

**COMPLAINTS MECHANISM**

SG/E/2021/16A CHIPAMBO AND GEISHA

**MALAWI NRW WATER EFFICIENCY  
(MALAWI)**

DISPUTE RESOLUTION REPORT

22 AUGUST 2022



# SG/E/2021/16A Chipambo and Geisha Malawi NRW Water Efficiency (Malawi) Dispute Resolution Report

**Complaint confidential:** No

**External distribution**

Complainants  
Promoter

**Internal distribution**

Relevant EIB project team

**Disclaimers**

This report is based on the information available to the EIB Group Complaints Mechanism up to 17 August 2022.

## The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (the Complaints Mechanism) is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and this may include the environmental or social impact of the EIB's projects and operations.

One of the main objectives of the Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

**Please note:** complainants that are not satisfied with the dispute resolution report may file a complaint of maladministration against the EIB Group with the European Ombudsman.<sup>1</sup>

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<sup>1</sup> Available at: <https://www.ombudsman.europa.eu/en/home>. For more information see [EIB Group Complaints Mechanism policy](#), section 4.5.

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# 1 COMPLAINT

- 1.1 On 9 July 2021, the EIB Group Complaints Mechanism (the Complaints Mechanism) received a complaint from members of several communities in the Mzuzu area (the complainants) regarding the Malawi NRW Water Efficiency project financed by the EIB. The Complaints Mechanism divided the complaint into two parts (A and B).<sup>2</sup>
- 1.2 Part A of the complaint concerns the issues raised by members of three communities — Kazando, Chipambo and Geisha — mainly regarding stakeholder engagement, compensation and damage to properties. Despite the similarity of the issues, the communities decided to split into two groups during the last phase of the dispute resolution process. To ease comprehension, this dispute resolution report concerns the members of the Chipambo and Geisha communities only. The dispute resolution report for the Kazando community was issued separately on 26 July 2022.<sup>3</sup>
- 1.3 Part B of the complaint concerns cracks in the walls and ceilings of an individual house. On 3 May 2022, the Complaints Mechanism issued a dispute resolution report that closed part B of the complaint.<sup>4</sup>

# 2 PROJECT

- 2.1 In November 2016, the EIB Board of Directors approved financing of up to €24.6 million for the Malawi NRW Water Efficiency project.<sup>5</sup> The total estimated cost of the project is €60.4 million. The project is being developed by the Northern Region Water Board (NRWB or the promoter).
- 2.2 The project involves the optimisation of available water resources to bridge the gap in water demand and aims to ensure a reliable water supply, primarily for people living in the Mzuzu and Ekwendeni areas in the northern region of Malawi. The project's main components consist of upgrading and extending the water distribution system, upgrading water treatment works, reducing leakages, and improving network management and the water supply to low-income areas. Certain plans are also expected to be carried out in the medium to long term, including a new water supply dam on the Lambilambi River.

# 3 INITIAL ASSESSMENT

- 3.1 The Complaints Mechanism carried out an initial assessment to clarify and understand the concerns raised by the complainants and determine if further work by the Complaints Mechanism was necessary and possible to address the allegations and resolve the issues raised by the complainants. Due to the travel restrictions caused by the coronavirus pandemic at the time, the Complaints Mechanism was unfortunately unable to visit the project site in 2021 during the initial assessment to meet the stakeholders in person. In light of these limitations, the Complaints Mechanism contracted two facilitators to conduct a field mission to develop a thorough understanding of the issues, determine the stakeholders who should be involved in a possible dispute resolution process and propose a way forward. After meeting the complainants and the promoter (the parties) in December 2021, the facilitators organised a joint meeting between them.

<sup>2</sup> [Initial assessment report dated 18 January 2022](#), paragraph 5.1.

<sup>3</sup> [Dispute resolution report for part A of the complaint for the Kazando community dated 26 July 2022](#).

<sup>4</sup> [Dispute resolution report for part B of the complaint dated 3 May 2022](#).

<sup>5</sup> Available at: <https://www.eib.org/en/projects/pipelines/all/20160106>.

- 3.2 Considering the parties' openness to engage in facilitated dialogue to address the issues raised, the Complaints Mechanism proposed proceeding with collaborative dispute resolution in its initial assessment report.<sup>6</sup>

## 4 DISPUTE RESOLUTION PROCESS

- 4.1 Following the field mission of the facilitators appointed by the Complaints Mechanism, the complainants and the promoter agreed to resolve the issues raised amicably and an agreement on the way forward was signed at the end of December 2021.
- 4.2 Regarding the compensation, the promoter agreed to provide each member of the community concerned with the details of the assessments and valuation made by officials from the Regional Commissioner for Lands North office (the Regional Commissioner for Lands). The promoter further agreed to pay compensation by 31 January 2022 to those whose properties had already been assessed. Regarding the damage to structures, the parties agreed that the promoter will assess the structures concerned individually and discuss the way forward.
- 4.3 Despite some progress in implementing the agreement on the way forward, it quickly became apparent that full and timely resolution of a number of issues would be challenging. In March 2022, due to some disagreements between the representatives of the communities, the communities decided to split into two groups: (i) Kazando and (ii) Chipambo and Geisha. Each group progressed with the implementation of the agreement on the way forward at a different pace. Furthermore, the complainants brought up some additional issues that had been previously discussed with the promoter. The Complaints Mechanism therefore continued to facilitate the dialogue between the parties beyond the initial agreement on the way forward reached in December 2021.
- 4.4 Between 3 and 5 July 2022, the Complaints Mechanism convened a final round of dialogue between the parties in Mzuzu, Malawi. The Regional Commissioner for Lands and the Mzuzu City Council were invited to participate as observers. Two members of the Dispute Resolution Unit of the Complaints Mechanism joined the local facilitators to moderate the dialogue. The team had preparatory calls and met the representatives of the Chipambo and Geisha communities and the promoter separately. Furthermore, the team met with the Regional Commissioner for Lands and the Mzuzu City Council ahead of the dialogue session. As part of these preparatory efforts, the team explained the purpose and structure of the facilitated dialogue and the role of the parties and observers.
- 4.5 The facilitated dialogue with the representatives of the Chipambo and Geisha communities was scheduled to take place on 5 July 2022. However, on the evening of 4 July 2022, the Grievance Redress Committee representing the members of Chipambo and Geisha communities concerned, informed the Complaints Mechanism that they would not attend the dialogue meeting and requested that the Complaints Mechanism proceeds with closing the complaint. The Complaints Mechanism acknowledged this communication the same evening.
- 4.6 To ensure transparency to the entire affected community, on 5 July 2022, the Complaints Mechanism issued a communication to the members of the Chipambo and Geisha communities concerned in English and Chichewa to inform them about the decision of the Grievance Redress Committee and the consequences for the dispute resolution and complaint handling process. The communication further clarified some relevant aspects for the affected community regarding the new valuation by the Regional Commissioner for Lands, the process for challenging it and

<sup>6</sup> [Initial assessment report dated 18 January 2022](#), paragraph 5.1.

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the possibility of obtaining payment.<sup>7</sup> The communication was distributed to the community members concerned on 6 July 2022.

- 4.7 Despite the withdrawal of the Chipambo and Geisha communities from the dispute resolution process, the Complaints Mechanism welcomes that various concrete actions have been agreed as an outcome of earlier stages of the facilitated dialogue. In addition, the promoter undertook various steps to address the issues raised by the affected community members. The following sub-sections summarise these agreed or pledged actions by the parties as well as the remaining open questions.

### Compensation

- 4.8 After the promoter shared the details of the assessments and valuation made by officials from the Regional Commissioner for Lands office with the community in January 2022, the Grievance Redress Committee raised concerns about the validity of the original valuation of assets impacted by the project and requested that a new valuation be done by the Regional Commissioner for Lands. This was also discussed during meetings on 20 and 30 May 2022 facilitated by the Mzuzu City Council. The Regional Commissioner for Lands performed the requested new valuation of the assets that had been impacted by the installation of pipes in Chipambo and Geisha. The draft valuation report was submitted to the promoter. The Regional Commissioner for Lands and the promoter met with the community representatives to disclose the results of the new valuation on 28 June 2022. Members of the Mzuzu City Council were present during that meeting. However, the Grievance Redress Committee did not accept the new valuation of the Regional Commissioner for Lands.
- 4.9 During their preparatory meetings in Mzuzu, the Complaints Mechanism further learnt that in the event of dissatisfaction with a valuation, reasoned request can be submitted to the Regional Commissioner for Lands to revisit its valuation. Thus far, no reasoned request has been submitted. The Complaints Mechanism further understood that the promoter was prepared to pay the affected households based on the new valuation. In order for affected community members to make an informed decision in light of the terminated dispute resolution process, the Complaints Mechanism included the information obtained in its communication to the affected community members dated 5 July 2022.<sup>8</sup>
- 4.10 On 6 July 2022, the Mzuzu City Council convened a meeting with the members of Chipambo and Geisha communities concerned, the chiefs of the two communities, the Grievance Redress Committee, the promoter and the Regional Commissioner for Lands to discuss the concerns regarding the new valuations that has been conducted. The promoter updated the participants about the progress made to resolve the issues. The Regional Commissioner for Lands explained the valuation procedure, the rates used and how the total value of affected property was determined. After receiving this information, the community members concerned participated in a disclosure session where they verified the accuracy of their valuation and had the opportunity to raise any issues that they had with the valuation report. Out of 234 households assessed, 231 community members signed their valuations. Two community members were not present but were invited to sign their valuations later at the office of the Regional Commissioner for Lands. One community member refused to sign the valuation.
- 4.11 During this session, it was agreed that the Regional Commissioner for Lands would finalise the valuation report and submit it to the promoter by 13 July 2022.<sup>9</sup> The promoter promised to

<sup>7</sup> Communication from the EIB Group Complaints Mechanism to the members of the Chipambo and Geisha communities concerned dated 5 July 2022, available at <http://www.eib.org/attachments/complaints/sq-e-2021-16-malawi-nrwb-communication-to-the-concerned-members-of-geisha-and-chipambo-communities-2022-07-05.pdf>.

<sup>8</sup> Communication from the EIB Group Complaints Mechanism to the members of the Chipambo and Geisha communities concerned dated 5 July 2022, available at <http://www.eib.org/attachments/complaints/sq-e-2021-16-malawi-nrwb-communication-to-the-concerned-members-of-geisha-and-chipambo-communities-2022-07-05.pdf>.

<sup>9</sup> The Regional Commissioner for Lands finalised the valuation report and submitted it to the promoter on 11 July 2022.

commence payment of compensation after receiving the final report. In August 2022, the promoter communicated to the Complaints Mechanism that it will be in a position to make all the payments by mid of September 2022.<sup>10</sup>

### **Damage to structures**

- 4.12 Regarding the damage to structures, on 6 July 2022, the community chiefs, the Grievance Redress Committee and the promoter agreed to meet to discuss the way forward on the valuation of repair works of damage to structures.
- 4.13 The promoter confirmed that it intends to adopt the same approach as for the Kazando community, which is to assess the damage to structures of the households concerned, evaluate the cost and then make the payment.<sup>11</sup>

### **Deviation from the original route of the water pipes**

- 4.14 According to the complaint, some of the community members believed that the project is a significant deviation from the proposed route due to the change of the alignment of the water pipes from being laid along the road to under the road.
- 4.15 During the facilitated dialogue between December 2021 and March 2022, the issue of deviation from the original alignment was not raised as a major issue and the parties did not include it in the agreement on the way forward signed in December 2021.
- 4.16 During the subsequent engagement with the communities, the alignment came up again and some members of the Grievance Redress Committee and of the communities argued that the promoter needed to adhere to the original route to be compliant with the EIB standards. The Complaints Mechanism understands that the original route would have led to more properties being impacted and thus more people being entitled to compensation. In June 2022, the Complaints Mechanism shared the explanation provided by the EIB project team with the Grievance Redress Committee that the EIB does not approve detailed designs of the project. Since the EIB did not approve the alignment/route of the pipes in the Mzuzu area, according to the EIB project team, the EIB did not need to approve any adjustments to the exact route either. Furthermore, it was explained that according to the EIB's Environmental and Social Standards,<sup>12</sup> the promoter has an obligation to apply the mitigation hierarchy by identifying measures to be taken to avoid, reduce and, if required, compensate/remedy significant adverse residual effects on workers, affected stakeholders, and the environment, so as to contribute to the avoidance of any deterioration in the quality of human life, the environment and any net loss of biodiversity and ecosystems. Therefore, the promoter had to explore options to first avoid or reduce the impact of the project where possible — including by altering the route.
- 4.17 Regarding the allegation that the contractor did not comply with the Public Roads Act while laying the pipes under the road, the main complainant referred in particular to section 10(1)(d) of the Public Roads Act.<sup>13</sup> As per the finance contract, the promoter must comply with all laws and regulations to which it or the project is subject to. From its interaction with local stakeholders, the Complaints Mechanism understood that the project extends into urban and

<sup>10</sup> On 6 July 2022, the intention of the promoter was to make the payments by 15 August 2022, which proved impossible due to the availability of funds.

<sup>11</sup> [Dispute resolution report for part A of the complaint for the Kazando community dated 26 July 2022](#), paragraph 4.6.v; [settlement agreement between the members of the Kazando community concerned and the Northern Region Water Board dated 5 July 2022](#), paragraphs 20-21.

<sup>12</sup> The EIB's Environmental and Social Standards 2013 contained in Volume I of the EIB Environmental and Social Handbook and published on the EIB's website at the following address: [https://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf).

<sup>13</sup> Section 10(1)(d) of the Public Roads Act provides that the minister responsible for roads shall have the power to declare by notice published in the gazette the width of any road reserve or class of road reserve outside any city, municipality or township or any planning area declared under the Town and Country Planning Act. The Complaints Mechanism does not see the relevance of this section for the issue at hand.



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non-urban areas, which complicates the clear determination of responsibilities and procedures to follow. In addition, the relevant road in Chipambo and Geisha appears not to fall within a planned area. It therefore does not qualify as a public road, calling into question the applicability of the Public Roads Act.

- 4.18 The Complaints Mechanism has no indication to believe that the change of alignment of the water pipes represented a violation of the EIB standards.

### Public consultation

- 4.19 Some of the community members were concerned because, according to them, they were not directly consulted about the project.<sup>14</sup> While the dispute resolution process could not address real or perceived issues with communication and consultation in the past, it offered an opportunity to engage directly with the promoter and other stakeholders on the issues experienced by the community at the time of the facilitated dialogue.

## 5 LESSONS LEARNT

- 5.1 The case presented several challenges and learning opportunities. It showed the importance of early management of expectations of affected communities, including by providing detailed information about compensation. The environmental and social impact assessment reports<sup>15</sup> in 2019 already identified the unrealistic expectations regarding compensation and resettlement negotiations as a risk that may cause negative impacts. The reports recommended conducting adequate and thorough public meetings about land laws, land acquisition and compensation as mitigation measures. They also stressed the importance of observing transparency and accountability when evaluating land and property and paying compensation.
- 5.2 The case also stressed the importance of using the established channels for stakeholder engagement, such as the traditional chiefs, but also communicating directly with the affected communities. While using the traditional authorities to disclose information about the project may be culturally appropriate in some situations, this may not always be sufficient to ensure an inclusive and meaningful engagement process. The EIB's Environmental and Social standard on stakeholder engagement provides that an effective and meaningful engagement and consultation is a two-way process that must be inclusive of the affected communities and accessible to any vulnerable groups.<sup>16</sup> The promoter must undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to identify and express their views on project risks, impacts and mitigation measures and engage in a collaborative process with the project in responding to and addressing considerations raised.<sup>17</sup> The promoter is also required to review the effectiveness of previous public consultation processes, report on the findings and make the necessary amendments to improve future consultations.<sup>18</sup>
- 5.3 The Complaints Mechanism observed that most of the issues raised by the community relate to the process of assessing compensation and applicable rates, which could have been avoided or limited by appropriate management of expectations and inclusive consultation from the early stages of the project.

<sup>14</sup> [Initial assessment report dated 18 January 2022](#), paragraph 1.3.i.

<sup>15</sup> [Environmental and Social Impact Assessment for two river intakes on the Lunyangwa River dated 26 October 2019](#), page v; [Environmental and Social Impact Assessment for Lunyangwa Dam Raising dated 11 October 2019](#), pages v and vi.

<sup>16</sup> [EIB's Environmental and Social Standards 2013](#), paragraph 19.

<sup>17</sup> [EIB's Environmental and Social Standards 2013](#), paragraph 35.

<sup>18</sup> [EIB's Environmental and Social Standards 2013](#), paragraph 38.

## 6 OUTCOME

- 6.1 Taking into account the Grievance Redress Committee's request to close the complaint dated 4 July 2022 and the promoter's undertakings to pay compensation based on the new valuation and to address the issue of damage to structures, the Complaints Mechanism closes this process in line with the request from the community representatives and Article 2.5.6 of the Complaints Mechanism procedures.<sup>19</sup> The Complaints Mechanism will follow up on the implementation of these actions by the promoter.

Complaints Mechanism

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<sup>19</sup> [EIB Group Complaints Mechanism procedures dated November 2018](#), Article 2.5.6.