

THE EIB'S EMPTY PROMISES ON HUMAN RIGHTS

Briefing



ABOUT COUNTER BALANCE



Counter Balance is a coalition of 9 NGOs whose mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies. Over the last decade, we have monitored extensively the operations of the EIB and led campaigns to make it a more sustainable, democratic and transparent institution.

More information is available at:
<http://www.counter-balance.org/>

ABOUT CEE BANKWATCH NETWORK



CEE Bankwatch Network is the largest network of grassroots, environmental and human rights groups in central and eastern Europe. It monitors public finance institutions that are responsible for hundreds of billions of investments across the globe. Together with local communities and other NGOs Bankwatch works to expose their influence and provide a counterbalance to their unchecked power.

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This briefing is extracted from a broader research carried out by NGOs CEE Bankwatch Network and Counter Balance regarding the European Investment Bank's (EIB) track record in the development field.

Over the last decades, in solidarity with numerous citizens and local communities across the world, both organisations have researched and documented several controversial projects financed by the EIB in the name of supporting EU development policies.

This briefing summarises the key issues we have identified - both in EIB internal policies and procedures and in their implementation on the ground - and which currently undermine the protection and promotion of Human Rights in EIB-financed projects.

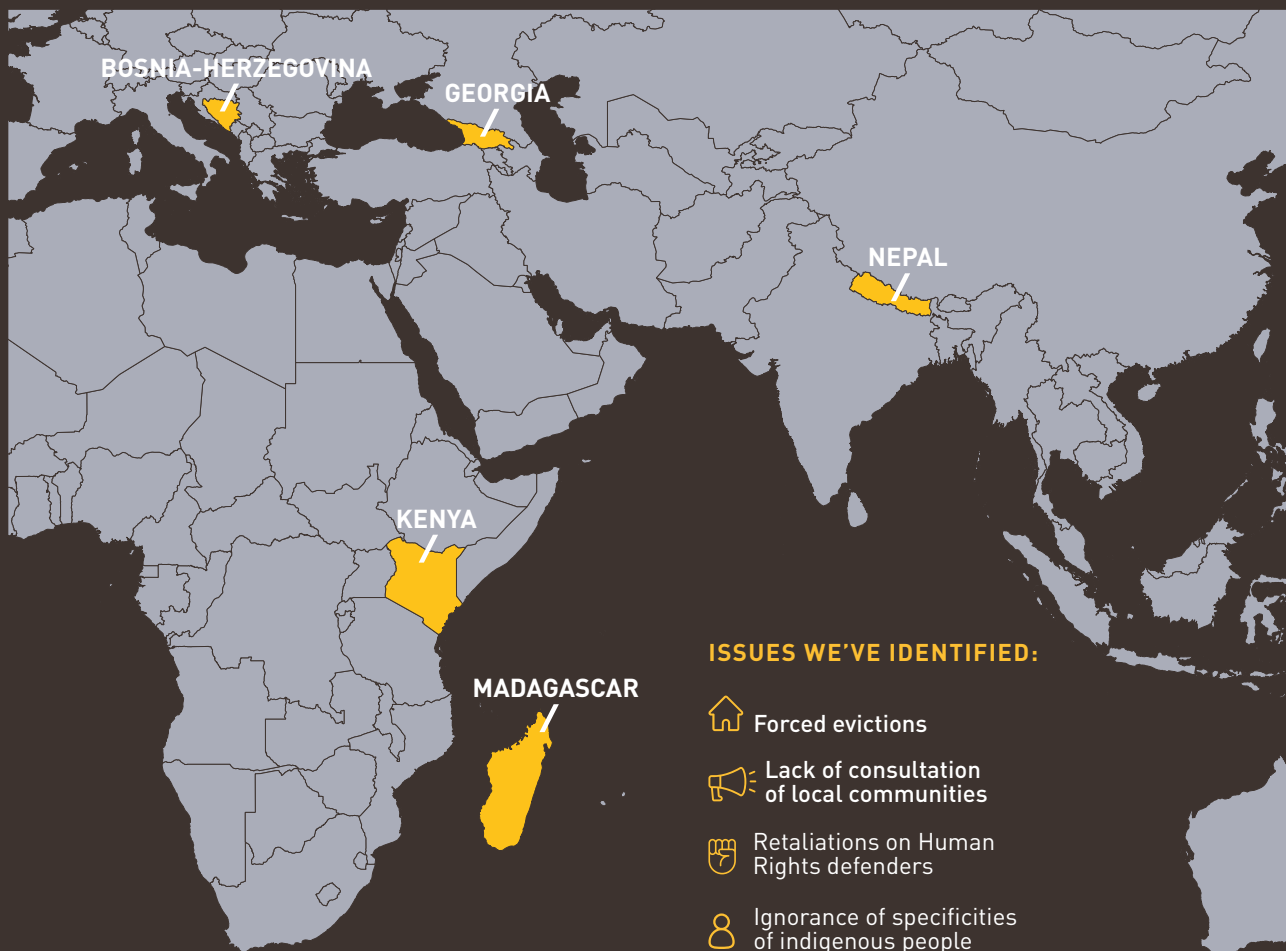
Our conclusion is clear: the EIB does not have a clear enough policy statement, an overarching human rights strategy or adequate systems at the project level. The existing social safeguards neither sufficiently prevent intimidation, threats and forced evictions nor protect the existence and well being of the most vulnerable project stakeholders.

The briefing offers a series of detailed recommendations for fundamental reforms at the EIB, so that it can create a proper Human Rights framework for its operations.

THE EIB'S EMPTY PROMISES ON HUMAN RIGHTS

HARMFUL HUMAN RIGHTS IMPACTS OF NUMEROUS EIB-FINANCED PROJECTS

CASES WE'VE MONITORED



ISSUES WE'VE IDENTIFIED:

-  Forced evictions
-  Lack of consultation of local communities
-  Retaliations on Human Rights defenders
-  Ignorance of specificities of indigenous people

WEAKNESSES AT THE EIB

- 1 No proper due diligence at project level
- 2 Lack of development expertise and presence on the field
- 3 Human Rights are a low priority for the bank

OUR RECOMMENDATIONS: DEVELOP A THREE PILLAR HUMAN RIGHTS FRAMEWORK:



1. STRONG POLICY STATEMENT

2. HUMAN RIGHTS STRATEGY

3. SOUND DUE DILIGENCE
SYSTEM AT PROJECT LEVEL

The EIB's empty promises on human rights

How the EIB should take action and create a proper Human Rights framework for its operations

It may seem logical to every European citizen that European public money should not support projects that violate human rights. The Charter of Fundamental Rights of the European Union¹ provides a strong foundation for this. The promotion of human rights, democracy, the rule of law and good governance is thus one of the basic pillars of EU external policy. The European Union and its bodies commit to promote all human rights, in all areas of its external action without exception, in line with the EU Strategic Framework² and Action Plans on Human Rights Democracy³.

Naturally, the EIB, in line with its Statement of Environmental and Social Principles and Standards, declares “[it] will not finance projects which result in a violation of human rights”. The Bank also commits to follow a human rights-based approach – which is described as mainstreaming the principles of human rights law into the EIB’s practices – when considering the social impacts of its projects. In 2011, the EIB announced a review of its project social performance standards to align with the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁴, and claims that human rights considerations are now fully integrated in its Environmental and Social Handbook.

The question however remains as to how the Bank identifies potential abuses when evaluating project proposals and its capacity to take the necessary steps and measures to prevent them.

In reality, it may come as a surprise that the European value of “putting human rights first” is not always born out with the necessary rigor and diligence when it comes to the EIB’s lending outside Europe.

In Madagascar for instance, the Ambatovy nickel-cobalt mine supported by the EIB has caused health problems for the local communities and made the lives of farmers a nightmare⁵. The EIB Complaints Mechanism (CM) has received a complaint, starting with the discovery that pesticides used for malaria fogging were eliminating bees and jeopardising farms, followed by broader environmental concerns about waste dumped into the sea and pollution of local rivers with dire consequences for fauna, crops and most of all human health. The EIB’s slow reaction time and the lack of independent evaluation of the project’s impacts have been criticised by the European Ombudsman⁶.

In Kenya, the EIB has been supporting geothermal installations around the picturesque Hell’s Gate National Park for decades. Maasai communities have been uprooted from their homes and traditional way of living, and their status as indigenous people was ignored until the Bank’s Complaints Mechanism (CM) reacted.⁷ In 2014 residents of four villages, which were home to one thousand people, were moved to a purpose-built resettlement village called RAPland. Indeed, RAPland refers to the acronym of RAP – Resettlement Action Plan. In the place where they were resettled, the volcanic ash land, lacking grass for cattle and full of wide and precipitous gullies that appear suddenly in the rainy season, has made life more dangerous and costly. Their culture, which constitutes a basis for self-identification as indigenous peoples, is at risk.

In Georgia, the EIB approved a loan for the construction of the Nenskra dam⁸, which is one of the largest of Georgia’s massive plans for hydropower plants in the Upper Svaneti region. Apart from the biodiversity risks and natural disaster threats linked to the dam, the Bank failed to adequately apply its standard on indigenous people to the community of Svans impacted by the project. As a consequence, the EIB failed to ensure their right to determine their future, including the right to take part in the decision making for a project situated on their traditional lands. Ultimately, the CM stated that there was no evidence that the EIB took the adequate steps to properly apply its standard on the rights and interests of vulnerable groups.⁹

These cases, which the authors of this report have been monitoring over the last decade, are only the tip of the iceberg. In 2019 alone, 69% of the complaints submitted to the CM on specific projects were related to projects outside the EU.

While the examples provided cannot be generalised to all projects financed by the EIB, the reality is that the risks of human rights impacts of EIB projects remain largely unknown and are often addressed only after abuses occur. The few projects outlined above – which are further described in the case studies within this report – are examples of projects that have been monitored by civil society or the media or where affected individuals were engaged, informed and empowered enough to make the scandals public. There are many other examples of EIB projects with significant risks of human rights violations due to the nature of the project and/or the context of the countries where the Bank operates. The Bank should not only seek to avoid such projects, but also be equipped with due diligence to properly address human rights risks.

The EIB’s operations outside of Europe, based on the general principles guiding EU external action and safeguarded by a complex web of internal procedures, guidance notes and handbooks, should never leave anyone deprived of their rights. Even if affected individuals can use the EIB CM to seek remedy and justice, their problems should be anticipated and prevented before harm is done. How is it then possible that the largest multilateral development bank in the world ends up furthering human rights abuses?

THE OLKARIA GEOTHERMAL PLANTS: JEOPARDISING THE EXISTENCE OF MAASAI COMMUNITIES

One hundred kilometers north-west of Nairobi, the Olkaria area in Hell's Gate National Park is home to wildlife, pastoralist Maasai communities and geothermal water.

In 2010, the EIB, together with the World Bank, Kreditanstalt für Wiederaufbau (KfW) and the French Development Agency invested in the extension of the geothermal power plants Olkaria I and IV. This resulted in the resettlement of four indigenous Maasai villages to a remote place called RAPland, a name that refers to the acronym RAP – Resettlement Action Plan.

Despite the EIB's long experience in the region, it failed to recognise the indigenous peoples' status of the Maasai. Following numerous complaints from the impacted people, in 2014 the EIB CM confirmed the loan's non-compliance with the lenders' environmental and social standards. The non-recognition of Maasai as indigenous people as well as several other breaches resulted in serious negative impacts on the resettled communities, which have not been fully addressed.



The Olkaria geothermal project resulted in the resettlement of four indigenous Maasai villages (Photo: Bigstock/ Oksana Byelikova)

Implementation of the lenders' action plan, which was finalised in 2016 during a mediation agreement between the impacted community and the project promoter (the Kenyan public electricity company KenGen), has been delayed, largely due to failures on the side of the company. This delay caused serious problems that undermine the culture and livelihood of resettled communities.

In 2014 the four Maasai villages were resettled from a 4,200 acre area to an area of 1,700 acres of land on loose volcanic soil. This area, which turned out to be largely unsuitable for grazing and extremely prone to soil erosion, has made people's lives more dangerous and costly. The slopes and gullies make raising livestock in RAPland nearly impossible: cows have fallen to their deaths. The communities' herds had to be reduced, affecting their economic livelihood and cultural practices.

Flash-floods during the rainy season leave infrastructure like roads and water pipes damaged for months. Unstable and precipitous gullies threaten the new houses. In September 2019, six houses were completely cut off due to a bridge collapse. A few months later, several animals lost their lives by falling into a deep cleft.

The children's plight is no less problematic. Walking from the edge of the settlement to the school takes well over an hour for the smaller children, each way. When a flash-flood hits, many roads are cut off and children cannot go to school at all.

Even now, the future of the Maasai remains uncertain. Despite promises, a formal land title has not been transferred to the community. Instead, their residence is only secured by a leasehold with an annual fee. To make things worse, the village is now flanked by two large plots which are part of the Akiira One geothermal project, a new exploration of the potential for geothermal power that is set to once again disrupt the livelihoods of this recently resettled community.



Flash-floods during the rainy season cause severe damages to roads and other infrastructures, making life in RAPland particularly difficult (Photo: CEE Bankwatch, 2019)

THE CRUX OF THE PROBLEM: HUMAN RIGHTS DUE DILIGENCE AND AN OUTDATED MODEL OF DEVELOPMENT

In 2011, academics Nicolas Hachez and Jan Wouters published a study on environmental, social and human rights accountability at the EIB. Their conclusion was clear: *“Human rights considerations are weakly embedded into the EIB’s appraisal and monitoring process, as human rights impact assessments are not mainstreamed in practice”*¹⁰. Almost ten years later, it is highly regrettable and concerning that this critical conclusion remains valid.

The EIB Environmental and Social Handbook provides tools for assessing the projects’ compliance with the development mandates of the Bank and its social and environmental principles and standards. It includes a number of “safeguards” to be used during the appraisal process¹¹, among others: *“In-depth assessment of the likelihood and severity of identified impacts is necessitated, so as to ‘prioritise actions to address actual and potential adverse human rights impacts (by) first seek(ing) to prevent and mitigate those that are most severe’ (UNGP 24). The likelihood that potential human rights impacts may occur is often based on (i) the country context related to specific rights and (i) specific business relationships that pose particular risks to human rights.”*¹² If deemed necessary by the EIB, the promoter may be required to carry out a stand-alone human rights impact assessment and/or other supplementary assessments¹³.

However, in 2020 the EIB responded to an inquiry from the authors of this study stating that *“since 2015, no standalone human rights impact assessments have been required to be carried out by promoters.”*¹⁴

What the EIB implies here is that the quality of its projects did not make it necessary to perform standalone human rights impact assessments, and that human rights considerations are already well embedded in its environmental and social due diligence process.

This is particularly unsettling considering that at the same time more than five hundred complaints have been submitted to the Bank regarding human rights abuses for only a single project in Kenya. Given that the EIB provides financing in challenging historical or economic contexts, which naturally exposes the Bank to higher social and human rights risk than commercial banks. The EIB should be expected to scrutinise these parts of its portfolio carefully.

INVESTMENTS IN NEPAL DEPRIVE LOCAL COMMUNITIES OF THE RIGHT TO DECIDE UPON THEIR FUTURE

Indigenous communities in Nepal's Lamjung District are affected by multiple existing and planned infrastructure projects in the region. One of these projects is the 220 kV Marsyangdi Corridor transmission line, funded by the EIB and the ADB, which provides a means to transport electricity towards Kathmandu and India¹⁵. The transmission line is part of the Nepal Power System Expansion Project, implemented by the state-run Nepal Electricity Authority (NEA)¹⁶.

The Marsyangdi Corridor is being built without adequate consultation and information disclosure, therefore breaching the EIB's own environmental and social standards, which include the right to FPIC. Local communities have raised concerns about not having been consulted or given a fair share of the benefits, despite having to shoulder the numerous social, environmental and economic impacts of the hydropower sector.

Indigenous and non-indigenous groups affected by hydropower projects have come together under the umbrella organisation FPIC and Rights Forum to protect their rights. In October 2018, FPIC and Rights Forum filed a complaint with the EIB CM to seek redress for their concerns, including environmental impacts arising from deforestation, loss of community resources, health and safety and insufficient compensation for affected land¹⁷.



The project appears to be moving ahead without the free, prior and informed consent of affected indigenous populations
(Photo: Accountability Counsel)

One of the main concerns was the lack of public consultations and information disclosure. Project documents were provided primarily in English and not translated into Khas Nepali or in the affected indigenous peoples' language. Some people reported being surprised to see stones marked with red paint on their land, finding out only by asking around that they were used to mark the location of transmission towers. In cases where consultations did happen, communities did not receive sufficient notice to be able to participate in a meaningful way.

Local people furthermore complained that the forms and rate of compensation were determined without consultation. The practice in Nepal is that landowners are only provided with a compensation of 10% or 20% of the value for land under the transmission line's right of way, a percentage that is extremely low considering the economic losses, land devaluation, increased health and safety risks, and the many other impacts experienced by the communities. The international best practice is to provide compensation worth 100% or more of the "market value" for the land¹⁸.

An important factor hindering public participation is also the fear of retaliation. In 2016, the armed police force used violence against communities protesting another transmission line in Nepal¹⁹. Despite threats and intimidations, many affected households have refused to take the compensation and continue fighting for their rights.

In July 2019, the CM released an assessment report proposing to facilitate a dialogue between the parties²⁰. Unfortunately, NEA refused to take part²¹. Disappointed by NEA's lack of commitment to addressing their concerns, the communities filed a complaint with the National Human Rights Commission, which conducted an investigation in February 2020. The CM is also currently investigating the allegations made in the complaint it received, and whether the EIB complied with its own environmental and social rules.

Indigenous people in other parts of Nepal are also challenging the expansion of hydropower projects. In Tanahu District, communities have raised concerns about the Tanahu Hydropower Project funded by the EIB, the ADB and the Japanese International Cooperation Agency²². Here again, the EIB is accused of failing to ensure meaningful consultation with affected communities. Local communities have filed complaints with the EIB CM and the ADB to request a mediation process to help them exercise their rights. The CM issued its initial assessment for the case, and the project promoter accepted the collaborative resolution process proposed by the CM and the ADB²³.

RISKY PROJECTS HANDED ON A PLATE

One can find risky projects with even just a brief screening of the list of projects outside the EU that the EIB signed in 2019. Several projects are located in countries such as Laos²⁴ and China,²⁵ which are not free countries according to the Freedom House methodology²⁶, or in Ukraine²⁷ which is only considered partly free. The nature of certain EIB projects should also require a closer look in terms of their potential human rights impact. This includes the construction of metro lines in India²⁸ through the acquisition of about 44 hectares of land and permanent involuntary resettlement, and the construction of solar plants in Senegal²⁹ that will cause the economic displacement of almost 800 farmers or nomads. Apparently, the EIB services did not spot sufficient risks related to human rights in these projects to trigger a dedicated assessment. Or is it simply that there was no human rights screening performed at all?

THERE IS NO PROPER HUMAN RIGHTS DUE DILIGENCE TAKING PLACE AT THE EIB.

The EIB does not have a clear enough policy statement, an overarching human rights strategy or adequate systems at the project level. The existing social safeguards neither sufficiently prevent intimidation, threats and forced evictions nor protect the existence and well being of the most vulnerable project stakeholders.

Proper human rights due diligence does not mean social due diligence with some human rights aspects included in it. Human rights due diligence is an ongoing risk management process which aims to identify, prevent, mitigate and redress the potential adverse human rights impacts of an operation. It should provide information about the likelihood and severity of impacts – taking into account the country context, the project specificity and the promoter's track record – and should explain how applying the EIB's environmental and social standards will remedy potential human rights impacts. Consequently, human rights due diligence is a prerequisite of the proper implementation of the environmental and social standards.

The EIB therefore needs a mechanism in place to ensure proper human rights due diligence, including specific risk screening for every project, risk assessment when red flags are identified, and impact assessments when risks

are identified. This process would enable the EIB to tailor a solid monitoring system at the project level. As stated in the Office of the United Nations High Commissioner for Human Rights's (OHCHR) latest draft study on human rights safeguards and due diligence in development finance: *"If human rights risks are not highlighted explicitly in safeguard policies, they will not be taken as seriously: information specific to particular human rights risks will more likely be overlooked; implementation will be inconsistent; and expectations between lender and borrower will not be clear"*³⁰.

A screening system at the pre-appraisal stage could easily be based on human rights indicators for civil, political, economic, social and cultural rights, conflict related data or labour rights³¹. Specific criteria linked to the nature of the project and the track record and risks linked to the client's profile should be included. As mentioned in the OHCHR study: *"... human rights are relevant to all areas of DFI due diligence – project context, client due diligence and project operations and footprint – and should be included as part of the routine steps undertaken to identify and assess risks and, subsequently, to manage risks and impacts"*³².

For example, when the economic displacement of nomads (some of the most fragile societal groups, directly dependent on natural resources) is at stake in the case of solar plants in Senegal, a further human rights impact assessment should be deemed essential. If credible indicators were used during *ex ante* project screening, it is likely that projects financed in Senegal would at least require a risk assessment by the EIB, if not a full impact assessment from the promoter.

The EIB claims that its environmental and social due diligence is sufficient to cover risks linked to human rights violations. But in reality, existing processes fall short of providing any methodology or concrete measures for anticipating the likelihood, severity and frequency of human rights impacts, in line with the EIB's own human rights mitigation hierarchy, before a project is approved by the EIB³³. There is also a lack of transparency around decisions from the Bank not to carry out dedicated human right impact assessments. Last but not least, avoiding risks is not sufficient for a bank pretending to become the "EU Development Bank": all its interventions should generate positive impacts on people's life and their environment.

THE NAIROBI-MOMBASA ROAD: AN ILL-CONCEIVED PROJECT FINANCED BY THE EIB IN THE NAME OF DEVELOPMENT

The narrow, crowded road from Mombasa towards Nairobi is the main traffic artery of eastern Africa. Kenya's National Highways Authority (KeNHA) is working to expand a 41.7 kilometre section of the route to a dual carriageway standard. The EIB is supporting the project via a €50 million loan. Over the last five years, the resettlement of residents of Mombasa's suburbs living along the route has caused human rights violations.

In 2015, more than a hundred families from the Jomvu area were forcibly evicted from their homes on the roadside to make way for the construction works. Only due to adamant efforts of the affected community to seek help and outreach done by civil society groups did the banks financing the project and KeNHA halt the road works to mitigate the harm caused to the people and revise the Resettlement Action Plan (RAP) for the whole project. However, the mitigation process was not satisfactory, and ultimately the EIB Complaints Mechanism facilitated a mediation process covering complaints from 316 people.

The RAP, despite its revision, should not have been accepted by lenders. It lacks crucial components such as a Livelihood Restoration Framework, which has still not been published, and does not satisfactorily treat women and children as vulnerable groups, despite the fact that they are at risk of becoming homeless or dropping out of school due to resettlement, and face disproportionately negative consequences of these outcomes. The project maps are still not available, even though they are supposed to be part of the RAP. According to the EIB, *"such detailed maps are generally not published"*. The compensation practices still leave affected persons with uncertainty and fear for their livelihoods. Not only are the houses and business structures at risk, but movable structures, stalls, and trees or tree nurseries are also at risk; these structures are the basis of the economic activity of the road dwellers and should also be compensated. There are cases of people not being included in the compensation scheme or of people being compensated with lump sums without any valuation provided.



Despite more than 560 affected people complaining about their evictions or the economic losses they incurred, the EIB has not required any standalone human rights impact assessment (Photo: CEE Bankwatch)

In 2017, the community leaders reported intimidation by the project grievance mechanism established by the promoter. It appeared that, prior to these intimidations, the EIB accidentally disclosed the identity of complainants to the project promoter. The CM later acknowledged this blatant mistake, but not before the complainants had already suffered renewed reprisals.

Despite the revision of the resettlement scheme for the project, between 2017 and 2019 the CM received another 250 complaints on the implementation of the revised RAP³⁴. This time the CM closed the cases only with a Compliance Report and a one page long Action Plan. In its conclusions, the CM heavily relied on KeNHA declarations, without (for example) using objective verification measures, such as bank transfer proofs for compensation, despite the history of forced evictions in the project. The Action Plan does not ensure direct access to remedy and justice for the complainants, which constitutes its major weakness. It also fails to tackle the lack of trust in the project grievance mechanism, although the CM claims that this grievance mechanism is undergoing reforms.

Even with more than 560 affected people complaining about their evictions or the economic losses they incurred, the EIB has not required any standalone human rights impact assessment from the promoter KeNHA. Instead, the Bank is about to disburse the first tranche of the loan.

HUMAN RIGHTS ARE FAR FROM A PRIORITY FOR THE EIB

The operational weaknesses identified above are unfortunately matched by a lack of political willingness to address the issue – human rights issues have been a low priority for the EIB Management Committee for years. There is not even an EIB vice-president clearly in charge of the topic.

Too often, the Bank hides behind the political green light to operate in a given country, ignoring its responsibilities at the project level. Indeed, the EIB is the EU bank, driven by EU policies, controlled by the European Parliament and the Council, and working in cooperation with the European Commission and European External Action Service (EEAS) in charge of the assessment of the political and social situation in countries of operations. However, this does not mean the EIB is not itself responsible for conducting serious human rights due diligence at the project level, especially given that the Bank operates in very difficult regions when considering the issues of democracy, good governance and fundamental human rights.

At a time when the jurisdictional immunity of development banks is starting to be challenged³⁵, the EIB's governing bodies should consider as a matter of urgency the development of a proper human rights due diligence system at the Bank. Such a system would effectively mitigate the negative impacts of EIB projects, improve their development outcomes and alleviate the Bank's exposure to legal and reputational damage.

RECENT DEVELOPMENTS AT EU LEVEL ON HUMAN RIGHTS DUE DILIGENCE

A noticeable development is that an obligatory human rights due diligence framework is currently being designed at the EU level. In April 2020, the European Commissioner Didier Reynders committed to introduce new rules for mandatory cross-sectoral corporate due diligence for all environmental, human rights and governance impacts in 2021. Such rules could make a significant difference for the EIB and become binding requirements for all EIB clients and for investors backing their operations. The EIB should not wait for this to happen, but rather proactively align its ways of working with the best practices in this field.

There is also room for the European Commission and EEAS to play a more active role in the appraisal process at the EIB, given that both institutions are consulted on every EIB project before their adoption by the Board of Directors (under the Article 19 procedure). Unfortunately, the information provided by the EIB to the Commission is often too limited to enable Commission officials to properly assess the risks related to human rights issues.

Before approving a project, the Commission should carry out a detailed check to ensure that the EIB has properly assessed the human rights risks and eventual impacts of projects early in the project cycle. When red flags emerge, the Commission should not provide any guarantee to the project and oppose it via Article 19 and via its director on the EIB Board of Directors.

RECOMMENDATIONS

TO RAISE THE BAR ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS AT THE EIB:

/ 1

The Bank must develop an overarching and coherent **three pillar Human Rights Framework** consisting of a strong policy statement, a Human Rights Strategy and a sound human rights due diligence system at the project level³⁶.

A firm policy statement committing the EIB Group to respect for human rights should be added to the existing Statement of Environmental and Social Principles and Standards, which should be named **the EIB Statement of Environmental, Social and Human Rights Principles and Standards**.

A new **Human Rights Strategy** should ensure that human rights specific risks and impacts are considered, prevented and mitigated at all stages of the project cycle. It should describe how the Bank will promote a human rights based approach among its stakeholders, clients and counterparts. It should make clear what the red lines are for the EIB not to support a project because of human rights risks.

A sound due diligence process should commit the Bank to perform systematic human rights due diligence at the project level. This should be based on

1 / human rights risk screening and human rights risk assessment (HRRRA) by the EIB;

2 / human rights impact assessment (HRIA) required from the promoter when the human rights risks related to the projects are significant;

3 / monitoring and reporting procedures; and

4 / access to remedy.

More details on this due diligence system are described below:

The EIB should revise its Environmental and Social Handbook to complement environmental and social due diligence with human rights due diligence, including:

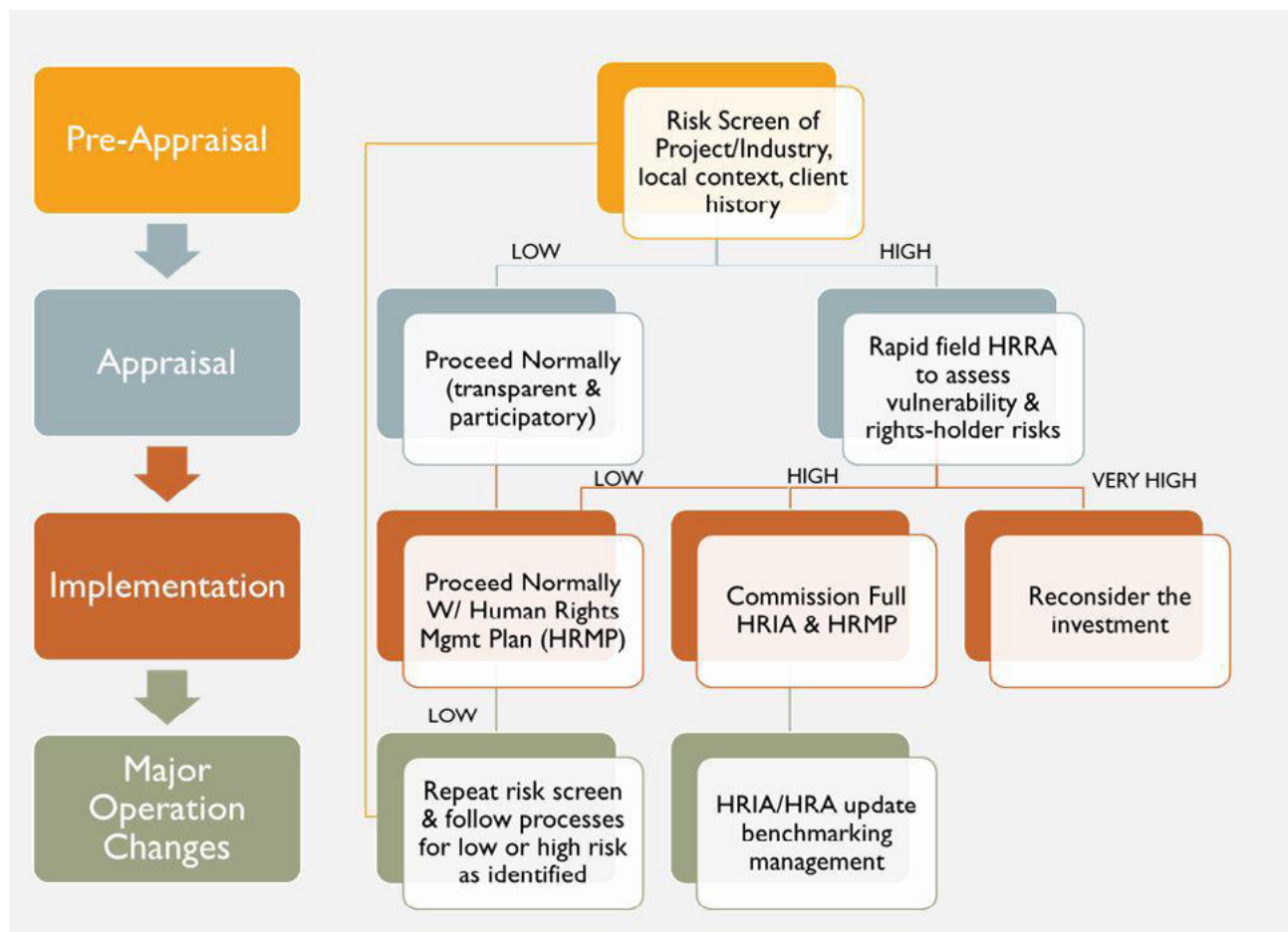
I A risk screening performed at the pre-appraisal stage. The EIB should develop a specific methodology and indicators for this screening in order to assess the level of sensitivity of the country context, project-specific aspects including cumulative impacts, and the client's human rights record (for example on public participation, approach to protest, human rights defenders or criminal connections). Sound indicators for assessing national and regional contexts need to be used, alongside sector-specific indicators.

II When the risk screening identifies a high risk, a participatory and gender-sensitive human rights risk assessment (HRRRA) should be triggered during the project's appraisal process. There are already existing methodologies for such assessments, and they could be performed either by external experts or internally.

III The risk assessment should indicate if a specific human rights impact assessment (HRIA) is required from the project promoter. If so, it should then be conducted in tandem with the environmental and social impact assessment (ESIA).

The whole due diligence process, as well the methodology used, should be made public in advance of the project approval, in line with the common practice of other MDBs. The results of such due diligence should be an essential part of the EIB Environmental and Social Data Sheets, which could then be renamed **Environmental, Social and Human Rights Data Sheets**.

The graph below provides an example of how a proper human rights due diligence system can be applied at the EIB. This proposal is based on previous work from the US organisation Nomogaia.



/ 2

The Bank should develop **specific policies on human rights defenders and protocols to prevent and respond to risks of reprisals**, ensuring meaningful access to information, robust free, prior and informed consent (FPIC) of indigenous peoples and all other affected communities in case of land-related projects.

/ 3

The Bank must be equipped enough to ensure **continuous monitoring of the situation on the ground** in order to guarantee that its projects respect the core values of the EU's external action and do not directly or indirectly contribute to human rights violations. The current setup of local EIB offices without any clear connection to the field work does not do enough to ensure this.

/ 4

The EIB lacks **human rights specialists**. It should hire extra specialists and make sure that human rights considerations are taken into account all throughout its decision-making process and are treated as a third pillar of the Bank's safeguards, next to the environmental and social ones.

/ 5

As the outcome of any human rights due diligence should be a part of the project documentation, **the EIB Board of Directors** should be better informed about human rights risks before they discuss the approval of a project.

FOOTNOTES

1

See the Charter of Fundamental Rights of the European Union: <https://www.consilium.europa.eu/media/29726/qc0116985enn.pdf>

2

"EU Strategic Framework on Human Rights and Democracy", Council of the European Union, June 2012 https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

3

See the EU Action Plan on Human Rights and Democracy 2020-2024: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_492

4

"The EIB approach to human rights", May 2011, <https://www.eib.org/en/press/news/business-and-human-rights>

5

"A tale of reverse development", EIB in Africa, June 2017 <https://www.eibin africa.eu/a-tale-of-reverse-development/>

6

Recommendation of the European Ombudsman in case 146/2017/DR: <https://www.ombudsman.europa.eu/fr/recommendation/en/107214>

7

See the complaint's description and conclusions: <https://www.eib.org/en/about/accountability/complaints/cases/sg-e-2014-07-olkaria-a>

8

See: <https://bankwatch.org/project/nenskra-hydropower-plant-georgia>

9

"CM Conclusions Report, SG/E/2018/32", February 2020: <https://www.eib.org/en/about/accountability/complaints/cases/nenskra-hpp-2>

10

"A responsible lender? The EIB's environmental, social and human rights accountability" Nicolas Hachez & Jan Wouters, September 2011

11

In EIB's jargon, project's appraisal is the phase during which the EIB assesses the merits of a project and the risks attached to it. At the end of the appraisal phase, a proposal to support a project is then sent to the EIB

12

See EIB Environmental and Social Handbook, page 6 https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

13

Ibid, page 8

14

E-mail communication with CEE Bankwatch Network, May 29, 2020

15

See: <https://www.accountabilitycounsel.org/client-case/nepal-220-kv-marsyangdi-corridor-transmission-line/>

16

See: <https://www01.eib.org/en/projects/pipelines/all/20130599>

17

The full complaint and request for mediation regarding the Nepal Power System Expansion Project can be found here: <https://www.accountabilitycounsel.org/wp-content/uploads/2018/10/10-8-18-final-complaint-eng.pdf>

18

See for more details pages 7-8 of the 2019 Accountability Counsel report "Investing in the Right of Way: International best practices to secure local community consent for transmission lines in Nepal": https://www.accountabilitycounsel.org/wp-content/uploads/2019/11/final_investing-in-the-right-of-way.pdf

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"Benchmarking Study of Development Finance Institutions' Safeguards and Due Diligence Frameworks against the UN Guiding Principles on Business and Human Rights", Office of the United Nations High Commissioner for Human Rights (OHCHR), September 2019, page 6 and 17 www.ohchr.org/Documents/Issues/Development/DFI/OHCHR_Benchmarking%20Study_HRDD.pdf

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Examples taken from the Nomogaia toolkit <https://nomogaia.herokuapp.com/about>

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See the EIB Environmental and Social Practices Handbook, 2014 version, page 6

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CEE Bankwatch Network communication with the EIB CM from 29 October, 2019

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See for example the US Supreme Court ruling of the *Jam v. IFC* https://www.supremecourt.gov/opinions/18pdf/17-1011_mkhn.pdf

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The bank responded to our draft report stating that the *"EIB is currently revising its ESF, and in line with other IFIs and bilateral DFIs, it will integrate its explicit commitment to human rights in its E&S Sustainability Policy, it will further enhance the human rights elements in its Standards and internal due diligence systems. The Bank has developed such guidance as part of the forthcoming Guidance note on Stakeholder engagement, and intends to publish it by the end of 2020. Similar guidance will be integrated in the revised internal E&S procedures for EIB staff. The EIB seeks to increase its capacity in human rights. It also intends to continue pursuing an integrated approach to human rights in its E&S due diligence, in line with policies and practices of other IFIs and DFIs."*