

COMPLAINTS MECHANISM

SG/A/2022/02

AKIIRA Geothermal Power Plant (KENYA)

CONCLUSIONS REPORT

18 APRIL 2023



SG/A/2022/02

AKIIRA Geothermal Power Plant (KENYA)

Conclusions Report

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Disclaimer

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 20 March 2023. The conclusions are addressed solely to the EIB.

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The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (Complaints Mechanism) is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank Group 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 judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB Group 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 Group 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 Group'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 conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman¹.

¹ More information on the European Ombudsman is available [here](#).

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GLOSSARY

CJEU	Court of Justice of the European Union
Complainant	CEE Bankwatch Network
Document at issue	Akiira Geothermal Limited draft Environmental and Social Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
ESIA	Environmental and Social Impact Assessment
EUR	Euro
Fund	DI Frontier Market Energy and Carbon Fund
IP	Indigenous Peoples
Project	Akiira One Geothermal Power Development
Promoter	Akiira Geothermal Limited
TFEU	Treaty on the Functioning of the European Union
TP	EIB Group Transparency Policy

EXECUTIVE SUMMARY

On 30 May 2022, a representative of the non-governmental organisation “CEE Bankwatch Network” (hereinafter: the complainant), lodged a complaint with the EIB Group Complaints Mechanism (hereinafter: EIB-CM). The complaint relates to a partial refusal by the EIB in disclosing the Akiira Geothermal Limited draft Environmental and Social Impact Assessment (hereinafter: document at issue) requested by the complainant. More specifically, the complainant challenges some of the exceptions applied by the EIB in justifying partial refusal of the document at issue, in particular the protection of public interest as regards international relations.

The Akiira One Geothermal Power Development (hereinafter: the project) is a greenfield development located in Nakuru County being developed by Akiira Geothermal Limited (hereinafter: the promoter) in Eastern Kenya. The project is partly financed by DI Frontier Market Energy and Carbon Fund (hereinafter: the fund).

The document at issue, held by the Bank, is a draft provided by the promoter in 2016 in the context of a loan request, while the project was at an early stage of appraisal and development. The EIB decided not to pursue its appraisal of the project and the document at issue was neither concluded nor publicly disclosed.

The EIB and the complainant have a history of interaction initially prompted by concerns of potential eviction risks in the project area. The EIB-CM recognises that the EIB took adequate steps in engaging with the complainant through correspondence, exchanges and a telephonic meeting. Additionally, the EIB-CM acknowledges that the Bank worked closely with the fund to identify potentially sensitive information in the document at issue, meanwhile raising important questions to ensure compliance with the EIB Group Transparency Policy (hereinafter: the TP) prior to and following the complainant’s initial application.

For the purpose of better assessing the arguments put forward by the EIB relevant services, and in the absence of a record of supporting evidence, the EIB-CM has carried out its own due diligence. The EIB-CM has reached the conclusion that under the specific circumstances of the present complaint, the EIB’s decision to withhold some information on the basis of the exception pertaining to the protection of the public interest as regards international relations was justified. This outcome has been reached in light of a broader context, taking into account the following: the margin of appreciation recognised by the EU judicature; historical and existing inter-ethnic tensions in Nakuru County; and the linkage between said tensions and the information provided in the redacted portions of the document at issue.

Based on its inquiry, the EIB-CM concludes that the allegation is ungrounded and proceeds to close the case with a suggestion for improvement.

Allegation	Outcome	Suggestions for improvement
Failure to comply with the EIB Group Transparency Policy	Ungrounded	When triggering the exception pertaining to the protection of the public interest as regards international relations, the EIB relevant services should prepare a record of evidence supporting the rationale for the EIB’s decision, commensurate to the type (initial/confirmatory) of application.

1 BACKGROUND

1.1 The Project

- 1.1.1 The Akiira One Geothermal Power Development (hereinafter: the project) is a greenfield development located in Nakuru County and is one of the first geothermal projects of Akiira Geothermal Limited (hereinafter: the promoter) in Eastern Kenya. Following a pre-development phase², the project is expected to be implemented in two phases:
- i. Phase I: exploration drilling, financed by equity provided by the fund and Centum Investment Company; and
 - ii. Phase II: drilling of production wells and construction of the power plant, financed by – among other sources of funding – the balance of the above-mentioned equity.
- 1.1.2 In 2013, DI Frontier Market Energy and Carbon Fund (hereinafter: the fund)³ invested in Akiira Geothermal Limited. The fund has a shareholder participation of 37.5% in the promoter. In November 2014, the fund decided to invest in phase I of the project.
- 1.1.3 The EIB initially considered a direct loan proposal concerning the project. While the project was at an early stage of appraisal and development, the promoter provided the EIB with the 2016 draft Environmental and Social Impact Assessment for the project. Subsequently, the EIB decided not to pursue its appraisal of the project.
- 1.1.4 The EIB Group is involved in the project through the Global Energy Efficiency and Renewable Energy Fund (GEEREF), which invested in the fund. GEEREF is advised by the EIB Group.

1.2 The Complaint

- 1.2.1 On 30 May 2022, an individual, on behalf of the non-governmental organisation “CEE Bankwatch Network” (hereinafter: the complainant), lodged a complaint with the EIB Group Complaints Mechanism (hereinafter: EIB-CM).
- 1.2.2 The complaint relates to the partial disclosure by the Bank of the project’s draft Environmental and Social Impact Assessment (ESIA)⁴ requested by the complainant (hereinafter: document at issue). Prior to submitting the complaint, the complainant had received a redacted draft ESIA from the EIB in May 2021 (see §1.3).
- 1.2.3 The complainant challenges two exceptions applied by the EIB in justifying partial refusal of the document at issue: “*the protection of the public interest as regards international relations and integrity of groups.*” According to the complainant, the exceptions applied are unjustified given that redacted portions of the report describe an “*objective social situation in the project area*”. The complainant suspects that the disclosure of such information is “*uncomfortable for the promoter*” and concerns a group of potentially impacted people who had previously lodged a complaint with the EIB-CM⁵.

² This phase included the establishment of the Project Company, preparatory studies and survey, engineering, design, procurement preparation, permitting and licensing process.

³ The fund is a sub-Saharan-focused renewable energy and infrastructure private equity fund managed by Frontier Investment Management. The fund develops, constructs and operates more than 45 energy projects in Africa within hydro, geothermal, wind and solar PV with a total capacity of more than 750 Megawatt. DI Frontier Investment Fund, Invest EU, available [here](#). About us, Frontier Energy, available [here](#). Conclusions Report case SG/E/2020/08 and SG/E/2021/01, available [here](#).

⁴ Environmental and Social Impact Assessment for the Akiira Geothermal Power Plant in Naivasha Sub County, Nakuru County, May 2016.

⁵ Cases [SG/E/2020/08](#) and [EIF/E/2020/01](#).

- 1.2.4 From a general standpoint, the complainant believes that such information and opinions should be disclosed “as the document services the public purposes in the process of environmental and social impact assessment.”

Table 1 — Summary of allegations

Allegation	Description of the Allegation
Failure to comply with the EIB Group Transparency Policy	The complainant claims that some exceptions applied by the EIB in its partial refusal of the project’s draft ESIA are unjustified.

1.3 The Initial Application

- 1.3.1 On 22 April 2021, the complainant requested the disclosure of the document at issue. The EIB subsequently acknowledged this request on 5 May 2021.
- 1.3.2 In its response to the complainant dated 31 May 2021, the EIB disclosed the document at issue, specifying the grounds for its partial refusal of information requested:

[...] This concerns incomplete or unverified data that, if disclosed, could contribute to exacerbating existing tensions in the area potentially impacting public security and therefore undermining the protection of the public interest as regards international relations. This also concerns names and information on individuals and groups identified in the draft which if disclosed could undermine their privacy and integrity, as well as technical and financial information which, if disclosed, would undermine the commercial interests of the project promoter.

No overriding public interest was found in the information redacted that would prevail over the relevant exceptions, and none of the redacted information refers to emissions into the environment.

- 1.3.3 It is worth noting that, prior to the initial application, the EIB and the complainant had a history of interaction that included several instances of written communication and a telephone conversation. The interactions were initially prompted by concerns of potential eviction risks involving inhabitants of Lorropil village (¶1.4.3). The complainant’s preliminary request for the document at issue was received after the eviction took place. Following a telephone conversation in May 2020, the parties jointly decided to delay the disclosure process to allow investigation into the eviction allegations.

1.4 Socio-economic context and land matters in the project area⁶

- 1.4.1 The project area is located in the Kedong Valley (Nakuru county), the ancestral homeland of the Maasai people living semi-nomadically in the area. In the 1960s and 1970s, Turkana and Samburu communities started to migrate from northern Kenya to the project area in search of work on Kedong Ranch in Naivasha. Others, such as Borana and Somali herders, and Luhya and Kikuyu, worked as employees on Kedong Ranch. More recently, people internally displaced by the violence following elections including that of 2017, were given land by the government of Kenya to settle in the Kedong Valley.
- 1.4.2 The prospect of the Kedong Ranch covers an area of around 12 000 ha of land to develop and operate the plant and lies adjacent to the Olkaria geothermal field. In recent years, the Kedong Ranch Ltd sold parcels of land for geothermal (the Akiira Ranch area) and other industrial developments such as the Standard Gauge Railway and the dry port. The Maasai were

⁶ EIB Group Complaints Mechanism Akiira Geothermal Power Plant Conclusions Report, July 2021, p. 6, available [here](#).

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concerned that these sales entailed the loss of their ancestral rights to the land and progressive restrictions on access and use of the open plains and hills for grazing and settlement.

- 1.4.3 At the time of the Kedong sale agreement with the promoter, two informal settlements were identified close to the project area: ‘Mlima Tatu’ and ‘Lorropil’, both of which comprised Kikuyus, Turkanas and Samburus.

2 WORK PERFORMED

- 2.1.1 This inquiry has been conducted in accordance with the EIB Group Complaints Mechanism Policy and Procedures (2018)⁷.
- 2.1.2 It is based on a review of relevant documentation pertaining to, among others, (i) the complainant’s initial application, (ii) correspondence between the EIB competent services and the fund and (iii) EIB project monitoring.
- 2.1.3 In accordance with the EIB-CM Policy and Procedures, this report documents inquiry findings with respect to the EIB’s compliance with the applicable regulatory framework.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB Group⁸. Maladministration means poor or failed administration⁹.
- 3.1.2 The policy specifies that the EIB-CM review the EIB Group’s activities with a view to determining whether maladministration that is attributable to the EIB Group has taken place¹⁰.

3.2 Relevant legal framework

EU Treaties

- 3.2.1 Article 42 of the Charter of Fundamental Rights of the European Union¹¹ ensures that “*any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.*” Article 15 of the Treaty on the Functioning of the European Union (TFEU)¹² establishes that “*the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible. [...] Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph. [...] The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks*”.
- 3.2.2 The right to good administration is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. Under this provision, every person has the right to have his or her affairs

⁷ Available [here](#) and [here](#).

⁸ § 5.1.3 of the EIB Group Complaints Mechanism Policy.

⁹ § 3.1 of the EIB Group Complaints Mechanism Policy.

¹⁰ § 5.3.3 of the EIB Group Complaints Mechanism Policy.

¹¹ Available [here](#).

¹² Available [here](#).

handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes, among others, the obligation of the administration to give reasons for its decisions.

The EIB Group Transparency Policy

- 3.2.3 The EIB Group Transparency Policy (hereinafter: the TP) applicable to the case was adopted by the EIB's Board of Directors on 6 March 2015.¹³ It sets out the EIB Group's approach to transparency and defines the procedures concerning information requests from the public.
- 3.2.4 According to Article 2.1, the TP is *"guided by openness and the highest possible level of transparency with the underlying presumption that information concerning the Group's operational and institutional activities will be made available to third parties (the public) unless it is subject to a defined exception ("presumption of disclosure", see section 5 of this Policy and the respective disclosure section of the EIF Transparency Policy), based on the principle of non-discrimination and equal treatment and in line with EU legislation, those of the EU Member States and countries of operation and internationally accepted principles"*.
- 3.2.5 The TP is also guided by the principle of ensuring trust and safeguarding sensitive information. Pursuant to its Article 2.5, the TP *"[...] ensures that information is protected from disclosure when disclosure would undermine the legitimate rights and interests of third-parties, and/or of the Group in line with the exceptions defined in the Policy."* Article 3.8 of the TP provides that *"[...] the intention of [Article 15(3) of the TFEU] is that the EIB itself should determine, in a way consistent with the principles of openness, good governance and participation, how the general principles and limits governing the right of public access should apply in relation to its specific functions as a bank. The EIB does this through the Policy and specifically through the applications of the exceptions to access set out in Article 5 below"*.
- 3.2.6 The TP defines the EIB's procedures concerning the disclosure of information to the public upon request. Pursuant to Article 5.1 of the TP, all information and documents held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure.
- 3.2.7 Under Article 5.3 of the TP, in applying the exceptions to disclosure, the EIB shall, in line with Article 3.8 of the TP, have due regard for its specific role and activities, the need to protect its legitimate interests and the confidentiality of its relationship with its counterparts.
- 3.2.8 According to Article 5.4 of the TP, the EIB will not disclose information where such disclosure would undermine the protection of, among others, the public interest as regards international relations (Article 5.4 (a) first bullet point) or the privacy and the integrity of the individual (Article 5.4 (b)). As regards third-party documents, the EIB shall consult with the third party as to whether the information in the document is confidential, unless it is clear that the document shall or shall not be disclosed (Article 5.9).
- 3.2.9 It must be noted that the 2015 TP does not contain an explicit exception protecting the public interest as regards "public security". Such an exception has been included in the 2021 TP (Article 5.4 a) first bullet point)¹⁴.
- 3.2.10 Pursuant to Article 5.15 of the TP, *"[...] the Bank [...] will either grant full or partial access to the document requested (if only parts of a requested document are covered by any of the constraints above, information from the remaining parts shall be released) and/or the grounds for the total or partial refusal shall be stated."* In that regard, see also Article 5.25 of the TP.

¹³ Available [here](#).

¹⁴ Available [here](#).

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3.2.11 Under Article 5.31 of the TP, in the event of a total or partial refusal following the initial application, the applicant may make a confirmatory application asking the Bank to reconsider its position. Alternatively, the applicant may lodge a complaint with the EIB-CM.

3.3 Jurisprudence of the Court of Justice of the European Union (CJEU)

- 3.3.1 With regard to the protection of the public interest as regards international relations exception, according to the settled case law of the CJEU, *“the particularly sensitive and essential nature of the interests protected..., combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision requires, therefore, a margin of appreciation.”*¹⁵ The CJEU has acknowledged that the criteria for applying this exception *“are very general, since access must be refused, as is clear from the wording of that provision, if disclosure of the document concerned would ‘undermine’ the protection of the ‘public interest’ as regards, inter alia, ... ‘international relations’.*¹⁶ The CJEU noted, in particular, that *“various proposals intended to define more precisely the scope of the public-interest exceptions...which would undoubtedly have enabled the opportunities for judicial review in regard to the institution’s assessment to be correspondingly increased, were not accepted”.*¹⁷
- 3.3.2 According to established case-law, *“[...] the response to the initial request is only an initial statement of position”* and, as such, is not capable of being directly challenged in front of the CJEU, due to its provisional nature.¹⁸

4 FINDINGS AND CONCLUSIONS

- 4.1.1 In May 2021, in response to the complainant’s request for disclosure of the 2016 ESIA (¶1.3) - and having consulted with the relevant third parties - the EIB provided partial access to the document at issue.
- 4.1.2 The EIB’s reply begins from the premise that *“[...] the EIB does not hold a finalised version of the requested ESIA. The document held by the Bank is a draft provided by the project promoter in 2016, while the project was at an early stage of appraisal and development. As you know, the EIB decided not to pursue its appraisal of the project and the draft ESIA was not reviewed nor finalised.”*
- 4.1.3 It goes on to specify the grounds for its partial refusal:
- i. **Commercial interests of a natural or legal person**¹⁹: *“[...] technical and financial information which, if disclosed, would undermine the commercial interests of the project promoter.”*
 - ii. **Privacy and integrity of the individual**²⁰: *“[...] names and information on individuals and groups identified in the draft which if disclosed could undermine their privacy and integrity [...].”*
 - iii. **International relations**²¹: *“[...] concerns incomplete or un-verified data that, if disclosed, could contribute to exacerbating existing tensions in the area and potentially impact public*

¹⁵ European Court of Justice, First Chamber, Case C-266/05 P, *Sison v Council*, 1 February 2007, para. 35.

¹⁶ Case C-266/05 P, para. 36.

¹⁷ Case C-266/05 P, para. 37. The CJEU case law quoted in this paragraph refers to the relevant exceptions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not directly to the TP.

¹⁸ General Court, Fourth Chamber, Joined Cases T-109/05 and T-444/05, 24 May 2011, paras. 101 and 102. The case law refers to Regulation 1049/2001 and not specifically to the TP.

¹⁹ Art. 5.5, first bullet, EIB-TP.

²⁰ Art. 5.4 b), EIB-TP; this exception does not cover information on groups to protect their privacy and integrity.

²¹ Art. 5.4 a), first bullet, EIB-TP.

security and therefore undermining the protection of the public interest as regards international relations.”

- 4.1.4 It is first necessary to clarify that, as relates to the EIB’s reply under ¶4.1.3(ii) above – and as the EIB competent services explained to the EIB-CM during the course of the inquiry - the exception on the protection of privacy and integrity was invoked in order to protect the individuals concerned, while in order to protect the integrity of groups, the EIB invoked the exception on the protection of the public interest as regards international relations.
- 4.1.5 The findings that follow focus on the complainant’s allegation that the EIB’s decision to withhold some information on the basis of exceptions related to international relations and the integrity of groups is unjustified.
- 4.1.6 In assessing whether the exceptions described above have been adequately applied, the EIB-CM will not make findings and conclusions with the benefit of hindsight. Rather, the EIB-CM has assessed whether there is evidence that the EIB applied relevant requirements considering the information available at the time the decisions were made.

The document at issue

- 4.1.7 The document at issue was received within the context of a direct loan proposal (¶ 1.1.3). It is labelled ‘draft final’ and was neither concluded nor publicly disclosed.
- 4.1.8 The redactions specific to the public interest as regards international relations exception, including elements of public security and integrity of groups as applied by the EIB, can be regarded as falling within any one of three categories: (1) the presence of some communities in the project area or neighbouring villages, (2) livelihood activities of some communities and (3) qualification of one community as indigenous peoples (IP), including details of an IP Development Plan.

Consultation with the fund prior to the EIB’s reply to the initial application

- 4.1.9 The EIB-CM’s inquiry shows that the EIB, in its early communication with the fund in early May 2020, understood that the fund’s concern was that certain information contained in the document at issue, if disclosed, could give rise to new ethnic tensions in the project area.
- 4.1.10 It should also be stressed that the EIB, in agreement with the fund and contrary to the document at issue, did not consider some of the stakeholder groups as indigenous for purposes of the project, given their absence of ancestral ties to the land.
- 4.1.11 In further exchanges with the fund taking place in late May/early June 2020, and on the basis of its own assessment, the EIB agreed, in principle, to remove all specific references to (i) the names of some communities referred to in the document at issue, (ii) livelihood activities of some communities and (iii) the qualification of some communities as IP. This approach was based on the view that (i) some communities referred to in the document at issue were not present in the project area and (ii) disclosing the qualification of some communities as IP was misleading and could have encouraged further influx to the project site in the hopes of receiving entitlements normally conferred upon IPs. It was also believed that further influx to the project site would raise the risk of ethnic tensions, possibly putting at risk personal safety.

Assessment of inter-ethnic tensions in Nakuru county

- 4.1.12 According to the EIB relevant services, the Bank took a precautionary approach in relation to its disclosure of the document at issue. During the consultation of this report, the EIB relevant services expressly referred to a number of key factors in taking its approach, including Nakuru county’s history of conflict and insecurity; the upcoming elections at the time; and factual mistakes in the document at issue on indigenous status potentially leading to incorrect claims

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and related tensions. The EIB relevant services did not provide sources of information or written documentation/communication that documented or supported their assessment.

- 4.1.13 In the absence of a record of supporting evidence, the EIB-CM drew on its own research to establish facts and clarify uncertainties in relation to inter-ethnic tensions in the area potentially impacting public security.
- 4.1.14 Much has been written on Nakuru County's long history of violent conflict. To begin, the devolution process - necessitated by a new constitutional dispensation in 2010 - transformed the Nakuru municipality and the larger rift valley into a leading destination for investors in Kenya. This metamorphosis gave rise to violence in and around Nakuru County and has increased gradually over the years.²²
- 4.1.15 In Nakuru County, resource-use related conflicts are particularly common. This often plunges the region into violence, especially during election periods²³. Political influence and incitements to violence remain a leading threat to peace and security in Nakuru County. Electoral related violence continues to occur as a result of a combination of factors, including politicization of ethnicity and inequitable distribution of resources, among others²⁴.
- 4.1.16 In Nakuru County, inter-ethnic conflicts have caused loss of human life, poor inter-ethnic relations, negative ethnic stereotype²⁵, forced human displacements and land and boundary disputes. The question of use, ownership and access to increasingly scarce land and related resources has been at the centre of protracted conflicts between ethnic communities in Nakuru County²⁶.

Conclusions

- 4.1.17 It is important to note, in regard to the complainant's argument set out in ¶1.2.4, the unique status of the document at issue explained by the EIB in its reply to the complainant (¶4.1.2). The fact that the document at issue was an outdated and incomplete assessment precludes its disclosure from servicing the public in the same way expected by the disclosure of a finalised and updated ESIA. Furthermore, the EIB-CM notes that the Remedial Action Plan and Stakeholder Engagement Plan dated November 2022 and February 2023 respectively, have been made publicly available²⁷. Of note, these documents contain information on (1) the presence of some communities in the project area or neighbouring villages and (2) their livelihood activities (see ¶4.1.8). Therefore, it appears that the disclosure of the Remedial Action Plan and the Stakeholder Engagement Plan, which are recent and finalised documents, serves the public interest in a more meaningful way than an outdated and incomplete draft ESIA.
- 4.1.18 The EIB-CM recognises that the EIB took adequate steps in engaging with the complainant through correspondence, exchanges and a telephonic meeting. Furthermore, it is worth noting that, although the EIB did not hold a finalised version of the 2016 ESIA, the EIB services, for the sake of transparency and as an act of good will, assessed the possibility to disclose the draft version held by the EIB. Finally, the EIB-CM acknowledges that the Bank worked closely with the fund to identify potentially sensitive information in the document at issue, meanwhile raising important questions to ensure compliance with the TP prior to and following the complainant's initial application.
- 4.1.19 With respect to the EIB's statement of reasons (¶4.1.3), the EIB-CM notes that the EIB's reply to the complainant was provided in the context of an initial application and refers to the information on the exception pertaining to the protection of international relations in ¶3.3.1.

²² Nakuru County Violence Prevention Policy, June 2019, available [here](#).

²³ Resource-use Practices Influencing Inter-Ethnic Conflicts in Nakuru County, Kenya, January 2023, available [here](#).

²⁴ Nakuru County Violence Prevention Policy, June 2019, available [here](#).

²⁵ Emerging Trends and Persistence of Inter-Ethnic Conflicts in Kenya, 2019, p. 38, available [here](#).

²⁶ Briefing Paper No.10: An Analysis of the Land and Boundary Related Disputes in Nakuru County, February 2021, available [here](#).

²⁷ Available [here](#).

While it appears that the EIB's statement of reasons was proportional to the context, the EIB-CM finds that the EIB's reference to the protection of the privacy and integrity of individuals and groups did not provide sufficient clarity about the rationale for non-disclosure. The EIB services have clarified this point during the EIB-CM's inquiry as outlined in ¶4.1.4 of this report.

- 4.1.20 For the purpose of better assessing the arguments put forward by the EIB relevant services, and in the absence of a record of supporting evidence, the EIB-CM has carried out its own due diligence (¶4.1.14-4.1.16). The EIB-CM has reached the conclusion that under the specific circumstances of the present complaint, the EIB's decision to withhold some information on the basis of the exception pertaining to the protection of the public interest as regards international relations was justified. This outcome has been reached in light of a broader context, taking into account the following: the margin of appreciation recognised by the EU judicature (¶3.3.1); historical and existing inter-ethnic tensions in Nakuru County; and the linkage between said tensions and the information provided in the redacted portions of the document at issue.

5 OUTCOME

- 5.1.1 Based on its inquiry, the EIB-CM concludes that the allegation is ungrounded and proceeds to close the case with a suggestion for improvement as detailed below.

Table 2 — Summary of the allegation and outcome

Allegation	Outcome	Suggestion for improvement
Failure to comply with the EIB Group Transparency Policy	Ungrounded	When triggering the exception pertaining to the protection of the public interest as regards international relations, the EIB relevant services should prepare a record of evidence supporting the rationale for the EIB's decision, commensurate to the type (initial/confirmatory) of application.