

COMPLAINTS MECHANISM

SG/E/2021/16B

MALAWI NRW WATER EFFICIENCY (MALAWI)

DISPUTE RESOLUTION REPORT

3 MAY 2022



SG/E/2021/16B Malawi NRW Water Efficiency Dispute Resolution Report

Complaint confidential: No

External distribution

Complainant
Promoter

Internal distribution

Management Committee
Secretary General
Inspector General
Relevant EIB services

Disclaimer

This report is based on the information available to the EIB Group Complaints Mechanism up to 4 April 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 Ombudsman¹.

¹ Available at: <https://www.ombudsman.europa.eu/en/home>.

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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 in two parts (A and B)².
- 1.2 Part B of the complaint concerns cracks in the walls and ceilings of an individual house. According to its owner, the cracks were caused by the project works, namely the excavation of a trench and backfilling in proximity to the house. The complainant requested compensation or repair of the damages. This dispute resolution report concerns only the part of the complaint relating to cracks on the individual house and the facilitation process put in place to solve the respective dispute (process B).
- 1.3 Part A of the complaint concerns the issues raised by the wider community. Dispute resolution process A is still ongoing. The Complaints Mechanism will issue a separate dispute resolution report once it has been concluded.

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 project³. 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 at ensuring 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 complainant, understand the complainant's position and determine if further work by the Complaints Mechanism is necessary and possible to address the allegations or resolve the issues raised by the complainant. Due to the ongoing travel restrictions caused by the COVID-19 pandemic, the Complaints Mechanism was unfortunately not able to visit the project site and 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 complainant and the promoter (the parties), the facilitators organised a joint meeting between them.
- 3.2 Considering the parties' openness to engage in facilitated dialogue to address the issues raised, the Complaints Mechanism proposed to proceed with collaborative dispute resolution.
- 3.3 On 20 January 2022, the Complaints Mechanism issued the initial assessment report⁴.

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

³ Available at: <https://www.eib.org/en/projects/pipelines/all/20160106>.

⁴ [Initial assessment report dated 18 January 2022](#).

4 DISPUTE RESOLUTION PROCESS

- 4.1 Following the field mission of the facilitators, the complainant and the promoter agreed to resolve the issues raised amicably and an agreement on the way forward was signed. The parties decided to use the services of an independent structural engineer to assess the damage and the likely cause. The parties agreed that in case the structural engineer finds that it is likely that the damages were caused by the works on the project, the engineer shall determine how the damages could be repaired and shall estimate the costs of the repairs. Both parties agreed to abide by the findings of the independent structural engineer.
- 4.2 At the beginning of February 2022, the parties agreed on the terms of reference and the choice of an independent engineer, who is registered with the Malawi Board of Engineers and was pre-selected by the Complaints Mechanism.
- 4.3 On 19 and 20 February 2022, the structural engineer conducted a visual inspection to note all the areas of the house that had cracks. Soil logging was conducted to record the soil properties at various depths around the house. Tests were performed to assess the strength of the concrete used for structural elements and to determine the bearing capacity of the soil. The tests involved the use of a dynamic cone penetrometer machine and a Schmidt hammer.
- 4.4 On 25 February 2022, the structural engineer's report was shared with the parties at a joint meeting convened by the Complaints Mechanism and attended and moderated by the local facilitators.
- 4.5 The structural assessment concluded that it cannot be established that the trench excavation works resulted in the alleged damage to the house. The engineer established, among other things, that the clay soil on which the house is built usually undergoes volumetric changes when soaked with water and then dried, which can disturb the foundation and create movement under the walls that results in cracks. The engineer is of the opinion that the cracking process has taken years because it initiates every time the rains start and then concludes when the dry season returns.

5 OUTCOME

- 5.1 The Complaints Mechanism welcomes the active participation of the parties in the dispute resolution process.
- 5.2 Taking the above into account, the Complaints Mechanism closes this process in line with Article 2.5.6 of the Complaints Mechanism procedures without further monitoring.

Complaints Mechanism
03.05.2022

Dispute Resolution
03.05.2022