future.

Second, while the ESIA will (i) assess issues related to resettlement and social impacts; and (ii) identify areas for improvement and mitigation measures, it will not substitute for the obligation of

¹ See <http://documents.worldbank.org/curated/en/2013/02/17389401/kosovo-clean-up-land-reclamation-project-resettlement-plan>.

² See http://mmph-rks.org/repository/docs/rePlan_-_Shala_ME_Report_1_-_final_345581.pdf.

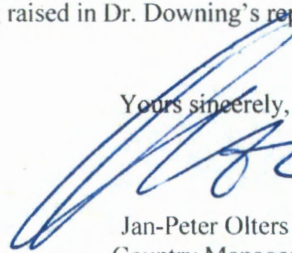
preparing site-specific RAPs for future mine expansion. Consequently, the survey of 20 percent of project-affected population mentioned in the ESIA is not the census required for a RAP. It is a socio-economic assessment to inform the evaluation of social impacts, identify possible mitigation measures, and enhance positive impacts and opportunities associated to the project.

Finally, the World Bank recognizes the need to strengthen the capacity of the Government, and it has been making efforts in this direction—for instance, through the inclusion of the recruitment of an international resettlement company to monitor the RAP implementation for the Shala Neighborhood of Hade village. Its activities included the organization of training and workshop on resettlement in September 2013 and further training and an international study tour to review resettlement practices for open pit mining in December 2014.

We acknowledge that the resettlement process associated to the New Mining Field (Sibovc) is very challenging—and there is always room for improvement. The gaps and weaknesses of the current procedures and institutional set-up to manage resettlement are being identified through the ESIA process for the Kosovo Power Project, based on the experience with the Shala neighborhood. The Government, with support from the World Bank and the different international experts involved in the process, will continue working to correct them and strengthen capacity in Government and the Kosovo Energy Cooperation (KEK) to manage any additional resettlements, as required, and plan for them based on good international practices (based on RAPs prepared with the active participation of project-affected people).

We encourage KOSID to continue (i) engaging with the Government of Kosovo on this and other issues; and (ii) participating actively in the ESIA process, which should respond to the resettlement challenges being raised in Dr. Downing's report.

Yours sincerely,


Jan-Peter Olters
Country Manager
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cc: H.E. Dr. Avdullah Hoti, Minister of Finance
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