

# **Joint CSO Submission**

## **Human rights approach of the EIB**

**August 2021**

NGOs and local communities have been alerting the EIB about the need to prioritise the promotion and protection of human rights in all its operations for years. Too often, the EIB has financed projects which have contributed to human rights abuses and have sidelined or ignored the voices and concerns of impacted people (see for instance recent cases in [Nepal](#), [Georgia](#) and [Kenya](#)).

As an EU body committed to supporting the values and objectives of the European Union through its financing and other operations, the EIB should adhere to the provisions of the Treaty on the EU guiding the EU's external action. They require that these operations be guided by democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The drafts of the Bank's new Environmental and Social Policy and Environmental and Social Standards do not include sufficient provisions to promote these EU values or to prevent EIB operations from having a detrimental impact on human rights.

While the term 'human rights' is used as a cross-cutting subject throughout the whole Policy and Standards, the language in the proposed drafts is not concrete and does not make neither the EIB nor the project promoters fully liable in case of failure in applying the EIB standards. The Bank uses phrases such as: *'EIB contributes to the long-term promotion of human rights'*, *'promoters are required to take a human-rights-responsive approach'*, and *'human-rights-responsive environmental and social due diligence'*, but such phrasing does not give any detailed procedures to follow, does not provide any obligations for promoters and does not ensure any enforcement in case of human rights violations. The EIB's 'human-rights-responsive approach' and related language in the drafts do little to ensure that the EIB's clients will respect and promote human rights, and that they will be held accountable if they fail to do so. A policy cannot be 'human-rights-responsive' if it does not require the EIB to conduct human rights due diligence and appropriately safeguard human rights.

In addition, the human rights approach proposed by the EIB remains unclear. For instance, the Questionnaire for the consultation asks the following question: *'How difficult is compliance with human rights at the project level, for example in view of your local context?'* However, there is no generally accepted metric for 'ease of human rights compliance', which is precisely why the EIB should require project promoters to conduct human rights impact assessments (HRIAs) that consider the potential risks posed to the dozens of human rights enumerated in the EU treaties as well as in the International Bill of Human Rights (UN Declaration; ICCPR; ICESCR) and the 8 core Conventions of the International Labour Organisation (including child labour, forced labour, unionisation, strike and nondiscrimination).

The draft Policy and Standards also exclude a broad range of important stakeholders, such as people with physical and mental disabilities, people with no access to technology or internet, those who are illiterate, and non-EU language speakers. While the proposed standards touch directly upon their immanent rights and herein, they are only mentioned as direct stakeholders without providing tools designed to ensure their possible participation.

The pluralism of human rights is particularly important to point out, on a social, legislative, and geographic basis, taking into consideration the specificity of the human rights issues in each country of the EIB's operation. For this reason, the Policy should mention the need for specific diagnostic studies, such as the United Nations High Commissioner for Human Rights reports, UN treaty bodies reports, the Universal Periodic Review, the European Commission's reports and action plans, Freedom House reports, and the Human Rights Watch World Report to be used in its due diligence process.

The submission below outlines our recommendations for integrating human rights into the EIB's Environmental and Social Sustainability Framework, by proposing specific improvements to the Policy and to several Standards. This contribution should be read in connection with the other joint NGO contributions on the EIB Environmental and Social Policy and Standards.

### **The EIB Group Environmental and Social Sustainability Framework:**

The Treaty on European Union sets the objectives for the EU's cooperation in the field of international relations. The EIB should enshrine these objectives in the Policy and Standards. Specifically, the EIB's Policy and Standards should safeguard and support the EU's values; protect human rights; preserve peace and prevent conflicts; foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; and apply measures to preserve and improve the quality of the environment and the sustainable management of global natural resources. Enshrining key principles in the Policy is instrumental to make sure that the EIB delivers on its vision and objectives.

The Environmental and Social Sustainability Framework (ESSF) should include a three pillar **Human Rights Framework** for the EIB:

- An **'Environmental, Social and Human Rights Policy'** describing how the EIB will safeguard and promote human rights. The Policy needs to clearly state the EIB's role in identifying, preventing and mitigating human rights risks and impacts through its project appraisal (due diligence) and the promoters' role and responsibilities.
- A **Human Rights Strategy**. This overarching strategy should integrate specific policies on human rights defenders; explain how human rights specific risks and impacts are considered, prevented and mitigated at all stages of the project-cycle; and describe how the Bank will promote a human rights-based approach among its stakeholders, clients and counterparts. The strategy should foresee extra staff resources and expertise on human rights. The powers and responsibilities of the human rights specialist staff should be clearly defined, as well as the procedures they can and should use to respond to human rights violations, breaches of procedures regarding human rights, and failures to adequately address and remedy violations. It should duly take into account the EIB's Gender Strategy and ensure women's rights, as they are human rights. The EIB should explicitly commit to gender-responsive human rights due diligence and ensure gender issues and women's human rights are actively assessed and addressed in all steps. Local expertise must be taken into consideration, and the Bank should develop secure means for reaching out to this expertise without exposing it to risk. Sometimes, foreign expertise finds difficulties in understanding the specificities of the context. We recommend that the EIB commits to develop a Human Rights Strategy in its Environmental, Social and Human Rights Policy.
- **Human rights due diligence at the project level**. Human rights project appraisal should consist of:
  - \*dedicated **ex-ante screening and Human Rights Risk Assessment (HRRRA)** conducted by the Bank. Such an assessment is a prerequisite for the Bank to decide about the need for the impact assessment from the promoter (as described below). The Explanatory Note (page 12)

gives some examples of the factors for the EIB decision on the need for HRIA, but this Note is not part of the Policy, and thus is not binding.

\*participatory and public **Human Rights Impact Assessment (HRIA)** to be required from the client when risks are identified during the HRRRA and/or when an ESIA is taking place on a given operation. Specific provisions should be integrated in the new Standard 1 on Environmental, Social and Human Rights Impacts and Risks.

\***continuous and progressive monitoring** of the situation on the ground, including contact points to be disclosed so that affected stakeholders can address their concerns (anonymously or publicly). This process needs to mainstream technical concepts in order to be accessible to all concerned stakeholders, including people with physical and mental disabilities, people with no access to technology and network, those who are illiterate, and non-EU language speakers.

The EIB in its Exploratory Note frames its human rights approach around several issues. Our comments below are set accordingly.

- **EIB's human rights due diligence**

The Explanatory Note describes the EIB's commitments to undertake human-rights-responsive environmental and social due diligence on its operations. However, such commitments should first be integrated into the Environmental, Social and Human Rights Policy. The proposed Policy lacks clarity about the EIB's role in identifying, preventing and mitigating human rights risks and impacts through its project appraisal (due diligence) and the promoters role and responsibilities. In the current draft, the EIB only commits not to finance projects that violate human rights '*to the best of its knowledge*', but it never commits to acquire the relevant knowledge by properly designed and clear due diligence. It claims to '*apply a human rights-based approach to its activities*' but has neither the personnel nor the methodologies to demonstrate that it has any capability to do this. The EIB is tying its own hands with this language, because it commits to doing so little human rights due diligence, and it restricts itself so severely in what it monitors, that it leaves a massive gap in the implementation of 'rights-responsive' oversight. Here, clearly, the EIB cannot be 'responsive' to human rights issues, because it can only monitor the issues evoked by the promoter's assessment and verified by EIB desk review upfront.

The Policy should include a provision requiring the Bank to conduct dedicated ex-ante screening and Human Rights Risk Assessment (HRRRA) (as described above) and continuous and progressive monitoring. It should also include a provision obliging the project promoter to conduct a Human Rights Impact Assessment (HRIA), when required by the EIB's due diligence. Relevant provisions related to HRIAs should be included in the renamed Standard 1 Environmental, Social and Human Rights Impacts and Risks. Although the Bank requires promoters to ensure respect for human rights by taking a human-rights-responsive approach to the impact assessment process, the proposed 'human-rights-responsive approach' is not explained and operationalised anywhere, so it is hard to expect that promoters will know how to implement it. The Standard should leave no doubts that participatory HRIA can be required from the client when human rights risks are identified during the ex-ante screening and the Human Rights Risk Assessment conducted by the Bank.<sup>1</sup> The EIB seems to articulate that high-risk projects (ones that require an ESIA) might also require an HRIA (Annex 1A of Standard

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<sup>1</sup> There is nothing inherent in environmental and social due diligence that makes it rights-respectful. An example can be a riverine port facility. The port might have a small footprint on an existing industrial zone, and implementation by the borrower might actually clean up historic environmental damage. This would be flagged as low-risk by EIB. But if there is an indigenous community on the other side of the river from that port, and they use the river for transportation, fishing and spiritual purposes, and the upgraded port brings in larger boats, such that the coasts of the river will see heightened erosion from large and fast vessels moving through, affecting small fish hatcheries and coastal flora. Fishing nets will be severed by increased boat traffic. Indigenous resources, livelihoods and cultures could be decimated but the EIB's current screening processes would never pick this up. ESIA has long been the preferred tool for evaluating project risk levels, but this is not fit-for-purpose for the EIB's EU commitments.

1), but even here, human rights are only a consideration if the area is already *'known to have a high occurrence of... violation of human rights.'* The whole concept of human rights due diligence is to prevent any potential violations of human rights – this is not restricted to situations where human rights violations are already ongoing. If the Bank has identified environmental and social impacts of a project and requires an ESIA, then a HRIA should be required automatically. This is because the role of the human rights due diligence is to ensure that applying the EIB's environmental and social standards will remedy potential human rights impacts. Consequently, human rights due diligence is a prerequisite for the proper implementation of the environmental and social standards. More problematically, in Annex 1b of Standard 1, the EIB relies on the promoter to provide a description of the 'country context' for human rights. Often, potential borrowers are part of the systems and structures that oppress rightsholders. In this case, they are not qualified to be reporting on their home country's human rights context. An HRIA should then be mandatory for all high-risk projects which require an ESIA and should be published together with other due diligence documents.

The Policy should also include provisions that state the EIB has the duty to set out contractual obligations and undertakings to address specific human rights considerations during the implementation of the project and to define any reporting and monitoring requirements identified during appraisal. The provisions should also allow the EIB to secure the services of specialists, international or local, to enhance the monitoring, conduct additional studies (such as labour and health and safety audits) or support the promoter as needed. Currently these are only commitments described in non-binding documents (such as the Explanatory Note) and as such will not guarantee that the EIB will conduct proper due diligence and that specific obligations can effectively be imposed on the project promoters.

The Policy should also include specific provisions on human rights defenders. It should state that the EIB will develop specific procedures on human rights defenders and protocols to prevent and respond to risks of reprisals. In this regard, the Guidance Note on stakeholders engagement targeting promoters can be of inspiration, but is not sufficient itself, as a non-binding document not covering the obligations on the EIB side. The Bank should undertake robust contextual and project-related due diligence to prevent, identify and mitigate human rights impacts and threats to defenders. This should involve consultation with human rights defenders during the Bank's HRIA. A clear anti-reprisal statement should be added to the Policy. Within the gender equality cross-cutting subject, the EIB's Policy and Standards should explicitly disapprove of morality arrestations, including the death penalty. The EIB should also make clear in its Policy that it will respond in a timely and effective manner (including publicly where appropriate) to any threats or attacks carried out in reprisal, in consultation with the defender(s) at risk, to prevent future attacks, and ensure the accountability of those at fault. This also includes potential sanctions, withholding of disbursements or cancellation of contracts and disqualification of parties identified as responsible for the reprisals from entering into a contractual relationship with the EIB in the future.

### **Access to information and transparency**

In order to ensure human rights such as the right to information and freedom of expression, Standard 2 should better explain the requirements for project promoters concerning disclosure of information and public participation. Contrary to the EIB's explanations, Standard 2 does not clearly require that promoters disclose relevant project information in a timely manner. The chapter 'Disclosure of information' does not clarify that this is the promoter who is required to disclose information and it does not explain when this information should be disclosed; it does not clarify what *'in a timely manner'* means; it only refers to the phrase *'as soon as it can reasonably be provided'*, which leaves too much discretion to the promoter. Also, the phrase *'shall be made available to the public in the most accessible way'* is not clear enough about whether this information is required to be constantly public, for example in an electronic form. Such a formulation would also mean that information could only be accessible in an office of the promoter or in some other physical place or just on request.

Therefore, the Standard should clarify these issues and require that environmental and social information is available constantly in the public domain throughout the project implementation and operation, directly accessible through electronic means and additionally in physical form in a public place to which stakeholders have access.

Human rights protection of the most vulnerable groups also requires inclusive community engagement, land governance and upholding the right to Free Prior and Informed Consent (FPIC). In that regard, the Bank should align with the fundamental right to self-determination which includes sovereignty over natural resources and with the best practices recommended in [the Food and Agriculture Organisation of the UN's \(FAO\) FPIC Manual for Project Practitioners](#) and by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW). We recommend that Standard 2 extends the right to FPIC to all affected communities in cases of land and natural resource-based investments. It should also recognise rural women's right to FPIC before projects are carried out on their land.

In addition, the Bank has previously recognised the need to more systematically consider the practices of the FAO Voluntary Guidelines for the Governance of Tenure (VGGT) in its due diligence processes, as some other development finance institutions's do. This is ever more relevant as the Bank sets out its climate ambitions, yet recommendations from Resource Equity (2019) do not seem to be taken on board.

Finally, the Policy should clarify that, in order to ensure compliance with the EU's transparency requirements, the EIB will disclose its ex-ante environmental and social assessments and appraisal documents to the public at the same time information on the project appears on the EIB's pipeline 'Projects to be financed'.

#### **Access to remedy**

Standard 2 provisions related to grievance mechanisms should include all attributes of the mechanisms (not only one 'effective') in order to ensure coherence between the Standard and the Guidance Note on Stakeholders Engagement. Therefore, the Standard should require that the established grievance mechanism be legitimate, effective, accessible, predictable, equitable, transparent, commensurate to a project's impacts and risks, based on engagement and dialogue, and function as a source of continuous learning. These basic principles for the grievance mechanism exist in the current Standard and therefore it is not understandable why the Bank proposes to eliminate them, which will negatively impact the quality of the project grievance mechanisms.

Additionally, in order to be more independent, project grievance mechanisms should be co-designed by stakeholders in their own accessible language and format, including by those who are illiterate, people with disabilities and other underprivileged groups.





Arab Watch Coalition



CEE Bankwatch Network



Counter Balance



Both ENDS



Ecoaction, Ukraine



International Federation for Human Rights



Focus Association for Sustainable Development



Zaļā brīvība

Green Liberty, Latvia



Recourse



Za Zemiata