

EUROPEAN INVESTMENT BANK:

PROMOTING SUSTAINABLE DEVELOPMENT, “WHERE APPROPRIATE”

A survey of the EIB's social guidelines for project financing outside the European Union

November 2007

**“You who are on the road,
must have a code,
that you can live by”**

Crosby, Stills, Nash and Young, “Teach Your Children” (1970)

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Contents

ABBREVIATIONS	4
EXECUTIVE SUMMARY	5
The dilemma	5
Report objectives	6
Social assessment	6
Human rights	7
Community participation and consent	7
Labour rights	9
Gender equality	10
Conclusion: Towards external accountability	10
THE EIB'S STRUCTURE AND ACTIVITIES	13
The EIB's lending policies in developing countries	15
Report objectives	17
1. SOCIAL ASSESSMENT	19
1.1 The EIB's current approach to social assessment	20
1.2 International best practice in project finance	22
1.3 Recommendations for the EIB	23
2. HUMAN RIGHTS	25
2.1 The EIB's current approach to human rights	27
2.2 International best practice in project finance	27
2.3 Recommendations for the EIB	29
3. COMMUNITIES PARTICIPATION AND CONSENT	31
3.1 The EIB's current approach to community participation and consent	34
3.2 International best practice in project finance	37
3.3 Recommendations for the EIB	40
4. LABOUR RIGHTS	43
4.1 The EIB's current approach to labour rights	44
4.2 International best practice in project finance	45
4.3 Recommendations for the EIB	46
5. GENDER EQUALITY	47
5.1 The EIB's current approach to gender equality	48
5.2 International best practice in project finance	49
5.3 Recommendations for the EIB	50
CONCLUSION: TOWARDS EXTERNAL ACCOUNTABILITY	51
APPENDIX	53
Multilateral development bank lending to developing countries: Total commitments 2006	53

Index of abbreviations

ACP	Africa, Caribbean and Pacific region.
ADB	Asian Development Bank.
ALA	Asia and Latin America.
CBD	Convention on Biological Diversity.
CLS	ILO's Core Labour Standards.
DDP	(UNEP's) Dams and Development Project.
DIAF	(EIB's) Development Impact Assessment Framework.
EC	European Commission.
EIB	European Investment Bank.
EIF	European Investment Fund.
EIR	Extractive Industries Review.
EITI	Extractive Industries Transparency Initiative.
EPE	European Principles for the Environment.
ESIAF	(EIB's) Environmental and Social Impact Assessment Framework.
EU ETS	European Union Emissions Trading System.
EU SDS	European Union Sustainable Development Strategy.
EU	European Union.
FPIC	Free, Prior and Informed Consent.
FPICon	Free, Prior and Informed Consultation.
IADB	Inter-American Development Bank.
IAIA	International Association of Impact Assessment.
IF	EIB Investment Facility.
IFC	International Finance Corporation.
IFI	International Financial Institution.
ILO	International Labour Organization.
MDB	Multilateral Development Bank.
MDGs	Millennium Development Goals.
MIF	IADB's Multilateral Investment Fund.
OPIC	US Overseas Private Investment Corporation.
PJ	Projects Directorate.
UNCTAD	United Nations Conference on Trade and Development.
UNEP	United Nations Environment Program.
WBG	World Bank Group.
WCD	World Commission on Dams.

Executive summary¹

The European Investment Bank (EIB) was established in 1958 under the Treaty of Rome as the long-term lending institution of the European Union (EU). As such, it is mandated to provide financing in support of the policy objectives of the EU, including EU environmental policy. Acting outside of the EU, the EIB is charged with implementing European Commission (EC) policy in the sphere of development cooperation. But while the World Bank and the IFC operate with a single overarching mission in all their countries of operations, the EIB operates with distinct regional mandates outside of the EU, as defined by the European Council.

While its financing is concentrated in the EU, its operations in developing countries are growing rapidly. In December 2006, the EIB was given a new mandate that called for up to 35 percent growth in financing, including sizeable increases to Latin America, Asia and Africa. In 2006 alone, it distributed EUR 5.9 billion to projects outside of the EU, exceeding the total lending volume of several other multilateral lenders, including the EBRD and the International Finance Corporation (IFC).

Meanwhile, in terms of ensuring that such investments do not harm the environment or local communities, the EIB president Phillippe Maystadt has on several occasions called into question the rationale for applying ‘international best practices’ given growing competition from other lenders, notably Chinese financial institutions.

This wavering risks encouraging a ‘race to the bottom’ in environmental and social standards among financial institutions which strongly conflicts with its mandate to further EU development cooperation policy in developing countries.

As identified in this report, the peculiar internal governance structure of the EIB comparing with other MDBs – only EU Member States and the European Commission sit on its board – provides the EIB with distinct responsibilities to promote European sustainable development and social justice goals when lending to developing countries and offers the opportunity to define more advanced approaches to safeguard the environment and beneficiaries’ rights.

The dilemma

Its recent funding increase will make the EIB the largest multilateral lender in developing countries by volume (see appendix). Yet, compared to other lenders, the scope, depth and clarity of the EIB’s environmental and social policies leave a lot to be desired. In August 2006, the EIB released the Environmental and Social Practices Handbook, a guidance document primarily for internal staff that contains a series of guidance notes on a variety of social assessment topics. They identify why and how the EIB conducts social assessments of projects, and which international laws, standards and conventions are used in a variety of issue areas, including population

¹ Footnotes with sources for various statements and figures have been omitted from the executive summary, and can be found in the main text.

movements and involuntary resettlement, labour standards and minority rights.

While the Handbook adds some substance to previous documentation, it reveals that there is still a notable discrepancy between the standards the EIB is prepared to adhere to inside and outside the EU. For example, whereas projects in the former are required to “comply” with EU laws and standards, those in the latter are only “benchmarked” against them. Furthermore, the EIB argues that the application of EU standards to non-EU projects is subject to local conditions such as affordability, local environmental conditions, international good practice and with reference to factors such as the costs of application. And curiously, while the EIB has in the past declared its lending outside the EU would “subscribe” to the Equator Principles – a voluntary set of standards adopted by more than 50 private financial institutions exclusively for their project finance operations – this notable commitment is not explicitly stated in the recent Handbook.

Report objectives

This report aims to inform the ongoing review of environmental and social practices within the EIB by examining the standards endorsed by the EIB in a variety of social policy areas, and identifying ‘international best practices’ against which the EIB’s new framework will invariably be judged. Specifically, it will focus on five different social policy areas in which EIB policy remains unclarified and underdeveloped; social assessment, human rights, communities’ participation and consent, labour rights, and gender equality.

By surveying key publicly available documents issued by the EIB, the report intends to identify the gaps between the EIB’s existing social policies and the standards embedded in EU laws, conventions and mandates that inform its relations with developing countries, as well as the policies and procedures of both public and private financial institutions that provide loans to developing countries. In doing so, it hopes to identify and clarify which areas of lending policy require additional attention, either because of lack of clarity, or because they do not adequately fulfill the EIB’s current mandates and responsibilities as an investment arm of the EU.

What follows are separate sections with the main findings and policy recommendations pertaining to each social policy area.

Social assessment

Social assessments are management tools for achieving a variety of social development objectives, including those

considered in this report. In the EU, a number of recent directives, agreements and initiatives provide the normative and legal framework for EU institutions, including the EIB, to develop their own operational objectives and policies. For example, the recent Review of the EU Sustainable Development Strategy (EU SDS) declared that all EU institutions should ensure that major policy decisions are based on proposals that have undergone high quality impact assessments, assessing in a balanced way the social, environmental and economic dimensions of sustainable development and taking into account the external dimension of sustainable development and the costs of inaction. Therefore, for the EIB, a systematic and expanded use of social assessments in its financing operations in developing countries can be seen as a way to fulfill its own operational mandate, and as a critical element of promoting policy coherence among and between EU development institutions.

The EIB claims it has always paid attention to social issues in projects, but not systematically. Its current policy is that social assessment will be carried out for all projects outside EU-27 and “on a selective basis” in projects in Candidate and potential Candidate countries. In this context, the EIB notes that investment analysis routinely includes the examination of any significant effects on income distribution and the likely impact on poverty alleviation. But, as is emphasized, the scope of social assessments will vary according to the circumstances, the capacity of the Promoter (the borrower and project operator in EIB’s terms) and the involvement of other financial partners. For projects in the Africa, Caribbean and Pacific (ACP) region, the EIB has introduced a Development Impact Assessment Framework (DIAF) (later renamed ESIAF) which uses qualitative ratings and relies on informed judgement to outline a project’s contribution to the relevant EU mandate and the Millennium Development Goals (MDGs).

Best practice principles and guidelines are commonly attributed to the reports released by the World Commission on Dams (WCD) and the Extractive Industries Review (EIR). In particular, these inclusive multi-stakeholder processes concluded that such assessments should be conducted or verified by parties independent of the interests of project developers, given the sensitivity of the issues involved. Among multilateral lenders, social assessment is increasingly becoming a priority area, evidenced in the inclusion of social as well as environmental assessments as part of a client’s project preparation and respect for all core labour standards in the IFC’s Performance Standards. Similar to the IFC, the African Development Bank (AfDB) and the European Bank for

Reconstruction and Development (EBRD) have developed assessment policies and guidelines that include social issues. In terms of the World Bank, although it has developed best-practice guidelines on social analysis, it still confines mandatory requirements for social assessment to sub-provisions in specific operational policies on Resettlement and Indigenous Peoples.

Key recommendations

- Translate guidance notes into binding operational policies, so as to communicate to internal staff, Promoters and stakeholders that it is fully committed to complying with well-recognized international laws and norms, notably human rights.
- Clarify which EU and international laws the EIB is prepared to honour in its non-EU projects, and how it plans to monitor compliance with these laws once projects are operational. A critical element of doing this, as noted by the WCD report, is to have an assessment and monitoring process that is independent of the interests of Promoters.

Human rights

The protection of human rights is deeply enshrined in EU constitutive law, and is foundational to EU development cooperation policy. As stated in the European Consensus on Development and the EU EDS, the promotion and protection of fundamental rights is among the EU's guiding principles. Furthermore, in relation to ACP countries, the Cotonou Agreement refers to a multitude of constitutive human rights law and states that cooperation shall be directed towards sustainable development centered on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

The EIB does not have a separate policy on human rights, but its current policy can be principally deduced from its Guidance Note on Dealing with Minority Rights, Including Women, Indigenous People and Other Vulnerable Groups. In the Handbook, the EIB states it is committed to EU policies that uphold and respect human rights in its investment activities and aims to ensure that investments support and respect international conventions on human rights and that it is not complicit in human rights abuses. And while the EIB has unequivocally stated that it will not disburse funds in a country declared "off-limits" for EU-financing, it merely "encourages" adherence to the various international conventions, and other laws governing the protection and promotion of human rights in the countries in which it operates.

Despite the legal and symbolic significance of human rights to democracy, equity and law, no multilateral development bank has to date issued a specific and consolidated policy or statement on human rights that clarifies its role and responsibilities as a public lender. Instead, references to human rights appear in more issue-specific operational policies in areas such as labour, resettlement and gender. Among the private banks surveyed that have committed to specific human rights declarations and conventions, Rabobank has formally recognised an obligation "to not associate with immoral parties" and committed to explicitly support the UN Norms and all the human rights as written down in the Universal Declaration of Human Rights in relationships with its workers, with its clients or suppliers and with governments. Similarly, Barclays has declared it will operate "in accordance with" the Universal Declaration of Human Rights, whereas Standard Chartered "supports" it, and aims to uphold it in all circumstances.

Key recommendations

- Produce a binding operational policy that clearly identifies for internal staff, Promoters and stakeholders which standards it is prepared to adhere to. While the EIB currently shuns countries that the EU has seized to interact with economically and financially, it should also identify similar criteria for Promoters, leaving open the possibility of refusing financing in cases where human rights violations are well documented.
- Operationally, the EIB should first assess the human rights record and the human rights approach of the Promoter, leaving open the option of refusing financing in the most critical cases. Subsequently, it should adopt an operational procedure aimed at defining which EU or international law frameworks should be used as benchmarks to assess compliance, reporting and review mechanisms, and how internal staff will ensure that projects are and remain in compliance. And at this juncture the EIB should consult with stakeholders and obtain their consent to the project management plans, including any proposed compensatory measures. And once agreed upon, the human rights standards that the EIB expects the Promoter to comply with should be publicly disclosed, and routinely monitored.

Community participation and consent

Public consultation has become a common feature of environmental and social assessment processes undertaken in conjunction with high-risk development projects. The

overarching purpose is to inform project-affected communities of investments and development decisions that will affect them, either positively or negatively, and allow them to voice their reactions to project proposals, influence the selection of adverse impacts that will be considered and managed, and recommendations to be included in management plans. Yet, while having access to consultation may facilitate information-sharing, it by no means guarantees influence, unless consulted parties are given established rights and entitlements.

In development finance, international standards can be placed into two distinct yet not entirely separate camps, based on whether they consider participatory decision-making in the context of “consultation processes” or “consent processes.” The former approach, which has been widely adopted by project finance lenders, provides project-affected communities with a right to participate in “free, prior and informed consultations” (FPICon) in a way that is “meaningful”, but denies them the power to prevent particular projects from being implemented. In contrast, the “consent processes” shift the balance of power to stakeholders, and require project developers to obtain the “free, prior, informed consent” (FPIC) of project-affected communities, granting them the right to control access to their land and natural resources, and share in the benefits when these are utilised by others.

The EU has indirectly endorsed the FPIC principle by having adopted relevant international law, such as the Convention on Biological Diversity (CBD). More broadly, EU laws, policies and conventions commonly affirm the importance of civil society participation in decision-making, and promoting governance that is transparent, accountable and inclusive. For example, the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies advocates a “rights-based” approach, in which people should be granted guaranteed rights of access to information, public participation in decision-making and access to justice in environmental matters. Furthermore, the UK Government has made a commitment to “implementing the recommendations of the WCD (which endorsed FPIC), and the Swedish and German bilateral aid agencies have adopted the WCD decision-making framework and are supporting their partner countries and project developers in implementing it.

For projects outside the EU that require an environmental impact assessment (EIA), the EIB has committed to promote public consultation and participation, “according to EU standards”, through appropriate discussions with the

Promoter and other parties. In explicit and unequivocal terms, the guidance note states that the EIB will apply the principles and practices of three central regulatory frameworks to all its regions of operation: the Århus Convention, the EU Environmental Impact Assessment (EIA) Directive and the Strategic Environmental Assessment (SEA) Directive. Yet, with particular relevance to indigenous peoples’ rights and involuntary resettlement, the guidance notes fail to unequivocally state that adherence to international law is a precondition for receiving financing.

More broadly, a problematic aspect of its current approach is the extent to which ‘local conditions’ may dictate both the scope and depth of consultation processes, and the seemingly complete reliance on internal staff for assessing the acceptability of public consultation processes. While the institutional environment of each project will differ, it is important to communicate to internal staff, stakeholders and potential Promoters which principles will govern EIB projects in non-EU countries, regardless of project-specific circumstances. Specifically, the extent to which it considers itself bound by EU law and policy is unclear. Although it has endorsed both the WCD and the Extractive Industries Review (EIR) in particular contexts, neither of these frameworks have been identified in the context of binding operational commitments. Furthermore, the statement that EU policy will be followed in non-EU projects is not unequivocal, making it difficult to determine which standards the EIB is prepared to use.

To date, no lender has directly adopted the FPIC principle as their guide to engaging with project-affected communities, although the language seems very similar in some cases. The closest example is HSBC, which has committed to the FPIC principle as articulated in the WCD report for its investments in the water sector. Meanwhile, the World Bank and the IFC (and by extension the private banks that have adopted the Equator Principles) have committed to an approach based on a process of FPICon that results in ‘broad community support’ at each stage of the project. But depending on how lenders define and interpret what ‘broad community support’ means, this standard could approximate FPIC, if ‘support’ is understood as provision of ‘consent’, or it could allow for a looser interpretation in which only (limited) support is needed for the development proposal. Meanwhile, the Swiss export credit agency expects project developers to address the WCD’s seven strategic priorities, and the US Overseas Private Investment Corporation (OPIC) applies screening and environmental assessment criteria that incorporate the WCD core values and strategic priorities.

Key recommendations

- The EIB should in this regard much more forcefully confirm that it is prepared to extend the rights and entitlements given to local communities in the Århus Convention to project-affected communities in non-EU countries by incorporating it into binding policy. To verify compliance, the EIB should either organise consultations or be present at them, and establish clear rules for information disclosure. This includes publicly disclosing the results of any consultation exercises before the project goes before the EIB's board for approval.
- The EIB should produce a binding commitment that identifies the distinct characteristics that indigenous peoples have as vulnerable groups, and the rights and entitlements it is prepared to provide them in its financing operations. In order to follow EU policy statements on the matter, it should align its approach with recent EU policy pronouncements and U.N initiatives and adopt the FPIC principle when engaging with indigenous peoples. Particularly important is the recognition that many indigenous communities are not fully integrated into national legal systems, and therefore require and deserve special protections.
- The EIB should make the FPIC principle a cornerstone of its management of forced resettlement issues. In cases where development plans conflict with the interests of local communities, the aim should be to find a consensus solution in which they fully share in the benefits of the project.

Labour rights

Promoting and protecting labour rights is an important aspect of the EU's internal policies on social cohesion, and also features prominently in its development cooperation policies and mandates. As reiterated in the European Consensus for Development, this commitment draws directly on the International Labour Organization (ILO) conventions and core labour standards (CLS) that prohibit certain labour practices and guarantee a variety of worker protections. In a notable announcement, the EC has stated that the EC and EU Member States should actively promote discussion and consideration of social development and core labour standards in other development organisations, including the Bretton Wood Institutions and the United Nations Conference on Trade and Development (UNCTAD). This pledge was also reinforced by the Cotonou Agreement, which mandates the EIB to commit to internationally recognised core labour

standards, as defined by the relevant ILO Conventions, and in particular, the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour and non-discrimination in respect to employment.

In the Handbook, there are two guidance notes on Addressing Labour Standards and Addressing Occupational and Community Health and Safety that outline the EIB's policy on labour standards and community relations for projects outside the EU. In terms of the choice of standards, the former note says the EIB's due diligence procedures should focus on the Core Labour standards (CLS) outlined in the ILO Declaration on Fundamental Principles and Rights at Work, and the relevant national labour laws. Subsequently, it explicitly affirms that the EIB will not finance projects that employ, use or benefit from harmful child labour, that use or knowingly benefit from forced labour, and that do not comply with national law on worker representation and organisation. Yet, such statements are obscured by language in other sections that provide EIB staff with discretion in applying them to projects.

While the policies of multilateral and private lenders vary in this issue area, most do reference the CLS when articulating which labour rights and protections they are prepared to guarantee. In the new Performance Standard, the IFC (and by extension the Equator banks) is substantially guided by the CLS, stating for example that where national law substantially restricts workers' organisations, the client will enable alternative means for workers to express their grievances and protect their rights regarding working conditions and terms of employment. Similarly, the Performance Standard explicitly prohibits Promoters to hire child labour or forced labour. For its part, the Asian Development Bank (ADB) recently released a Core Labour Standards Handbook, developed in close consultation with the ILO, which identifies the ADB's intention to take all necessary and appropriate steps to ensure that projects comply with the CLS.

Key recommendations

- To be consistent with EU policy, the EIB should formally adopt all four CLS in its non-EU projects, and put in place binding operational procedures – in close consultation with the ILO – that ensure that projects comply with them. In this context, the division of roles and responsibilities between lenders and Promoters with respect to implementation, monitoring and disclosure should be firmly established.

- The EIB should ensure that a requirement for periodic, independent reviews of ongoing labour practices is integrated into loan agreements, so as to reassure workers that the EIB is prepared to protect their rights. In turn, the labour standards should be publicly disclosed, so as to allow workers to learn about the commitments the Promoter needs to abide by in terms of working terms and conditions.

Gender equality

Gender equality is increasingly becoming a priority area within EU development cooperation. For example, the European Consensus on Development recognized gender equality as a goal in its own right, identifying it as one of the five common principles of EU development cooperation. The Cotonou Agreement identified gender issues as “cross-cutting”, and called on parties to reaffirm the equality of men and women as part of promoting and protecting all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. To facilitate this, it recommended that systematic account shall be taken of the situation of women and gender issues in all areas – political, economic and social.

The EIB’s Guidance Note on Dealing with Minority Rights, Including Women, Indigenous People and Other Vulnerable Groups outlines the EIB’s policy positions on assessing and managing impacts on minority groups, including women. It recognises that the protection of minority rights and the participation of minorities in decision-making are central to the founding principles of the EU. Yet both EIB documentation and external reporting suggests that redressing gender imbalances is not a high priority in the EIB’s assessment work. Apart from the seeming lack of specialised in-house expertise, the EIB’s guidance notes do not refer to particular international treaties and conventions, and thereby fail to place its gender commitments within a particular legal or policy framework.

A recent comparative study of MDB policies and practices on gender equality concludes that existing policies tend to be weak, and special gender units are often under-resourced and under-staffed. With regard to mitigating and preventing adverse gender impacts in projects, the ADB and the AfDB have the strongest policies among multilateral lenders. The ADB requires a preliminary gender assessment to be completed as part of initial project assessments, and in cases where it is found that the project may positively contribute to correcting gender disparities, it is classified as having a gender theme. In turn, a gender action plan is prepared, and reports concerning the involvement of women in project design are produced.

With regard to the AfDB, it has developed a Gender Policy in which it is committed to conduct gender analysis for all Bank interventions. More broadly, the AfDB commits to a variety of public policy objectives related to women’s empowerment, including promoting girls’ education in science and technology, supporting measures that promote equal sharing of work between men and women, boys and girls, and increasing women’s access to affordable, quality health care and information.

Key recommendations

- Given the relatively strong commitment to redressing gender imbalances in EU policy, the EIB bears a special obligation to further women’s rights in development finance. The objective for the EIB should be to ensure that its project financing contributes positively to the economic, social and political conditions of women directly and indirectly affected by its financing.
- The EIB should consider undertaking an assessment that identifies how its projects in various industry sectors and regions affect women, and how it may contribute to improving the conditions of women as a lender in developing countries. This means identifying opportunities for making positive interventions, and advocating gender mainstreaming as a critical element of responsible financing.

Conclusion: Towards external accountability

The main shortcoming of the guidance notes annexed to the Handbook is the lack of clarity, consistency and comprehensiveness. While it recommends that staff should write in a clear and concise fashion when producing project summaries on the EIB website, its own guidance notes do not seem to follow this advice.

Rectifying this problem is important for the EIB to become externally accountable for the development impact of its non-EU projects, to reduce risk by developing stable expectations among stakeholders and potential Promoters, and to contribute to the ongoing upward harmonisation of operational policies across public and private lenders. It is particularly worrying that the EIB’s operational policies lag behind those of many private lenders, given the strength of EU development cooperation mandates, and the obligation that the EIB has to promote them.

Key recommendations

While the EIB has made important strides in recent years, notably in the areas of climate change and biodiversity, the preceding analysis has illustrated that its Environmental and Social Practices Handbook lacks clarity and comprehensiveness relative to the operational policies of other multilateral lenders, and even some private lenders as well. Based on this, the EIB is not currently in a position to effectively promote EU policies and commitments in the area of development cooperation.

- The EIB should represent an important standard-bearer of the norms and values shared by EU member states when financing projects in non-EU countries. To facilitate this, the EIB should draft a set of clear and comprehensive operational policies that identify the standards it is prepared to follow in developing countries in the policy areas analysed in this report.
- To clarify its obligations as an EU institution, the EIB should produce a comprehensive list of its existing legal obligations under EU law and international statute in the policy areas considered in the preceding analysis.
- The EIB should introduce an external accountability mechanism similar to the World Bank's Inspection Panel, to which affected communities from developing countries and European citizens can address their concerns. Such a mechanism would allow for possible sanctions in cases where the EIB is in clear violation of its own policies, thereby providing EIB staff with a real and vital incentive to honor environmental and social commitments in project assessment, implementation and monitoring, particularly in cases where competing interests provide incentives for not doing so.

The EIB's structure and activities

The EIB was established in 1958 under the Treaty of Rome as the long-term lending institution of the European Union (EU). Similar to the World Bank, each EU Member State's share in the Bank's capital is based on its economic weight within the European Union. In 1994, an EIB Board decision created the European Investment Fund (EIF), which is dedicated to financing small- and medium-sized businesses in the EU. In 2000, the EIB and the EIF were formally constituted as part of the EIB Group. In terms of ownership, the EU Member States are sole owners of the EIB and are represented on its Board of Governors and the Board of Directors. Meanwhile, the EIF is owned jointly by the EIB (62 percent), the European Commission (EC) (30 percent), and several European financial institutions (8 percent), including the European Bank for Reconstruction and Development (EBRD).

Box 1: The EIB and the MDGs

"Investments through the European Investment Bank and the EU-Africa Partnership for Infrastructure should support sustainable development objectives. The EIB should assess its lending against the contribution to achieving the MDGs and sustainable development."

The EU's Renewed Sustainable Development Strategy, p.21.

In broad terms, the EIB is mandated to provide long-term investment in support of the policy objectives of the EU, including EU environmental policy.² Acting outside of the EU, the EIB is charged with implementing EC policy in the sphere of development cooperation. (see Box 1) Accordingly, the EIB's own policies and strategies "shall be complementary to the policies pursued by the Member States."³ This formal institutional relationship between the EIB and the EU is its most important

- 1 According to the EIB, its policies and strategies on the environment are supposed to be directly derived from those of the EU. (see European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.1). It also reaffirmed its close, institutional relationship with the EU as a signatory of the European Principles for the Environment in June 2006.
- 2 The notion that "community policy in the sphere of development cooperation shall be complementary to the policies pursued by the Member States" is embedded in Article 177 of Treaty to the European Union, and was affirmed most recently in the European Consensus for Development, a Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>
- 3 This is a requirement under Article 21 of the EIB's Statute. See Corporate Operational Plan 2007-2009, European Investment Bank (EIB), January 29, 2007, p.3. Date of Access: August 21, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/strategies/cop_2007_en.pdf

distinguishing characteristic as a multilateral development bank. According to the EIB, it engages in close and continuous consultation and cooperation with the European Commission, Council and Parliament, in order to maintain coherence between EU priorities and its own operational objectives.⁴ And by its own accord, its overall responsiveness to EU policy change serves as an important criterion for measuring its credibility as an EU institution.⁵ Therefore, its effectiveness and legitimacy as a public lender in developing countries hinges on its capacity and commitment to promote EU policies, laws, and norms in its financing operations.

While the EIB's operations and lending commitments focus on investments in EU Member States, it is also mandated to finance projects in prospective member countries, and increasingly, developing countries in the global south. In December 2006, the EIB was given a new mandate that called for up to 35 percent growth in financing, including sizeable increases to Latin America, Asia and Africa.⁶ In 2006 alone, it distributed EUR 5.9 billion to projects outside of the EU, exceeding the total lending volume of several other multilateral lenders, including the EBRD and the International Finance Corporation (IFC).

While the World Bank and the IFC operate with a single overarching mission in all their countries of operations, the EIB operates with distinct regional mandates defined by the European Council. Specifically, financing in Africa, the Caribbean and the Pacific (ACP) should further objectives outlined in the Cotonou Agreement, notably poverty eradication, whereas EIB lending in Asia and Latin America (ALA) aims to support "viable public and private sector

projects in infrastructure, industry, agro-industry, mining and services", in which "special emphasis is given to the improvement or protection of the environment."⁷ To fulfill the former, the Bank manages the Cotonou Investment Facility (IF), which is a EUR 2 billion risk-bearing and revolving instrument established to "promote the development of the private sector and commercially-run public enterprises."⁸ In addition, the IF has an interest rate subsidy appropriation, similar to the World Bank's International Development Association (IDA), aimed at providing appropriately concessional lending to the Bank's public sector Promoters in low-income countries.⁹

In Asia and Latin America, the EIB has been mandated to finance projects since 1993, including over EUR 2.5 billion in the latest commitment period (2000-2007). While focusing on promoting private sector investment in industries strategically important to EU energy security and resource needs, the EIB's mandate in Asia and Latin America requires it to place special emphasis on "the improvement or protection of the environment."¹⁰ Yet, based on publicly disclosed information, it is unclear how this commitment influences project selection and appraisal. But perhaps more controversial, the EIB's mandate in these regions contains a "mutual interest clause" in which the EIB should prioritise projects that benefit both the EU and the host country, by for example enhancing the market positions of European exporters or banks, or promoting the sale of European technology and know-how.¹¹ By being required to overtly promote European interests in such a way, the EIB operates in Asia and Latin America with objectives similar to those of export credit agencies.

4 This is a requirement under Article 21 of the EIB's Statute. See Corporate Operational Plan 2007-2009, European Investment Bank (EIB), January 29, 2007, p.3. Date of Access: August 21, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/strategies/cop_2007_en.pdf

5 Corporate Operational Plan 2007-2009, European Investment Bank (EIB), January 29, 2007, p.1. Date of Access: August 21, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/strategies/cop_2007_en.pdf

6 In November 2006, the European Council decided to augment EIB's financing ceiling to EUR 27.8 billion over the period 2007-2013, compared to EUR 20.7 billion under the 2000-2006 mandates. See "EU clears European Investment Bank to loan €27.8 billion until 2013", International Herald Tribune, November 28, 2006. Date of Access: October 2, 2007. http://www.ihrt.com/articles/ap/2006/11/28/business/EU_FIN_EU_European_Investment_Bank.php

7 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.12.

8 Activity Report 2006, Message from the President, p.76. Date of Access: September 26, 2007. <http://www.eib.org/cms/htm/en/eib.org/attachments/general/reports/ar2006en.pdf>

9 The IF and the subsidy endowment are both funded out of the Cotonou Agreement's first financial protocol of EUR 13.5 billion contributed by the Member States from the 9th European Development Fund (EDF), alongside EUR 11.3 billion in grants channeled through the European Commission.

10 See European Investment Bank loans in Asia and Latin America, the EIB, March 2005, p.5. Date of Access: October 2, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/country/ala_en.pdf

11 See European Investment Bank loans in Asia and Latin America, the EIB, March 2005. Date of Access: October 2, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/country/ala_en.pdf

The EIB's Lending Policies in Developing Countries

According to its new overarching strategy announced in 2005, the EIB's financing outside the Union should "implement the financial aspects of the Union's aid and cooperation policies towards its partner countries."¹² In another source, this is specified as financing projects in support of the EU's policy objectives on development cooperation and sustainable development, and in particular, the Millennium Development Goals (MDGs).¹³ In the EIB's own language, supporting the realisation of the EU's social and development policy objectives is one of its own "value-added objectives."¹⁴ Given that EU policy differs by region, the EIB's development strategy is regionally based, dependent on ongoing EU mandates.

The EIB's approach to managing environmental and social risks is identified in its Environmental and Social Practices handbook, disclosed in August 2006, as well as other previously released documents (see Box 2). Despite the substantial differences between regional mandates, the EIB's Environmental and Social Practices Handbook states that standards applied to developing country projects should be "informed by the same principles, core values and good practices that govern operations within the Union."¹⁵ This declaration of intent is underscored by the fact that the commitments outlined in the Handbook are "applicable to all EIB projects irrespective of region and type."¹⁶ The EIB has further stated that in regions where EU and/or national environmental and social standards do not exist or are inappropriate, the EIB states that it "minimally" takes into account the IFC Safeguard Policies on indigenous peoples, involuntary resettlement and cultural property.¹⁷ Meanwhile, the EIB in the Handbook also notes that its projects in developing countries are "guided by recognised good international practices, such as those laid down by the World Commission on Dams (WCD) and the Extractive Industries Transparency Initiative (EITI)" (emphasis in original).¹⁸

Box 2: EIB's Environmental and Social Commitments

External observers frequently note how the EIB's environmental and social policies and procedures lack specificity, and lag behind those of other lenders. Perhaps in response to such claims, the EIB has in recent years undergone a slow maturation as a development institution, particularly in the area of environmental protection.

In 2004, it released an Environmental Statement, which affirmed its commitment to comply with EU environmental policies and standards, promote good environmental management practices, and notably, "accord with internationally recognised social safeguard measures, including labour standards", when financing projects in developing countries.

In 2006, the EIB negotiated and signed up to the European Principles for the Environment, and thereby committing itself to a set of constitutive EU principles on environmental protection, including the precautionary principle, the prevention principle, the principle that environmental damage should as a priority be rectified at source, and the polluter pays principle.

In August 2007, the EIB released an Environmental and Social Practices Handbook, the most comprehensive document on the subject it has published to date. The Handbook follows the sequence of its internal project cycle, and identifies the due diligence procedures that apply to the pre-appraisal, appraisal and monitoring stages, and the allocation of responsibilities between the EIB and so-called 'Promoters'. It includes an annex with guidance notes on how internal staff should assess and manage a variety of social issues in non-EU projects.

To access documents, see www.eib.org

Notwithstanding such references to well-recognised policy frameworks, there is still a notable discrepancy in the Handbook between the standards the EIB is prepared to

11 See European Investment Bank loans in Asia and Latin America, the EIB, March 2005. Date of Access: October 2, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/country/ala_en.pdf

12 Activity Report 2006, Message from the President, p.7. Date of Access: September 26, 2007. <http://www.eib.org/cms/htm/en/eib.org/attachments/general/reports/ar2006en.pdf>

13 The EU's Renewed Sustainable Development Strategy states that the EIB should "assess its lending against the contribution to achieving the Millennium Development Goals and sustainable development." (EC 10917/06, p.21)

14 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.119.

15 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.9.

16 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.8.

17 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.103, fn 104.

18 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.29.

adhere to inside and outside the EU.¹⁹ Whereas projects in the former are required to “comply” with EU laws and standards, those in the latter are only “benchmarked” against them. And curiously, while the EIB declared it would “subscribe” to the Equator Principles when operating outside the EU, this commitment is not included in the more recent Handbook.

More specifically, for projects outside of the EU and the Western Balkans, the EIB only requires compliance with “national law” and “the obligations of relevant multilateral environmental agreements to which the host country is party to.”²⁰ This seemingly omits international laws and conventions that deal with social issues to which host countries may be signatories. Furthermore, the application of EU standards “is subject to local conditions (such as affordability, local environmental conditions, international good practice, etc) and with reference to such factors as the costs of application.”²¹ In some cases, the EIB notes that compliance may be “phased”, without divulging on what basis such decisions are made, or whether they are publicly disclosed. It also argues that “it can only confirm compliance with Community policy and with legislation to the best of its knowledge”, and “it cannot give assurance about the behaviour of the promoters once equipment is installed.”²²

Such discretionary, vague and convoluted language fails to clearly identify for clients, stakeholders and EU public officials which standards the EIB is prepared to honour and promote in its non-EU investments. From a risk perspective, the approach directly contradicts the approach taken by the Equator Principles banks, which apply higher environmental and social risk management standards in countries with weak governance precisely because their risk exposure is higher. Notwithstanding these limitations, the EIB has in recent years made important strides in defining and implementing commitments towards environmental protection, notably in the area of climate change and biodiversity, as an aspect of conforming to evolving EU policies in these areas²³ (see Box 3).

Box 3: Commitments to mitigating climate change and biodiversity loss

In the area of climate change, the EIB has stated “all Bank projects are assessed for their expected impacts in terms of greenhouse gas emissions the scope for improvements in energy efficiency and the need for measures to adapt to climate change are also reviewed.”
(See the Handbook, p.28, para 67)

Furthermore, it has introduced and supported a variety of carbon finance mechanisms, most of which focus on helping European companies make climate-friendly investments and technology upgrades. They include the Climate Change Finance Facility (CCFF), Multilateral Carbon Credit Fund jointly with the EBRD, the Carbon Fund for Europe co-financed by the World Bank, and the Carbon Programme in cooperation with KfW.

In terms of protecting biodiversity, the EIB has signed a Memorandum of Understanding with the World Conservation Union (IUCN), in which it committed to, among other things, strengthening its screening of biodiversity issues in projects, and maintaining regular contact with the IUCN on biodiversity and conservation matters. In turn, the IUCN committed to helping the EIB build internal capacity to assess and mitigate biodiversity impacts in projects.

For example, the EIB claims that “climate change considerations are systematically included in the Bank’s internal appraisal procedure, so that all projects are now routinely screened for their potential to mitigate climate change and generate carbon credits.”²⁴ While it is unclear how such screening influences the selection and management of emission-intensive projects, its commitment to mitigating climate change is significant in multilateral finance, and no doubt pushed by the EU’s own policy commitments in this area.

As the EU released a Renewed Sustainable Development Strategy (EU SDS) in 2006, the EIB recently signalled

19 In this report, “the EU” is used to refer to EU Member States, and in addition, countries which the EIB refers to as Candidate Countries and Potential Candidate Countries. As of June 2007, Candidate Countries refers to Croatia, Turkey, Former Yugoslav Republic of Macedonia (FYROM), whereas Potential Candidate Countries refers to Albania, Serbia, Montenegro, Kosovo and Bosnia Hercegovina). (See “European Investment Bank – Environmental and Social Practices Handbook”, August 2, 2007, p.1, fn. 1)

20 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.9.

21 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.10.

22 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.22.

23 For more information, see <http://www.eib.org/projects/topics/environment/climate-change/index.htm> and http://www.iucn.org/en/news/archive/2006/09/20_eib.htm.

24 See EIB Climate Change Facilities, EIB website. Date of Access: October 2, 2007. <http://www.eib.org/projects/topics/environment/climate-change/index.htm>

its intention to refine its project identification, appraisal and monitoring techniques “to ensure that sustainability is sufficiently and consistently considered when the value-added aspects of a project are assessed.”²⁵ As part of this effort, it released the Environmental and Social Practices Handbook, a document intended to describe the “internal processes and practices of the Bank, particularly the work carried out by its Projects Directorate (PJ), to ensure that all financing activities are consistent with its environmental policy.” Thus, its primary target is internal staff members who are charged with managing environmental and social issues in projects financed by the EIB. Thus, unlike the operational policies of other multilateral lenders, the Handbook seems not to be intended primarily for external audiences, which is reinforced by the existence of hyperlinks directing readers to the EIB’s intranet site, but exclusively reserved for EIB staff.²⁶ More broadly, for an external observer, the Handbook comes across as guidance notes for internal staff that could be a supplement to a set of operational policies that currently do not exist.

Report objectives

This report aims to inform the ongoing review of environmental and social practices within the EIB by examining the standards endorsed by the EIB in a variety of social policy areas, and identifying ‘international best practices’ against which the EIB’s new framework will invariably be judged. Specifically, it will focus on five different social policy areas in which EIB policy remains unclarified and underdeveloped; social assessment, human rights, communities’ participation and consent, labour rights, and gender equality. By surveying key publicly available documents issued by the EIB, the report intends to identify the gaps between the EIB’s existing social policies and the standards embedded in EU laws, conventions and mandates that inform its relations with developing countries, as well as the policies and procedures of both public and private financial institutions that

provide loans to developing countries. In doing so, it hopes to identify and clarify for the EIB, its shareholders and clients, civil society organisations and the wider investment community, which areas of lending policy require additional attention, either because of lack of clarity, or because they do not adequately fulfill the EIB’s current mandates and responsibilities as an investment arm of the European Commission.

The report comes at a critical time in the evolution of the EIB as a development institution. As noted above, the EIB is embarking upon a major expansion of financing operations in developing countries with weak governance systems, increasing the importance of having strong social safeguards in place.²⁷ Some of this increase will be channeled to private sector projects in Africa, in high-risk sectors such as mining and infrastructure. To facilitate this expansion, it has in recent years introduced new financing mechanisms, notably the Cotonou Investment Facility and the EU-African Infrastructure Partnership. In order for its augmented funds to make investments that are consistent with the Cotonou Agreement, the EU’s development cooperation mandates, and ‘international best practice’ in development finance, it is important that the EIB accelerates the further development of its operational policies as an urgent matter.

In this regard, statements made by the EIB president that seemingly call into question the rationale for applying ‘international best practices’ given growing competition from Chinese lenders in Africa are disconcerting, as they not only conflict with those of other multilateral development banks (MDBs), but also many private lenders.²⁸

This wavering risks encouraging a ‘race to the bottom’ in environmental and social standards among financial institutions which strongly conflicts with its mandate to further EU development cooperation policy in developing countries.

25 See “Corporate Operational Plan 2007-2009”, January 29, 2007, p.3. Date of Access: August 22, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/strategies/cop_2007_en.pdf

26 For example, the specifics of the Development Impact Assessment Framework (DIAF) are hidden behind such a link, even though the information is of interest to the wider public. On another page, a similar link to a document describing the DIAF on the EIB web page does not work. See European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.31, fn 35, and p.60, para 226, respectively. (Date of Access: October 2, 2007)

27 Under its new external mandate, the EIB can lend up to € 27.8 billion over the period 2007-2013, compared to €20.7 billion under the 2000-2006 mandates. (see “EIB Annual Report 2006 – Volume 1 Activity Report”, January 29, 2007, p.7. Date of Access: August 22, 2007. <http://www.eib.org/cms/htm/en/eib.org/attachments/general/reports/ar2006en.pdf>)

28 See “EIB Accuses Chinese Banks of Undercutting Africa Loans”, Financial Times, November 29, 2006. Date of Access: October 2, 2007. <http://www.ft.com/cms/s/0/added3c2-7f4e-11db-b193-0000779e2340.html>. For commentary and additional sources, see Bank Information Center (BIC) website on the matter. Date of Access: October 2, 2007. <http://www.bicusa.org/en/Article.3180.aspx>

1. Social assessment

Social assessments are management tools for achieving a variety of social development objectives, including those considered in this report.²⁹ The scope of social assessment policies across multilateral and bilateral development agencies is informed by principles, norms and values embedded in constitutive law and framework agreements. In the EU, a number of recent directives, agreements and initiatives provide the normative and legal framework for EU institutions, including the EIB, to develop their own operational objectives and policies.³⁰ A critical and lasting objective of EU development co-operation since the establishment of the EU has been the fostering of “sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them.”³¹ To realise this objective, the recent EU SDS declared that,

“all EU institutions should ensure that major policy decisions are based on proposals that have undergone high quality Impact Assessment (IA), assessing in a balanced way the social, environmental and economic dimensions of sustainable development and taking into account the external dimension of sustainable development and the costs of inaction.”³²

The recent *European Consensus on Development*, agreed upon during the UK EU Presidency in 2005, states that the primary and overarching objective of EU development cooperation “is the eradication of poverty in the context of sustainable development, including pursuit of the MDGs.”³³ As a means to “strengthen the impact and sustainability of [development] cooperation”, the European Community has committed to “a strengthened

29 As an example, one source defines social impact assessment as “a process of evaluating the likely impacts, both beneficial and adverse, of a proposed development that may affect the rights, which have an economic, social, cultural, civic and political dimension, as well as the well-being, vitality and viability, of an affected community - that is, the quality of life of a community as measured in terms of various socio-economic indicators, such as income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, services.” (see The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities Montreal, Secretariat of the Convention on Biological Diversity (CBD Guidelines Series: Montreal 2004), p.7, section 6j.

30 The fact that these EU initiatives are directly relevant to, and should inform the social assessment policy of the EIB, has been recognized by the EIB itself. See *The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank*, October 2, 2006, p.2.

31 This objective is also enshrined in the EU’s institutionalized commitment to Fundamental Rights, as stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the individual national constitutions of Member States. See *Treaty Establishing the European Community, as Amended by Subsequent Treaties*, Part 3, “Community Policies”, Title XVII, “Development Cooperation”, Article 130u. Date of Access: August 25, 2007. <http://www.hri.org/docs/Rome57/Part3Title17.html#Art130u>

32 The EU’s Renewed Sustainable Development Strategy, EC 10917/06, p.7, para 11.

approach to mainstreaming cross-cutting issues”, including the promotion of human rights, gender equality, democracy, good governance, children’s rights and indigenous peoples, conflict prevention, environmental sustainability and combating HIV/AIDS.³⁴ For the EIB, a systematic and expanded use of social assessments in its financing operations in developing countries can be seen as a way to fulfill its own operational mandate, and as a critical element of promoting policy coherence among and between EU development institutions (see Box 4).

Box 4: Policy Coherence

“We reaffirm our commitment to promoting policy coherence for development, based upon ensuring that the EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives.”

*The European Consensus for Development,
p.6, para 9. November 25, 2005.*

On the operational level, numerous multilateral and bilateral aid agencies have developed methodologies and procedures for undertaking social assessments of projects in developing countries, differing in scope, analytical focus and rigor. (see section 1.2) Overall, their purpose is to mitigate and prevent adverse impacts on local communities and vulnerable groups, and to foster an inclusive, transparent and accountable decision-making process. As with Environmental Impact Assessments (EIAs), the outcomes of these processes can dramatically and fundamentally influence management plans that will determine the impact on the livelihoods of vulnerable groups. By extension, the extent to which social assessments are undertaken

in a transparent, inclusive and independent fashion is an important benchmark for determining whether they are likely to achieve their intended results.

In the EU, the EIA and Strategic Environmental Assessment (SEA) Directives inform impact assessment and planning legislation within EU Member States. And in a recent significant decision, the EU has endorsed the Akwé: Kon guidelines, designed by the secretariat of the Convention on Biological Diversity (CBD) for assessing developments in areas traditionally occupied or used by indigenous and local communities.³⁵ The guidelines aim to facilitate the implementation of the CBD, notably the avoidance or mitigation of adverse impacts on biodiversity (Article 10) and THE PROMOTION OF traditional sources of knowledge, innovation and practices. (Article 8j).³⁶

While directed at governments, the guidelines “invite” international financial and development agencies to take into consideration the need to incorporate and implement the guidelines. They recommend that “proposed developments should be evaluated in relation to tangible benefits to [indigenous or local communities], such as non-hazardous job creation, viable revenue from the levying of appropriate fees from beneficiaries of such developments, access to markets and diversification of income opportunities.” As such, baseline studies should incorporate traditional knowledge, and the project management and monitoring plans should be based on those developed by the affected communities themselves.

1.1 The EIB’s current approach to social assessment

Annexed to the Handbook is a series of guidance notes for EIB staff on a variety of social assessment topics, first

33 The document is intended to be “a common vision that guides the action of the EU, both at its Member States and Community levels, in development co-operation.” (p.5). See European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

34 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.29, para 101. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

35 The author is indebted to Tom Griffiths for this observation. The EU committed to applying them “both within EU Member States and in Third Countries”, and at the Community Level, “in respect to projects financed by Community public aid.” (See Annex I to European Commission (2006) Communication from the Commission – Halting the Loss of Biodiversity by 2010 – and beyond: sustaining ecosystem services for human well-being Brussels, 22 May 2006 COM (2006)216 final at Section B.3.1.8)

36 Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities Montreal, Secretariat of the Convention on Biological Diversity (CBD Guidelines Series: Montreal 2004), p.1.

released in July 2006. They identify why and how the EIB conducts social assessments of projects, and which international laws, standards and conventions are used in a variety of issue areas, including population movements and involuntary resettlement, labour standards, community and occupational health and safety and minorities and vulnerable groups, including indigenous peoples and women. It expands on a separate EIB document on Social Assessment Outside of the EU released in October 2006, which stated that “a broad social assessment has been introduced selectively.”³⁷ As the most recent and comprehensive EIB document on social issues in financing operations, the annex represents the primary source of information on EIB social assessment practices for this report.

The Handbook contains numerous references to the EIB’s commitments towards conducting social assessments of projects, but its general policy in this area is primarily outlined in the introduction of the Guidance Notes on Taking Social Issues Into Account Outside of the EU (Annex 12).³⁸ The EIB claims it has always paid attention to social issues in projects, but not systematically.³⁹ Its current policy is that “social assessment will be carried out for all projects outside EU-27 and on a selective basis in projects in Candidate and potential Candidate countries.”⁴⁰ In this context, the EIB notes that “investment analysis routinely includes the examination of any significant effects on income distribution and the likely impact on poverty alleviation.”⁴¹

According to the Handbook, EIB’s current attention relative to social issues is directed towards “the potential impacts of investment projects on population movements and resettlement, and on vulnerable groups of various kinds.”⁴² For projects in the ACP region, the EIB has introduced a Development Impact Assessment Framework (DIAF), which it describes as “a set of indicators to better assess how operations contribute to sustainable development in developing countries”, which uses “qualitative ratings rather than numerical scores and relies on informed judgement rather than on weighted averages of a series of predefined indicators”⁴³ (see Box 5).

Box 5: The Development Impact Assessment Framework

According to the EIB, the DIAF (renamed ESIAF) was introduced at an experimental scale in 2005, and applied to 8 small projects in the ACP regions. The purpose was to examine their development performance across seven areas; financial performance, economic performance, social performance, governance, environmental performance, the Cotonou Investment Facility’s strategic role, and the projects’ contributions to the MDGs.

In 2006, the results were in. According to the EIB, five of the projects to which the DIAF was applied had an overall rating of “high” (the highest rating category) and two had a rating of “medium” (the second-highest rating category). No project was rated moderate or low. Following this pilot phase, the Management Committee decided that the DIAF should be applied to all operations in ACP countries.

The EIB has disclosed the indicators used for two of the areas.

Social performance indicators:

- Numbers of affected persons and anticipated impacts.
- Impacts of resettlement/migration
- Poverty level in region.
- Impact on poorest decile.
- Quality of labour standards.
- Impact on women.
- Social and human capital generated.
- HIV/AIDS prevention programme.
- Impact on disadvantaged/excluded groups.
- Contribution to social facilities.

Governance/institutional aspects:

- Degree of executive board independence.
- Standards of information disclosure and reporting.
- Standards of financial transparency.
- Degree of consultation with affected communities.
- Impact on existing legal framework.
- Partnerships with public, private and civil society sectors.

See EIB Corporate Social Responsibility Report 2005, p.73, and EIB Corporate Social Responsibility Report 2006, p.54.

37 “The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank”, October 2, 2006, p.2.

38 See Environmental and Social Practices Handbook, pp.110-112.

39 “European Investment Bank – Environmental and Social Practices Handbook”, August 2, 2007, p.100

40 European Investment Bank – Environmental and Social Practices Handbook, p.11.

41 “EIB Annual Report 2006 – Volume 1 Activity Report”, p.27. Date of Access: August 22, 2007. <http://www.eib.org/cms/htm/en/eib.org/attachments/general/reports/ar2006en.pdf>

42 The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank, October 2, 2006, p.3.

According to the EIB, the framework outlines the project's contribution to the relevant [EU] mandate and the MDGs, and "is currently being piloted for Investment Facility financed projects in ACP countries."⁴⁴

While the Handbook indicates that social issues are systematically assessed in all non-EU projects, the scope of individual assessments is based on the judgement of project officers. On the one hand, the Handbook states that "social issues are always examined by the EIB in the assessment of projects outside the EU", but "will vary according to the circumstances, the capacity of the Promoter and the involvement of other financial partners."⁴⁵ In a separate paragraph, it notes that most projects will not require a detailed social assessment either because;

- they do not have any measurable negative impacts (most telecom projects for example), or
- the social issues fall outside the remit and influence of the Bank as an investment financier (e.g. the Bank cannot be reasonably held responsible for rises in the crime rate in the project area), or
- because the Promoter is dealing with social issues appropriately (e.g. has developed a sound Corporate Responsibility policy that is independently verified).⁴⁶

With regard to gaining assurances from Promoters that projects are compliant with particular standards, the Handbook states that "specific confirmations regarding legal compliance should be made where appropriate", leaving the possibility that this requirement can be waived in unspecified cases.⁴⁷ The guidance notes encourage EIB staff "to draw the attention of Promoters to international principles such as the Equator Principles, the European Principles for the Environment (EPE), the EITI, the UN Global Compact, and the various international standards frameworks currently being developed." Yet, it explicitly states that compliance with reporting obliga-

tions under these frameworks is "voluntary", and therefore not an explicit lending condition.⁴⁸

With regards to addressing capacity or commitment problems, the EIB states it "will try to assist" Promoters in cases where "they do not have the capacity, have not developed adequate standards, or operate in weak institutional environments", again, "wherever possible." Yet, the EIB states that even for category A projects, monitoring is in general delegated to the Promoter, and the EIB "will rely on the Promoter's information for its own reporting on environmental matters."⁴⁹ Such discretionary language, coupled with a reliance on information produced by the Promoter, makes it difficult to ascertain in which circumstances the EIB is prepared to assist Promoters in complying with standards, and is in either case very susceptible to implementation failures.

In conclusion, as few details about the pilot phase of the DIAF are publicly available, it is difficult to assess how the EIB assess social issues in investment practices. The prevalence of exceptions and caveats also makes it difficult to determine in which circumstances the guidance notes may be waived. While the guidance notes do identify issues that will be taken into account, their relationships with both EU and international law governing social issues remains unclear.

1.2 International best practice in project finance

While EIA remains significantly more developed than social impact assessment procedures and methodologies, multilateral development banks, UN special agencies, bilateral aid agencies and some private lenders have in recent years made strides in integrating social concerns into project impact assessments. This development is perhaps a product of a trend (at least rhetorical) in the sustainability missions of lenders to go beyond minimising harm, to "doing good" when financing projects

43 The DIAF was renamed the Environmental and Social Impact Assessment Framework (ESIAF) in 2006, but yet rather confusingly, the Environmental and Social Practices Handbook uses the two names interchangeably. According to the EIB, the ESIAF is applied to all Investment Loans outside the EU, Candidate and potential Candidate countries. (European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.60) For more on the DIAF, see EIB's Corporate Social Responsibility Report 2005, the EIB, p.73.

44 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.97.

45 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.98.

46 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.97.

47 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.25.

48 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.104.

49 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.52.

in developing countries. Taking this proactive stance is central to the principle of social impact assessment, in particular to ensure that indigenous or local communities directly affected by the project gain a greater share of project benefits. According to guidelines issued by the International Association of Impact Assessment (IAIA), social impact assessment should focus on the impact burden on vulnerable groups, and seek to improve or reconstruct their livelihoods through stakeholder involvement and directly build on local forms of knowledge and expertise.⁵⁰ In turn, according to the IAIA, this emphasis on equity and social justice entails that practitioners need to subscribe to a professional value system that includes “an ethic that advocates openness and accountability, fairness and equity, and defends human rights.”⁵¹

In this regard, both the WCD and the Extractive Industries Review (EIR) made recommendations on improving the legitimacy and effectiveness of impact assessments. Given the political nature of assessments, particularly the weighing of the costs and benefits of different planning options, the WCD report recommended that “impact assessments should be carried out independently of the interests of the project developer.”⁵² This recognises that project developers and their financial backers may have conflicting interests when balancing the short-term commercial benefits of project implementation and the long-term sustainability of local communities and ecosystems. In a similar vein, the EIR advocated that project monitoring systems “should involve the public and outside experts to provide early warning of any previously unforeseen social or environmental impacts”, and “results should be transparently reported to the public.”⁵³

Among multilateral lenders, social assessment is increasingly becoming a priority area, evidenced in the inclusion of social as well as environmental assessments as part of a client’s project preparation and respect for all core labour standards in the IFC’s Performance Standards.

Similar to the IFC, the AfDB and the EBRD have developed assessment policies and guidelines that include social issues. In terms of the World Bank, although it has developed best-practice guidelines on social analysis, it still confines mandatory requirements for social assessment to sub-provisions in specific operational policies on resettlement and indigenous peoples. This runs counter to the recommendations made by the EIR.

With regard to the IFC, and many other lenders for that matter, a major concern is the prevalence of discretionary language and the absence of required timelines and benchmarks for public consultation and disclosure of information. In relation to the IFC, the performance standards increase reliance on client-generated information and self-monitoring by the private sector, raising questions about the independence and objectivity of impact reporting and the comprehensiveness of mitigation measures.

1.3 Recommendations for the EIB

While social assessment policies will and should be tailored to the operations of individual lenders and aid agencies, there are some basic elements that feature in those that can be identified as ‘international best practice.’ As a social assessment is meant to help vulnerable groups by protecting and strengthening their livelihoods and the environmental resources they depend on, a necessary first step is to identify those communities, record the basis of their well-being, and incorporate their concerns into baseline studies and project plans. As recommended by the WCD report and the Akwe: Kon guidelines, the project-level assessment process should be preceded by a strategic impact assessment in which alternative project designs are carefully assessed and considered, including the “no-project option.” This would place the needs of the poor at the centre of EIB’s project operations, and ensure that the most vulnerable share in the benefits of the project.

50 International Principles for Social Impact Assessment, International Association for Impact Assessment (IAIA), Special Publication Series No.2. Date of Access: August 31, 2007. <http://www.iaia.org/modx/assets/files/SP2.pdf>

51 International Principles for Social Impact Assessment, International Association for Impact Assessment (IAIA), Special Publication Series No.2, p.3. Date of Access: August 31, 2007. <http://www.iaia.org/modx/assets/files/SP2.pdf>

52 See Dams and Development, A New Framework, A Report on the World Commission on Dams for Decision-Making, November 2000, p.283. Date of Access: October 2, 2007. <http://www.dams.org/docs/report/wcdreport.pdf>

53 In this regard, it also noted that “independent and impartial third-party monitors may be appropriate.” See Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.62. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$file/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$file/volume1english.pdf)

Given that the Cotonou Agreement calls for poverty reduction to be the overarching objective of development cooperation between the EU and its partner countries, a social assessment process focused on the needs of the poor should be a central element of the EIB's operational practice. To strengthen its approach and meet its obligations under the EU's development cooperation mandates, the EIB needs to translate its guidance notes into binding operational policies, so as to communicate to internal staff, Promoters and stakeholders that it is

fully committed to well-recognised international laws and norms, notably human rights. Furthermore, to be meaningful, greater clarity is needed as to which EU and international laws the EIB is prepared to honour in its non-EU projects, and how it plans to monitor compliance with these laws. A critical element of doing this, as noted by the WCD report, is to have an assessment and monitoring process that is independent of the interests of borrowers, and thereby recognises that they may be in a conflict of interest in making decisions on behalf of local communities.

2. Human rights

The protection of human rights is deeply enshrined in EU constitutive law, and is foundational to EU development cooperation policy. As stated in the European Consensus on Development, “all people should enjoy all human rights in line with international agreements”, and “the Community will on this basis promote the respect for human rights of all people in cooperation with both states and non-state actors in partner countries.⁵⁴ Similarly, the EU SDS identified “the promotion and protection of fundamental rights” as one of the EU’s “policy guiding principles”, which is achieved “by combating all forms of discrimination and contributing to the reduction of poverty and the elimination of social exclusion worldwide.”⁵⁵ Furthermore, in relation to ACP countries, the Cotonou Agreement refers to a multitude of constitutive human rights law and states that “cooperation shall be directed towards sustainable development centered on the human person, who is the main protagonist and beneficiary

of development; this entails respect for and promotion of all human rights”⁵⁶ (see Box 6).

Box 6: The EU and Human Rights

“Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.”

The Cotonou Agreement, p.9, Art.9, November 25, 2005.

Current human rights policy at the Community level within the EU builds on the UN Universal Declaration of Human Rights, as well as subsequent treaties and conventions that consider the rights of vulnerable groups. While focused on states and state obligations, the declaration affirms the need for ‘every organ of society’ to secure the

54 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.26, para 86. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

55 The EU’s Renewed Sustainable Development Strategy, EC 10917/06, p.4, para 11.

56 Listed in the preamble, these international laws and treaties include the Charter of the United Nations, the Universal Declaration of Human Rights, the 1993 Vienna Conference on Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the 1949 Geneva Conventions and the other instruments of international humanitarian law, the 1954 Convention relating to the Status of Stateless Persons, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol relating to the Status of Refugees. See The Cotonou Agreement: Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part., p.46.

universal and effective recognition and observance of human rights, including economic, political, cultural and social rights.⁵⁷ This entails that the protection and promotion of human rights is not the sole remit of states, as international organisations, business and civil society are also obliged to respect and them. Crucially, this clause implicates both public and private lenders, which through their financing operations in developing countries can have a strong impact on human rights, particularly in cases where national or regional economic development plans conflict with the rights of vulnerable groups, including indigenous peoples, poor communities and women.

Furthermore, recent global policy developments have reemphasized the role of business in promoting human rights, in some ways drawing upon the previous work of the UN Centre on Transnational Corporations. For example, the Voluntary Principles on Security and Human Rights in the Extractive Sector were developed jointly by the governments of the United States, the United Kingdom, the Netherlands and Norway, extractive industries and energy companies, and non-governmental organisations. They identify standards for “managing risks related to security and human rights practices” for companies that conduct business in conflict-prone areas. They demand, amongst other things, that companies communicate their ethical and human rights policies to “public security providers”, and “consult regularly with host governments and local communities about the impact of their security arrangements on those communities.”⁵⁸

In May 2007, formal participation criteria were adopted, most notably an annual reporting requirement in which participant companies need to disclose how they have

implemented or assisted in implementing the Voluntary Principles.⁵⁹ While this represents a marked improvement, there are still significant concerns about whether participating companies are in fact complying with them.

While voluntary initiatives are often plagued by the lack of clarity and accusations of ineffectiveness, such declarations nevertheless raise public expectations about the conduct of private companies and their financial backers, beyond merely complying with host country laws and regulations. For example, the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights state that “within their respective spheres of activity and influence”, transnational corporations have the obligation “to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognised in international as well as national law.”⁶⁰

In addition, John Ruggie, the intellectual force behind the UN Global Compact, has in a series of working papers and publications made the case that “corporate complicity” in human rights violations, such as “deriving indirect economic benefit from the wrongful conduct of other”, may in fact result in legal liabilities under both international and national law.⁶¹ Responding to a draft of Ruggie’s latest report, the NGO network Banktrack argued for a greater scrutiny of banks, noting that many “are routinely complicit in violating human rights, yet they operate with impunity and without accountability in the home country where they are based, nor in the country where their transaction / the violations occur.”⁶²

57 The UNDHR comprises of 30 articles, including affirmations of political rights, such as non-discrimination (Art.2), freedom of speech (Art.19) and association (Art.20); economic rights, such as right to own property (Art. 17), access to education (Art. 26) and free choice of employment (Art. 23); political rights, such as the right to take part in government (Art. 21) and freedom from arbitrary interference with privacy, family, home or correspondence (Art. 12); and cultural rights, such as the right to freely participate in cultural life. (Art. 27)

58 The Voluntary Principles on Security & Human Rights. Date of Access: Sept 4 2007. http://www.voluntaryprinciples.org/files/voluntary_principles.pdf

59 Voluntary Principles Participation Criteria. Date of Access: Sept 4 2007. <http://www.voluntaryprinciples.org/participants/participation-criteria.php>

60 See Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). Date of Access: Sept. 4 2007. <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>

61 For example, John Ruggie, Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, Section II, para 19-32. Date of Access: Sept 4 2007. <http://www.business-humanrights.org/Links/Repository/948764/jump>

62 Banktrack, The Role of the Financial Services in Respecting Human Rights, December 18 2006. Date of Access: Sept 4 2006. <http://www.banktrack.org/doc/File/banks%20and%20human%20rights/banktrack%20on%20human%20rights/061218%20letter%20to%20ruggie%20on%20banks%20and%20human%20rights.pdf>

2.1 The EIB's current approach to human rights

The EIB does not have a separate policy on human rights, but its current approach can be principally deduced from its Guidance Note on Dealing with Minority Rights, Including Women, Indigenous People and Other Vulnerable Groups.⁶³ In the Handbook, the EIB states “it is committed to EU policies that uphold and respect human rights in its investment activities” and “aims to ensure that investments support and respect international conventions on human rights and that [the EIB] is not complicit in human rights abuses.”⁶⁴ In differentiating between standards that “must be met” and those that it would be “desirable to address” or “reasonable to recommend”, the EIB places “specific social safeguard policies and minimum acceptable human rights standards” among the former, without specifically identifying the policies and standards.

It further notes that “some system for reporting on mitigation progress should be written into the loan agreement.”⁶⁵ And while the EIB has unequivocally stated that “it will not disburse funds in a country declared ‘off-limits’ for EU-financing”, it merely “encourages” adherence to the various international conventions, and other laws governing the protection and promotion of human rights in the countries in which it operates.⁶⁶

Procedurally, the EIB depends on its internal due diligence exercise in the project preparation phase for uncovering potential human rights issues, ensuring that adequate arrangements are in place to mitigate adverse/negative impacts, and guaranteeing minimum human rights standards. *For projects in non-EU countries, it explicitly states that human rights “should be addressed as early as possible in the pre-appraisal process”, and “should be an integral part*

of the ex ante EIA where an EIA... would be required according to the EU EIA Directive and where stakeholder consultations are required.” (emphasis in original)⁶⁷

In conclusion, while the Handbook identifies the EIB's commitment to protecting and promoting human rights, it remains unclear which international laws it will use to govern its engagement with this issue when financing projects in developing countries. Such clarity is critical to enabling both internal staff and external stakeholders to differentiate between acceptable and unacceptable business practices. While the EIB should be governed by the EU development cooperation mandates when financing projects outside of the EU, the discretionary language used to describe its human rights obligations and commitments contribute to blurring this link. As such, much more clarity is needed in how the EIB intends to promote and protect human rights in its financing operations.

2.2 International best practice in project finance

While the UN Norms do not explicitly identify the role of the financial sector in promoting and protecting human rights, a UN working group advocated that the document forms “the basis for benchmarks of ethical investment initiatives and for other benchmarks of compliance.”⁶⁸ Echoing this call for action, the EIR recommended that the World Bank “adopt a system-wide policy that integrates and mainstreams human rights into all areas of Bank policy and practice”, adding that “adoption of and demonstrated compliance with human rights principles should be a prerequisite for companies seeking World Bank Group (WBG) support for extractive industries.”⁶⁹ More broadly, such statements call on lenders to disburse funds only after they have verified that Promoters are in compliance with recognized international human rights law.

63 Information on the EIB's policy on Minority Rights can be found in Guidance Note 2, Annex 12, in the Environmental and Social Practices Handbook, pp.113-115.

64 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.103 and p.44 respectively.

65 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.101.

66 See Social Assessment of Projects Outside the EU, October 2, 2006, p.3.

67 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.44.

68 See Draft Commentary on the Norms of Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, by the UN the Working Group on the Working Methods and Activities of Transnational Corporations, U.N. Doc. E/CN.4/Sub.2/2003/XX, E/CN.4/Sub.2/2003/WG.2/WP.1. Date of Access: October 2, 2007. <http://www1.umn.edu/humanrts/links/businessresponsibilitycomm-2002.html>

69 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

Yet, despite such growing calls, and the legal and symbolic significance of human rights to democracy, equity and law, no multilateral development bank has to date issued a specific and consolidated policy or statement on human rights that clarifies its role and responsibilities as a public lender.⁷⁰ Instead, references to human rights appear in more issue-specific operational policies in areas such as labour, resettlement and gender. However, the IFC recently issued a draft Guide to Human Right Impact Assessment and Management, which intends to “assist [firms and financial analysts] in identifying the human rights issues associated with their business; provide them with a tool to manage and mitigate these impacts; and help them seize opportunities to engage beyond compliance requirements.”⁷¹

In recognition of the democratic nature of human rights, the Guide states that “human rights impact assessment process has at its heart engagement with stakeholders, with the objective of arriving at some consensus on identifying human rights challenges and appropriate responses to those challenges.”⁷² It also recommends that any formal documentation of the business relationship between lenders and Promoters should specifically refer to expected performance on human rights.⁷³

Yet, notwithstanding such guidance, the Guide does not explicitly outline how the IFC or other multilateral lenders

can promote and protect human rights in their selection of clients and project, and the management of client relationships, nor is it intended to make recommendations on how such lenders can and should audit the human rights impacts of funded projects.⁷⁴

Therefore, symptomatic of multilateral lenders, the IFC does not seek to hold Promoters responsible for adhering to international human rights standards, noting that this is primarily the responsibility of states.⁷⁵ While agreeing on this basic point, several private banks have nevertheless issued human rights statements and policies that identify, albeit to a varying degree of specificity and clarity, their own human rights obligations as lenders in developing countries. This development was in part triggered by a corporate survey on Banking and Human Rights, which suggested that private banks should develop “a clear and comprehensive human rights policy” and “guidelines for external reporting.”⁷⁶

Among the private banks surveyed that have committed to specific declarations and conventions, Rabobank has formally recognised an obligation “to not associate with immoral parties” and committed to adopt the UN Norms and “explicitly support all the human rights as written down in the Universal Declaration of Human Rights...in relationships with its workers, with its clients or suppliers and with governments.”⁷⁷

70 In contrast, according to Griffith (2006), a significant number of bilateral international development agencies in European donor countries have formally adopted a rights-based approach to development, including DFID (UK), DANIDA (Denmark), SIDA (Sweden), DGIS (Netherlands) and SDC (Switzerland). (See *Making the Grade: a survey of IFI social policies, international development standards and the policies of the European Investment Bank (EIB)*, by Tom Griffiths, Updated Version. 31 December 2006, p.18.

71 Guide to Human Rights Impact Assessment and Management, Road-Testing Draft, June 2007, p.vii. Date of Access: Sept 4 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/\\$FILE/Final+HRIA+road-testing+draft.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/$FILE/Final+HRIA+road-testing+draft.pdf)

72 Guide to Human Rights Impact Assessment and Management, Road-Testing Draft, June 2007, p.6. Date of Access: Sept 4 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/\\$FILE/Final+HRIA+road-testing+draft.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/$FILE/Final+HRIA+road-testing+draft.pdf)

73 Guide to Human Rights Impact Assessment and Management, Road-Testing Draft, June 2007, p.3. Date of Access: Sept 4 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/\\$FILE/Final+HRIA+road-testing+draft.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/$FILE/Final+HRIA+road-testing+draft.pdf)

74 With regards to its own responsibilities, the IFC states that “the management response to the Extractive Industries Review and the Performance Standard 4: On Community Health, Safety and Security constitute IFC’s adoption of the Voluntary Principles on Security and Human Rights.” (See foreword in Guide to Human Rights Impact Assessment and Management, Road-Testing Draft, June 2007. Date of Access: Sept 4 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/\\$FILE/Final+HRIA+road-testing+draft.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/$FILE/Final+HRIA+road-testing+draft.pdf)

75 See comments by Ms. Motoko Aizawa (Head, Policy and Standards Unit, Environmental and Social Development Department, IFC) in Report of the United Nations High Commissioner on Human Rights on the sectoral consultation entitled “Human rights and the financial sector”, 16 February 2007, p.8, para 28. Date of Access: Sept 4 2007. <http://www.reports-and-materials.org/UNHCHR-finance-sector-consultation-report-6-Mar-2007.pdf>

76 Banking and Human Rights – Confronting human rights in the financial sector, KPMG and F&C Asset Management, September 2006, p.4. Date of Access: Sept 4 2007. http://www.us.kpmg.com/microsite/FSLibraryDotCom/docs/Banking%20on%20Human%20Rights_FC_KPMG.pdf

77 The Human Rights Statement for Rabobank as elaboration of the Code of Conduct. Date of Access: Sept 4 2007. http://www.rabobank.com/content/images/hrcode_rabobank_tcm43-37344.pdf

Similarly, Barclays has declared it will operate “in accordance with” the Universal Declaration of Human Rights, whereas Standard Chartered “supports” it, and “aims to uphold it in all circumstances.”⁷⁸

Both ABN Amro and Citigroup state their support for human rights is “guided” by fundamental principles of human rights, such as those in the Universal Declaration of Human Rights and the ILO Core Conventions, whereas the former also notes that it will “strive within [its] sphere of influence to uphold and promote human rights, taking full responsibility for [its] own operations.”⁷⁹

Yet, in reality, such semantic differences may in fact matter very little if lenders do not abide by their declared commitments. A recent Banktrack report alleges that private banks continue to finance projects that flagrantly violate the human rights of project-affected communities, despite having made corporate-level commitments to the contrary.⁸⁰ In individual cases, it could mean that the “sphere of influence” or “level of influence” of lenders is not sufficient to ensure that Promoters promote and protect human rights. Yet, equally plausible, it may also suggest that private banks, and lenders more generally, are not willing to take necessary actions to avoid complicity with human rights violations and thereby fulfill their own operational commitments, including the active monitoring of clients and reporting potential human rights violations to relevant public authorities. Furthermore, even in cases where they have limited influence, lenders must be willing to exploit it and push for remedial measures, and in extreme cases, sever relationships with clients that demonstrate a consistent lack of willingness or ability to respect human rights standards in their business operations.

2.3 Recommendations for the EIB

As noted by John Ruggie, the UN Special Representative, whereas conventional environmental and social risk assessments focus on the identifying and managing the impacts of corporate conduct, a human rights impact assessment “starts with the rights of people and communities and relates these to proposed corporate activity.”⁸¹ In this regard, the UN Norms are perhaps the most comprehensive attempt to date to clarify the roles and responsibilities of business in protecting and promoting human rights. While the EIB as a public institution has obligations that go beyond those of business, it should at a minimum adopt standards expected of responsible business, in order to act as a model for private companies.

In associated commentaries on implementation, the UN Norms state that a transnational corporation should “adopt, disseminate and implement internal rules of operation in compliance with the [UN] Norms”, and “shall apply and incorporate [them] in their contracts or other arrangements and dealings.” In addition, they should “periodically report on and take necessary measures to implement the [UN] Norms”, disseminate compliance assessments to stakeholders, and investigate claims brought forward by groups alleging that violations have occurred. In general terms, the UN Norms dictate that transnational corporations articulate an explicit policy statement on human rights, develop internal compliance mechanisms, and implement and monitor compliance in a transparent, accountable and inclusive fashion.

In this regard, the IFC’s Guide to Human Rights Impact Assessment and Management provides a methodology that can inform the EIB’s own approach to ensuring that Promoters help the EIB comply with its own human rights obligations as a multilateral lender.⁸² While the guide is

78 For Barclays’ statement on human rights, see http://www.personal.barclays.co.uk/BRC1/jsp/brcucontrol?task=file&site=pfs&fileName=/PFS/A/Content/Files/Barclays_Group_Statement_on_Human_Rights_FINAL.doc. For Standard Chartered’s policy, see http://www.standardchartered.com/sustainability/files/sc_policy_humanRights.pdf

79 For Citigroup’s statement (Date of Access: Sept 4 2007) see <http://www.citigroup.com/citigroup/citizen/humanrights/index.htm>. For ABN Amro’s (Date of Access: Oct 12 2007), see http://www.abnamro.com/com/about/sd/sd_policies.jsp#Human%20Rights%20Position%20Statement

80 For definitions and legal analysis of these terms, see Human Rights, Banking Risks – Incorporating Human Rights Obligations in Bank Policies, by Jan Cappelle (Proyecto Gato) for Banktrack, February 2007. Date of Access: Sept 4 2007. http://www.banktrack.org/doc/File/banks%20and%20human%20rights/banktrack%20on%20human%20rights/0_070213%20human%20rights%20Banking%20risks.pdf

81 See concluding remarks in Report of the United Nations High Commissioner on Human Rights on the sectoral consultation entitled “Human rights and the financial sector”, February 16 2007. Date of Access: Sept 4 2007. <http://www.reports-and-materials.org/UNHCHR-finance-sector-consultation-report-6-Mar-2007.pdf>

82 Guide to Human Rights Impact Assessment and Management, Road-Testing Draft, June 2007, p.vii. Date of Access: Sept 4 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/\\$FILE/Final+HRIA+road-testing+draft.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_SocialResponsibility_HRIARoadTesting/$FILE/Final+HRIA+road-testing+draft.pdf)

intended for businesses, or Promoters in the EIB's own terms, it provides some principles that could improve the EIB's own internal management systems in this area. By more systematically managing its human rights impact, the EIB should have two primary objectives; to hold Promoters accountable for the human rights obligations they have under national and applicable international law, and as part of this effort, ensure that its own project selection, appraisal and monitoring practices honour its own obligations to promote and protect human rights in all its investments.

As advocated by KPMG's survey report on Banking and Human Rights, a clear and comprehensive policy on human rights is a necessity to effectively manage risk.⁸³ Thus, to clarify and effectively promote and protect human rights in its financing operations, the EIB needs to produce a binding operational policy that clearly identifies for Promoters and stakeholders which standards it is prepared to adhere to. While the EIB claims to shun countries that have ceased to interact with the EU economically or financially, it should also identify similar criteria for Promoters, leaving open the possibility of refusing financing in cases where human rights violations are well documented.

Operationally, the EIB should systematically incorporate and implement its human rights obligations into existing social assessment practices. As human rights cover a range of different policy areas, such as gender equality, indigenous peoples and involuntary resettlement, it may choose to produce a general policy statement identifying EU and international human rights law and policy that it intends to honour, and then several individual operational policies outlining its specific obligations in different issue areas, akin to the World Bank's Safeguard Policies.

In more concrete terms, the EIB should first assess the human rights record and the human rights approach of the Promoter, leaving open the option of refusing financing in the most critical cases. Subsequently, it should adopt an operational procedure aimed at defining which EU or international law frameworks should be used as benchmarks to assess compliance, reporting and review mechanisms, and how internal staff will ensure that projects are and remain in compliance. And as the IFC also recommends in the context of businesses, the EIB should at this juncture consult with stakeholders and verify that the human rights impacts uncovered in the scoping process include all those that are relevant. Most importantly, project-affected communities whose human rights may be adversely impacted should be able to consent to the project management plans, including any proposed compensatory measures. And once agreed upon, the human rights standards that the EIB expects the Promoter to comply with should be publicly disclosed, and routinely monitored.

To address lingering uncertainties in the current guidance notes that accompany the Handbook, an effective policy would have to directly address how the EIB plans to promote and protect human rights in operational environments where both borrowers and host country authorities may be resistant to it, or lack the capacity to enforce existing domestic laws and/or international obligations. It is precisely in countries with difficult institutional environments that a well-intentioned and consistent EIB can make the most important contributions as a guarantor of human rights, and a champion for the causes of the poor and the most vulnerable. Given the complexity of this approach and its political relevance, the EIB should act in close coordination with other EU institutions and the Member states.

83 Banking and Human Rights – Confronting human rights in the financial sector, KPMG and F&C Asset Management, September 2006, p.4. Date of Access: Sept 4 2007. http://www.us.kpmg.com/microsite/FSLibraryDotCom/docs/Banking%20on%20Human%20Rights_FC_KPMG.pdf

3. Communities' participation and consent

Public consultation has become a common feature of environmental and social assessment processes undertaken in conjunction with high-risk development projects. The overarching purpose is to inform project-affected communities of investments and development decisions that will affect them, either positively or negatively, and allow them to voice their reactions to project proposals, influence the selection of adverse impacts that will be considered and managed, and recommendations to be included in management plans. And as an aspect of consulting project-affected communities that may be affected by a particular development proposal, project developers and lenders commonly disclose project-level information, including management plans for mitigating and/or preventing adverse impacts.

Yet, while having access to consultation may facilitate information-sharing, it by no means guarantees influence, unless consulted parties are given established rights and entitlements. EU laws, policies and conventions commonly affirm the importance of civil society participation in decision-making, and promoting governance that is transparent, accountable and inclusive. The Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies advocates a “rights-based” approach, in which people should

be granted guaranteed rights of access to information, public participation in decision-making and access to justice in environmental matters. In the context of planning decisions, the Convention states that “each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.”⁸⁴ The Convention applies to local, national and regional public authorities and EU Member States committed to advocating the principles of the Convention in international fora.

In development finance, the current controversy over stakeholder relations primarily concerns the allocation of rights and responsibilities between investors and people adversely affected by their investment decisions. More specifically, international laws and standards can be placed into two distinct yet not entirely separate camps, based on whether they view participatory decision-making as “consultation processes” or “consent processes.” The former approach, which has been widely adopted by project finance lenders, provides project-affected communities with a right to participate in “free, prior and informed consultations” (FPICon) in a way that is “meaningful”, but denies them the power to prevent particular projects from being implemented, even if it

84 Århus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, p.11, Article 7. Date of Access: August 26, 2007. <http://www.unece.org/env/pp/documents/cep43e.pdf>

they are forced off their lands.⁸⁵ In this context, those administering the public consultation process and collating stakeholder responses make the final determination as to which inputs to accept, and which ones to dismiss. In some cases, the rationale for selecting inputs is then communicated back to the stakeholders. But overall, the thrust of the consultation exercise is geared towards information-sharing, rather than consensus-building.

In contrast, “consent processes” shift the balance of power to stakeholders, as project operators and their lenders are required to obtain the consent of project-affected communities to implement their development plans. This requirement to obtain a “social license to operate” is based on providing project-affected people with a right to withhold consent in cases where they feel their livelihoods will be excessively undermined by development. Captured in the phrase “free, prior, informed consent” (FPIC), the purpose of upholding this principle is to grant indigenous peoples and local communities with rights to control access to their land and natural resources, and a share in the benefits when these are utilised by others⁸⁶ (see Box 7). The presumption is that without empowering marginalised local communities in consultation processes by giving them formal roles and rights, they may be further marginalised and fail to benefit from development projects.

Box 7: Free, Prior and Informed Consent (FPIC)

“The key principle for safeguarding indigenous peoples rights in development cooperation is to ensure their full participation and the free and prior informed consent of the communities concerned.”

The Cotonou Agreement, p.9, Art.9, November 25, 2005.

The principle and practice of FPIC has been endorsed in numerous conventions and governance initiatives, and is considered ‘international best practice’ for conducting public consultation exercises in conjunction with projects that are expected to significantly undermine the livelihoods of particular vulnerable groups.⁸⁷ The United Nations Declaration on the Rights of Indigenous People states indigenous people “shall not be forcibly removed from their lands or territories...without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”⁸⁸

Moreover, the declaration states that indigenous peoples should participate “through representatives chosen by themselves in accordance with their own procedures.”⁸⁹ In terms of their participation in development, the United Nations Forum on Indigenous Issues argues that only FPIC can ensure that future conflicts are avoided and that indigenous peoples can fully participate in consultation mechanisms and environmental impact assessments.⁹⁰

Drawing on the Århus Convention, the European Consensus on Development declared that civil society plays “a vital role as promoters of democracy, social justice and human rights”, and that “the EU will enhance its support for building capacity of non-state actors in order to strengthen their voice in the development process and to advance political, social and economic dialogue.”⁹¹

In terms implementing this commitment, the EU SDS stated that tools for better policy-making may include “ex-post-assessment of policy impacts and public and stakeholders participation”, iterating that “[EU] Member States should make wider use of these tools, in particular impact assessment,

85 As emphasised in the World Bank’s Operational Policy on Indigenous Peoples (OP 4.10), FPIC refers to “a culturally appropriate and collective decision-making process subsequent to meaningful and good faith consultation and informed participation regarding the preparation and implementation of the project. It does not constitute a veto right for individuals or groups.” See OP.4.10. Date of Access: Sept 5 2007. <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/tocall/0F7D6F3F04DD70398525672C007D08ED?OpenDocument#This%20policy%20should%20be%20read%20togeth>

86 Lavina, A. and Nakhooda, S. (2005), Empowering Communities Through Free, Prior, and Informed Consent, World Resources Institute (WRI), September 2005.

87 See Making the Grade: a survey of IFI social policies, international development standards and the policies of the European Investment Bank (EIB), by Tom Griffiths, Updated Version. 31 December 2006, p.11, fn. 33

88 The UN Declaration on the Rights of Indigenous Peoples, Article 10.

89 The UN Declaration on the Rights of Indigenous Peoples, Article 18.

90 United Nations Permanent Forum on Indigenous Issues, Report on the sixth session (14–25 May 2007), Economic and Social Council, Official Records Supplement No. 23, p.5, para 21.

91 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.9, para 18. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

when allocating public funds and developing strategies, programmes and projects.”⁹² And as part of adopting the Akwe: Kon Guidelines, the EU has indirectly endorsed FPIC in its development cooperation outside of the EU.⁹³

Relative to project finance in developing countries, community participation and consent is particularly important in two policy areas; indigenous peoples’ rights and involuntary resettlement. In terms of the former, the economic dependence and spiritual attachment of indigenous groups to their local environment means they can be severely and often irreversibly affected by development on or near their lands. The European Consensus on Development in very explicit terms noted that “the key principle for safeguarding indigenous peoples rights in development cooperation is to ensure their full participation and the free and prior informed consent (FPIC) of the communities concerned.”⁹⁴

More recently, the UN Declaration on the Rights of Indigenous Peoples, which was strongly promoted by the EU and has been adopted by the UN Human Rights Council, declares that indigenous peoples have the right not to be removed from their lands by force, and no relocation shall take place without their free and informed consent, and only after adequate compensation is paid or the option to return is provided⁹⁵ (see Box 8). As evidence of its support for this cause, the Community has provided numerous grants in support of implementing the ILO’s convention on Indigenous and Tribal Peoples’ rights, in countries such as Nepal, Bangladesh, Ecuador, Colombia and Bolivia.⁹⁶

The EU’s endorsement of FPIC in the context of indigenous peoples’ rights is consistent with the CBD, which advocates the empowering of indigenous peoples and the safeguarding of their knowledge, innovations and practices. These latest EU policy initiatives build on an earlier 1998 resolution by the European Council on Indig-

enous Peoples within the Framework of the Development Cooperation of the Community and Member States, which noted that development cooperation should enhance the right and capacity of indigenous peoples to their “self-development.”⁹⁷ In turn, this implied “integrating the concern for indigenous peoples as a cross-cutting aspect at all levels of development cooperation, including policy dialogue with partner countries and enhancing the capacities of indigenous peoples’ organisations to take an effective part in the planning and implementation of development programmes.”⁹⁸

Box 8: Indigenous Peoples’ Rights

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

UN Declaration on the Rights of Indigenous Peoples, Article 32

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Universal Declaration of Human Rights, Article 12.

In terms of involuntary resettlement, community participation and consent processes are relevant to development finance in cases where a proposed project or

92 The EU’s Renewed Sustainable Development Strategy, EC 10917/06, p.7, para 11.

93 See *Making the Grade: a survey of IFI social policies, international development standards and the policies of the European Investment Bank (EIB)*, by Tom Griffiths, Updated Version. 31 December 2006, p.14, fn. 49.

94 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.30, para 103. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

95 UN Declaration on the Rights of Indigenous Peoples, Date of Access: October 2, 2007. <http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf>

96 See The EU’s Human Rights and Democracy Policy, The Rights of Indigenous People, Date of Access: Sept 5 2007. http://ec.europa.eu/external_relations/human_rights/ip/index.htm

97 Council Resolution of 30 November 1998, Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.2, para 6. Date of Access: August 26, 2007. http://ec.europa.eu/external_relations/human_rights/ip/res98.pdf

98 Council Resolution of 30 November 1998, Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.2, para 6. Date of Access: August 26, 2007. http://ec.europa.eu/external_relations/human_rights/ip/res98.pdf

programme would force people to relocate from their physical communities and cultural homelands, for example to make way for a hydropower dam or pipelines. In 2000, the WCD, mandated to review the development effectiveness of large dams and develop internationally acceptable guidelines, released a report which concluded that “while dams have made an important and significant contribution to human development, in too many cases an unacceptable and often unnecessary price has been paid to secure those benefits, especially in social and environmental terms, by people displaced, by communities downstream, by taxpayers and by the natural environment.”⁹⁹

To remedy this, the report recommended that stakeholders are provided “access to information, legal and other support” in order to enable their “informed participation in decision-making.” In a similar vein, the EIR argued the WBG “should engage in consent processes leading to FPIC before resettlement takes place, thereby complying with indigenous peoples’ rights and receiving a social license to operate.”¹⁰⁰ In effect, as the EIR noted, this means WBG projects would only result in voluntary resettlements, not forced ones.

With regard to the EU, the UK Government has made a commitment to “implementing the recommendations of the WCD”, and has funded the Dams and Development Project (DDP) administered by the United Nations Environment Program (UNEP). Furthermore, the Swedish and German bilateral aid agencies have adopted the WCD decision-making framework and are supporting their partner countries and project developers in implementing it.¹⁰¹ Meanwhile, EU member states have integrated the WCD framework into legislation on carbon trading, as

outlined in the EU’s Linking Directive. Under the legislation, EU Member States are allowed to purchase carbon credits from low-carbon projects in developing countries to help them meet their Kyoto emission reduction targets, but carbon credits from large hydropower projects are only eligible to be used in the EU European Trading System (EU ETS) if they “respect” relevant international criteria and guidelines, including those contained in the WCD report.¹⁰²

3.1 The EIB’s current approach to community participation and consent

The EIB’s policy on public consultation for projects outside of the EU is described in its Guidance Note on Public Consultation and Participation in Project Preparation.¹⁰³ In contrast to other guidance notes, the arguments of “critics” as to why local communities should be consulted are cited at length, giving the impression that the EIB does not share these policy positions. Yet, language in the Handbook on public consultation is relatively specific, given the strength of EU laws and policy in this area. The EIB commits to encouraging “a culture of disclosure, reporting and communication amongst the promoters it supports.”¹⁰⁴

For projects outside the EU that require an EIA, the EIB has committed to “promote public consultation and participation, according to EU standards, through appropriate discussions with the Promoter and other parties” (emphasis added).¹⁰⁵ In explicit and unequivocal terms, the guidance note states that the EIB will “apply the principles and practices” of three central regulatory frameworks “to all its regions of operation” (emphasis in original): the Århus Convention, the EU EIA Directive and the SEA Directive.¹⁰⁶

99 See Dams and Development, A New Framework, A Report on the World Commission on Dams for Decision-Making, November 2000. Date of Access: October 2, 2007. <http://www.dams.org/docs/report/wcdreport.pdf>

100 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.55. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

101 From Commitment to Implementation - the WCD After Five Years, International Rivers Network (IRN).

102 EU Directive 2004/101/EC, Amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol’s project mechanisms, October 27 2004, para 6 and 14. Date of Access: Sept 5 2007. <http://www.climnet.org/EUenergy/ET/200410LinkingDirective.pdf>

103 Guidance Note on Public Consultation and Participation in Project Preparation, in Annex 12, Environmental and Social Practices Handbook, p.122.

104 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.98.

105 In this context, the EIB defines consultation as “a tool for managing culturally appropriate two-way communications between project sponsors and the public.” (See Guidance Note on Public Consultation and Participation in Project Preparation, in Annex 12, Environmental and Social Practices Handbook, p.122)

106 See Guidance Note on Public Consultation and Participation in Project Preparation, in Annex 12, Environmental and Social Practices Handbook, p.122. See also p.29, and fn. 135, p.123, of the Handbook.

As required in the EIA Directive, it is the responsibility of EIB staff to ensure that “the host country and its Competent Authorities” have informed and consulted the “public concerned” on the proposed project. (Articles 6 and 9) In terms of determining the adequacy of public consultations, the EIB’s own staff independently assesses and verifies whether the Promoter has adhered to EIB policy. In this context, the extent to which the Promoter has made the results of consultations publicly accessible and available, and that arrangements for stakeholders to monitor the project during implementation are satisfactory, are both evaluations made by EIB staff without external accountability.

The EIB principally draws on the Århus Convention to define its public consultation objectives. In this regard, it states that the public should have access to “adequate and appropriate information”, it should be “able to express comments and opinions before critical decisions are made” (emphasis added), the Promoter should take “due regard” of those comments and opinions and “informs the public of the rationale for the decision”, and finally, sufficient time should be allowed for each of the different stages.¹⁰⁷

While these objectives point to the responsibility of the Promoter to consult project-affected communities, the Handbook does not clarify whether it can override demands made by a local community that opposes a project because it will significantly undermine their livelihoods. Under the header “basic ‘must-do’ issues”, the EIB notes that “adverse impacts cannot be mitigated without the meaningful participation of affected male and female stakeholders who should be effectively involved in decisions that affect their livelihoods” (emphasis added).¹⁰⁸

Yet, in a separate section of the Handbook on handling projects that are slated to “significantly alter or degrade natural habitats”, the Handbook seemingly gives national authorities the power to determine whether “the development outweighs the nature conservation importance of the site (i.e due to overriding public interest).”¹⁰⁹ More generally, the guidance notes suggest that the EIB’s

policy position is that the provision of monetary compensation to project-affected communities can ensure that their livelihoods are adequately restored.¹¹⁰

According to EIB policy, consultation can be operationalised at “different levels of intensity”, by providing information to stakeholders and requesting feedback, engaging in formal or informal dialogues “to identify issues of concern”, or so-called “extended involvement”, where participants “are able to contribute to the formation of a plan or proposal and to influence a decision through group discussions or activities.” According to the EIB, the choice of mechanisms depends on “the nature of the proposed investment, the social and political context in which that investment is planned, the Promoter’s commitment to transparency and accountability, and the local legislative environment.”

This statement could be interpreted as suggesting that “the intensity” of public consultations may be less in institutional environments characterised by weak governance and a poor commitment to transparency and accountability. In this regard, it may illustrate how the EIB views adherence to EU laws and regulation to be “subject to local conditions” when financing projects outside of the EU.

In terms of honouring the collective interests of indigenous groups, the issue of FPIC is in most cases only mentioned in passing in existing guidance notes as an element of assessing project impacts on “vulnerable groups”. Its approach can be broadly deduced from its Guidance Note on Public Consultation and Participation in Project Preparation, and its Guidance Note on Dealing with Minority Rights, Including Women, Indigenous People and Other Vulnerable Groups.¹¹¹ The EIB has identified “the rights and livelihoods of vulnerable groups affected by the project”, which include indigenous people, as a “key social issue to screen” as part of a social assessment of projects outside the EU.¹¹² In doing so, it has stated that the ILO’s Convention on Indigenous and Tribal Peoples (No. 169) “provides the framework”, alongside the policies developed by other multilateral development banks.

107 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.123.

108 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.103.

109 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.42.

110 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.42.

111 See Environmental and Social Practices Handbook, pp. 122-125 and pp.113-115, respectively.

112 In this context, the EIB defines indigenous people as those with “close ties to the land of their forefathers and natural means of existence identification with a particular cultural group and recognition by others as belonging to it an indigenous language, often differing from the national language primarily self-sufficient production and the presence of social and political institutions determined by custom.” (See Environmental and Social Practices Handbook, p.100, and p.114 for definition)

Furthermore, the EIR is mentioned as a source of information on dealing with indigenous rights, rather than a policy framework that should be referenced in social assessments.¹¹³

With respect to projects that adversely affect indigenous people, the EIB has committed to ensuring “that appropriate arrangements for mitigating adverse impacts are put in place and that their customary claims are fairly addressed.”¹¹⁴ As an element of this, the guidance notes explicitly state that “local priorities will be determined in direct consultation with the representatives of minorities.”¹¹⁵ As an example, in the context of a biodiversity assessment, the EIB has committed to taking into account “the views, roles and rights of groups, including NGOs and local communities, affected by the projects involving natural habitats and to involve such people to the extent possible in the management of the site.”¹¹⁶

Overall, the stated intention is for indigenous people to “profit” from EIB-financed projects, by receiving benefits such as better educational and health facilities, employment opportunities, aid in the development of indigenous technical knowledge and cultural programmes, and community development work to increase self-sufficiency and sustainability.

With regards to development schemes that lead to involuntary resettlements, the Guidance Note on Population Movements and Resettlement outlines the EIB’s policy position.¹¹⁷ The note states that although the EIB is not in a position to “deal specifically with issues of unplanned immigration induced by new industrial and urban developments, Bank staff should be aware that land invasions might be a consequence of development investments.”¹¹⁸ With regard to the rights of those forcibly resettled, the EIB notes that the EU does not currently have overarching legislation on land acquisition. While stating that the

Århus Convention provides affected citizens with rights to be consulted about projects and programmes that have environmental impacts, the note adds that “in its work outside the EU, the Bank endeavours where possible, to promote the agreed policies of the Union” (emphasis added).¹¹⁹

Therefore, it is unclear which rights the EIB is prepared to extend to citizens that have been involuntarily forced to resettle as a result of a development projects or programmes in a non-EU country financed wholly or in part by the EIB.

With regards to procedures, the EIB performs an initial screening of the capacity and commitment of the Promoter and the host government to implement appropriate measures “to restore and preferably improve” the livelihoods of those forcibly resettled.¹²⁰ This process also includes the consideration of alternative designs that might minimise displacement. Following the screening process, the EIB determines the approach to be adopted in consultation with the Promoter, which includes the formulation of a resettlement plan and mitigation measures. The note unequivocally states that the receipt of a resettlement plan satisfactory to the EIB is a precondition for finalising negotiations over the investment. Subsequently, the resettlement plan will feature in the loan agreement, and progress is reported in a Project Progress Report and evaluated in the Project Completion Report. But neither of these are publicly disclosed.

In terms of the WCD and the EIR, the EIB has publicly commented on both. As a result of the EU Linking Directive, the EIB has stated that it would “align to” the recommendations of the WCD for any large dams from which it sources carbon credits.¹²¹ In response to the EIR, the EIB stated that in relation to extractive industry projects outside the EU, its Promoters would be required to “apply standards comparable to those for such projects in the EU.”¹²²

113 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.114.

114 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.114.

115 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.114.

116 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.41.

117 Information on the EIB’s policy on development-induced displacement of people can be found in Guidance Note 1, Annex 12, in the European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, pp.110-112.

118 Information on the EIB’s policy on development-induced displacement of people can be found in Guidance Note 1, Annex 12, in the European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.110.

119 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.111.

120 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, p.111.

121 From Commitment to Implementation - the WCD After Five Years, International Rivers Network (IRN), p.8.

122 The Extractive Industries Review (EIR) - The Position of the European Investment Bank, European Investment Bank, November 9 2004. Date of Access: Sept 5 2007. http://www.eib.eu.int/Attachments/thematic/extractive_industries_en.pdf

According to the EIB, this is ensured by “the appropriate screening and appraisal of projects, the promotion of good governance, a high level of transparency, the application of environmental and social safeguard measures, the respect of human rights and core labour standards, legal covenants and the monitoring of its projects during implementation and operation.” Yet, these policy pronouncements have not been translated into binding operational commitments.

In conclusion, the EIB policy commitments to public participation are fairly strong and explicit, likely a reflection of the EU EIA and SEA directives, and the Århus Convention.

In addition, the guidelines make frequent references to international laws and conventions that offer significant protections to indigenous communities that may be adversely affected by development projects. The identification of the ILO’s Convention on Indigenous and Tribal Peoples (No. 169) as the framework for engaging with indigenous people’s rights is particularly significant in this regard. Yet, as is the case with involuntary resettlements, the guidance notes fail to unequivocally state that adherence to international law is a precondition for receiving financing. Furthermore, whereas indigenous peoples share many characteristics with other ‘vulnerable groups’ at the local level, they also have some distinct characteristics that need to be given specific recognition, particularly the fact that many do not hold legal claims to land, and have been denied many legal protections provided to other citizens of the countries in which they live.

More broadly, a problematic aspect of its current approach is the extent to which ‘local conditions’ may dictate both the scope and depth of consultation processes, and the seemingly complete reliance on internal staff for assessing the acceptability of public consultation processes. While the institutional environment of each project will differ, it is important to communicate to internal staff, stakeholders and potential Promoters which principles will govern EIB projects in non-EU countries, regardless of project-specific circumstances. Specifically, the extent to which it considers itself bound by EU law and policy is

unclear. Whereas it has endorsed both the WCD and the EIR in particular contexts, neither of these frameworks have been identified in the context of binding operational commitments. Furthermore, the statement that EU policy will be followed in non-EU projects is not unequivocal, making it difficult to determine which standards the EIB is prepared to use.

3.2 International best practice in project finance

The public’s right to know about and influence decisions that affect them underlines all the environmental and social practices of multilateral lenders. In the specific context of large-scale development projects, two recent governance initiatives have endorsed FPIC as a central element of stakeholder consultations. The WCD report recommended that no dam should be built without “demonstrable acceptance” of affected people, and without free, prior and informed consent of affected indigenous and tribal peoples.¹²³

Similarly, the EIR suggested that “the communities closest to extractive projects should become involved in participatory assessments of projects, giving free and prior informed consent to plans and projects and developing poverty reduction plans before projects begin.”¹²⁴ The latter noted that FPIC is a guaranteed right for indigenous people, under the UN Declaration of the Rights of Indigenous Peoples, and for local communities, “an essential part of obtaining social license and demonstrable public acceptance for the project.”¹²⁵

As noted in section 3.2, lenders differ in their approach to community participation and consent, particularly with regards to how they collect, evaluate and weigh input from project-affected communities. The sticking point is what decision they make in cases where a project is likely to have a significant adverse effect on a vulnerable group, and therefore generates local opposition and protest. In such cases where the interests of project developers are irreconcilable with those of project-affected communities, operational policies on community

123 See Dams and Development, A New Framework, A Report on the World Commission on Dams for Decision-Making, November 2000. Date of Access: October 2, 2007. <http://www.dams.org/docs/report/wcdreport.pdf>

124 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.49. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

125 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.50. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

participation and consent can become very important in determining the outcome.

Yet, to date, no lender has directly adopted the EIR's recommendations, although the language seems very similar in some cases. The World Bank and the IFC (and by extension the Equator banks) have committed to an approach based on a process of FPICon that results in 'broad community support' at each stage of the project. But depending on how lenders define and interpret what 'broad community support' means, this standard could approximate FPIC, if 'support' is understood as provision of 'consent', or it could allow for a looser interpretation in which only (limited) support is needed for the development proposal. Given that the FPIC principle, along with the recommendations of the EIR, has seemingly been intentionally bypassed, the truth is likely to be closer to the latter.

Meanwhile, the EBRD, by still operating with the now replaced World Bank's Operational Directive on Indigenous Peoples (OD 4.20) requires, among other things, that Promoters ensure indigenous peoples' informed participation, account for their preferences in project design, and develop specialised Indigenous Peoples' Development Plans.

In contrast, the ADB has stated that its "initiatives should be conceived, planned, and implemented, to the maximum extent possible, with the informed consent of affected communities, and include respect for indigenous peoples' dignity, human rights, and cultural uniqueness" (emphasis added).¹²⁶ While such language leaves open the possibility that the rights and interests of indigenous people could be undermined if agreement between them and the project developer is not reached, it nevertheless identifies the acquisition of consent, rather than simply consultation, as the overarching goal.

In terms of protecting and promoting indigenous peoples' rights, approaches differ widely among lenders. In broad terms, policies can be differentiated between lenders that clearly follow a 'rights-based' approach that provides indigenous peoples with legal rights and protections in the event that their livelihoods will be negatively affected by development, and those that simply make general assurances and commitments to mitigating adverse impacts on project-affected communities. As noted previously, much of this depends on whether the operational policy endorses the FPIC principle, in which project operators and lenders require a social license to operate, or the FPICon principle, in which a simple consultation exercise is sufficient, regardless of whether the concerns of local communities are integrated into management plans.

Among the multilateral lenders, the Operational Policy on Indigenous Peoples of the Inter-American Development Bank (IADB) is perhaps the most advanced in adopting a rights-based approach to integrating the concerns of indigenous peoples in financing operations. The stated objective of the policy is to "support the development with identity of indigenous peoples, including strengthening their capacities for governance", and "safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects" (emphasis in original).¹²⁷

Crucially, the policy applies to all of its financing, including intermediary lending channeled through its Multilateral Investment Fund (MIF). And according to the policy, the IADB will conduct processes of consultation with indigenous peoples "with a view to reaching agreement or obtaining consent."¹²⁸ Similarly, the ADB has stated that its "initiatives should be conceived, planned, and implemented, to the maximum extent possible, with the informed consent of affected communities, and include respect for indigenous peoples' dignity, human rights, and cultural uniqueness" (emphasis added).¹²⁹

126 However, the ADB's policy has other weaknesses that may undermine its effectiveness. (See Indigenous Peoples and the ADB, Raja Devasish Roy (Taungya) and Helen Leake, (FPP), in Bankwatch Magazine, April 2007, p.10. Date of Access: Sept 5 2007. http://www.forestpeoples.org/documents/ifi_igo/adb_bankwatch_apr07_eng.pdf); For the ADB's policy, see The Bank's Policy on Indigenous Peoples, Asian Development Bank. Date of Access: Sept 5 2007. http://www.adb.org/Documents/Policies/Indigenous_Peoples/ADB-1998-Policy-on-IP.pdf

127 Operational Policy on Indigenous Peoples, Inter-American Development Bank, Sustainable Development Department, Indigenous Peoples and Community Development Unit, p.2, para 2.1. Date of Access: Sept 5 2007. <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=691261>

128 Operational Policy on Indigenous Peoples, Inter-American Development Bank, Sustainable Development Department, Indigenous Peoples and Community Development Unit, p.3, para 4.1(a). Date of Access: Sept 5 2007. <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=691261>

129 However, the ADB's policy has other weaknesses that may undermine its effectiveness. (See Indigenous Peoples and the ADB, Raja Devasish Roy (Taungya) and Helen Leake, (FPP), in Bankwatch April 2007, p.10. Date of Access: Sept 5 2007. http://www.forestpeoples.org/documents/ifi_igo/adb_bankwatch_apr07_eng.pdf); For the ADB's policy, see The Bank's Policy on Indigenous Peoples, Asian Development Bank. Date of Access: Sept 5 2007. http://www.adb.org/Documents/Policies/Indigenous_Peoples/ADB-1998-Policy-on-IP.pdf

While such language leaves the possibility open that the rights and interests of indigenous people could be undermined if agreement between them and the project developer is not reached, it nevertheless identifies the acquisition of consent, rather than simply consultation, as the overarching goal.

The IFC's approach (and by implication that of over 50 financial institutions that have adopted the Equator Principles) is identified in the Performance Standard 7 on Indigenous Peoples. Compared to the Safeguard Policy on Indigenous Peoples, which governed IFC operations between 1998 and 2006, the Performance Standard 7 both strengthens and weakens IFC's approach.¹³⁰ It requires Promoters to identify indigenous peoples and their concerns as part of an overall Social and Environmental Assessment, and in cases where adverse impacts cannot be avoided, the Promoter needs to develop and implement remedial measures. In projects with adverse impacts on affected communities of indigenous peoples, the Performance Standard notes that "the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues."¹³¹

In a similar vein, the World Bank Policy on Indigenous Peoples establishes that "the Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected indigenous peoples", and also stipulates that "the Bank does not proceed further with project processing if it is unable to ascertain that [broad community support] for the project exists."¹³²

For its part, the EBRD has aligned its approach with the World Bank's operational directive on Indigenous People (4.20) from 1991. By extension, while these policies and standards require project developers to "enter into good faith negotiation with the affected communities of indigenous peoples, and document their informed participation and the successful outcome of the negotiation", they fall short of requiring them to obtain the consent of affected indigenous peoples in cases where they plan to develop their lands.¹³³

While many private banks draw on Performance Standard 7 Indigenous Peoples to articulate their responsibilities in this policy area, several have developed their own independent policies that mostly reaffirm their commitments. For example, JP Morgan Chase has stated it "prefers to only finance projects in indigenous areas where free, prior informed consultation results in support of the project by the affected indigenous peoples."¹³⁴ Furthermore, in relation to projects that will likely adversely affect indigenous peoples, the policy requires the Promoter to "demonstrate" that it has "given indigenous people the opportunity and, if needed, culturally appropriate representation to engage in informed participation and collective decision-making", "provided information on the ways in which the project may have a potentially adverse impact on them in a culturally appropriate manner at each stage of project preparation, implementation and operation", "given adequate time to study the relevant information" and significantly, "provided access to a grievance mechanism."¹³⁵ Similarly, HSBC also adopts the FPIC terminology for Category A and higher-risk Category B projects, and when financing dams, has committed to the FPIC principle as articulated in the WCD guidelines.¹³⁶

130 For an analysis, see A brief and preliminary assessment of the IFC's new Safeguard Policy framework, Forest Peoples Programme (FPP). Date of Access: Sept 5 2007. http://www.forestpeoples.org/documents/ifi_igo/ifc_safegd_fpp_brief_may06_eng.shtml#_edn3

131 Performance Standard 7 Indigenous Peoples, International Finance Corporation's Performance Standards on Social & Environmental Sustainability, p.29. Date of Access: Sept 5 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

132 World Bank Operational Policy on Indigenous Peoples (OP 4.10), para 1 and 11, respectively. Date of Access: Sept 5 2007.

133 Performance Standard 7 Indigenous Peoples, International Finance Corporation's Performance Standards on Social & Environmental Sustainability, p.31, para 13. Date of Access: Sept 5 2007. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

134 See Environmental Policy Section D: Indigenous Communities, JP Morgan Chase. Date of Access: Sept 5 2007. <http://www.jpmorganchase.com/cm/cs?pagename=Chase/Href&urlName=jpmc/community/env/policy/indig>

135 See Environmental Policy Section D: Indigenous Communities, JP Morgan Chase. Date of Access: Sept 5 2007. <http://www.jpmorganchase.com/cm/cs?pagename=Chase/Href&urlName=jpmc/community/env/policy/indig>

136 See Shaping the Future of Sustainable Finance, WWF in association with Banktrack, January 2006, p. 27, HSBC Freshwater Infrastructure Guideline. Date of Access: Sept 5 2007. http://www.hsbc.com/1/PA_1_1_S5/content/assets/csr/freshwater_infrastructure_guideline.pdf

On the specific issue of involuntary resettlements, the WCD recommendations speak directly to policies and practices that government, project developers and lenders should pursue in order to ensure that such projects have a positive development outcome. While formulated in the context of hydropower development, these recommendations can nevertheless be applied to projects in other sectors that entail forced resettlements.

Specifically, four core recommendations have become associated with the WCD report; (1) gaining public acceptance; (2) assessing all options; (3) recognising entitlements and sharing benefits; and (4) ensuring compliance. Going a step further, the EIR recommended in the context of indigenous communities involuntary resettlement should be “strictly prohibited”, and only be allowed under conditions of FPIC, that they maintain the right to return once/if the reason for resettlement ceases to exist, and that the terms of resettlement benefits have been agreed upon.¹³⁷

More broadly, both frameworks suggested that project assessment be conducted using a rights-based approach in which affected communities would be empowered by gaining legal rights and entitlements in the consultation process. To date, HSBC is the only lending institution that has publicly committed to only finance dam projects that “conform” to the WCD framework.¹³⁸ According to IRN, the Swiss export credit agency expects project developers to address the WCD’s seven strategic priorities, and the US Overseas Private Investment Corporation (OPIC) applies screening and environmental assessment criteria that incorporate the WCD core values and strategic priorities. Among private banks, WestLB is currently developing sectoral policies for their lending to dam projects and have stated that they will take the recommendations of the WCD into account.¹³⁹

In terms of multilateral lenders, none have to date committed to incorporate all the WCD and/or EIR recommendations into their operational policies. For example, the

IFC has a Performance Standard on Land Acquisition and Involuntary Resettlement, but it does not incorporate the recommendations of the WCD, and provides little sector-specific guidance. Rather, the IFC’s performance standards only address environmental assessment issues, dam safety, and how to gain the approval of neighbouring states for projects with transboundary impacts.

3.3 Recommendations for the EIB

As a public institution, the EIB should seek to lead rather than follow markets, which means encouraging greater transparency and information disclosure in projects that have significant adverse impacts on local communities. As a major financier in developing countries, the EIB can operate as a model for other lenders, particularly private banks and state-owned development institutions from the south. By doing so, the EIB will fulfill the EU’s development cooperation mandate, while also reducing the risk associated with its own project portfolio, particularly the likelihood of project disruptions as a result of local protests.

The credibility and effectiveness of the community participation process is in large part dependent on obtaining the trust of stakeholders. In this regard, a process that is inclusive, transparent and fair is the most likely to succeed in reducing the reputational risk of the lender and obtaining a ‘social license to operate’ from project-affected communities.

With regard to the EIB, it should in this regard much more forcefully confirm that it is prepared to extend the rights and entitlements given to local communities in the Århus Convention to project-affected communities in non-EU countries by incorporating it into binding policy. A critical element of this would be to insist that its obligations to honour law that has been ratified by EU member states takes precedent over the unwillingness of Promoters to inform project-affected communities of decisions that affect them. To verify compliance, the EIB should either organise consultations or be present

137 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.60. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

138 The guidelines “applies to direct lending or other forms of project finance only, including corporate lending and other financial support where the use of proceeds is known to be project-related. It covers water resource management, water services and infrastructure but, at this stage, excludes water usage and other human activities that have an impact on water.”, See HSBC Freshwater Infrastructure Sector Guideline. Date of Access: Sept 5 2007. <http://www.hsbc.com/1/2/newsroom/news/news-archive-2005/hsbc-launches-freshwater-infrastructure-guideline>

139 From Commitment to Implementation - the WCD After Five Years, International Rivers Network (IRN), p.8. Date of Access: October 2, 2007. <http://www.irn.org/wcd/5/pdf/051107flyer.pdf>

at them, and establish clear rules for information disclosure. This includes publicly disclosing the results of any consultation exercises before the project goes before the EIB's board for approval.

In more specific terms, the EIB should make several clarifications and amendments relative to its existing disclosure policy so as to adhere to its obligations under the Aarhus Convention and other relevant EU policies and directives.¹⁴⁰

Firstly, the EIB should publicly justify exceptions to disclosure, such as documentation related to its Global Loans portfolio, by identifying the specific damage that public access to this information would cause. Secondly, the distinction made in the disclosure policy between public and private sector projects contradicts common practice in development finance, and should be eliminated. Whether a project is operated by a public or private entity should not have a bearing on whether project-affected communities have access to information that is directly relevant to their livelihoods. Thirdly, the EIB should consider increasing staff capacity, providing additional training, introducing an effective and progressive system of record management and a central system for tracking requests to improve disclosure practices. Furthermore, it should provide for individual sanctions for willful obstruction of access to information and publish and widely disseminate an annual review of the implementation of the openness policy, and regular internal audits.

With regard to its engagement with indigenous peoples, the EIB should develop an operational policy that identifies the distinct characteristics that indigenous peoples have as vulnerable groups, and the rights and entitlements it is prepared to provide them in its financing operations. Particularly important is the recognition that many indigenous communities are not fully integrated into national legal systems, and therefore require and deserve special protections.

While the EIB may be correct in asserting that the EU does not have a directive on indigenous peoples rights,

it is the EU's endorsement of international law in this area that is relevant to the EIB's non-EU projects. Therefore, to identify its own obligations as an EU institution, the EIB should look to those international frameworks and legal conventions that have been endorsed at the Community level.

In this regard, the endorsement of FPIC in the European Consensus for Development is notable, and should be the guiding EIB policy in engaging with indigenous peoples. In addition, the EU's long-standing support for the UN Declaration on the Rights of Indigenous Peoples, reaffirming the need to protect and promote the human rights of indigenous groups, should be more forcefully reflected in the EIB's policy, particularly with reference to projects that are proposed on indigenous lands. As the EIB is one of a few EU institutions that may directly engage with indigenous peoples in non-EU countries, it should in effect act as an ambassador for the EU, promoting and protecting the principles that EU Member States have endorsed and ratified.

Lastly, on the issue of involuntary resettlement, it is unclear which rights the EIB is prepared to extend to citizens that have been involuntarily forced to resettle as a result of development projects or programmes in a non-EU country financed wholly or in part by the EIB. This is a significant shortcoming that contradicts the EU's commitment to protecting minority rights as an aspect of promoting social justice and equal opportunity. While the FPIC principle should be the guiding EIB policy in all its relations with local communities, it is particularly important in cases where development projects force indigenous people to uproot their livelihoods and abandon land to which they have economic, social and cultural attachments.

In cases where development plans conflict with the interests of local communities, the aim should be to find a consensus solution in which they fully share in the benefits of the project. But such a decision should ultimately depend on obtaining the consent of those people most adversely affected.

140 For a more extensive discussion of these points, and a survey of the EIB's informational disclosure policies and practices, see EIB's Transparency Performance Rules and Day-To-Day Practice in Access to Information, Bankwatch, May 2007. Date of Access: October 2, 2007. http://bankwatch.org/documents/EIBtransparency_report.pdf

4. Labour rights

Labour rights concerns the conditions under which people are treated in their working environment. The responsibilities of states have been articulated in a variety of ILO conventions, and a set of four core labour standards (CLS) identify the absolute minimum standard for protecting and promoting labour rights.

In broad terms, the four CLS, assumed to be irreducible and fundamental, are (1) the progressive elimination of child labour (ILO 138 and 184), (2) a ban on the use of forced labour (ILO 29 and 105) (3) non-discrimination in employment (ILO 100 and 111); and (4) the right of freedom of association and collective bargaining. (ILO 87 and 98) In 1998, the ILO reaffirmed the international legitimacy of the CLS in the Declaration on the Fundamental Principles and Rights at Work, which calls upon its member countries to comply with the four principles, regardless of whether they have ratified the relevant conventions. And significantly in relation to this report, it also identified a role for international organisations, such as multilateral development banks, in promoting respect for CLS.

Promoting and protecting labour rights is an important aspect of the EU's internal policies on social cohesion, and

also features prominently in its development cooperation policies and mandates. As reiterated in the European Consensus for Development, this commitment draws directly on the ILO conventions and core labour standards (CLS) that prohibit certain labour practices and guarantee a variety of worker protections.¹⁴¹

In a notable announcement, the EC has stated that “the EC and [EU] Member States should actively promote discussion and consideration of social development and core labour standards in other development organisations, including the Bretton Wood Institutions and the United Nations Conference for Trade and Development (UNCTAD), in order to ensure policy coherence in support of core labour standards and increased assistance for the enforcement of core labour standards as part of aid programmes.”¹⁴²

As an example, the EU and ACP countries reaffirmed as part of the Cotonou Agreement their commitment to “internationally recognised core labour standards, as defined by the relevant ILO Conventions, and in particular, the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of

141 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.29, para 99. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

142 Promoting Core Labour Standards and Improving Social Governance in the Context of Globalization, European Commission, COM(2001) 4 16 final, July 18 2001, p.15, section 5.1.2. Date of Access: Sept 5 2007. http://trade.ec.europa.eu/doclib/docs/2004/march/tradoc_111234.pdf

the worst forms of child labour and non-discrimination in respect to employment.”¹⁴³ The agreement also called for greater cooperation in the area of labour standards and practices, including the formulation of national labour legislation and the strengthening of existing legislation.

Separately, the EC has recommended that “the EU should extend the Cotonou approach to other agreements by seeking to include specific provisions on core labour standards.”¹⁴⁴

4.1 The EIB’s current approach to labour rights

The two guidance notes on Addressing Labour Standards and Addressing Occupational and Community Health and Safety outline the EIB’s policy on labour standards and community relations for projects outside the EU.¹⁴⁵ In terms of the choice of standards, the former note says the EIB’s due diligence procedures should focus on the Core Labour standards (CLS) outlined in the ILO Declaration on Fundamental Principles and Rights at Work, and the relevant national labour laws.¹⁴⁶ Subsequently, it explicitly affirms that “the EIB will not finance projects that employ, use or benefit from harmful child labour, that use or knowingly benefit from forced labour, and that do not comply with national law on worker representation and organisation.”¹⁴⁷

Given that this statement omits several clauses of the CLS, notably those pertaining to equal treatment and opportunity and freedom of association, it seems as if not all the standards assessed for compliance in the due diligence procedures can be grounds for the EIB to INTERVENE AND REQUIRE REMEDIAL MEASURES. The impression that compliance with some important international labour standards is not a universal requirement is further supported by the statement that “in the pursuit of these

core standards, the EIB should assure itself that the Promoter is aware of national law and has arrangements in place to comply with that national law.”¹⁴⁸

Again, given that national labour laws may not provide the same protections to workers as the CLS in countries with weak governance, it is notable that the Promoter is only asked to demonstrate compliance with national laws.

Yet, other sections of the Handbook and other related EIB documents contain much stronger and more explicit language. In a section dealing with environmental and social finance conditions, the Handbook states that Bank staff “will ensure that minimum relevant social safeguard standards are being adhered to”, which include “core labour standards, standards for occupational and community health and safety, standards for dealing with involuntary resettlement and standards for the treatment of vulnerable groups, particularly women and indigenous peoples” (emphasis added).¹⁴⁹ In cases where the EIB deems potential labour problems to be “significant”, they are required to conduct a labour assessment as part of the broader ES-IAF.¹⁵⁰ Accordingly, such an assessment “should include a review of the Promoter’s employment policies, their adequacy, and management’s capacity to implement them.” It further states that the assessment “may” include a number of descriptions of, among other things, the workforce, current working conditions, the state of compliance with national employment and labour laws, and the external governance environment. In turn, it is emphasised that “these arrangements should be agreed between the Bank staff and the Promoter before disbursement, monitored periodically through implementation and operation, and reported on at project completion.”

With regard to health and safety issues, the relevant guidance note states that “the Bank team should

143 The Cotonou Agreement: Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part., p.35, Article 50.

144 Promoting Core Labour Standards and Improving Social Governance in the Context of Globalization, European Commission, COM(2001) 4 16 final, July 18 2001, p.19, section 5.2.2. Date of Access: Sept 5 2007. http://trade.ec.europa.eu/doclib/docs/2004/march/tradoc_111234.pdf

145 See Guidance Note 3 and 4, Annex 12, in the Environmental and Social Practices Handbook, pp.116-118 and pp.119-121, respectively.

146 Elsewhere, the EIB states it “assesses core labour issues (related to abolition of forced labour, elimination of harmful child labour, freedom of association and the right to organise and bargain collectively and equality of opportunity and treatment) with reference to the Conventions of the ILO and the safeguard policies of the other major IFIs.” (emphasis added). See The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank, October 2, 2006, p.4.

147 Guidance Note on Addressing Labour Standards, in Annex 12, Environmental and Social Practices Handbook, p.117.

148 Guidance Note on Addressing Labour Standards, in Annex 12, Environmental and Social Practices Handbook, p.117

149 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.55.

150 Guidance Note on Addressing Labour Standards, in Annex 12, Environmental and Social Practices Handbook, p.117.

normally screen any project proposal to ensure that appropriate health and safety standards are in place to deal with both internal and external risks” (emphasis added). The screening should consider both the Promoter’s “internal” and “external” environment. The former refers to the existing safety and hygiene of workers, the formal structure put in place to monitor worker health and safety, and the extent to which the Promoter is “aware of relevant local regulation and minimum standards.” When conducting this assessment, EIB staff members are advised to “consult” the IFC’s Environmental Health and Safety Guidelines.

Meanwhile, the external environment refers to project-impacts on the health and safety of local communities, such as increased transportation or pollution. In cases where the Promoter’s existing practices fall short of meeting the EIB’s expectations, the guidance note only mentions instituting “awareness raising programs” or obtaining certification from an internationally agreed code of conduct as possible remedial measures. But in terms of protecting community health and safety, the EIB explicitly states that “[EIB] staff should ensure that the Promoter is aware that the precautionary principle”, as it is “the overriding principle guiding action to minimise environmental degradation and health impacts” (emphasis in original).¹

In relation to various health challenges, the guidance notes specifically mention the threat that the spread of diseases such as HIV/AIDS, drug-resistant forms of Tuberculosis and Malaria pose to sustainable economic growth. In cases where these diseases are prevalent, Bank staff are asked to “examine existing and proposed measures to implement workplace and community programmes and policies to counter communicable and preventable diseases.”¹⁵³

In conclusion, according to the EIB, core labour issues are assessed with reference to the Conventions of the ILO and the safeguard policies of the other major IFIs.¹⁵⁴ Yet, such statements that identify the ILO’s CLS as the appropriate reference for conducting labour assessments are obscured by discretionary language that fails to embrace all of the CLS, and provides EIB staff with discretion in applying them to projects.

Furthermore, the guidance note does not unequivocally identify which standards or MDB policies the EIB uses to assess the adequacy of the Promoter’s employment policies, only noting that in most cases, “the [EIB] team will likely find these adequate and appropriate.”¹⁵⁵ Greater clarity will allow stakeholders and prospective Promoters to identify which minimum standards EIB projects are expected to comply with.

4.2 International best practice in project finance

The ILO’s CLS and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy define ‘international best practice’ in labour rights and protections. In turn, both of these are embedded in the UN Norms. While the policies of multilateral and private lenders vary in this issue area, most do reference the CLS when articulating which labour rights and protections they are prepared to guarantee. The Extractive Industries Review recommended that the “IBRD and IDA should adopt the CLS as contractual requirements for project financing by including them as mandatory elements of the World Bank Group’s Standard Bidding Document.”¹⁵⁶ In the new Performance Standard, the IFC (and by extension the Equator banks) is substantially guided by the CLS, stating for example that “where national law substantially restricts workers’ organizations, the

151 As is clarified, internal risks are “those associated with applicable occupational health and safety measures, whereas external risks are “those associated with community health and safety measures within the sphere of influence of the project. (See Guidance Note on Addressing Occupational and Community Health and Safety, in Annex 12, Environmental and Social Practices Handbook, p.119.

152 Guidance Note on Addressing Occupation and Community Health and Safety, in Annex 12, Environmental and Social Practices Handbook, p.120.

153 Guidance Note on Addressing Occupation and Community Health and Safety, in Annex 12, Environmental and Social Practices Handbook, p.121.

154 It defines these as those related to “abolition of forced labour, elimination of harmful child labour, freedom of association and the right to organise and bargain collectively and equality of opportunity and treatment.” See The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank, October 2, 2006, p.4.

155 Guidance Note on Addressing Labour Standards, in Annex 12, Environmental and Social Practices Handbook, p.117.

156 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.59. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

client will enable alternative means for workers to express their grievances and protect their rights regarding working conditions and terms of employment.” Similarly, the Performance Standard explicitly prohibits Promoters to hire child labour or forced labour.

For its part, the ADB recently released a Core Labour Standards Handbook, developed in close consultation with the ILO.¹⁵⁷ It contains “good practice suggestions” and is not intended to be an expansion of existing policy. Yet, it affirms that as all developing member countries of the ADB are members of the ILO, they are bound to respect and promote the fundamental CLS. In terms of commitments, they will comply with the internationally recognised CLS... in the design and formulation of its loans”, and “take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country’s labour legislation as well as with the CLS.”¹⁵⁸ In turn, Promoter compliance with these commitments will be monitored as part of regular loan reviews.

In the private sector, Equator banks have indirectly adopted the IFC’s Performance Standard 2 on Labour Rights. In addition, many have endorsed the UN Global Compact, and thereby indirectly committed themselves to promoting and adhering to the Declaration on Fundamental Principles and Rights at Work. Yet, it is difficult to establish how such commitments to upholding labour standards are integrated into project finance operations, as very little public information is available from each individual bank.

4.3 Recommendations for the EIB

The Cotonou Agreement clearly identifies the promotion of fair labour practices as a central element of EU development cooperation. While a strong operational policy for managing labour issues should contain many elements, a basic feature should be to explicitly identify which local, national and international standards, laws and conventions will be adhered to. To be consistent with EU

policy, the EIB should formally adopt all the four CLS in its non-EU projects, and put in place binding operational procedures that ensure that projects comply with them. In this context, the division of roles and responsibilities between lenders and Promoters with respect to implementation, monitoring and disclosure should be firmly established. By doing so, the policy contains the necessary clarity and coherence that allows prospective Promoters and stakeholders to develop clear expectations of performance.

To do so, the EIB should formally adopt the IFC’s Performance Standard on Labour and Working Conditions, which places the four CLS at the centre of an assessment of labour practices in projects in developing countries. Such a commitment would be in line with the EU’s current development cooperation mandate, as well as existing labour law in the EU and EU Member States. While many of the EIB’s partner countries are members of the ILO and therefore have an obligation to promote the CLS, the EIB should unequivocally declare its commitment to them by integrating them into a binding operational policy. This would communicate to stakeholders, including project-affected communities that may be directly influenced by labour conditions facilitated by the project, that an EIB-financed project adheres to minimum labour standards as a matter of principle, that is not subject to negotiations with Promoters that lack the capacity or commitment to do so.

Only if such a commitment is publicly communicated can the EIB be held externally accountable for the labour conditions provided by its projects. This is critical to reducing the risk it faces when financing projects in countries with weak governance systems, as it increases the leverage that mistreated workers may have against their employers. And to reassure itself that labour standards are adhered to, it is critical that a requirement for periodic, independent reviews of ongoing labour practices is integrated into loan agreements, so as to reassure workers that the EIB is prepared to protect their rights.

157 Core Labour Standards Handbook, Asian Development Bank. Date of Access: Sept 5 2007. <http://www.adb.org/Documents/Handbooks/Core-Labour-Standards/default.asp>

158 Excerpts from ADB’s Social Protection Strategy, in Core Labour Standards Handbook, Asian Development Bank, pp.16-17. Date of Access: Sept 5 2007. <http://www.adb.org/Documents/Handbooks/Core-Labour-Standards/default.asp>

5. Gender equality

Gender equality is increasingly becoming a priority area within development cooperation, as the gender dimensions of poverty and globalisation are becoming more widely known and disseminated. MDG3 focuses on gender equality and the empowerment of women, and raised awareness of the gender disparities that are present in many development issues, including access to education, public health, employment and human rights. EU laws and policies frequently and strongly endorse gender equality as a critical aspect of promoting and protecting fundamental rights.

For example, in the context of development cooperation, the European Consensus on Development recognised gender equality as a goal in its own right, identifying it as one of the five common principles of EU development cooperation (see Box 9). It declared that “the promotion of gender equality and women’s rights is.. instrumental in achieving all the MDGs and in implementing the Beijing Platform for Action, the Cairo Programme of Action and the Convention on the Elimination of All Forms of Discrimination Against Women.”¹⁵⁹ More recently, the EC has made a significant and more precise statement that identifies the three primary preconditions for

realising gender equality; “equal rights (political, civil, economic, employment, social and cultural) for women and men”, “girls and boys, equal access to, and control over, resources for women and men”, and “equal opportunities to achieve political and economic influence for women and men.”¹⁶⁰

Box 9: Gender Equality

“The gender aspect must be addressed in close conjunction with poverty reduction, social and political development and economic growth, and mainstreamed in all aspects of development cooperation. Gender equality will be promoted through support to equal rights, access and control over resources and political and economic voice.

*The European Consensus for Development, p.30, para 104.
November 25, 2005.*

In broad terms, the validity of these preconditions was confirmed in the Cotonou Agreement, which identified gender issues as “cross-cutting”. It called for the parties to “reaffirm the equality of men and women”, as part of “promoting and protecting all fundamental freedoms

159 European Consensus on Development, Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, p.9, para 4.4. Date of Access: August 25, 2007. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

160 Communication from the Commission to the European Parliament and the Council: Gender Equality and Women Empowerment in Development Cooperation, p.3, March 8, 2007. Date of Access: August 25, 2007. http://ec.europa.eu/development/ICenter/Pdf/COMM_PDF_COM_2007_0100_F_EN_ACTE.pdf

and human rights, be they civil and political, or economic, social and cultural.”

To facilitate this, it recommended that “systematic account shall be taken of the situation of women and gender issues in all areas – political, economic and social.” This entailed, among other things, the integration of “a gender-sensitive approach and concerns at every level of development cooperation, and “encourage the adoption of specific positive measures in favour of women.”¹⁶¹ In its evaluation of the World Bank’s operational policies, the Extractive Industries Review suggested that they should “recognise explicitly the rights of women .by ensuring that social management, community development, and consultation plans and exercises explicitly reach out to women and protect them from gender-based human rights violations, such as forced prostitution and rape.”¹⁶²

5.1 The EIB’s current approach to gender equality

A commitment to eliminate gender inequities can manifest itself in selecting and implementing projects that aim to provide clear benefits for women, and systematically identifying, assessing and mitigating adverse impacts on women in conjunction with the wider project portfolio. On the first point, evidence suggests that the EIB is lagging behind the other multilateral development banks in dedicating funding towards projects specifically intended to address gender inequities in the global south.¹⁶³ In terms of the latter, which is the focus of this report, the EIB’s Guidance Note on Dealing with Minority Rights, Including Women, Indigenous People and Other Vulnerable Groups outlines the EIB’s policy position on assessing and

managing impacts on minority groups, including women.¹⁶⁴ It recognises that the protection of minority rights and the participation of minorities in decision-making are central to the founding principles of the EU. The note devotes less than two paragraphs to the subject of gender impacts, but a separate section in the Handbook states that “the pursuit of sustainable social objectives assumes that all projects will be appraised in a way that recognizes that women are likely to be impacted in different ways than men.” While noting that such gender appraisal will likely be particularly important “where issues of land rights are significant”, it emphasises that the need to assess gender impacts applies as much to “telecom projects as urban regeneration projects.”¹⁶⁵

While the Guidance Note refers to relevant EU legislation on non-discrimination and makes the case for ensuring that minorities are protected, it fails to identify how potential gender inequalities, such as unequal distribution of adverse impacts between men and women, are identified, assessed and managed during project preparation, and monitored during the implementation phase. And in a curious sentence, the EIB states that “with greater emphasis on Small and Medium Enterprise development and on the employment of women, there may be less ability to ensure appropriate health and safety standards are maintained, particularly when one is dealing with hundreds or thousands of suppliers.”¹⁶⁶

While it may very well be that monitoring the labour practices at numerous SMEs is more resource-intensive than a single large company, it is unclear why increasing female employment makes it more difficult to judge whether labour standards have been adhered to.

161 Suggestions for the latter included “participation in national and local politics, support for women’s organizations, access to basic social services, especially to education and training, health care and family planning, access to productive resources, especially to land and credit and to labour market, and taking specific account of women in emergency aid and rehabilitation operations.” See The Cotonou Agreement: Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part., p.26, Article 31.

162 Striking a better balance: the World Bank Group and Extractive Industries, Dr. Emil Salim, Extractive Industries Review final report, December 2003, p.61. Date of Access: Sept 4 2007. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

163 One comparative study of MDB policies and practice in this area noted that “the EIB does not fund any health projects in the global South, although its massive infrastructure projects all over the world have huge health implications.” (see Mapping Multilateral Development Banks’ Reproductive Health and HIV/AIDS Spending, by Suzanna Dennis and Elaine Zuckerman, June 2007. Date of Access: Sept 5 2007. <http://www.genderaction.org/images/Gender%20Action%20MDBs%20RH-AIDS.pdf>)

164 Information on the EIB’s policy on Minority Rights can be found in Guidance Note 2, Annex 12, in the Environmental and Social Practices Handbook, pp.113-115.

165 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, Annex 12, p.101.

166 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, Annex 12, p.119.

In conclusion, the guidance notes include brief statements that argue for the importance of assessing and managing gender impacts, and rightly recognise that gender issues can be relevant to projects across industry sectors. Yet both EIB documentation and external reporting suggests that redressing gender imbalances is not a high priority in the EIB's assessment work. As well as the seeming lack of in-house expertise, the EIB's guidance notes do not refer to particular international treaties and conventions, and thereby fail to place gender commitments within a particular legal or policy framework.¹⁶⁷ Furthermore, despite acknowledging that gender issues are cross-cutting, very little information is provided as to how gender imbalances will be addressed in particular projects.¹⁶⁸ And given the cultural sensitivity of challenging established gender roles, it is important that the EIB identifies how it will address gender inequities in countries characterised by systematic gender discrimination.

5.2 International best practice in project finance

Following the convergence of development policy around the MDGs, "gender equality" has gradually risen on the operational agendas of multilateral development banks. Many multilateral development banks have made commitments to address gender aspects in their financing operations, and most have added staff with expertise in operational divisions and introduced guidelines on how gender disparities can be addressed in financing operations.¹⁶⁹ Yet, a recent comparative study of MDB policies and practices on gender equality concludes that existing policies tend to be weak, and special gender units are often under-resourced and under-staffed.¹⁷⁰

With regard to mitigating and preventing adverse gender impacts in projects, the ADB and the AfDB have the strongest policies among multilateral lenders. The ADB requires a preliminary gender assessment to be completed as part of initial project assessments, and in cases where it is found that the project may positively contribute to correcting gender disparities, it is classified as having a gender theme. In turn, a gender action plan is prepared, and reports concerning the involvement of women in project design are produced. Evidence has found that these measures significantly improve project results for project-affected women.

With regard to the AfDB, it has developed a Gender Policy in which it committed to conduct 'gender analysis' for all Bank interventions, a tool that is "designed to enhance understanding of the culturally-determined gender division of labour and the gender-based access to and control over resources as well as the needs and priorities that characterise this division."¹⁷¹ More broadly, the AfDB commits to a variety of public policy objectives related to women's empowerment, including promoting girls' education in science and technology, supporting measures that promote equal sharing of work between men and women, boys and girls, and increasing women's access to affordable, quality health care and information.

With regard to the World Bank and the IFC, the record on systematically considering gender impacts in the selection and appraisal of projects is mixed. The World Bank requires gender concerns to be considered in all project loans (but not policy loans), and monitored during project implementation. The IFC's approach is driven by its overall mission to promote private sector growth and investment, and therefore emphasises investment

167 According to one account, the EIB does not have a single member of staff charged with ensuring that gender aspects are addressed in EIB financing. (see *Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions*, by CIEL and Gender Action (sponsored by the Heinrich Boll Foundation), July 2007, p. 2, table 1. Date of Access: Sept 5 2007. http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf)

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169 This section draws heavily on *Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions*, by CIEL and Gender Action (sponsored by the Heinrich Boll Foundation), July 2007, . Date of Access: Sept 5 2007. http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf

170 *Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions*, by CIEL and Gender Action (sponsored by the Heinrich Boll Foundation), July 2007, p. v. Date of Access: Sept 5 2007. http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf

171 AfDB's Gender Policy, African Development Bank. Date of Access: Sept 5 2007. <http://www.afdb.org/pls/portal/url/ITEM/F5F1F592565823F6E030A8C0668C7BB2>

schemes that support female entrepreneurs and broadening women's access to credit. In terms of its due diligence practices, the IFC's Performance Standards require that men and women are included in consultations at an early stage of a project, but do not give women special consideration in project assessments or the formulation of compensation schemes. Furthermore, while 'broad community support' is required for projects with significant adverse impacts on local communities, the IFC's policies are silent on whether this entails equal support across genders.

5.3 Recommendations for the EIB

Given the enormous challenges that remain with regard to eliminating the discrimination and marginalisation of women, current levels of resources and commitments across all lenders lag considerably behind what is needed. For example, it is increasingly evident that achieving many of the MDGs, not only the one concerned with gender equality, requires an understanding of how to disrupt the vicious cycle that connects poverty, reproductive health and HIV/AIDS.¹⁷² More broadly, such inter-linkages illustrate how gender discrimination is a cross-cutting issue that has to be addressed systematically across financing operations.

Given the relatively strong commitment to redressing gender imbalances in EU policy, the EIB bears a special obligation to further women's rights in development finance. The objective for the EIB should be to ensure that its project financing contributes positively to the economic, social and political conditions of women directly and indirectly affected by its financing. While admittedly challenging in particular socio-cultural contexts, promoting women's rights in a systematic manner is a central aspect of fulfilling the EU's development cooperation mandate, and promoting the core values and principles upon which EU is based.

While gender inequities in local communities may vary across projects, it is necessary to survey such conditions as part of an overall social assessment. As a start, the EIB should consider undertaking an assessment that identifies how its projects in various industry sectors and regions affect women, and how it may contribute to improving the conditions of women as a lender in developing countries. This means identifying opportunities for making positive interventions, and advocating gender mainstreaming as a critical element of responsible financing.

172 For an extensive discussion of this issue, and how MDBs are addressing it, see *Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions*, by CIEL and Gender Action (sponsored by the Heinrich Boll Foundation), July 2007. Date of Access: Sept 5 2007. http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf

Conclusion: Towards external accountability

The broader picture in the global project finance market indicates that standards and procedures for sustainable financing are gradually diffusing and strengthening across public and private financial institutions.¹⁷³ This trend reflects a growing recognition among lenders that effectively identifying and managing environmental and social risks is a critical element of sound risk management, and that appearing accountable to shareholders and stakeholders is a central aspect of responsible investment practice. In addition, the benefits of upward harmonization have been recognized by multilateral lenders and Equator banks alike, as a convergence in lending practices can ensure that environmental and social risk management does not become a negative competitive issue.

Yet, while policy commitments may be broadening, deepening and converging around 'international best practices', evidence continues to surface that individual projects do not comply with standards formally adopted by lending institutions.¹⁷⁴

This points to either vague policies that fail to establish for internal staff and Promoters which standards should be adhered to, inconsistent application of standards as a result of incapacity or lack of commitment, and/or poor monitoring and enforcement of breaches of compliance. Rectifying poor performance and ensuring that the project portfolio consistently achieves pre-stated development objectives starts with concise and instructive operational policies that clearly identify standards and metrics against which performance will be assessed.¹⁷⁵

Box 10: Clarity in Operational Policies

"Text that is short and clear should be used as much as possible."

EIB's advice to internal staff preparing Project Summaries for the EIB's website, the Handbook, p.25, para 57.

The main shortcoming of the guidance notes annexed to the Handbook is the lack of clarity, consistency and com-

173 All multilateral lenders operating in developing countries have formally adopted environmental and social policy frameworks, and with the growth of the Equator Principles, responsible and accountable financing is gradually expanding in the commercial banking industry as well including Asia. (see Time to Go Green: Environmental Responsibility in the Chinese Banking Sector, Michelle Chan-Fishel (FOE) and Banktrack, June 2007.)

174 For examples, see Banktrack, The Role of the Financial Services in Respecting Human Rights, December 18 2006; The Role of the IFIs in Supporting Decent Work and Countering the Risks of Financial Globalisation, Statement by Global Unions to the 2007 Annual Meetings of the IMF and World Bank (Washington, 20-22 October 2007), released Sept 5 2007.

175 For more recommendations, see The dos and don'ts of Sustainable Banking - A BankTrack manual, Banktrack, November 2006. Date of Access: September 5 2007. http://www.banktrack.org/doc/File/banktrack%20publications/banktrack%20other%20publications/0_061129%20the%20Dos%20and%20Donts%20of%20Sustainable%20Banking%3B%20BT%20manual.pdf

prehensiveness. While it recommends that staff should write in a clear and concise fashion when producing project summaries on the EIB website, its own guidance notes do not seem to follow this advice (see Box 10). Rectifying this problem is important for the EIB to become externally accountable for the development impact of its non-EU projects, to reduce risk by developing stable expectations among stakeholders and potential Promoters, and to contribute to the ongoing upward harmonisation of operational policies across public and private lenders. It is particularly worrying that the EIB's operational policies lag behind those of many private lenders, given the strength of EU development cooperation mandates, and the obligation that the EIB has to fulfill them.

Furthermore, external accountability and oversight requires a recourse mechanism in which project-affected communities have access to justice in cases where the EIB's violation of its own policies has adversely affected them. Akin to the World Bank's Inspection Panel, such a mechanism would introduce possible sanctions for clear violations, and thereby provide EIB staff with a real and vital incentive to honour environmental and social commitments in cases where competing interests provide incentives for not doing so.

While the EIB claims to receive complaints made by project-affected communities, the merits of these are not assessed independently, but handled by the Civil Society Organizations Unit, in consultation with ENVAG (an assessment group chaired by PJ, the directorate charged with overseeing environmental assessments), and the Sustainable Development Unit.¹⁷⁶ As these departments would most likely be directly implicated in any complaint lodged against an EIB project, there is a clear conflict of interest that undermines the complaints process and the broader accountability of the EIB.

Apart from the policy gaps identified in PREVIOUS SECTIONS, THE REPORT ALSO IDENTIFIED a number of other observations with regard to the coherence and effectiveness the EIB's current policies. Firstly, the EIB seems to often defer to other IFIs, noting for example, that "where other multilateral investment partners are involved it

may be sufficient to ensure that the social guidelines developed by those partners are being adhered to."¹⁷⁷ It further states that "it may also be appropriate to partner with other IFIs that have developed comprehensive 'safeguard' policies and are able to provide appropriate resources to ensure they are followed."¹⁷⁸

Such statements seem to be intended to communicate that EIB financing may be aligned with the policies of other financial institutions when it operates in syndications, and therefore may not need to develop or formally adopt those policies itself. Yet, while financing through loan syndication is a reality in the global project finance market, the EIB still needs to develop and adopt operational policies that define how it intends to govern the environmental and social impacts of its investments.

Secondly, the EIB proclaims to be a "policy-driven" bank that "wishes to promote the standards expected within the EU." In explaining the rationale for expanding its practice, the Handbook refers to the evolution of development cooperation policy at the EU level, notably clauses in the Cotonou Agreement, as well as the broadening use of environmental and social 'safeguards' among international financial institutions operating in weak governance zones.¹⁷⁹ Its attention to evolving EU policy is evident in the inclusion of "energy" as a core objective in the EIB's Corporate Operational Plan for 2007-09, which comes across as a direct response to an EU Green Paper on European Strategy for Sustainable, Competitive and Secure Energy released in March 2007.¹⁸⁰

But as illustrated in most of the issue-specific sections in this report, the EIB lacks clear and comprehensive policies in many social areas, which challenges the notion that policy drives its practices. In this regard, it would be instructive if the EIB produced a comprehensive list of its existing legal obligations under EU law and international statute in the policy areas considered in the preceding analysis.

And third, the way the EIB justifies the implementation of social assessments does not signal a strong and unwavering commitment to fundamental norms and principles. By its own admission, individual decisions made by

176 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.47.

177 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.100.

178 European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.100.

179 European Investment Bank – Environmental and Social Practices Handbook, August 2, 2007, pp.106-107 (Appendix 1).

180 Corporate Operational Plan 2007-2009, European Investment Bank (EIB), January 29, 2007, p.3. Date of Access: August 21, 2007. http://www.eib.org/cms/htm/en/eib.org/attachments/strategies/cop_2007_en.pdf

EIB officers about the scope and depth of social assessments in particular projects are significantly driven by a concern that the EIB might suffer reputational damage by being “targeted” as the result of its involvement in “sensitive projects”.¹⁸¹ In making the case for consulting local communities and being concerned with labour conditions, for example, the guidance notes informs EIB staff that a failure to do so may result in reputational liabilities for the EIB as a lender. But project-level decisions regarding which standards to apply to particular projects should not be driven by a desire to avoid reputational damages, but by a principled commitment to consistently uphold the norms and values fundamental to the EU.

More broadly, by proclaiming to adopt the public policies of the EU and apply these in its financing operations in developing countries, the EIB has indirectly consented to a set of fairly progressive and ambitious performance targets that go beyond those of other project finance lenders, both public and private. At the very least, the EIB should represent an important standard-bearer of the norms and values shared by EU member states when financing projects in non-EU countries. Yet, the preceding analysis has illustrated that its Environmental and Social Practices Handbook lacks clarity and comprehensiveness

relative to the operational policies of other multilateral lenders, and even some private lenders as well.

Based on this, the EIB is not currently in a position to effectively promote EU policies and commitments in the area of development cooperation, in lieu of its operational expansion in low-income countries.

Therefore, to fulfill this role, it should more aggressively promote the norms and values that the EU claims to represent, rather than diverge from this important mission in the interest of short-term profits. This important and urgent task begins with clearly defining a set of operational policies akin to those of the World Bank, that identify the standards it is prepared to follow in developing countries.

Therefore, to bridge the gap between its own environmental and social practices and the mandates and policies of the EU, it is recommended that the EIB revise the Handbook to, at a minimum, harmonise its approach with other multilateral lenders. In this way, it can become an equal member of a growing group of public and private lenders that have committed to international best practices when financing projects in developing countries.

181 In this regard, the Handbook defines a ‘sensitive project’ as one that “poses high risks for the EIB related to its potential environmental and social impacts, which may attract significant external scrutiny adversely affecting the reputation of the Bank, and likelihood of undue difficulties during project implementation and/or operations.” (European Investment Bank – Environmental and Social Practices Handbook, European Investment Bank (EIB), August 2, 2007, p.24. See also p.101)

Appendix

Multilateral development bank lending to developing countries: Total commitments 2006

2006 Financing ¹⁸³ (in USD millions)	EIB ¹⁸⁴	ADB ¹⁸⁵	AfDB ¹⁸⁶	EBRD ¹⁸⁷	IADB ¹⁸⁸	WORLD BANK GROUP		
						IFC ¹⁸⁹	IBRD ¹⁹⁰	IDA ¹⁹¹
Africa	1,061 (EUR 747)	n/a	1586 (UA 1,057)	n/a	n/a	700	4	4,003
Asia and the Pacific	398 (EUR 280)	5,265	n/a	n/a	n/a	1,489	1,806	755
Latin America and the Caribbean	399 (EUR 281)	n/a	n/a	n/a	6,489	1,747	565	25
Non-EU Europe and Central Asia	4,612 (EUR 3,248)	1001	n/a	7,009 (EUR 4,936)	n/a	2,084	2,550	457
North Africa and the Middle East	1,923 (EUR 1,354)	n/a	1,215 (UA 810)	n/a	n/a	668	1,333	811
Total	8,393 (EUR 5,910)	6,266	2,801 (UA 1867)	7,009 (EUR 4,936)	6,489	6,688	6,258	6,051

183 A comparison of financing volumes across banks by region is complicated by conflicting definitions, time periods and financial reporting practices across the respective institutions. In addition, it is likely that significant programs that are not directed towards particular regions or countries are not included. Therefore, the figures are meant to be an indication of relative financing volumes. For accurate data on each bank, it is advised to consult the original sources directly.

184 Total loans provided. (1 EUR = USD 1.42) 'Non-EU Europe and Central Asia' is based on figures for Enlargement countries as defined by the EIB. 'North Africa and the Middle East' is based on figures for the Mediterranean countries as defined by the EIB. (EIB Group Activity Report 2006, tables p.43, p.49, and p.52)

185 Total disbursements. 'Asia and the Pacific' combines figures for East Asia (USD 1880 million), Pacific (USD 49 million), South Asia (USD 1321 million) and South-East Asia (USD 2015 million) Figures for 'Non-EU Europe and Central Asia' are based on ADB financing to Central and West Asia. (ADB Annual Report 2006, tables in pp.)

186 Total commitments (1 UA = USD 1.5). The respective figures for 'Africa' and 'North Africa and the Middle East' are aggregates of figures given in the list of project commitments 2006 in Compendium of Statistics on Bank Group Operations 2007.

187 Volume XXX", AfDB, Table 1.03, p.9. Countries included in the NEMA region from the table are Egypt, Morocco and Tunisia.

188 Total commitments. (1 EUR = USD 1.42) (EBRD Annual Report 2006, p.3)

189 Total loan disbursements. (IADB Annual Report 2006, Table III, p.44)

190 IFC financing committed of its own account. 'Africa' figures are based on financing to Sub-Saharan Africa, and do not include financing in the Middle East and North Africa region. 'Asia' figures include financing to both South Asia. (USD 507 million) and East Asia and the Pacific (USD 982 million) (IFC Annual Report 2006, p.42, p.48, p.54, p.60, p.66, and p.72)

191 Total commitments. 'Asia' figures include financing to both South Asia (USD 1034 million) and East Asia and the Pacific. (USD 1806 million) (World Bank Group Annual Report 2006, p.30, p.34, p.38, and p.42)

192 Total commitments. 'Asia' figures include financing to both South Asia (USD 3218 million) and East Asia and the Pacific. (USD 755 million) (World Bank Group Annual Report 2006, p.30, p.34, p.38, and p.42)

“Its recent funding increase will make the EIB the largest multilateral lender in developing countries by volume. Yet, compared to other lenders, the scope, depth and clarity of the EIB’s social policies and commitments leave a lot to be desired.”

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