

Joint CSO Submission
Standard 2: Stakeholder Engagement
August 2021

Signatories of this submission are disappointed about the draft Standard 2, as it does not bring any significant improvement to the current EIB Standard 10 on Stakeholder Engagement. This new Standard - in connection to the draft Policy - would do little to address a key challenge at the EIB, which is about closing the gap between its standards on public participation and stakeholder engagement and their implementation on the ground. For that, the Standard 2 (as well as the Policy and Procedures) require important modifications, that are summarised in the following Key Recommendations:

1. Clarifying responsibilities and making requirements binding for project promoters

The EIB continues placing too much trust in the promoter without having robust safeguards in place to ensure that the promoter is living up to its responsibilities. For public consultation to be more than a tick-the-box exercise, the EIB needs to make it a priority area of its planning, appraisal and monitoring processes, and should not leave all responsibilities to the project promoter.

All the obligations referred to in Standard 2 and the related Guidance Note for promoters on Stakeholder Engagement should be inserted and made explicit in contracts between the EIB and promoters, including for intermediated operations.

In the case of intermediated operations, these obligations should be transferred between clients and sub-clients. Such provision should be included in the Policy.

The EIB should strengthen those provisions which will determine the quality of the EIB's due diligence which must ensure that meaningful stakeholder's engagement has taken place. There is a lack of oversight by the EIB at the various stages of stakeholder engagement. Hence, we call on the EIB to clarify its own responsibilities and reinforce its monitoring over stakeholder engagement in all projects it finances.

First, it should be the EIB's responsibility in its due diligence to determine the relevance for the application of Standard 2 (in principle the EIB due diligence should determine the application of all EIB Standards). It may not be left only to the Promoter and to the ESIA/EIA stage and rely only on the Promoter or national authorities' decisions. The EIB should, in its appraisal, assess whether a project requires Environmental and Social Impact Assessment and/or Human Rights Impact Assessment and should determine the scope of public participation required.

The Point 5 in the Standard 2 should be changed as follows:

*This Standard applies to a specific project when its relevance is determined during **the EIB's project appraisal or environmental impact assessment/environmental and social impact assessment (EIA/ESIA) process (as outlined in Standard 1) throughout the EIB project cycle and in line with the requirements described below. The nature and extent of the required stakeholder engagement will be determined by the EIB** and shall be commensurate to the project's likely environmental, climate and/or social **and human rights** impacts and risks, taking into account the type and complexity of the project, sector and country context.*

Also, the point 12 in the Standard should be changed as follows:

*“For all projects for which the relevant competent authorities have determined that an EIA is not required, as defined in Standard 1, the promoter shall provide to the EIB for review **the rationale for this decision** and evidence that this determination has been made available to the public. **In case the EIB due diligence determines the need for EIA/ESIA or Human Rights Impact Assessment, the promoter will be responsible to apply for the competent authority.**”*

An important tool for meaningful stakeholder engagement with affected communities is free, prior and informed consent (FPIC). That is why Standard 2 should recognize FPIC and include provisions to ensure that the right to FPIC is implemented in a transparent and systematic manner as well as documented publicly in project documentation.

The right to FPIC should also be extended to all affected communities in cases of land and natural resource-based investments, in line with the fundamental right to self-determination which includes sovereignty over natural resources. The extension of FPIC is becoming an emerging best practice, with the FAO's FPIC [Manual](#) for Project Practitioners recommending it and the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) also recognised all rural women's right to FPIC before development projects are carried out on their lands. As women are often most affected in land- and natural resource-based investments, any commitment to gender and women's rights of the EIB should translate into ensuring their right to be heard, including FPIC and proactive technical and capacity building support to ensure they can exercise these rights. This not being a practice at other multilateral banks should not be an excuse for the EIB not to act, especially as the EIB lags behind other DFI's that have adopted additional guidance on land and references to the Voluntary Guidelines on Land Tenure (Resource Equity 2019). In fact, it is particularly urgent as the Bank moves forward in its climate ambitions, considering the potential land impacts this can have and the important roles that indigenous and other local communities play in conservation and (agro)ecological practices.

Therefore, we propose to add a new provision in General requirements as follows:

“11. (new point in General requirements) In cases of land and natural resource-based investments and projects impacting rural women, the promoter should apply requirements laid out in Standard 7 related to vulnerable, marginalised, and/or discriminated-against groups, as well as the requirements relating to the free, prior and informed consent (FPIC).”

The EIB should also strengthen the relevant provision concerning projects located in the “rest of the world”. The point 15 of the Standard should be changed as follows:

“On the basis of the determination as defined in point 5 of this Standard, the promoter shall carry out a stakeholder engagement process that is proportionate to the nature and scale of the project and its potential impacts and risks, involving, at a minimum¹³: (i) the identification and analysis of the stakeholders; and (ii) the establishment and/or maintenance of a grievance mechanism; as well as some or all of the following elements to varying degrees as deemed necessary by the EIB; (iii) engagement planning; (iv) disclosure of information; (v) meaningful consultation; and (vi) monitoring and reporting.”

A recently concluded [investigation](#) by the CM illustrates how these unclear mandates fail to ensure that promoters conduct meaningful stakeholder engagement. On the Nepal Power System Expansion project, the stakeholder engagement process [suffered from a number of significant shortcomings](#). This led to inadequate information disclosure on the project’s environmental and social impacts and low levels of participation at consultations. The CM noted that an SEP for the project had not been created, even though the development of one “*should have been considered a must given the nature of the Project*” (Conclusions Report, para. 5.2.12). More generally, the CM found that “*The means of communication may not have always been the most effective to encourage meaningful and effective participation*” (*Id.*, para 5.2.14). These findings demonstrate the need for Standard 2 to include a more actionable mandate for the EIB on determining the scope, nature and extent of the required stakeholder engagement.

Second, the EIB should always verify the results of public participation, whether and how the concerns addressed with the competent authority or project promoter were given due consideration and were addressed, in line with the [outcome of the complaint](#) to the EIB Complaints Mechanism (CM) on the Castor project which formulated an important recommendations for the EIB, which should be fully reflected in the Policy and Standard 2: “*The Bank’s services should verify that the concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank’s services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process.*”

Therefore, the Point 11 of the Standard should be change as follow:

For all projects subject to an assessment according to the Environmental Impact Assessment (EIA) Directive, coordinated and/or supplemented with any applicable specific assessments, as defined in Standard 1, the promoter shall support the competent authorities in carrying out the relevant public participation process, including in a transboundary context where applicable, to seek to achieve outcomes that are consistent with this Standard, and provide to the EIB ~~upon request~~:

(...)

2. Ensuring meaningful consultation

The Standard shall aim at ensuring that public participation will have a tangible influence on the decisions related to proposed projects, that is, even the rejection of a project. Even with

best public participation procedures in place, opposition to the mere existence of a project can be well justified. In these cases, the EIB should be in a position to simply refuse to finance a project. This is not all about “misconceptions” and “misunderstandings” that should be cleared through dialogue. It is also crucial to be aware of - and where possible address - power imbalances at all levels and all times, which can hamper meaningful consultation.

Identification of stakeholders

Standard 2 should include provisions requiring the promoter to identify all stakeholders including local civil society, who might have an interest in, or may influence, the project. Specific efforts are needed to include those stakeholders that may be particularly affected and those often not included in decision-making, such as women and young people. The Standard should explicitly state that Human Rights Defenders (HRDs) and Human Rights organisations are legitimate stakeholders to be consulted, especially given how often they are targeted for highlighting human rights violations.

The proposed standard no longer includes a definition of “stakeholders” and as a result risks limiting the understanding of this term.

Therefore, we suggest that the point 16 should be changed as follows:

*“The promoter shall identify, analyse and document the different stakeholders, **those who will be or are likely to be directly or indirectly affected, positively or negatively, by a project, as well as those who might have an interest in or show an interest, or may influence, the project.** In doing so, the promoter shall pay particular attention to and prioritise the identification and analysis of individuals or groups that may be differentially or disproportionately affected because of their vulnerability status. **Human Rights Defenders (HRDs) and Human Rights organisations should also be considered as legitimate stakeholders.**”*

Grievance mechanism

The EIB’s Guidance Note on Stakeholders Engagement points that in case of complex projects it may be advisable to establish a grievance mechanism outside the project structure. The EIB Standard should include relevant provision. Also, the Standard should require that, in any case, the staff of the grievance mechanism should not have other functions in the project.

Therefore, the point 21 should be changed as follows:

*“Grievance mechanism refers to the system introduced and/or maintained by the promoter that enables all stakeholders, in particular affected people and communities, to channel their feedback, questions and grievances related to the environmental and social performance of the project, and access recourse and remedy. **Potential conflicts of interest within the GM should be avoided by hiring independent staff with no ties to the preparation, design or implementation of the project.** In case of complex projects with significant environmental, social or human rights impacts and risks, the EIB will require setting up grievance mechanisms outside of the project structure, such as in a local or community institution, non-governmental organisation or think tank.”*

The EIB's Standard should also require that promoters establish a grievance mechanism policy describing the grievance mechanism process and which should be known to project stakeholders and be publicly available. The promoter should be bound to actively disseminate information about the existence of the grievance mechanism.

A relevant provision shall be added as follows:

“The promoter should establish a grievance policy describing the grievance mechanism process which should be publicly available in relevant languages on the project website, and/or in the written material about the project.”

Also, in order to ensure transparency of the grievance mechanism, the EIB's Standard 2 should require the following:

“To ensure the transparency of the GM and its value in providing operational lessons, a periodic report should be prepared. It should be shared with the EIB and made public by posting on the project website and disclosed to project's stakeholders in an agreed way.”

Engagement planning

The requirements for Stakeholder Engagement Plan (SEP) are unclear. In particular, it is not clear for which projects SEP is required and whether it is always required for all ESIA/EIA/HRIA projects.

Therefore, we propose to change the point 26 as follows:

~~***“Depending on the nature and scale of the projects and their potential impacts and risks, or if deemed necessary by the EIB, The promoter shall ensure an effective engagement process by planning it thoroughly and preparing a Stakeholder Engagement Plan (SEP).”***~~

Disclosure of information

The Standard should clarify the promoter's responsibility for early disclosure of information. Therefore, the point 33 should be changed as follows:

“In order to ensure the effective participation of the identified stakeholders, the Promoter is required to make the following information available to the public in the most accessible way and as soon as it can reasonably be provided early on in the decision-making process, when all options are still open, to allow for their meaningful contribution and ensure that their opinions, interests and concerns are taken into account:

(...)”

Although the draft Standard mentions that *“meaningful consultation is a two-way process”*, it does not mention the possibility for stakeholders to be proactive in the process. This is an important tool for ensuring genuine involvement of and openness to vulnerable persons.

In order to increase the ownership of stakeholders, point 38 should be changed as follows:

“The consultation includes culturally appropriate mechanisms and processes and is tailored to the different needs of stakeholders. It also considers diverse forms of targeted communication

to facilitate the increased participation of men and women, taking also into account factors such as age, literacy, language, mobility, or vulnerability status.

The timelines for engagement shall be realistic and respectful of all identified stakeholders, and in particular affected persons and/or groups. **Stakeholders should have the possibility to propose consultation methods.**

Monitoring and reporting

There should be stronger clauses on the evaluation and monitoring by third parties. At the moment the provision included in the draft Standard is extremely weak.

Point 42 should be changed as follows:

*“The promoter shall conduct regular monitoring of the stakeholder engagement process agreed with the EIB and use this information to identify areas in which stakeholder engagement should be strengthened, including through the revision and update of the SEP or adjustments in the grievance mechanism, as needed. ~~Whenever feasible, the promoter is advised to~~ **The promoter shall** have in place monitoring by third parties, such as stakeholder representatives, civil society or community-based organisations, affected communities, external experts, local and public authorities, think tanks or others familiar with relevant aspects of the projects.”*

3. Addressing risks of reprisals

A relevant provision for preventing reprisals should be added to Standard 2 as follows:

“Project promoters are required to ensure consistency with UN Guiding Principles on Business and Human Rights and UN Voluntary Principles on Security and Human Rights. All finance contracts with promoters will include covenants prohibiting and sanctioning any form of intimidation and reprisals.”

The Standard should strengthen provisions requiring promoters to identify, mitigate and prevent risk of reprisals and report the instances of reprisals to the EIB. These important provisions may not only be left as non-binding suggestions in the Guidance Note on Stakeholders Engagement.

Therefore, we suggest to change the following provisions as following:

“17 Based on this identification, the promoter shall further analyse and prioritise individuals and groups who may have different concerns and priorities about project impacts and risks, mitigation mechanisms and benefits, and who may require different or separate forms of engagement. ~~Taking note of the country context and the public debate about the project and the sector in question, the analysis shall also take into account any risks of reprisals against those who voice their opinion regarding the project activities or the promoter, and identify groups at risk in that respect.~~

18 (new) Taking note of the country context and the public debate about the project and the sector in question, the analysis shall also take into account any risks of reprisals against those who voice their opinion regarding the project activities or the promoter, and identify groups at risk in that respect. The promoter’s stakeholder analysis should flag specific groups, such as Indigenous Peoples, communities in the vicinity of projects in the extractives

sector, forest dwellers, human rights defenders, journalists or environmental activists, who may face greater risks of reprisals. A stakeholder engagement plan (SEP) should provide secure forums for consulting these groups to promote reprisal-sensitive stakeholder engagement. It should be recognised that risks for women and men as well as for certain communities may be different, and also that risk levels may change during the project cycle. The promoter should also reiterate to all parties its zero tolerance of reprisals.

19 (new) Where any such risks or claims exist or are anticipated, or where there are “at-risk” groups, the promoter should have a strategic approach to preventing and responding to reprisals in an open and non-retaliatory manner, in particular by engaging constructively with individuals and groups at risk. Mitigation measures must not include exclusion of relevant rights-holders who may be at risk.

20 (new) If the promoter becomes aware of any allegation of reprisals, the promoter should share this information immediately with the EIB, subject to the consent of the affected individuals concerned.

21 (new) Responses to reprisals should be based on the principle of “do no harm”, i.e. prioritising the safety and protection of the victims or others associated with them. If there is credible information that the promoter’s staff, employees, or (sub)contractors have acted in a way that threatens, intimidates or coerces stakeholders, the promoter is expected to take firm action with the perpetrator, including the possibility of sanctions, as appropriate, and/or referral to other relevant authorities, such as an ombudsman, subject to the consent of the stakeholder(s) concerned. The EIB should be consulted and informed of actions taken by promoters to address and remedy reprisals, or the decision not to take any action and the reason why not.”

List of signatories:

Accountability Counsel



ActionAid International



Alliance of Associations Polish Green Network



Arab Watch Coalition



CEE Bankwatch Network



Both ENDS



Counter Balance



Ecoaction Ukraine



International Federation for Human Rights



Focus Association for Sustainable Development



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