



Original Article

Managing geothermal project implementation conflicts through mediation: A case of Olkaria IV Project, Nakuru county, Kenya

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ABSTRACT

Geothermal energy installations generate conflicts that escalate when improperly managed. Studies from outside Kenya have demonstrated application of mediation in managing conflicts over natural resources. However, its efficacy has not been adequately covered in Kenya. This study used the case of mediation between project affected persons (PAPs) and the developers of Olkaria IV energy project to document the process, to assess its role in resolving conflicts that emanated from the implementation of the project. A PAPs' household heads survey, focus group discussions (FGDs), and key informant interviews (KII) were conducted. Primary data was collected on pre-mediation preparations; mediation attributes, post-mediation buy-in and endorsements and the sequel of mediation. Secondary data was obtained from documents available in the mediation archive. The protagonists, that is, the Kenya Electricity Generating Company (KenGen) and PAPs agreed to use mediation to resolve their conflicts. The mediation neutralized conflicts between KenGen and the PAPs, mended relationships between them, improved PAPs' livelihoods and smoothed project operations. The community representatives, selected by themselves, regularly reported back and held consultation with the larger community. This promoted acceptability of the results and is here presented as a good practice, in addition to having competent mediators with good listening and probing skills. Further, inclusion of women and youth in the mediation exercise combined with freedom of expression during the mediation clinics, ensured that the weaker gender's voice was heard and its input incorporated in the agreement. In spite of the above, there is a need for greater democratization for the PAPs representation, and a more comprehensive documentation of the process. The last two provide opportunity for copying this case for an improved mediation process. Finally, it is recommended that policies be formulated to provide for use of mediations as an alternative dispute resolution mechanism, in future project developmental conflicts in Kenya.

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1. Introduction

The demand for countries to meet diverse economic needs, human development and environmental sustainability towards sustainable development and other global commitments is growing progressively. In this light, countries worldwide have intensified investments towards major projects such as road infrastructure (Khanani et al., 2020), domestic and irrigation water developments, and clean energy, including geothermal developments among others (Kirchherret et al., 2019; Mosley & Watson, 2016; Schilling et al., 2016).

However, these large-scale infrastructure projects invade traditional indigenous and marginalized communities' lands and other natural resources (Hughes & Rogei, 2020; Vancley, 2017), resulting in conflicts with host communities. The Global Environmental Justice Atlas (EJAtlas) (Temper et al., 2018), suggested that there are about 2520 socio-environmental conflicts between large projects and communities worldwide. Over 345 of these conflicts are related to the construction of renewable energy amenities, climate fixes, and dams.

In Spain, for instance, the development of an 800 MW combined cycle gas turbine (CCGT) power plant in Boroa,

which aimed at converting Basque Country into self-reliant in the production of energy by 2010, caused community concerns over their quality of life and health and thus triggered conflicts with the local community (Baigorrotegui, 2015).

In Asia, to meet the rising demands for palm oil and timber locally and nationally, the Indonesian government was compelled to increase plantation land to nine million hectares (Ha) by 2016 (Obidzinski & Chaudhury, 2009). This expansion was necessitated by plans to double crude oil production by 2020 to about 40 million tons (Gingold, 2010; Rokhim et al., 2020). While this increase was earmarked to contribute significantly to the country's economic development, conflicts were inevitably triggered by the nature of their scale (Gritten and Mola-Yudego, 2010; Mola-Yudego and Gritten, 2010). In the year 2010 alone, slightly more than 600 conflicts between the local communities and the plantation companies were reported (Dhiaulhaq et al., 2014; Rokhim et al., 2020).

In Kenya, geothermal resources are located within the Kenyan Rift Valley, forming part of the East Africa Rift System (EARS) having high tectonic activities that result in higher underground temperatures than in the adjacent highlands (Mangi, 2018; KenGen, 2010). The proposed geothermal exploration aims at facilitating the nation's transition to a newly industrializing, middle-income country by 2030 (The Energy Act 2019). This is also in line with the country's global commitment to Sustainable Development Goals (SDGs) Seven and 13.

Development of geothermal energy in Kenya is currently preferred to wind, solar, and hydropower due to its insusceptibility to climate conditions (Hughes and Rogei, 2020; Kubota et al., 2013). However, the Olkaria IV power plant development triggered conflicts between KenGen and the local communities over land use. These conflicts persisted beyond the project's completion (Kong'ani et al., 2021; Schade, 2017; Shiloh, 2015).

Conflicts lead to loss of social license and can increase the developer's financial risks, and the operational costs (Munden Project, 2012) and could result in disruption of host communities livelihoods, delay implementation or cause project, rejection. If unresolved such conflict may become violent, expensive to manage, lead to injury and loss of life (Batel et al., 2013; Dhiaulhaq et al., 2015; Enevoldsen and Sovacool, 2016; Jobert et al., 2007; Karytsas et al., 2019).

For instance, the construction of the 800 Mega Watts (MW) combined cycle gas turbine (CCGT) power plant in Boroa, Spain, encumbered seven-years delay, following protracted protests over the community's quality of life and health concerns (Baigorrotegui, 2015). The Vattenfall project on exploring Beeskow in Germany, area's suitability for carbon dioxide (CO₂) storage was canceled. The public was anxious over the CO₂ storage' potential risks, including leakages with possible fatal accidents and groundwater contamination (Oltra et al., 2012; Dutschke, 2011).

Locally, in Kenya, coastal residents in Lamu area were apprehensive over potential ecological and health impacts, citing environmental and social hazards arising from proposed 1050 MW Lamu coal power plant. The community

protests against it caused cancellation of its license in 2019 and the investor's withdrawal of its financing, (Banktrack, 2020). While conflicts can facilitate collaboration and improved relationships (Dhiaulhaq et al., 2018; Dhiaulhaq et al., 2015), sustainable resolution requires effective management strategies, like mediation.

Mediation is one of the more famous mechanism of alternative dispute resolution approaches (Bercovitch, 2006; Moore, 2014; Muigua, 2019) that has been applied since antiquity. Its use has increased across the globe (Amanda and Jensen, 2016; Cheung, 2010), playing a crucial role in resolving natural resource conflicts, and creation of long-term cooperative relationships (Folger & Bush, 2015; Rokhim et al., 2020; Vukovic, 2014), especially in South Asia.

For instance, the mediation over different natural resource conflicts in the cases of Chiang Mai and Kanchanaburi (Thailand), Jambi and Riau (Indonesia), and Kampong Speu and Thom (Cambodia) resolved the conflicts and ended in attainment of sustainable resource management (Dhiaulhaq et al., 2015; Dhiaulhaq et al., 2014; Samsudinand, 2014). The mediation agreement for these cases were reached within a period of between six months and six years, due to the varying nature of the conflicts, the involved parties variability and the mediator's ability to help the parties reach pacts (Dhiaulhaq et al., 2015).

The mediation processes in these cases comprised of a pre-mediation, mediation, and post-mediation stages. The pre-mediation phase involved social preparation and clarification of the mediation objectives, assessment of the conflicts, and the making of mediation process' design. The activities during the mediation phase were establishment of ground rules, clarification of the issues and interests, negotiations on the issues by the parties and the drafting of agreements decided on. Lastly the post-mediation phase assessed the implementation of endorsed agreements. There was a sequel of monitoring, and evaluation of the mediation outcomes.

Six agreements resulted from the mediation exercise in the cases reported by Dhiaulhaq et al., (2015) and Dhiaulhaq et al., (2014) with numerous social, economic, and environmental benefits and impacts realized. The residents negotiated more rights to manage natural resources and to generate income from them. The companies' corporate image to the public improved while the government's forest conservation efforts were more successful.

Continently, during the pre-colonial era, Nigeria was constituted without litigation because mediation was used to resolve conflicts among constituent kingdoms including the Borno Empire, the Oyo Empire. Further, use of mediation as pioneer projects in countries like Ethiopia, Nigeria, Ghana resulted in amicable resolutions, demonstrating the appropriateness of mediation in the African context (Uwazie, 2011). Therefore, mediation enable formal and popular win-win situation that is impossible to attain with litigation.

While there is an increase in publications on mediation processes, and their effectiveness in managing natural resource conflicts, it mostly comes from South Asia (Dhiaulhaq et al., 2015; Dhiaulhaq et al., 2014; Dhiaulhaq et al., 2018; Yurdiet al., 2010). In practice, the mediation processes differ from one another, depending on the conflict dynamics

and other factors (Bercovitch & Sigmund, 2006; Dhiaulhaq et al., 2015). Mediation practice remains low in Kenya (Muigua, 2018b; Muigua 2016), yet its relevance in resolving conflicts is enshrined and recognized in the Constitution of Kenya, 2010, Article 159. The existing documentation are neither comprehensive on the mediation processes nor conclusive on its role in resolving developmental conflicts (Juma, 2009; Muigua, 2016; Muigua, 2017; Ambole et al., 2019).

Therefore, this article sought to analyze the Olkaria IV mediation process assessing its role in resolving conflicts that arose from implementing the geothermal energy project in that area. It was hypothesized that the parties' willingness to mediate interests and principles would offer chance for compromise through resulting in a win-win outcome, healed and positive relationship, reduced conflicts, improved PAPs' livelihoods, and smoother operations of the project.

The article has used quantitative and qualitative field data collected from the PAPs at the Resettlement Action Plan Land (RAPland), in Olkaria IV area, Nakuru County, Kenya and also from records kept during the mediation. The paper begins with the theoretical discussion of mediation. This is followed by the description of the study area and explanation of the research methods leading to results and discussion. The authors conclude with the recommendations on how to improve the efficacy of future mediation exercises in resolving similar conflicts within the country and beyond. The study's findings advance the literature on the resolution of natural resource conflicts through mediation.

2. Theoretical framework

Noll Theory of Mediation

The Noll theory of mediation focuses on mediation as a method of conflict resolution (Noll, 2001). It provides a basis for explaining application of mediation and why it is appropriate. Noll theory of mediation considers conflict dynamics, which enables reconciliation and justification of all diverging views of practice and outcome into a unified view of mediation.

Mediation is a process of conflict transformation that involves a mutually agreed upon and independent or impartial third party who has no authority to impose a solution (Bush and Folger, 2005; Dhiaulhaq et al., 2014; Moore, 2014; Nwazi, 2017; Vindeløv, 2012). The parties accept the oversight of a mediator appointed by them. While the mediator may suggest options and potential solutions throughout the process, he/she cannot impose the solution (Wall et al., 2011).

For the parties to reach the decision there is a measure of give and take: parties must provide as much ground as acceptable for them to live with the decision. The feeling that they make the decision enables them to deal with any hurt arising from the dispute and making an effort to live with the decision. Thus, it heals a relationship.

In line with Noll theory on mediation, in Olkaria IV's case, KenGen and the PAPs sought resolution of the conflicts that jeopardized their co-existence and smooth implementation of the geothermal project through mediation. The process considered dynamics of conflict that would en-

able reconciliation eventually. The disputes arose because parties had different interests and positions over the geothermal well site at Olkaria IV. Through KenGen, the government needed the land to expand geothermal production to attain its commitment to increase electricity supply and mitigate climate change via the production of green energy. The government had the legal right to compulsory takeover of the land, based on the greater public good. However, it was mandated with responsibility of community welfare and protecting it from the potential adverse impacts arising from the project, hence the need for PAPs relocation from the Olkaria IV site to the alternative land.

The community was keen on keeping the traditional land. It had invested in the cultural inputs and villages, whose value was difficult to calculate and compensate in monetary terms. They felt they had ancestral rights to the land and also livelihood interests attached to it. They had invested in income-generating cultural activities, including traditional dances and trade in conventional trinkets and other tourists' items. These activities were not easily transferable from the Olkaria IV site, located inside a wildlife park, to the new site, far from it. The community was cut from the hub of tourism activities, exacerbated by additional transport costs to the park.

Each party could have considered that they stood on the high ground and could win a legal battle. Instead, in the spirit of mediation, the government and the community agreed to negotiate relocation to allow KenGen to continue implementing the Olkaria IV geothermal plant. The mediated agreement may have been deemed expensive, but KenGen may have considered it a small price to pay for the project's expedited and secure implementation.

Studies suggest that mediation's outcomes can be affected by factors such as the nature of conflict, the mediator's personality and the process of mediation (Bush and Folger, 2005; Dhiaulhaq et al., 2014; Gritten et al., 2009; Kressel, 2006; Wall et al., 2001). In this case, the study sought to better appreciate the Olkaria IV conflict mediation process through contacting affected persons and appraising its documentation. It also vetted its effectiveness in resolving the disputes that arose from the projects' implementation.

3. Materials and Methods

3.1 Description of the research area

The research was conducted at the RAPland in the development area of Olkaria IV. RAPland comprises of 155 households with a total population of 1209 PAPs (GIBB Africa, 2012; Schade, 2017) situated in the Olkaria geothermal block in Naivasha-Sub-County, Nakuru County (Fig. 1). The area was gazetted as a Geothermal Resource Area in 1971 (Sena, 2015) and is located on KenGen's land covering approximately 80 square kilometers in the Hell's Gate National Park.. The park lies at 0°54'57"S, 36°18'48"E, to the south of Lake Naivasha, about 120 km north-west of Nairobi.

The area is sufficiently broad to accommodate additional power plants besides Olkaria I (units 4 and 5), that occasioned the resettlement. KenGen has marked the Olkaria IV area as a key component of the wider Kenya Electricity Expansion Project (KEEP). The Olkaria IV project aimed at con-

tributing to the national grid, improving distribution and efficiency of the supply of electricity while bettering the PAPs' livelihoods. It has an installed capacity of 140 MW owned and managed by KenGen, but established with the financial support of the European Investment Bank (EIB), World Bank (WB), and other international institutions (Schade, 2017).

The plant's installations necessitated the relocation of four villages (Cultural Centre, OlooNongot, OlooSinyat, and OlooMayana Ndogo) from the Olkaria IV site to RAPland (GIBB Africa, 2009, 2012; Schade, 2017) located outside the park. Relocation resulted from the environmental, social impact assessment (ESIA). The ESIA findings demonstrated potential adverse impacts, including noise pollution and disruption of livelihood sources of the four villages' inhab-

itants.

Most of the PAPs were of the Maasai ethnic group, whose livelihood depended mainly on pastoralism and livestock trading. A small proportion of the PAPs group; Cultural Centre village relied on tourism (selling of curios and tour guiding) (Schade, 2017). The National Environment Management Authority (NEMA) endorsed the resident's relocation, and GIBB Africa developed a resettlement action plan (RAP) to facilitate the relocation process. The PAPs were resettled on 1,700 acres of land. In addition, modern infrastructure (electric grid, schools, a health centre, a social hall and churches), grazing land and other benefits were promised to them.

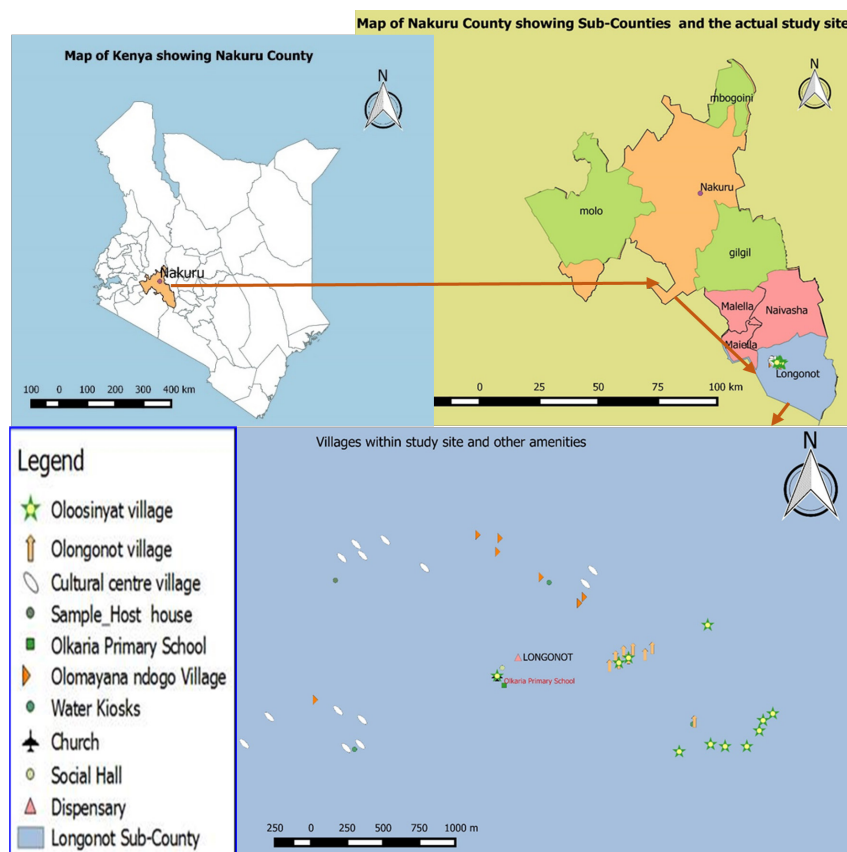


Fig. 1. Location of Study site, RAPland at OlkariaIV in Lolongot. Source: Kong'ani et al., (2021).

3.2 Research design

A blended methodology was employed to gather quantitative and qualitative data between May and November 2019. Quantitative data included the respondents' demographics. There was also proportioning and clustering of the mediated issues and mediation participants. Qualitative assessment of the respondents' reflection on the mediation's inception, stakeholders' involvement, the mediation process, issues mediated, and outcomes. An evaluation of secondary sources of information including project implementation reports, mediation process reports, journals articles, and published books on natural resources conflict resolution was conducted.

3.3 Sampling

The survey aimed to incorporate the individual household experiences on the mediation process and its role through a census of all the 155 households in the four villages at RAPland (GIBB Africa, 2012; Schade, 2017). However, only 117 households were surveyed, which is slightly above the recommended threshold that would have been calculated using a rigorous scientific formula, thus representative. The occupants of 24 homes had temporarily moved out of RAPland at the time of the study. Occupants of another 14 households were inaccessible because of work-related engagements outside the RAPland.

3.4 Data Collection

3.3.1 Preparations

A reconnaissance study was conducted in May 2019, during which four research assistants (a female and three males) were recruited from RAPland. They were trained on the various features of the questionnaire and interview procedures, and etiquette. The semi-structured questionnaire was pretested to improve its validity.

3.3.2 Household Survey

An open and closed ended questionnaire was developed to capture respondents' experiences on mediation inception, process, actors, issues mediated, and the sequels. It was administered systematically to household heads or dependents aged over 18 years old in the RAPland to collect quantitative and qualitative data. Data collected was supplemented by information gathered from focus group discussions (FGDs), key informant interviews, field observations, and literature review.

3.3.3 Focus Group Discussions

A checklist guide was prepared based on a questionnaire survey and used to collect qualitative data via three (elders, women, and youth) FGDs. Each group consisted of eight participants purposively drawn from the four villages. They were selected based on their experiences and participation in Olkaria IV mediation process. The youth group comprised of four female and four male participants. The female elders were separated from males to facilitate free participation and discussions, especially among women, whose culture forbids speaking openly among men (Hodgson, 1999). The participants granted consent to record the discussions.

3.3.4 Key Informant Interviews

In-depth interviews conducted with eight key informants generated further qualitative data. These informants were purposively selected to inform a deeper understanding of the mediation's initiation and process and the sequels. The informants were some of those people who took part in the mediation to resolve post-relocation conflicts. They included one mediator, two complainants, two from the Resettlement Action Plan Implementation Committee (RAPIC), two village elders, and one informer from KenGen. The interviews were conducted with the aid of a checklist designed in advance. They did not consent to voice recording. However, meticulous notes were taken during the interviews.

3.3.5 Field Observation

The researcher made observations of the RAPland's topography, the established facilities and infrastructure, and PAPs' livelihood activities. Photographs were taken. Besides, research assistants were engaged through informal talks to complement the information gathered.

3.5 Data analysis

The completed questionnaires were checked for adequacy and clarifications, and coded. Quantitative data were organized into Microsoft Excel, then imported into the R program (Gentleman, 2008), and analyzed using a combination of descriptive statistics (percentages and frequencies). Data were displayed using tables. Qualitative data gathered

from the household survey open-ended questions, FGDs, and informant interviews notes were typed, and the interview recordings transcribed. The transcripts were imported into qualitative research software, NVivo (Bazeley, 2013), for coding and analysis. The summaries of the narrations were used in the discussion in the subsequent section.

4. Results

4.1 Demographic Characteristics

The respondents comprised females (54%) and males (46%), with 75% being household heads. The majority of the respondents were married (83%), divorced (3%), widow/widower (6%), single (6%), and separated (2%). The average household size was five. Nearly two-thirds (63%) of the respondents had never been to school. Others had primary (19%), secondary (12%), College, and University (3%) education. Majority (68%) of respondents were between 21 - 40 years, 25% were aged 41 - 60 and (5%) were aged above 60 years. Only 1% of residents were aged less than 20 years old. Nearly all depended mainly on livestock keeping (85%) with slightly more than two-thirds of the PAPs (68%) supplementing livestock with small-scale farming, employment (52%), business (20%), fish farming (2%), and charcoal burning (3%).

4.2 Genesis and awareness of the mediation

The majority (83%) of the respondents linked the conflicts to PAPs' hasty relocation to incomplete facilities at RAPland, disregarding the stipulations of the memorandum of understanding signed with KenGen. The developer and the community leaders held numerous meetings to talk over the issues in vain. The discontented PAPs complained to the financiers (the EIB and WB) via emails requesting their intervention. The WB Inspection Panel, in collaboration with the European Investment Bank -Complaints Mechanism (EIB-CM) and Grievances handling mechanism, traveled to Kenya in early 2015 to investigate the PAPs' complaints.

The non-resettled PAPs (NRPAPs) were converged at the former Cultural Center area. The NRPAPs shared their concerns with the investigation team over being left out of house allocation and inadequate compensation. Also, the panel met with the resettled PAPs (RPAPs). The RPAPs complained about incomplete projects, increasing gully erosion, issuance of the title deeds, and inadequate financial compensations. These issues were read out to the community at the RAPland's Social Hall. The issues were considered by the panel, which in collaboration with the EIB, recommended the 2015 mediation.

On general awareness of mediation, more than half (59%) of the respondents claimed not to have heard of mediation before the one in which they got involved. The rest (41%) who had heard of it, identified community conflict resolution (37%), government (22%), media (19%), school (17%), and friends/neighbors (5%) as their sources of information.

4.3 The mediation processes

4.3.1 The pre-mediation phase

4.3.1.1 Ground setting

In May 2015, the EIB-CM's designated mediator met with KenGen and the community representatives. The mediator took the parties through the mediation processes that included selecting the mediation team and negotiating the issues. The mediator also gathered the PAPs' opinions and expectations of mediation, which included resolving all contentious issues. The issues included inadequate financial compensations, water scarcity, bad roads in the RAPland, lack of transport, gully erosion, issuance of title deeds, low-quality pasture, billed electricity, additional housing units, and the non-alignment of the built houses to the Maasai customs.

The EIB-CM recruited two certified mediators in Kenya based on their expertise and experience. One of the mediators had a legal background while the other was selected based on his experience in inter alia, social issues, community engagement, natural resource management and development practices. The two mediators collaborated with the EIB-CM designated mediator in the Olkaria IV mediation. However, the later was mainly involved in weighty issues that emerged during mediation.

While KenGen readily accepted mediation, the PAPs were hesitant, fearing a commercial arrangement between KenGen and the financiers, which could have disadvantaged them. The EIB, with the mediators' support, persuaded the PAPs to accept, stating that mediation would restore and enhance relationship between the parties. The mediators also helped KenGen better appreciate the PAPs' diverse concerns and expectations to develop appropriate options to address them.

The NRPAPs were inadequately involved during this process, since the meeting venue's choice, the community Social Hall at RAPland, was far from their current homes. They also failed to participate because of ill will, as aptly stated by an informant, 'Their low participation was because of the existence of a hate seed planted by RAPIC members against those left out of relocation benefits.' The EIB, WB, and the local mediators publicized mediation throughout

the community. The pre-mediation phase also involved the selection of stakeholders and their role in mediation as presented below.

4.3.1.2 KenGen and Local Community role in mediation

Almost all the respondents (96%) pointed out PAPs and KenGen as the main parties to mediation. KenGen was represented by three participants. Although, an informant noted, 'The community was not necessarily homogenous; some of the community members were part of the RAPIC, which had participated in the resettlement process, thus made it hard to determine the PAPs representatives,' the community was guided by the three mediators to elect 17 representatives. An informant put, "It was good that the mediators came to the community, met the youth, women and men and asked them to choose people they trusted 'by themselves' to represent them at mediation table."

Thus, RAPIC and the NRPAPs nominated six members each comprising of two women, one youth, and three men. The nomination was conducted through discussion and the majority vote. The 17 community representatives including Council of Elders and the community welfare representative played different roles as summarized in [Table 1](#).

In addition to the mediation team, a representative of EIB-CM was invited to participate as friends of the three mediators. There was also an observer from the Kenyan Ministry of Energy and Petroleum to represent the government, and another from the WB.

Two-thirds (65%) of the respondents were satisfied with the election process. The rest were dissatisfied, citing inadequate involvement of the community in the process, failure to use secret ballots, nepotism, corruption, lack of transparency, and election of illiterate members. Further, RAPIC had worked closely with KenGen in implementation of the Resettlement Action Plan (RAP). Therefore, the NRPAPs feared that RAPIC's participation would have favored the developer as stated by an informant:

Table 1: Community Representatives and their role(s)

Party	No. of representatives			Role
	Male	Female	Total	
Resettlement Action Implementation Committee (RAPIC)	4	2	6	<ul style="list-style-type: none"> • Provided the institutional memories of the resettlement process. • Consulted and negotiated on behalf of the resettled PAPs (150 households). • Gave community feedback on the mediation progress and carried back community's reaction to the mediation issues.
Non-Resettled PAPs (NRPAPs)	4	2	6	<ul style="list-style-type: none"> • Consulted and negotiated on behalf of the non-resettled PAPs. • Gave feedback on the mediation progress and carried back community's reaction to the mediation issues.
Council of Elders (CACs)	4	0	4	<ul style="list-style-type: none"> • Represented the four villages at RAPland and made decisions on the community's behalf. • Also brought traditional wisdom into the mediation.
Ewangan Sinyatti Welfare Society	1	0	1	<ul style="list-style-type: none"> • Gave input on RAPland's infrastructure needs.
Total	13	4	17	

'The participation of RAPIC in the mediation process aimed at opposing compensation for the NRPAPs. They were to side with KenGen in dismissing the NRPAPs' claims. RAPIC intended to hide KenGen's shame and instead continue to curry favour with the donors.'

4.3.2 The mediation phase

Three months after pre-mediation, the formal mediation phase started in August 2015. During this stage, the mediation team hosted at least three meetings before the negotiation of the issues. The mediation Chairperson and the team drafted the procedure for the mediation agreement. The agreement consisted of rules and code of conduct during mediation. These included:

- Chairing of mediation sessions to be only under one of the mediators,
- The participants to speak only on the Chair's permission,
- The right of the Chair to coordinate responses to questions arising, and
- The Chairs right to adjourn mediation to allow con-

sultations among the parties' representatives.

- Permission for non-mediation team persons to attend the mediation sessions as non-contributing participants to ensure transparency of the process.

The mediation participants were left to read and sign the mediation agreement without mediator intervention or support. The deal was written in English yet, only 24% (4/17) of the community representatives were literate. The mediation was then conducted in three sessions, as illustrated in Table 2, and was concluded by the signing of the accord.

5.3.3 Post-mediation and sequels of mediation

Most of the respondents (80%) in Olkaria IV did not participate directly in the mediation process but through representatives. However, they noted, the representation was satisfactory as expressed by nearly two-thirds (62%) of the respondents. Slightly more than half (53%) were satisfied by the process. The rest associated dissatisfaction with the inadequate publicity, consultation at the initial stage, inadequate capacity building on the mediation process, poor coordination and limited public participation.

Table 2: The mediation sessions and focus/logistics

Sessions	Period	Purpose	Focus/logistics
One	August 2015	To identify, discuss and agree on the issues for mediation	<p>The identification and discussion of the following issues raised by the PAPs:</p> <ul style="list-style-type: none"> • Construction of additional houses; • Improvement of livelihoods at RAPland (including for the most vulnerable, persons living with disability and the elderly) through employment, USD 5,000 disturbance allowances, a refund of USD 350 for electricity, free electricity, and benefit-sharing; • Improved services at RAPland: access roads, transportation, reliable water supply, enhanced medical facility, schools, scholarships/bursaries, furnishing of Social Hall with Chairs, construction of cattle dips and bridges, and rehabilitation of gulleys; • The title deeds to the allocated land portions; • Resolution of the post-relocation conflicts.
Two	September 2015	To clarify first mediation meeting identified	<ul style="list-style-type: none"> • Determination of suitable options to solve issues, explored alternatives and sought consensus outside mediation to facilitate conclusive subsequent mediation.
Three	May 26 - 27, 2016	In-depth negotiation of issues	<ul style="list-style-type: none"> • Open and in-depth discussions between the community and the financiers' representatives; • Negotiating that financiers oversight implementation of the agreement; • Compensation for the community representatives' accommodation, meals, per diem and transport; • Attention to issues agreement buy-in by the larger community.
Mediation agreement	May 28, 2016	The signing of the mediation agreement	<ul style="list-style-type: none"> • The agreement was signed by all except one of the sixteen community representatives; • Most community members endorsed the agreement in a Baraza on June 10, 2016.

Table 3: The mediation results

Sessions	Focus/logistics
<ul style="list-style-type: none"> • Agreement signed between KenGen and the community; • The majority of issues mediated were implemented, including the construction of five more houses, massive youth employment (30), and improved services at RAPland; • Improved standards of living at RAPland; • Mended relationship and created peaceful co-existence between KenGen and PAPs, and among the PAPs; • The community became aware of their rights and established linkages with the outside world; • The community appreciated the local government's role of promoting unity during mediation, which improved their perception towards it; • Community leaders felt more respected for their role in mediation. 	<ul style="list-style-type: none"> • Increased cost to KenGen with continued demand from the PAPs beyond the agreement; • Some families bore ill will for the mediation team because of perceived poor representation; • Division in the community occasioned by the alleged nomination of most members from one family to the RAPIC committee; • Nine (9) houses were yet to be constructed, leaving members in a state of confusion; • Gulley stabilization was found to be not practical; • Incomplete discussions and agreement over disturbance allowance (USD 5,000).

However, the results revealed that mediation was fruitful in managing the conflicts between KenGen and the PAPs. The majority (83%) of the respondent suggested they would recommend mediation of any other community development project conflicts. The mediation results were stated as follows (Table 3).

4.4 Olkaria IV mediation analysis, the features, and characteristics

The responses demonstrated essential features and characteristics of the mediation exhibited during the pre-mediation, mediation, and post-mediation. The process was inclusive, bringing on board antagonistic parties, among other features as presented below:

Inclusiveness

The process brought together KenGen and the PAPs in search of an amicable solution. Notably, the community delegates represented both the NRPAPs and the resettled PAPs, although most of the issues discussed, other than housing for NRPAPs favored the latter. In terms of gender inclusivity, the mediation team consisted of four women and two youth. Besides, a female translator outsourced from a distant location for neutrality was engaged in translating English to Maa and vice-versa throughout the mediation process, bridging the language barrier.

Freedom of expression

During the mediation sessions, the parties were encouraged to speak freely. This was confirmed by an informant;

“Women and youth are forbidden to speak before men. I recall I was given a chance to speak on behalf of the youth. When I mentioned something that I was not supposed to say, some men did not want. One man wanted to hit me with a bottle but the mediators helped by making them understand that everyone had a right to speak so they can be heard. It was a fair process.”

The CAC, the welfare representative, the banks' representatives, and the two local mediators were limited to listening, as required by the signed mediation protocols. The Banks' representatives and sometimes the local mediators

were allowed to participate in the caucus discussions. However, the CAC and the welfare representative voiced dissatisfaction with their role during the second session of the mediation stage. This led to the breach of the mediation protocols, which saw them permitted to speak throughout the signing of the mediation agreement.

In addition, the mediation clinics provided another chance for more than 200 complaints to speak for themselves. Eight complainants were found eligible for compensation. Five complainants qualified for resettlement and three for structural compensation.

The mediator's role and conduct

The EIB-CM designated mediator Chaired the opening session. The mediator welcomed all participants, took them through the itinerary of all mediation sessions, and officially opened the negotiations. Tension reportedly took over, as the NRPAPs believed that RAPIC representatives were principally in support of KenGen and constituted possible opposition to their contributions. Nevertheless, the mediators facilitated easiness by encouraging every member to speak openly and without restrictions.

Before each mediation phase session, the mediators held separate discussions with the parties to identify and discuss options to address such thorny issues as house entitlement and issuance of title deeds. An informant noted, *“the separate discussions were transparent, inclusive, impartial, and supportive of the communities, and aimed at correcting power imbalances.”*

The mediation phase encumbered countless disagreements between KenGen and the community and among the community representatives, who often threatened to quit the process. The mediators helped to calm the parties during such incidents and facilitated the process to continue. The mediators habitually stood in between the discordant parties whenever the differences almost escalated into violence.

The mediators facilitated about thirty meetings and workshops, to support the community to reach a mutual agreement for the mediation. An informant stated, *“Good listening and probing skills including listening to emotions were important. This helped to build the rapport with the community, neutralized hostility and promoted acceptability of the mediators*

leading to negotiation and agreement on a wide range of contentious issues.” The mediators also helped KenGen appreciate the community's anxieties and hopes.

The mediators worked closely with the Banks' GRS and the EIB-CM and updated them on emerging issues like the Cultural Center's occupation and the title deed concerns, which could have potentially affected the final mediation agreement's results.

Community Feedback

The community representatives gave feedback to the larger community and to the mediators upon resumption of the mediation sessions. The community's reaction to contentious issues was sought mainly via public barazas/meetings at the RAPland's Social Hall. However, the feedback was reportedly minimal due to the mediation design that failed to allow sufficient consultations and feedback on contentious matters. Further complications were created by some of the representatives' inability to unpack the issues to the broader community. The respondents claimed that the community did not have adequate time to share their input with the representatives.

The representatives were obligated to report and consult with their respective designated villages. Some were purportedly irresponsible since they only gave feedback when asked by community members upon coincidental contact.

The community's feedback was covertly discouraged by the mediators, bound by timelines, or not implemented in the subsequent mediation sessions. The mediation resolutions validation exercise took place ten days after signing the agreement, apparently against the mediation protocols.

Endorsement of the agreement

After the third mediation session, the agreement was signed by all but one of the sixteen (94%) of the community representatives. The one abstention was reportedly because of dissatisfaction with the process. The community was convened in June 2016 at the RAPland's Social Hall for a Baraza where the mediators read out the 27 items in the agreement to both parties.

Since the agreement was already signed, the community did not see the need to give input to it. They felt that they were denied an opportunity to react to the mediation resolutions. However, most of these community members endorsed the accord. Copies were availed to the signatories, and the agreement later translated to Maa and Swahili and circulated among the community.

The mediation attributes

The Olkaria IV mediation process attributes are outlined in Table 4. The acceptance of the mediation by both KenGen and the PAPs laid the foundation for formal mediation

Table 4: Positive and negative attributes of the mediation process

Mediation phase	Positive attribute	Negative attribute
Pre-mediation	Investigation of PAPs complaints conducted by the WB Inspection panel in collaboration EIB-CM. Mediation accepted by both KenGen and PAPs. Community independently elected representatives. Community leaders involved.	Low trust between KenGen and the financiers. NRPAPs inadequately involved during the pre-mediation meetings (that sort to explain mediation process and solicit community expectations) because the meeting venue was far from their current homes. Mediators were suggested by the EIB and WB/ Financiers. Lack of trust and “corruption” allegations against the Developer.
Mediation stage	All contentious issues were identified and put on the table by parties. Issues discussed one at a time. Freedom of expression. Mediators simplified language on the issues. Outline of issues agreed on drafted by mediators and agreement signed by both parties.	There was insufficient community mandate and reaction on some issues. Some community feedback not incorporated during subsequent mediation sessions. Frequent threats to quit mediation by parties. Language barrier: although there was a translator on duty, it was not easy to translate the nuances fully. Agreement not presented to the larger community before it's signing.
Post-mediation and the results	Mediation items read out and voted on. Copies of agreement availed to the mediation team. Nearly two-thirds of the negotiated issues were implemented.	Open voting system/suppressed freedom of choice. It should have been done by secret ballot. Translated copies not readily availed to the larger community. The negotiated USD 5000 disturbance allowance was never paid and nine more houses promised were never constructed.

agreement. The PAPs had an opportunity to identify contentious issues and vote on the agreement, albeit in an open forum. Nearly two-thirds of the negotiated items were actualized. The inadequate participation of the larger PAPs' community was notably a cross-cutting issue in the three mediation phases.

5. Discussion

The post-relocation conflicts at Olkaria IV underscore the importance of translating the pledges to actions. This frequently is ignored by the developmental projects (Schilling & Scheffran, 2018). Perhaps adequate participation of PAPs in the RAP negotiation could have promoted their buy-in to relocation and avoid unrealistic pledges, expectations and conflict. While results demonstrated that mediation can help avoid conflicts, they highlighted trouble that can arise because of power inequalities between parties (O'Malley, 2014). In this case, the weaker party (PAPs) gave into hasty relocation, perhaps out of fear of victimization. This is a recipe for destructive conflicts, especially where a large population is affected.

Cognizant of the conflicting parties' attempts to resolve issues via meetings, the post-relocation conflicts demonstrated this approach's inefficacy. Perhaps it was occasioned by the parties' likely inability or unwillingness and rigidity to talk publicly over issues in the unequal negotiation power or/and lack of trust between the parties (Bercovitch & Jackson, 2001; Dhiaulhaq et al., 2014; 2015).

Mediation has widely been used globally (Amanda and Jensen, 2016; Cheung, 2010; Dhiaulhaq et al., 2014; 2018; 2015; Yurdi et al., 2010). Yet, the Olkaria IV community was poorly informed of it as an option for resolving their conflict with KenGen. Probably this is because use of mediation is not common in Kenya (Muigua, 2016). Also, this could be ascribed to the possible unfamiliarity with the term 'mediation,' since most communities across the continent have traditionally used mediation to resolve social conflicts since antiquity. However, it is not termed as such (Muigua, 2018a).

Nevertheless, the use of mediation at Olkaria IV mirrored practices elsewhere, especially in South Asia where it has been applied following parties' failure to resolve major conflicts (Moore, 2014; Ni'mah et al., 2018). While the PAPs were hesitant over mediation at its inception, the EIB-CM's assurance of the mediation's ability to resolve their issues and to allow improved long-term relationships between them promoted its acceptance. Agreeing to mediate was one of the essential elements (Dhiaulhaq et al., 2018; 2015) contributing to successful resolution of the Olkaria IV conflicts. Maybe, the parties were driven by the desire to have issues amicably resolved, as was the case of the industrial tree planting conflict in Indonesia (Samsudin and Pirard, 2014).

Effective representation of interests contributes significantly to conflict resolution. The Olkaria IV community's elected able representatives through discussions and majority vote, with the support of the mediators. The community demonstrated confidence in their ability to present their case effectively resulting in mediation's success. However, the nomination of representatives could have been improved

through adequate involvement of the community and use of secret of ballots. The NRPAPs forsook their strong dislike of RAPIC's participation to represent their case effectively, and worked with them to obtain the larger community's interest. Perhaps, the community was conscious of their need for unity during the mediation since they faced similar predicaments.

While the mediators were fronted by the financiers, both parties embraced them, perhaps, due to their wish for earlier and durable solutions. An appropriate arrangement would provide parties with rights to nominate a mediator. This would be followed by negotiation on who both parties should accept. A weak community like Olkaria could also end up selecting a weak mediator or one that can be compromised, thus the financiers could have acted in best interest to safeguard financial support and avoid loss and acquire social license. In the Olkaria IV case, the PAPs were the weaker party. The weakness comprised of poor resourcing and lower level of knowledge of the process and actual practicing mediators. Thus, they reposed in the mediators selected by the financier, who in their opinion had played a more favorable role in listening to their complaints.

Also, the mediators' recruitment based on their expertise and experience could have contributed to neutrality and their acceptability by the parties, whose central concern was reaching resolutions. This could have also helped hasten the process to avert escalation of the conflict. It is also worth noting that the mediation was recommended by the EIB and WB following their agreement to allow parties to find solutions to the conflict. Another evidence of donor-driven mediation and lack of political goodwill for mediation in the content as observed by Uwazie, (2011).

Further, the mediators' experience and capacity to help the parties appreciate each other's concerns and interests, could have secured their acceptance and trust during the pre-mediation phase, and further smoothed subsequent phases. In Tanjung Jabung Barat mediation in Indonesia, the community was apprehensive that the mediator, having developed the company's social conflict management system, was unlikely to be impartial (Dhiaulhaq et al., 2018; Samsudin and Pirard, 2014). Nevertheless, considering the ability of the mediator to negotiate with the company's decision-makers, the community accepted them. Consequently, an amicable agreement was reached. It is therefore imperative that a mediator is equally accepted by the conflicting parties. Such was the case in Olkaria IV mediation.

The Olkaria IV mediation involved the three phases of pre-mediation, mediation, and post-mediation activities similarly to the six mediation cases in South Asia (Dhiaulhaq et al., 2015). However, the Olkaria IV mediation was more inclusive. The PAPs representatives were allowed to consult the broader community, an essential element for a more sustainable agreement. But the mediation process plan was not explicit on the form of feedback and reporting mechanisms. Perhaps, the small size of the PAPs (1209) (Schade, 2017) made it more inclusive, despite this weakness, and consequently, the mediation resulted in the signing of the agreement.

Mediation ran for 13 months, replicating a similar period covered during the Karang Mendapo and Lubuk Jering

conflicts mediation in Indonesia (Dhiaulhaq & Bruyn, 2014; Dhiaulhaq et al., 2018). However, the process was undoubtedly rushed, resulting in the removal of some of the unresolved and contentious issues, like the need for nine more houses. Maybe, the supposed fast-tracking of the process aimed at cutting down on the mediation costs arising from food, accommodation, and the participants allowances. The community's participation is key across all mediation stages. It enhances commitment to the agreement and improves the community's attitude towards the project's sustainability (Cheng et al., 2019). In simple terms, there is need for recognizable attributes that are attainable and that are articulated by accepted and well-empowered representatives.

The mediators' competence and teamwork could have been core to the effective bargaining between KenGen and the PAPs. Their capacity to work with these parties to establish the mediation protocols, identify and clarify issues, organize and manage meetings, and ensure the parties' commitment to mediation, irrefutably resulted in the agreement's signing. Although the mediators managed to contain the exchanges between the parties, a pre-mediation of the community interests could have helped manage such negotiation dynamics.

KenGen's willingness to negotiate the post-relocation conflicts and the PAPs acceptance of the mediated offer may have resulted in a win-win outcome as has been the case elsewhere (Bush and Folger, 2005; Dhiaulhaq et al., 2014; 2018). The PAPs had to let go some of their demand including their former settlement site, and accept the socio-economic compensation from KenGen. By signing the agreement, they considered it a fair exchange and, in any case, better than the previous arrangement that forced them to move without being heard. KenGen could have opted for a legal decision and, no doubt, and with right and might on its side, would have obtained it. However, good sense won the day and they agreed to mediate. The agreement allowed smooth project implementation. In addition, like in the six mediation incidents in South Asia (Dhiaulhaq et al., 2014; 2015), the Olkaria IV mediation's success culminated in the signing of the agreement, mended relationship between KenGen and the PAPs, and among the PAPs, reduced conflicts, improved livelihoods of the PAPs and smoothened project operations.

The diversification of the PAPs livelihoods, including small-scale farming enabled by the availability of water, supplemented the community's main source of livelihood (livestock). This could have helped the PAPs appreciate the new site and reduce possible hidden tensions and anxieties. The desire to contain costs could have made KenGen apprehensive of potential demands from the PAPs. However, in the spirit of mediation, they listened and negotiated acceptance of the ones within their project budget. Apparently, the agreement delivered to PAPs was what KenGen was willing to offer. This enabled continued implementation of the negotiated items, peaceful co-existence with the community and the project's sustainability.

Conclusion

Mediation resulted in the reaching of consensus between KenGen and the PAPs on contentious issues. This helped to

reduce conflicts, improved the relationships between KenGen and the PAPs, and among the PAPs, demonstrating mediation's effectiveness in resolving developmental conflicts. In addition, the PAPs livelihoods were improved by opportunities within Olkaria IV project and the RAPland. Further, the community established linkages with the outside world. The selection of the community representatives by themselves and consultation with the larger community, as a best practice could have promoted PAPs' ownership of the process and acceptability of the results. Also, the mediators' competence, good listening and probing skills resulted in successful negotiations and agreement on a wide range of issues. In addition, the freedom of expression created through ensuring women and youth's participation and mediation clinics, promoted the weaker gender's voice into mediation that would sustain the agreement. However, the mediation approach could have been improved with adequate pre-mediation capacity building among community representatives, and development of a strategy for comprehensive feedback and reporting mechanism with the community. Also, there is a need for further sensitization of men among the marginalized communities on the importance and right to participation by all parties. This will help overcome the possible cultural barriers to participation and smoothen future mediation practices. Further, a continuous documentation of the process could have created easier replication of mediation. Finally, it is recommended that policies be formulated to provide for use of mediations an alternative dispute resolution mechanism in implementation of large developmental projects for their sustainability. Such policy would provide for a public list of mediators to select from and guide identification of a mediator by protagonists.

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