

Briefing for the EIB Board of Directors for the seminar with civil society on 30 January 2017

Putting human rights upfront – towards a comprehensive Human Rights Action Plan

Dear Board of Directors,

In many EIB client countries, human rights, in particular freedom of expression, assembly, and association are under attack, from violent crackdowns on protests and criminalization of speech, to arbitrary arrests and detention of human rights defenders, as well as restrictions on civil society organizations (CSOs). As reported by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the very notion of human rights is under increasing attack in many parts of the world and the space for civil society has been effectively closed down by many governments¹.

The bank is active in many countries considered either ‘hybrid regimes’ or purely ‘authoritarian’, or in countries where political rights and civil liberties are highly limited². In a context of violence, intimidation and shrinking or closing space for civil society, the bank’s financing may be at risk of not complying with the standards of public participation and free consultations and may easily be associated with, contribute to, or exacerbate human rights violations. Moreover, the EIB is expanding its operations to respond to large movements of refugees and migrants in and outside Europe, which requires the bank to ensure its due diligence is upholding the respect for all human rights when operating in such volatile environments. In the face of global erosion of norms and standards, it should remain a responsibility of every EU institutions to stand by the principles of EU external action described in Article 21 of the EU treaties and universal values.

EU commitments and obligations are laid down in the treaties and strategies to uphold these principles and values in all its external actions. The EU strategic framework on human rights and democracy adopted by the Foreign Affairs Council (FAC) in June 2012 committed the EU to “*promote human rights in all areas of its external action without exception*”, and especially to “*integrate the promotion of human rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility[...]*”. It reaffirmed the same wording in June 2015 FAC conclusions – “*[t]he EU will also ensure a comprehensive human rights approach [...] in the external aspects of EU policies in order to ensure better policy coherence, in particular in the fields of migration, trade and investment, development cooperation and counterterrorism*”.

¹ Human Rights under Increasing Attack Worldwide, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21009&LangID=E>
² www.freedomhouse.org/report/freedom-world/freedom-world-2016

The point 25 of the action plan accompanying the strategic framework³ makes the following demand to the EU policies in Trade and Investments: “*Continue to develop a robust and methodologically sound approach to the analysis of human rights impacts of trade and investment agreements*”.

The EU Global Strategy adopted in 2016 is underpinned by the principles of the EU external action calls for mainstreaming human rights across policy sectors and institutions. For the EIB to fully deliver on these requirements, we call on the bank to adopt a comprehensive and ambitious **human rights action plan**, in line with the above-mentioned EU strategic framework.

Such a plan would outline the strategy to implement the objectives of the EU Strategic Framework in the bank’s operations, including those through financial intermediaries. In particular, we request the bank to spell out how it is going to work towards ensuring compliance with safeguards under the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT – key guidelines to avoid land-grabbing), and due diligence for beneficiaries involved in projects that affect land.⁴ Moreover, we encourage the bank to enhance support to create an enabling environment for public participation, in which local communities are empowered to engage in crafting their own development agendas and in holding their governments, donors, businesses and other actors to account and to take all necessary measures to identify and address human rights risks in all of the bank’s activities. The same standards should apply to operations through financial intermediaries, constituting a significant part of the EIB’s portfolio outside the EU, for which EIB’s human rights impact assessment should be strengthened.

We would like to recall that, in July 2016, 156 civil society groups from all over the world published a statement⁵ calling on all IFIs to ensure that the activities they finance respect human rights and that there are spaces for people to participate in project’s development and hold IFIs to account without risking their own safety. It was merely a call in support of the realisation of the rights to freedom of expression, assembly and association, which are often overlooked in human rights assessments. In its role as an EU institution supporting the EU Global Strategy which committed strongly to champion the indivisibility and universality of human rights, we recommend the bank to:

- Cooperate with the EEAS and the European Commission, in particular under the existing frameworks such as the EU Action Plan for Human Rights and Democracy, the EU Country Roadmaps for engagement with Civil Society⁶, and the EU country strategies for human rights and democracy 2016-2020 (developed and coordinated by the EU delegations and EEAS); as a way to improve capacities to analyze the

³ EU Action Plan_on Human_Rights_and_Democracy, June 2015

https://eeas.europa.eu/human_rights/docs/eu_action_plan_on_human_rights_and_democracy_en.pdf

⁴ CONCORD Report 2016, Sustainable Development: The stakes could not be higher, p 21

⁵ http://rightsindevelopment.org/?page_id=4691

⁶ See forthcoming results of CONCORD survey in EU Delegation and country CS Roadmaps

environment for freedoms of expression, assembly, and association, and the realization of other human rights critical to development and projects' implementation; as well as including identifying mitigation measures that can be undertaken to prevent human rights violations and address any risks.

- Adopt a Human Rights Action Plan to implement the objectives of the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan for Human Rights and Democracy. At the end, the human rights action plan should provide the rules and mechanisms aiming to prevent the negative impact on human rights, to ensure projects contribute to the enhancement and realisation of human rights, and to provide remedies in case of human rights violations. Its preparation and drafting should be done with the participation of civil society organisations.
- Ensure that Free Prior Informed Consent is a requirement for all land and natural resource based investments across the EIB's operations. This must include recognition that there can be no responsible investment in large-scale agricultural projects in contexts where communities do not have the right to express freely and assert their opposition to projects affecting their lands⁷.
- Throughout the project cycle, take all necessary measures to mitigate risks of all forms of threats, attacks, or reprisals to community members, workers, activists, journalists, human rights defenders, and civil society organizations for participating in project development, for criticizing or opposing a project or otherwise speaking out (or being perceived to have spoken out) against a project. Such measures should include: incorporating clauses preventing reprisals in loan agreements and developing an urgent response system to address threats to project critics.
- Concerning compliance/accountability mechanisms: develop measures to protect people's right to an effective remedy, including the right to freely approach and fully participate in the bank's accountability mechanism processes; ensure that those communities likely to be affected by a project are aware of and feel safe in approaching the EIB complaints mechanism; give complaints mechanism the tools and power to address situations in which complainants experience retaliation after participating in or attempting to lodge a complaint.

When given a mandate by the EU institutions (Council, Parliament, Commission and EEAS) to operate in a given country, the EIB must act in line with the principles laid-out in the EU treaties and Strategic Framework for Human Rights and Democracy. Indeed, it needs to do its utmost to ensure that every single project the bank supports does not incentivize

⁷ CONCORD Report 2016, Sustainable Development: The stakes could not be higher, p 21

human rights violations and is fully in line with the principles set out in Article 21 of EU treaties and with the European Charter of Fundamental Rights. In your responsibility of Director at the EIB, we call on you to take action in this regard and look forward to discussing this further in Luxembourg on 30th January 2017.

Yours sincerely

List of signatories:

ActionAid

ACT Alliance EU

CEE Bankwatch Network

Counter Balance

FIDH / International Federation for Human Rights

International Partnership for Human Rights

Urgewald