

Briefing
July 2018

Putting human rights first at the European Investment Bank

Upcoming opportunities



For more information:

Aleksandra Antonowicz-Cyglicka
Polish Green Network
ola@globalnepoludnie.pl
+48 601 32 52 42

Anna Roggenbuck
CEE Bankwatch Network
annar@bankwatch.org
+48 509 97 04 24

Xavier Sol
Counter Balance
xavier.sol@counter-balance.org
+32 473 22 38 93

Photos by:
Krzysztof Miękus

Starting from the ground: EIB development finance overlooks people at risk in Kenya

The nearly 1000 kilometre route connecting Mombasa and Lake Victoria has always been of key importance for the development of Eastern Africa. The narrow, crowded car road is still the main artery of the region. By 2020, the Kenya National Highways Authority (KENHA) plans to extend the route to standard dual carriageway length of 41.7 kilometres. The European Investment Bank (EIB) is one of the lenders.

But this important investment, before it has even begun, has destroyed the lives of hundreds of informal settlers in the suburbs of Mombasa. In 2015, more than 100 people faced forced evictions, losing their homes and livelihoods in the process. The lenders and KENHA halted the road works to mitigate the harm caused to the people and revise the Resettlement Action Plan (RAP) for the whole project.

While affected people and the project promoter are currently in a process of mediation facilitated by the EIB due to an unsatisfactory mitigation process, a field mission conducted by Polish Green Network and Bankwatch on 7-13 June 2018, documented the high risk of further forced evictions along the route of the entire project.

The Resettlement Action Plan, which is of such a poor quality that it should not have been accepted by the EIB according to its standards, has not yet been finalised and effectively disclosed to project affected persons. It lacks key components such as the Implementation Plan, Livelihood Restoration Framework, projects maps, assets inventories and a compensation methodology, leaving the project affected persons with uncertainty and serious fears. None of the annexes to the RAP are publicly available and the EIB has not addressed this matter to date. A striking point is that people are receiving notices to vacate without any relocation sites being offered and financial compensation (if any) is provided without any valuation reports.



Violet Nabwango, Jomvu Narcol inhabitant in her house

Some movable structures, small buildings, trees or tree nurseries were already destroyed, a situation which fulfils the definition of forced eviction under international law. The most vulnerable persons, such as women and children, are at risk of becoming homeless and dropping out of school. Finally, community leaders are intimidated and receiving death threats, while in parallel the EIB has accidentally disclosed the confidential complaint of the project affected person to the project promoter, which has resulted in reprisals.

Among the most critical findings from the field visit are:

- Blind reliance on the project promoter to apply a rights-based approach, leading to approval of the project despite the poor quality of the RAP, which has been already revised;
- Little monitoring of the implementation of the mitigation measures;
- Weak protection offered to complainants and disclosure of identity leading to reprisals against project affected people;
- No involvement of the EU Delegation in Kenya.

A more structural problem with EIB's human rights due diligence

Of 63 eligible countries under the current EIB External Lending Mandate for the period 2014-2020, as many as 43 are considered authoritarian or hybrid regimes by the Economist Intelligence Unit Democracy Index 2017. In this 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.

Unfortunately, the recent mid-term review of the ELM did not focus much on the problems related to the EIB's approach to human rights, including its weak due diligence on the matter. Instead, the mandate was enlarged to integrate sensitive migration issues and the guarantee ceiling was raised accordingly.

When awarded 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 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 its 2017 report on corporate social responsibility, the EIB proudly indicates that, during that year, it did not undertake a single human rights impact assessment, implying that the quality of its projects did not make it necessary. Given the reality of cases we monitored, we think there is nothing to be proud of, as it rather demonstrates a black box in the EIB's due diligence. This operational weakness is unfortunately matched by a lack of political willingness – human rights issues are given a low priority by the EIB Management Committee for some years already. Too often, the bank is hiding behind the political greenlight to operate in a given country, ignoring its responsibilities at the project level.

As proposed in our 2016 report “Going Abroad”¹ and subsequent communication, we recommend that the EIB develops 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. In the end, the human rights action plan should provide the rules and mechanisms aiming to prevent the negative impact to human rights, ensure that 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. This should then be used during the ex-ante assessment and ongoing monitoring on a project-by-project basis, including for projects funded via financial intermediaries.

In addition, throughout the project cycle, the bank should 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, criticising 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.

¹ <https://bankwatch.org/publication/going-abroad-a-critique-of-the-european-investment-banks-external-lending-mandate>



Koneja Aziza Juma, Jomvu Narcol inhabitant hoping to be properly compensated

We also consider that the Commission has a key role to play here. Indeed, as the example of the Mombasa-Mariakani Dualling Project and other projects presented in “Going Abroad” show, the EIB is currently unable to manage human rights violations in its portfolio, struggling to correctly implement its own standards and requirements under its mandate.

Getting serious on human rights: proposals to the European Commission for the future EU development finance architecture

The European Commission recently proposed to establish the Neighbourhood, Development and International Cooperation Instrument (NDICI), with the aim to merge several instruments and include European Development Fund (EDF) into the EU budget. We understand the ELM and the ACP investment facility of the EIB will be integrated under the EFSD+. Notwithstanding the possibility of changes to this proposal during the EU budget negotiations – and even the potential creation of an EU Development Bank – we think that this is an opportunity for the Commission to get the bank on the right track. Whatever the outcomes of these negotiations, the lack of human rights due diligence at the EIB would remain a problem and a risk for EU development finance effectiveness, as well as for the people directly affected by EIB-backed projects.

Operationalising a stringent human rights “proofing” of EIB operations will be a crucial challenge for the European Commission. In addition to making use of the Article 19 procedure, the Commission services should require the EIB to undertake obligatory HR Impacts Assessments at the project level, and then thoroughly check the quality and the conclusions of these assessments and due diligence. When red flags emerge, the European Commission should consider not providing any guarantee to the project and opposing a given project via Article 19 and its influence in the EIB Board of Directors.

Looking at the NDICI regulation, there are only limited concrete provisions to ensure the accountability and standards of the future EU development finance. We understand that the

Commission's approach is to enshrine such provisions into guarantee agreements signed with implementing partners like the EIB. While we would favour integrating some of the most important provisions in the regulation directly, we also think there is room for the European Commission to exert serious control of EIB operations and "proofing" as pointed out above.

This would be a litmus test for the Commission to ensure that, in the face of global erosion of norms and standards, every EU institution and body stands by the principles of EU external action and universal values.



Tomas Obongo, Jomvu Nacol inhabitant in his workshop destroyed in 2015

This briefing has been written with the financial assistance of the European Union. The content of this publication is the sole responsibility of Polish Green Network, CEE Bankwatch Network and Counter Balance and can under no circumstances be regarded as reflecting the position of the European Union.

