

COMPLAINTS MECHANISM

SG/E/2022/05

**SOUTHERN REGION WATER
BOARD WATER SUPPLY AND
SANITATION PROGRAMME
(MALAWI)**

CONCLUSIONS REPORT

27 MARCH 2024



SG/E/2022/05

Southern Region Water Board Water Supply and Sanitation Programme (Malawi) 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 31 October 2023, the cut-off date for the report. The conclusions are addressed solely to the EIB.

The EIB Group Complaints Mechanism

The EIB Group 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, that is, 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 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 impacts of the EIB's projects and operations.

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

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GLOSSARY

E&S	Environmental and Social
EIB-CM	European Investment Bank Group Complaints Mechanism
ESDS	Environmental and Social Data Sheet
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
IUCN	International Union for Conservation of Nature
LMNP	Lake Malawi National Park
MEPA	Malawi Environment Protection Agency
OUV	Outstanding Universal Value
UNESCO	United Nations Educational, Scientific and Cultural Organization

EXECUTIVE SUMMARY

In March 2022, the European Investment Bank (the “**EIB**” or the “**Bank**”) Group’s Complaints Mechanism (“**EIB-CM**”) received two complaints regarding the Southern Region Water Board Water Supply and Sanitation Programme in the Balaka, Liwonde and Mangochi provinces (the “**Project**”) in the Republic of Malawi (“**Malawi**”). In October 2020, the EIB approved the financing of the Project. The Project comprises several components, including the Liwonde and Balaka components (financed by the Bank) and the Mangochi component financed by the Kuwait Fund for Arab Economic Development, later referred as the “**KF**”). The complaints concern the Mangochi component and, in particular, the facilities located within Lake Malawi National Park (“**LMNP**”). The park is designated a United Nations Educational, Scientific and Cultural Organization (“**UNESCO**”) World Heritage Site for its outstanding biodiversity and landscape value.

The complaints include multiple allegations of non-compliance of the Project’s Mangochi component with the EIB environmental and social (“**E&S**”) standards (the “**Standards**”), which the EIB-CM grouped as follows: gaps in the analysis of alternatives, gaps in stakeholder engagement, gaps in the environmental and social impact assessment (“**ESIA**”), gaps in the biodiversity studies, non-alignment with UNESCO transposed conventions and UNESCO guidelines and a lack of E&S management and monitoring, in addition to other sub-allegations. The EIB-CM compliance review finds non-compliance with the relevant E&S standards regarding most of the allegations raised by the complainants.

The Mangochi component, financed by the KF, was integrated into the EIB financed Project. However, the EIB is financing only the two other components of the Project. Therefore, the EIB and the KF are considered parallel co-lenders. Under parallel co-financing, lenders generally administer their own part of a project although joint supervision or agreements are possible, on a best effort basis. In this case, the KF had signed its financing agreement before the EIB started its appraisal. As per its procedures, the Bank should assess the differences between the co-lenders’ standards and duly take into account any gaps. Additionally, the Bank has a duty to appraise E&S risks associated with any component financed by the co-lender (in this case, the Mangochi component), define the appropriate mitigation measures and monitor their implementation. However, since it does not supervise the procurement process nor the disbursement for the works of a component that it does not finance, the EIB has limited control on the implementation of the Mangochi component (i.e. during monitoring).

This report concludes that the Bank’s E&S appraisal of the Project did not assess gaps between the Standards and those of the KF (the co-lender). The EIB appraisal did nevertheless cover the Mangochi component. The EIB-CM’s compliance review finds that there were shortcomings in the appraisal of that component since the EIB did not review in substance the assessment of alternatives, the ESIA, the consultations undertaken and the biodiversity risks. The EIB-CM considers that the Bank’s E&S risk categorisation was also insufficient. According to the EIB E&S Procedures (the “**Procedures**”), an assessment of potential biodiversity impacts of projects located in protected areas or with high biodiversity value should be undertaken. The EIB-CM concludes, that had these risks been identified, the Bank could have taken more appropriate mitigation measures at appraisal and provided better tailored support to help and guide the promoter (the Southern Region Water Board, or the “Promoter”) in the implementation of that component in line with the Standards.

The EIB did nevertheless ensure, through its finance contract, that the Promoter committed to implementing the Project in compliance with the Standards. The EIB also provided technical assistance aiming at having the Mangochi component implemented in line with the Standards. The initial objectives of the technical assistance were however not achieved. The EIB-CM finds that the Bank adequately followed up on the Mangochi component on a best effort basis despite its limited leverage on the implementation of this particular component. The EIB had no direct leverage in the selection of the contractor and disbursement of the works. Hence, the EIB-CM concludes that there is no maladministration by the Bank with regard to the allegations that construction works started before the public consultations, the upgrade of the ESIA and before the environmental permit was granted.

In view of the shortcomings identified at appraisal, the EIB-CM recommends that the Bank:

- Clarifies through its ongoing revision of the E&S procedures, as committed when adopting the EIB Environmental and Social Sustainability Framework in 2022, the approach for E&S risk categorisation and associated minimum appraisal required.
- Ensures that a biodiversity assessment is undertaken of the Mangochi component to the satisfaction of the Bank in order to confirm whether the site is a critical habitat or not and accordingly determine if residual impacts (taking into account the implementation of existing mitigations) need to be further mitigated or offset. This is also in line with the UNESCO main recommendation.

The EIB-CM finds that the Bank did follow up on the Mangochi component on a best effort basis acknowledging that it does have limited direct oversight of the implementation of that component. Therefore, **the EIB-CM issues a suggestion for improvement for the Bank to verify that** the Promoter's E&S expertise in support of the Project implementation unit is reinforced and satisfactory to the Bank (both at its headquarters and on-site) to support all components of the Project to comply with the Standards. An improvement in this area is particularly important for the two components financed by the EIB.

To allow public access to environmental information on allegations investigated in this report, **the EIB-CM suggests** that the Bank requests the promoter to publish the biodiversity study complementary to the ESIA once available and considers publishing the document through a link to the promoter's website.

Allegation and applicable Standards	Project compliance	Conclusions on the role of the Bank
Analysis of alternatives EIB E&S standards 1 and 3	No	<u>At appraisal</u> The Bank's E&S risk categorisation was insufficient as it did not identify the need for a biodiversity screening.
Stakeholder engagement EIB E&S standard 10	No	The Bank's E&S appraisal failed to assess gaps between the Standards and those of the KF (the co-lender).
Environmental and social impact assessment EIB E&S standards 1–10	No	The EIB appraisal did cover the Mangochi component but did not review in substance the assessment of alternatives, the ESIA, the consultations undertaken and the biodiversity risks.
Biodiversity EIB E&S standard 3	No	The Bank ensured the Promoter is committed to implementing the Project in compliance with the Standards and there is technical assistance to support compliance of the Mangochi component compliance with the Standards.
UNESCO Convention and Commission recommendations EIB E&S standards 3 and 5	No	<u>At monitoring</u> The Bank carried out monitoring of the Mangochi component (that it does not finance) on a best effort basis.
E&S monitoring EIB E&S standards 1–10	No	The initial objectives of the technical assistance were not achieved.
EIB 2021–2025 Climate Bank Roadmap Zambezi Watercourse Commission agreement	Yes	As parallel co-lender, the EIB has limited leverage on the Mangochi component since it does not have control over the procurement of the contractor and the disbursement for the works. There is no maladministration by the Bank with regard to the allegations that construction works started before the public consultations, the upgrade of the ESIA and before the environmental permit was granted.

1 BACKGROUND

1.1 Project

- 1.1.1 The Project aims at supporting the rehabilitation and extension of the water supply infrastructure in three towns located in the southern part of Malawi: Liwonde, Balaka and Mangochi. The overall Project objectives are (i) to support the National Water Policy (2005) of the government of Malawi and (ii) to support the implementation of the relevant Sustainable Development Goals, by providing all populations with access to a safe water supply, specifically by providing the three towns with access to reliable drinking water supplies¹.
- 1.1.2 The borrower is the Republic of Malawi (the “**Borrower**”). The promoter of the Project is the Southern Region Water Board, a public organisation under the Ministry of Agriculture, Irrigation and Water Development that is responsible for the provision of the potable water supply and waterborne sanitation services in the urban centres of the Southern Region of Malawi.
- 1.1.3 The investment loan was approved by the EIB Board of Directors in October 2020 and the finance contract for the Project (including the three components) was signed in December 2020 (the “**Finance Contract**”). This operation is a parallel co-financing: the EIB has committed to financing the Liwonde and Balaka components of the Project, providing up to € 26,5 million; the Mangochi component is fully financed by the KF². However, the three components are indicated as being part of the Project (as defined in the Finance Contract). The financing agreement regarding the Mangochi component between the Borrower and the KF had been signed before the EIB started appraising the Project. The total estimated cost of the Project is approximately € 41 million. On the date of this report, the EIB has not made any disbursement for the components it finances under the Finance Contract.
- 1.1.4 The Mangochi component is located on the shore of the south-eastern part of Lake Malawi. The complaints submitted to the EIB-CM refer to the Mangochi component and, in particular, to the facilities located on Nkhudzi Hill within the LMNP (see Figure 1): a water reservoir of 4,000 m³, an access road and the connecting pipes. The complaints refer as well to other facilities and operations adjacent to the LMNP that are also part of the Mangochi component, such as the water intake system from the lake and the water treatment plant.
- 1.1.5 The LMNP has been a UNESCO World Heritage Site³ since 1984. The site was selected for its outstanding landscape and biodiversity values, which support habitats for hundreds of fish species, nearly all of which are endemic and of importance to the study of evolution.⁴

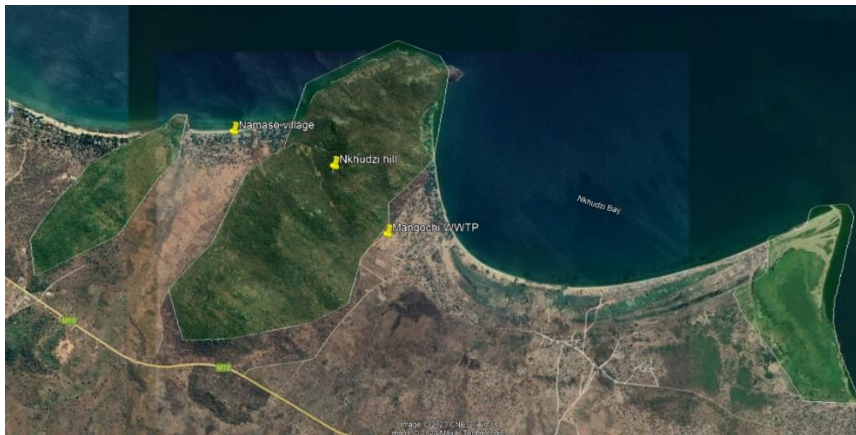
¹ See the European Investment Bank’s web page on the [Southern Region Water Board Water Supply and Sanitation Programme](#).

² <https://www.kuwait-fund.org/en/web/kfund>.

³ These sites are protected under the UNESCO World Heritage Convention of 1974. For more information, see <https://whc.unesco.org/>.

⁴ Also see the description of outstanding universal value criteria vii, ix and x of LMNP, available at <https://whc.unesco.org/en/list/289/>.

Figure 1: Location of Nkhudzi Hill and LMNP's approximate boundaries (in green)⁵



- 1.1.6 The EIB loan is complemented by technical assistance financed by a fund managed by the EIB and made available for Project's preparation support (SRWB Preparation Support). The technical assistance focuses on the technical design⁶ of EIB-financed components (Balaka and Liwonde) and on the review and update of the E&S safeguard documentation for all components under the Finance Contract (Balaka, Liwonde and Mangochi).⁷
- 1.1.7 The works of the Mangochi component started in 2021. The Project consulting engineers for this component confirmed all facilities (including the main reservoir and access road) are either completed, or nearing completion.

1.2 Complaint

- 1.2.1 In March 2022, the EIB-CM received two complaints regarding the Mangochi component.
- 1.2.2 The group of complainants comprises (i) two individuals founders of the local non-governmental organisation Health Education, Environment and Economic Development Malawi,⁸ which is active in the creation, protection and promotion of LMNP⁹ and (ii) other individuals that requested their identities to be kept confidential but agreed for the report to be published on the EIB-CM website.
- 1.2.3 According to the complainants, the development of the water system in Mangochi has had significant negative environmental and social impacts and does not comply with the Standards. The complainants mainly argue that the facilities constructed within the LMNP (the water reservoir, access road and pipes) should be located on an alternative site outside the UNESCO World Heritage Site. Based on the written complaints (described in more detail in the public initial assessment report¹⁰) and further exchanges with the complainants, the EIB-CM has grouped the allegations as follows:
- i. There are gaps in the assessment of alternatives to be carried out in line with the Standards, in particular the failure to compare the environmental and social impacts of alternatives.
 - ii. There are gaps between the stakeholder engagement process and the Standards, in particular a lack of timely and meaningful consultation with all stakeholders.

⁵ Maps of the park are available at https://whc.unesco.org/en/list/289/multiple=1&unique_number=323 and <https://www.protectedplanet.net/2317>.

⁶ This includes feasibility studies of options, technical surveys and studies, detailed drawings and procurement support.

⁷ This includes scoping impacts, scoping consultations, the review and update of the environmental and social impact assessment, the resettlement action plan (if required), environmental and social management plans, draft and final ESIA consultations, the stakeholder engagement plan and the grievance redress mechanism.

⁸ <https://heedmalawi.net>.

⁹ <https://heedmalawi.net/lake-malawi-national-park/>.

¹⁰ See [SRWB Water Supply and Sanitation Programme \(Malawi\): Initial Assessment Report](#).

- iii. The ESIA's do not comply with the Standards. The gaps mentioned include an incomplete description of the Mangochi component, a lack of on-site surveys for the E&S baseline, an incomplete assessment of alternatives and failure to assess environmental and social impacts adequately (in particular, impacts and mitigation measures in relation to pollution prevention, community safety and natural hazards, biodiversity and cultural heritage).
- iv. The biodiversity baseline and impact assessment fail to confirm the absence/presence of critical habitats and, as applicable, to comply with the Standards' requirements for such habitats (avoid, reduce, offset to achieve net gains).
- v. The implementation of the Mangochi component has failed to avoid a UNESCO site and to comply with Malawi obligations under the UNESCO Convention and to follow Malawi UNESCO Commission recommendations.
- vi. The implementation of the Mangochi component did not comply with environmental permit conditions and lacked monitoring by the Promoter, and the related construction works did not comply with environmental, social, public health and safety requirements.

2 WORK PERFORMED

2.1.1 During the initial assessment of the complaints, the EIB-CM explored the possibility of engaging in a collaborative resolution process. Nevertheless, the complainants and the Promoter acknowledged the limitations of such a process, considering that the complainants' main objective was to contest the location of the Mangochi water reservoir. Given the challenges linked to a potential change of location¹¹, the EIB-CM deemed it appropriate to proceed with a compliance review. The complainants also expressed their interest in moving forward with a compliance review regarding potential EIB maladministration instead of a dispute resolution process. The initial assessment report issued in August 2022 was shared with the complainants and published online¹².

2.1.2 As part of the compliance review, the EIB-CM reviewed:

- documents related to the EIB's appraisal¹³ and monitoring of the Project, including those from the technical assistance;
- the 2019 ESIA of the Mangochi component, the revised final version from 2021, and other E&S managements plans, studies and reports provided by the Promoter;
- documents and information provided by the complainants;
- the regulatory framework applicable to the Project, in particular the UNESCO convention related requirements, national regulations, the Finance Contract and the Standards and applicable EIB procedures;
- the report of the UNESCO/International Union for Conservation of Nature (IUCN) joint reactive monitoring mission of March 2022 to the LMNP;¹⁴ and
- other publicly available information from the UNESCO and IUCN websites and national and international media and civil society organisation platforms.¹⁵

¹¹ See [SRWB Water Supply and Sanitation Programme \(Malawi\): Initial Assessment Report](#), paragraphs 3.12 to 3.16.

¹² See [SRWB Water Supply and Sanitation Programme \(Malawi\): Initial Assessment Report](#).

¹³ See the [EIB Environmental and social data sheet dated 13 October 2020](#).

¹⁴ <https://whc.unesco.org/en/documents/199759>.

¹⁵ See the Mongabay article on the construction (<https://news.mongabay.com/2022/07/construction-begins-on-controversial-water-project-inside-lake-malawi-national-park/>) and the related Change.org petition (<https://www.change.org/p/government-of-malawi-department-of-national-parks-waterboard-a-world-heritage-site-on-lake-malawi-is-under-threat-and-needs-your-support-now>).

- 2.1.3 In addition to the meetings held during the initial assessment,¹⁶ the EIB-CM has had several meetings with the EIB services and the complainants to follow the progress of the situation in the Project's Mangochi component area.
- 2.1.4 The EIB-CM undertook a fact-finding site visit during the week of 21 November 2022, during which it met with the following stakeholders:
- some of the complainants;
 - the Promoter, the contractor and the consulting engineers;
 - the monitoring task force, comprising members from relevant ministries;
 - the UNESCO Commission of Malawi;
 - the LMNP officers;
 - the heads of the villages located each side of Nkhudzi Hill;
 - the Department of Museums and Monuments;
 - the Office of the Director of Parks and Wildlife;
 - the Malawi Environment Protection Authority;
 - the Ministry of Water and Sanitation; and
 - the consultants in charge of the ESIA.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The *EIB Group Complaints Mechanism Policy*¹⁷ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB.¹⁸ Maladministration means poor or failed administration.¹⁹ This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures.²⁰ Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB Group.²¹
- 3.1.2 The *EIB Group Complaints Mechanism Policy* specifies that it is the role of the EIB-CM to review the EIB's activities with a view to determining whether maladministration attributable to the EIB has taken place.²² This review may include a substantive review of project compliance with environmental and social standards.²³
- 3.1.3 Compliance of a project with international, EU, national or local standards is the responsibility of the relevant project promoter and local authorities. However, the EIB Group has a duty to verify compliance with its applicable policies, procedures and standards. Complaints may relate to any aspect of the planning, implementation or impact of EIB Group projects, including but not limited to:
- the due diligence of the project;

¹⁶ See Section 3 of the EIB-CM [SRWB Water Supply and Sanitation Programme \(Malawi\): Initial Assessment Report](#).

¹⁷ https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

¹⁸ Section 5.1.3 of the *EIB Group Complaints Mechanism Policy*.

¹⁹ Section 3.1 of the *EIB Group Complaints Mechanism Policy*.

²⁰ Section 3 of the *EIB Group Complaints Mechanism Policy*.

²¹ Section 3.3 of the *EIB Group Complaints Mechanism Policy*.

²² Section 5.3.3 of the *EIB Group Complaints Mechanism Policy*.

²³ Section 5.3.3 of the *EIB Group Complaints Mechanism Policy*.

- the adequacy of measures for the mitigation of the social and environmental impacts of the project;
- arrangements for involvement of the affected communities, minorities and vulnerable groups in the project;
- the monitoring of the project.²⁴

3.2 Finance contract

3.2.1 The Finance Contract provides for a loan for the execution of **the Project**. In the Finance Contract, the Project's technical description includes the following components: (i) rehabilitation and extension of Liwonde–Balaka water supply system, (ii) installation of a micro hydro turbine in Zomba water system, (iii) rehabilitation and extension of Mangochi water supply system, (iv) a COVID-19 response and Promoter business continuity plan and (v) technical assistance support for studies for components (i) and (ii) and implementation support for the Project.

3.2.2 In the Finance Contract, the Promoter commits to, and the Borrower commits to procure that the Promoter will, **implement and operate the Project in compliance with the Standards**, and to obtain, maintain, and comply with, the requisite E&S approvals for the Project.

3.2.3 In the Finance Contract, **E&S Standards are defined as:**

- environmental law and social law applicable to the Project and the Promoter, including EU law, principles and standards; national laws and regulations; and signed and ratified or otherwise applicable and binding on Malawi international treaties and conventions;
- the 2013 *EIB Environmental and Social Handbook*²⁵ (including the updated 2018 EIB E&S standards²⁶);
- the *EIB Statement of Environmental and Social Principles and Standards*;²⁷ and
- the environmental and social documents (including the ESIA, the non-technical summary and the stakeholder engagement plan and any other relevant document, to the extent required).

3.2.4 Before **disbursing the first tranche, the Finance Contract requires *inter alia*:**

- evidence of the environmental authorisation of the Project with, where appropriate, the completed ESMP and completed and published ESIA;
- for any disbursement related to the carrying out of works for the Project, evidence of implementation of the ESMP, including the grievance mechanism; and
- evidence that the Promoter has created and staffed a Project implementation unit and that a project management consultant has been recruited and mobilised to advise, support and build the capacity of the Promoter.

3.2.5 The Promoter is also obliged to provide information on the Project's progress semi-annually and following completion, including an update on the Project's technical description (see paragraph 3.2.1 above), a description of any major issue with impact on the environment and any legal action concerning the Project that may be ongoing.

²⁴ Section 4.3.14 of the *EIB Group Complaints Mechanism Policy*.

²⁵ Volume II of the handbook is available at: https://consult.eib.org/consultation/essf-2021-en/user_uploads/eib-environmental-and-social-handbook.pdf. Volume I is no longer available online. However, the 2018 version of the manual is available at: https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf.

²⁶ https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf.

²⁷ https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

3.3 Project applicable conventions and standards

The conventions

3.3.1 These include the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the 1993 United Nations Convention on Biological Diversity. Malawi has ratified these conventions, which are expected to be transposed into national law. These conventions are also reflected in the Standards, in particular standards 3 and 5.

Standard 1 — Assessment and management of environmental and social impacts and risks

3.3.2 This standard outlines the Promoter's responsibilities in the process of assessing, managing and monitoring environmental and social impacts and risks associated with EIB-financed operations (paragraph 5 of standard 1). It applies to all operations that are likely to have significant and material environmental and social impacts and risks. These impacts and risks need to be taken into account at the earliest possible stage in the technical planning and decision-making processes (paragraph 6).

3.3.3 When the EIB is co-financing with other IFIs that have developed and apply their own E&S policies, adequate implementation of these policies may be sufficient to meet the Standards, pursuant to the EIB's own assessment. Such possibility does not relinquish the EIB own E&S due diligence duty, as well as the duty to account for any gaps between the relevant IFI E&S standards and the Standards.

3.3.4 Projects that are likely to have significant and material impacts on, and pose risks to, the environment, human health, well-being and human rights must be subject to an ESIA procedure (paragraph 11). The assessment must be consistent with the principles contained in the EU environmental impact assessment directive²⁸ and best international practice. Specific attention should be given to integrating the impact on, among others, human rights, biodiversity and cultural heritage, as well as the disaster risks, into the overall ESIA as provided for by international treaties. If deemed necessary by the EIB based on the nature of the project and country context, the promoter may be required to carry out supplementary assessments.

3.3.5 Standard 1 further outlines the requirements applicable for:

- the identification of significant impacts and risks, the definition of the assessment area and the content of an ESIA (including project description, **assessment of alternatives**, baseline studies, assessment of impacts, mitigation measures, natural hazards and its associated ESMP) (paragraphs 23–49).
- the necessary organisation capacity and competencies for the management of E&S risks and impacts during project implementation (paragraphs 50–52).
- the monitoring system, plans and measures to review the effective implementation of the ESMP and compliance with the contractual obligations and regulatory requirements.

Standard 3 — Biodiversity and ecosystems

3.3.6 The EIB is committed to development that is compatible with maintaining the resilience of ecosystems and their functions and processes to achieve at least no net loss of biodiversity and ecosystem services (paragraph 2). The promoter needs to provide the necessary assurance that biodiversity, ecosystems and their associated services will be sustained when projects supported by the EIB are designed, implemented and decommissioned (paragraph 4). Promoters are further expected to identify risks to biodiversity and ecosystems by following a

²⁸ [Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment](#) (OJ L 124, 25.4.2014, p. 1).

credible and evidence-based process of impact assessment and to incorporate effective mitigation and management measures into their management systems, plans and procedures.

- 3.3.7 Standard 3 outlines the requirements for promoters to identify and map habitats and classify them into natural, semi-natural and urban habitats. Truly natural and unaltered habitats are increasingly rare and those that remain are likely to be a high priority for conservation (paragraphs 8–9).
- 3.3.8 More stringent requirements apply where projects are located in areas or ecosystems that are considered to represent a “**critical habitat**,” including a **presumption in favour of project avoidance** and a requirement to demonstrate positive outcomes (net gain) for biodiversity in cases where projects do take place. Promoters are therefore required to perform an assessment to determine whether their projects are located within or could affect any areas of critical habitat (paragraph 10).
- 3.3.9 An area will be considered critical if it supports any of the following features and is needed to ensure that they remain in a viable state: a highly threatened or unique ecosystem; a population of critically endangered, endangered or vulnerable species (as defined by the IUCN Red List and in relevant legislation); endemic, restricted range or highly distinctive assemblages of species; a habitat required for the survival of migratory and/or congregatory species; biodiversity with significant social, economic or cultural importance to local communities or indigenous groups; or a habitat of key scientific value or associated with key evolutionary processes (also see paragraph 4.1.22 of this report for the key biodiversity area criteria triggered in the Project).²⁹
- 3.3.10 Given that biodiversity has an intrinsic value, for all types of habitats, there is a **presumption of criticality** if one or more of the above criteria is met, and the burden of proof is on the promoter to characterise the absence of critical habitat in the project’s area of influence, even in urban habitats. Each criterion should be screened in consultation with relevant stakeholders (for example, local communities and conservation experts), whose opinions and conclusions should be attached to the assessment (paragraph 12).
- 3.3.11 **Development within or affecting a critical habitat should be avoided** and can only go ahead if (paragraph 14):
- no viable alternatives for the project exist in terms of location and design, and there is a rigorous justification for overriding public interest;
 - further studies are carried out on the critical habitat features affected by the project, to show that impacts will not result in any measurable decline in status of the feature or of the area needed to sustain the features in a viable state;
 - impacts will be avoided and minimised to the extent possible through changes in footprint or design;
 - positive conservation outcomes (net gain) are achievable through appropriate compensation or offsetting measures for residual impacts that would otherwise occur despite impact avoidance and minimisation measures;
 - a robust, appropriately designed and long-term biodiversity monitoring and evaluation programme aiming to assess the status of the critical habitat is integrated into the promoter’s adaptive management programme.
- 3.3.12 If critical habitats have been identified, it is recommended that the promoter seeks an external review of the impact assessment by a qualified, recognised and independent organisation in the field (paragraph 26).

²⁹ Note that the critical habitat criteria of the EIB E&S standards are similar to or overlap with the key biodiversity area criteria, including some that are triggered for the designation of the southeast arm of Lake Malawi as a key biodiversity area.

- 3.3.13 The significance of impacts on natural features is strongly influenced by their relative irreplaceability and vulnerability. Features that are highly rare, unique and irreplaceable and also very vulnerable to a project's impacts are less likely to recover, thus requiring compensation or offsets to avoid a net loss or achieve a net gain in a critical habitat. In some cases, impacts on irreplaceable and very vulnerable features may be impossible to compensate or offset, or the necessary techniques may be uncertain. To avoid risk of irreversible impacts on irreplaceable and very vulnerable features, the EIB will not finance projects likely to have significant adverse effects on such features, regardless of compensation or offset measures (paragraph 15).
- 3.3.14 **The EIB will not finance a project with significant impacts on nationally or internationally recognised highly threatened or unique species and ecosystems, nor will it finance a project with significant impacts on any UNESCO World Heritage Site** (paragraph 16). The EIB will only finance a project within a protected area, or within a nationally or internationally designated or recognised area for biodiversity conservation (including UNESCO Natural World Heritage sites), **if the promoter is able to demonstrate that the development is legally permitted and that the design of the project is consistent with any management plan for such areas that is recognised by the relevant authorities**. In the absence of a recognised plan, projects should be compatible with the achievement of the relevant conservation objectives used to designate the area in question (paragraph 17).
- 3.3.15 **It is necessary to demonstrate that there are no alternatives to a development affecting natural, semi-natural or critical habitats. This requires explicit assessment of alternatives from a biodiversity perspective and their inclusion in any decision on project alternatives**. Alternatives have to be sufficiently analysed with regard to their impacts on biodiversity, ecosystems and their associated services. The reference parameters for such comparisons are the conservation of biodiversity and the maintenance of the integrity of habitats. Economic criteria cannot be seen as overruling the ecological criteria.

Standard 4 — EIB climate-related standards

- 3.3.16 This standard requires that EIB financing as a whole is aligned with EU climate policy (paragraph 1). In practice, climate change considerations should be taken into account throughout the project cycle, in particular during appraisal, through the following analysis and tasks: undertaking carbon footprint assessment, undertaking climate vulnerability assessment for the sectors most at risk and aiming to address climate change vulnerability in the ESIA (paragraph 2).
- 3.3.17 Promoters must comply with appropriate national and — where applicable — EU legal requirements, including multilateral agreements, related to climate change policy (paragraph 7).
- 3.3.18 When significant climate change risks in projects and to surrounding ecosystems are identified, the EIB requires the promoter to identify and apply the necessary physical and soft measures at the planning, design and implementation stages to reduce and monitor these risks (paragraph 8).

Standard 5 — Cultural heritage

- 3.3.19 The EIB recognises the significance of cultural heritage as part of individual and collective identity and its central role in supporting the objectives of sustainable development and the promotion of cultural diversity. The EIB respects and promotes its protection in the regions in which it operates. In line with the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) and the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, this standard aims to safeguard unique and irreplaceable cultural heritage and guide promoters to integrate cultural heritage management into their operations so as to avoid or mitigate the adverse impact of their projects/activities on cultural heritage (paragraph 1).

3.3.20 If confirmed as applicable (paragraphs 5–7 and 10–11), **the promoter will undertake a cultural heritage impact assessment** according to a set of principles, one of which is constructive relationships with affected communities (paragraph 8), and it will seek to actively protect culturally significant places, objects and practices in relation to the threats they face (paragraph 9). Paragraphs 12–17 of the standard describe the content and methodology of the assessment.

Standard 9 — Occupational and public health, safety and security

3.3.21 An objective of this standard is to ensure that promoters duly anticipate, avoid or minimise, and effectively mitigate risks to, and adverse impacts on, the health and safety of host communities during construction and operation phases (paragraph 4, objectives).

3.3.22 Risks to public health and safety are normally expected to be identified at the ESIA stage (paragraph 39). Potential negative impacts affecting the public may be triggered by structural components (for example the failure of structures such as dams, or faulty design), sexually transmitted diseases (paragraph 40) or gender-based violence (paragraph 43). If such risks are identified, the management of them will be reflected in the ESMP (paragraph 13).

Standard 10 — Stakeholder engagement

3.3.23 This standard affirms the EIB's expectation that the promoter will uphold stakeholder engagement according to the free, prior and informed engagement principle (paragraph 6 and paragraph 17). This means undertaking an engagement process that is inclusive and iterative, involving, to varying degrees, stakeholder analysis and engagement planning, timely disclosure and dissemination of/access to information, public consultations and stakeholder participation and a mechanism ensuring access to grievance and remedy (paragraph 2). It is important that the views, interests and concerns of project-affected communities and other stakeholders are heard, understood and taken into account throughout the project life cycle (paragraph 1).

3.3.24 How stakeholder engagement must be put into practice is detailed in standard 10. It covers stakeholder identification and analysis (paragraphs 21–26), engagement planning (paragraphs 27–31), information disclosure (paragraphs 32–34), public consultation (paragraphs 35–38) and the grievance redress mechanism (paragraphs 45–50). An up-to-date stakeholder engagement plan is required and should outline the stakeholder engagement strategy. It should include the main stakeholders, past engagement activities, planning for the next project phases, the results of these activities and how they will be incorporated into the project's E&S management (paragraph 10).

3.4 EIB policies and procedures

3.4.1 The Bank can co-finance projects with other financial institutions. Such co-financing can be arranged on a joint or parallel basis. As per the EIB Guide to procurement³⁰, in parallel co-financing, each separate project component or contract is financed by a single financier. In this case, the (procurement) procedures adopted by each co-financier apply to those components or contracts that it finances.

3.4.2 As per the EIB Environmental and Social Handbook, volume 2³¹ (later referred as the "**EIB E&S Procedures**"), (paragraph 47) includes a similar obligation (as stated in paragraph 3.3.3) for the Bank to perform its own due diligence and assess and take into account any gaps with the other lender's E&S standards.

³⁰ See [Guide to Procurement for projects financed by the EIB](https://www.eib.org/en/publications/guide-to-procurement) published online: <https://www.eib.org/en/publications/guide-to-procurement>

³¹ Available online: https://consult.eib.org/consultation/essf-2021-en/user_uploads/eib-environmental-and-social-handbook.pdf

- 3.4.3 According to the Bank's procedures, whenever a project is co-financed (or receives parallel co-financing) with another IFI, the appraisal and monitoring missions are coordinated to minimise disruption to the promoter and to harmonise the due diligence and/or monitoring approach as much as possible. The term *as much as possible* is understood as on a best effort basis.
- 3.4.4 For individual project finance operations where there is more than one lender, common terms agreements (CTA) set out the covenants and representations and warranties given by the borrower to all senior lenders (including the EIB, if applicable). The CTA binds all the lenders of the same project in one single document. CTAs are used in case of joint co-financing of individual projects and not for parallel co-financing of different sub-projects (as is the case here).
- 3.4.5 The Southern Region Water Board Water Supply and Sanitation Programme is an investment loan (see paragraph 1.1.3). As per the EIB E&S Procedures, the **due diligence by the Bank should check that the project's ESIA** has been carried out and is satisfactory. The Bank E&S appraisal should review the substance of the project using ESIA documents and other studies. Outside the European Union, it should verify that a **biodiversity assessment** has been carried out as part of the ESIA or separately, where necessary, and clarify what protected areas, critical habitats, areas of important biodiversity value or priority areas for conservation may be affected by the project. It should also provide details and links to the appropriate methodology so that the biodiversity is adequately assessed and monitored. The due diligence should also **review the consultations carried out under the ESIA process, the stakeholder engagement plan** and determine if further consultation and engagement is required. The due diligence should **also assess the E&S capacity and management system of the promoter** (paragraph 90).
- 3.4.6 According to EIB E&S Procedures, the ESIA plays a key role in the EIB's due diligence (paragraph 107) of a given project. The ESIA should be completed to the satisfaction of the Bank prior to the submission of the project to the EIB's Board of Directors and, in exceptional cases, it can be a condition of loan signature or disbursement (paragraph 115).
- 3.4.7 A guiding principle for the ESIA is that the **assessment of alternatives must be a real analysis** and not merely dispose of alternatives in favour of a decision that has already been reached (paragraph 120).
- 3.4.8 According to EIB E&S Procedures, at appraisal, the purpose of public consultation and stakeholder engagement in the ESIA process is to allow the promoter to identify and address public concerns and issues, and to provide the public with an opportunity to contribute with meaningful input to the project assessment, development and implementation (paragraph 160). For projects outside the EU, a Stakeholder Engagement Plan, including a grievance mechanism, is mandatory as part of the ESIA process (paragraph 164). During appraisal, stakeholders' concerns should be established through the ESIA documents (paragraph 165). At appraisal and while reviewing the public consultation process carried out for the project, **the EIB team should verify among others that engagement has begun early in the process, and information has been disseminated and made accessible to all stakeholders with a substantial interest in the project** (paragraph 170). The team will review the adequacy of the grievance mechanism and stakeholder engagement (paragraph 171).
- 3.4.9 **As per EIB E&S Procedures**, due to the complexity of biodiversity issues, particularly when considered in terms of ecosystems, **the appraisal of the project on biodiversity does not lend itself to a simple or quick analysis**. The ESIA process should among others: take an integrated and ecosystems approach to planning, assess and consider alternatives that result in no net loss or seek to restore biodiversity (paragraph 172). All projects, irrespective of their location, have to be screened for their potential impact on biodiversity and ecosystems. The initial environmental and social assessment, which takes into account the location and scale of the project and the proximity to areas that have important biodiversity values (include amongst others world heritage sites, key biodiversity areas), should flag any potential impacts and risks the project may have on biodiversity and ecosystems. Key questions to facilitate this screening are for example: will the proposed operation result in changes to water quality; damage or loss

of protected habitats, areas known to provide important ecosystem services, habitats for threatened species; direct or indirect negative impact on species listed in the IUCN red list (paragraph 177).

- 3.4.10 When the screening carried out by the Bank under the E&S Procedures has identified that there are potential adverse impacts on biodiversity and ecosystems (primary and secondary effects), the EIB must verify that the promoter has applied the mitigation hierarchy (e.g. avoid, minimise, restore, offset) to ensure there is no net loss of biodiversity (paragraph 179).
- 3.4.11 Generally, the higher the ecological value (see paragraph 3.4.9 above), the more protective the mitigation measures. The Bank may request that further specific studies be undertaken by experts in the field. Biodiversity offsets should only be used for residual impacts, after all avoidance and minimisation measures have been considered. Should offsets be required, the Business and Biodiversity Offset Programme (“**BBOP**”) is an internationally recognised methodology that can be applied (paragraph 180). Where a significant impact is likely, the project should be monitored during implementation and operation, as appropriate. This monitoring plan should include a remediation plan for long term biodiversity stabilisation and promotion on the project site and in the secondarily affected adjacent areas (paragraph 188).
- 3.4.12 **The conclusions of the biodiversity assessment should be recorded in the ESDS** (paragraph 189).
- 3.4.13 For projects outside the EU, **a biodiversity screening process will determine whether a biodiversity assessment is required to ensure that projects take into account the conservation of biodiversity of legally protected areas or that are known to be of high conservation value, whether or not these habitats have been previously disturbed.** The assessment should be based on mitigation hierarchy and take into account the views and roles of NGOs and local communities (paragraph 199). In addition, an assessment of the promoter’s ability to implement necessary conservation and mitigation measures is required. The promoter will then prepare a biodiversity action plan acceptable to the EIB, such as avoiding and reducing the negative impacts on the loss of habitats and establishing and maintaining an ecologically similar protected area (paragraph 200).
- 3.4.14 According to EIB E&S Procedures, for projects outside the European Union where an ESIA is required, the **EIB will make the ESIA available to the public in its public register, where possible, through a link to the promoter website** (paragraphs 333, 334 and 337). The Promoter is responsible for making the documents available to the public in a language appropriate for consultation and stakeholder engagement (paragraph 337). Likewise, other procedures of the Bank require that the ESIA report and associated studies are published in the EIB Public Register.
- 3.4.15 As per the EIB E&S Procedures, **projects that are subject to an ESIA, complex in nature (such as those involving biodiversity and protected areas)** and that require special attention (for instance, in case of ongoing investigations of a complaint by the EIB-CM) **should seek the support of an E&S expert.**
- 3.4.16 As per the EIB E&S Procedures, monitoring aims to ensure the compliance of the operation with the EIB’s approval conditions and monitoring plan and to verify that the expected outputs and impacts are actually delivered throughout the project cycle, as required, to fulfil the EIB’s obligations and meet its objectives (paragraph 270).
- 3.4.17 In addition to the general requirements, E&S requirements include evidence on compliance with applicable environmental and social legislation, respect of contract conditions and undertakings related to the E&S matters, and the implementation of agreed impact management measures (paragraph 271).
- 3.4.18 **Close follow-up of the E&S actions that are required as part of the finance contract (in particular those related to disbursement conditions) is essential**, since it is at this stage

that the EIB can have the most impact in ensuring that any outstanding E&S issues are thoroughly and correctly followed up by the promoter, in compliance with the EIB's requirements. Where these issues are particularly sensitive or where the project team decides it requires specialist support, help can be provided by other teams or departments of the Bank, such as a review of environmental or social impact studies or other specific documentation submitted by the promoter or borrower (paragraph 272).

- 3.4.19 The promoter shall provide regular progress reports and a completion report with information on E&S compliance and implementation of impact management measures, including the effectiveness of the ESMP implementation (paragraph 273).

4 FINDINGS

In its compliance review, the EIB-CM aims to assess, for each allegation, the Project's compliance with the applicable Standards. Findings of the EIB-CM are presented below for each allegation (see Section 4.1). The role of the Bank in the appraisal and monitoring of the Project in relation to identified non-compliance is then reviewed in Section 4.2.

4.1 Compliance with the Standards

Analysis of alternatives

- 4.1.1 A 2017 feasibility report for the Mangochi component compares the construction and operational costs of alternative tank site locations on Nkhudzi Hill, Nkope Hill and Namakoma Hill. According to these estimations, the lowest cost alternative location is by far Nkhudzi Hill. The report includes an environmental and social screening of the proposed project (the extension of the Mangochi town water supply project). It does not mention that the tank site location is within the LMNP. The September 2019 ESIA does not assess alternative tank site locations.
- 4.1.2 The assessment of alternatives in the revised December 2021 ESIA refers primarily to the cost analysis, including construction and operational constraints of the tank site locations. One paragraph covers the impacts on ecosystems. This paragraph states that the reasons for the choice of Nkhudzi Hill were that:
- the water reservoir facilities footprint would be equal on all sites;
 - birds have long distance dispersal and therefore all sites exhibit similar populations;
 - a minimum impact on mammal fauna is expected;
 - the shorelines where the Mbuna fish breeds will be protected from siltation since the access road will be paved; and
 - as UNESCO World Heritage Site, it will benefit from additional assessments, mitigation measures and management plans.³²
- 4.1.3 In the EIB-CM's view, the reasons provided above are either non substantiated or include shortcomings. In fact, the location of the Project's Mangochi component should lead to an evaluation of higher E&S impacts since there is a protected sensitive habitat and species while on the other sites there are no such habitats or species, hence no receptors and no potential impacts. Indeed, technically, in line with the ESIA methodology, the significance of environmental impacts is higher due to the greater sensitivity and value of the receptors (in terms of habitats and species) in the protected area vs. other degraded sites, and the higher

³² See Final ESIA for the Mangochi extension project, December 2021, pp. 27–28.

magnitude (in terms of number of species affected) and probability of the impact (e.g., siltation in the lake vs. where there is no lake).³³

- 4.1.4 The analysis of alternatives that led to the selection of the tank site on Nkhudzi Hill dates from 2017. The EIB-CM finds that it is based on technical and financial constraints and does not compare potential E&S impacts, as required by EIB E&S Standard 1. It is only in the ESIA of December 2021, after works had already started in the Mangochi component area and following comments from stakeholders (including national authorities and UNESCO), that the analysis of alternatives includes E&S considerations. Moreover, contrary to the EIB E&S Procedures (see paragraph 3.4.6), the analysis of alternatives is brief and justifies a decision already made rather than meaningfully comparing alternative sites.

Stakeholder engagement

- 4.1.5 According to the September 2019 ESIA, meetings with the Mangochi District Council and government departments (health, environment, fisheries, forestry, education and public works), a LMNP officer, residents of two villages and a civil society organisation³⁴ were undertaken by the consultants in charge of the ESIA in August 2019³⁵. Based on a Google Maps search, these villages appear located along the extension area and far away from the Project's Mangochi component's main infrastructure (i.e., the treatment plant & water distribution facilities).³⁶
- 4.1.6 Meetings at the Department of National Parks and Wildlife in Lilongwe were held on 19 May and 23 June 2021 with different groups of national authorities. These meetings were reportedly organised after concerns about the Project's Mangochi component had been raised by various stakeholders and the public. In particular, concerns were raised that the implementation had started without prior public consultations nor an approved ESIA. It follows from the minutes of these meetings annexed to the revised December 2021 ESIA that:³⁷
- Based on the status of activities in May 2021, the engineering, procurement and construction (EPC) contractor had mobilised on-site and was carrying out surveys, constructing the staff houses and offices and excavating at the treatment plant site. All works had been interrupted following the environmental protection order issued by the Malawi Environment Protection Agency (MEPA) on 11 May 2021.³⁸
 - The Department of National Parks and Wildlife was not fully engaged in the initial stages of the Project's Mangochi component to provide guidance on, and consent for, it to continue its operations. The officer cited in the September 2019 ESIA allegedly from the Department of National Parks and Wildlife is not from the department.³⁹ Survey tracks within the protected area have been cleared without the necessary LMNP consent.⁴⁰
 - Some key stakeholders were not consulted nor asked to provide input to the ESIA. The public should have been informed of the Project Mangochi component and the on-going stakeholder engagements through the media.⁴¹
 - The ESIA is inadequate insofar as biodiversity and cultural heritage concerns are not incorporated in line with the Malawi National Parks and Wildlife Act, the Malawi Monuments and Relics Act and the UNESCO world heritage guidelines. A comprehensive heritage impact assessment must be undertaken as part of the ESIA.⁴²

³³ See also final ESIA, Section 7.4, on the rating of E&S impacts (p. 103).

³⁴ Amref Health Africa. For more information, see <https://amrefuk.org/contact>.

³⁵ See the [ESIA from September 2019](#).

³⁶ In particular with residents of the [Mponda](#) and [Chizula](#) villages (links give access to the Google Maps locations).

³⁷ See Final ESIA for the Mangochi extension project, December 2021, Appendix 7, pp. 234–241.

³⁸ See the final ESIA, p. 236.

³⁹ This information was also provided by the LMNP office to the EIB-CM during its site visit.

⁴⁰ See the final ESIA, p. 237.

⁴¹ See the final ESIA, p. 237.

⁴² See the final ESIA, p. 237.

- All parties agree that construction works should remain paused but that Mangochi component-related assessment and design surveys should be permitted inside the LMNP.⁴³ It is agreed that the Department of Museums and Monuments will undertake a site survey and a heritage impact assessment to be then integrated by the consultant in the ESIA.⁴⁴
 - With the support of the Southern Region Water Board, the Environmental Affairs Department should facilitate public hearings on the Project component.⁴⁵
- 4.1.7 On 19 July 2021, the September 2019 ESIA was submitted to the UNESCO World Heritage Committee⁴⁶, which provided comments on the gaps detected in the said ESIA in line with the UNESCO's *Operational guidelines for the implementation of the World Heritage Convention*. The main recommendations were to (i) consider alternative locations to avoid impact on the world heritage property, (ii) review the ESIA to assess impacts on the OUV⁴⁷ of the property and cultural heritage in line with UNESCO guidelines for impact assessment⁴⁸, and (iii) submit the revised ESIA to the World Heritage Centre for review before authorisation and construction.⁴⁹
- 4.1.8 Public hearings to present the September 2019 ESIA report were conducted between 21 and 23 July 2021 in various public locations in the project footprint.⁵⁰ These consultations are then reflected in the December 2021 ESIA.⁵¹ The main comments from the participants were to (i) improve the assessment on wildlife, (ii) assess alternative sites, (iii) ensure that UNESCO guidelines on ESIA are followed, (iv) confirm that the intake site is not a Mbuna breeding ground, (v) note that there is a risk of erosion and siltation affecting the lake and Mbuna fishes and (vi) assess the seismic risk on the water tank.
- 4.1.9 Following the consultations and national authorities concerns and expectations, the improvements brought to the ESIA cover the following topics, among others: alternatives, seismicity, cultural heritage, biodiversity and the OUV of the UNESCO property. In December 2021, the revised ESIA was submitted to MEPA, and it was approved on 28 December 2021. In February 2022, physical works in the LMNP resumed. However, this was without UNESCO's consultation of the revised ESIA.⁵²
- 4.1.10 Based on the above, the EIB-CM notes the following:
- There was no consultation with external stakeholders at the feasibility study stage in 2017 during which the tank location was decided.

⁴³ On 27 June 2021, MEPA waived its environmental protection order, thus allowing construction of staff houses and office blocks.

⁴⁴ See the final ESIA, p. 238.

⁴⁵ See the final ESIA, p. 238.

⁴⁶ Paragraph 172 of the OG of the UNESCO World Heritage convention, the state parties are invited to notify the UNESCO World Heritage Committee of their intention to undertake or authorize projects asap (e.g. before drafting basic documents and before making any decisions that would be difficult to reverse).

⁴⁷ The UNESCO Operational Guidelines define it as: "Outstanding Universal Value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole."

⁴⁸ See the IUCN *World heritage advice note: Environmental assessments* (https://www.iucn.org/sites/dev/files/import/downloads/iucn_advice_note_environmental_assessment_18_11_13_iucn_template.pdf) and the International Council of Monuments and Sites *Guidance on heritage impact assessments for cultural world heritage properties* (https://www.iccom.org/sites/default/files/2018-07/icomos_guidance_on_heritage_impact_assessments_for_cultural_world_heritage_properties.pdf).

⁴⁹ See the final ESIA, Appendix 7, pp. 210–211.

⁵⁰ At Mangochi's Municipal Council Hall, La Riviera Lodge in Maldeco, Lisumbwi Secondary School in Monkey Bay and the Capital Hotel in Lilongwe

⁵¹ See the final ESIA, Section 6.3 and Annexes 7 and 8.

⁵² See pp. 10–12 and 35 of the UNESCO reactive monitoring visit report from April 2023, available at: <https://whc.unesco.org/en/documents/199759>.

- Meetings with external stakeholders were undertaken in August 2019, but these stakeholders were mainly district officials and residents of two villages along the water distribution network, far from the main infrastructure.
- These meetings did not include stakeholders located near to — or with an interest in — the Nkhudzi Hill and the LMNP (see paragraphs 4.1.5, 4.1.6). Therefore, one may conclude that the September 2019 ESIA does not identify some of the key potential E&S impacts associated with the location of the site within the LMNP (a UNESCO site).
- The site was effectively handed over to the EPC contractor and the construction works started at the camp site and treatment plant without public consultations and before ESIA approval by MEPA.
- Following concerns from external stakeholders, MEPA issued an environmental protection order in May 2021 to stop the works. The order was then partially waived in June 2021, allowing for the construction of staff houses and offices.
- Consultations on the September 2019 ESIA were eventually undertaken in July 2021. They involved UNESCO and other stakeholders relevant to the potential impacts, in locations covered by the Project's Mangochi component footprint.
- The ESIA was then reviewed considering comments from stakeholders and was finalised in December 2021.

4.1.11 The EIB-CM finds the allegation about a lack of prior and informed stakeholder engagement (see paragraph 3.3.23) to be justified to the extent that (i) the tank location was decided without any consultation of external stakeholders, (ii) the consultation meetings as part of the ESIA in 2019 did not involve stakeholders near to — or with an interest in — Nkhudzi Hill and the LMNP and (iii) the construction works at the camp site and the survey works within the LMNP started before public consultations and approval of the ESIA by environmental authorities, although they were then partially stopped. Moreover, the EIB-CM finds that there is no stakeholder engagement plan for the Project's Mangochi component, which is not in line with EIB E&S standard 10 (see paragraph 3.3.24).

4.1.12 The EIB-CM finds however that, after concerns were raised by external stakeholders and upon authorities' requests, the consultations organised in July 2021 did involve the relevant stakeholders. Public consultation took place in appropriate locations, also online, over several days and allowed for a large attendance. The ESIA was improved and considered stakeholders' comments. However, UNESCO was not consulted on the revised and approved ESIA (see paragraphs 4.1.7, 4.1.9).

4.1.13 The environmental authorisation granted subsequently required the development of a memorandum of understanding to set up a task force team responsible for the E&S management during construction. As required, the team is composed of representatives of the relevant government departments (for example fisheries, parks, environment, museums and monuments) and also includes representatives of the national UNESCO Commission, local lodge owners and the chief of the Mwanyama village (the village is located next to the Mangochi component offices and the water treatment plant). The first team site visit and meeting were held on 8 March 2022. The EIB-CM received evidence that the task force team held regular monthly meetings and performed monitoring activities.

4.1.14 In March 2022, a MEPA audit found that the grievance mechanism for the Project Mangochi component had yet to be established. The Promoter did later develop a grievance redress mechanism procedure and a committee composed of members of the task force team. At the time of its site visit in November 2022, the EIB-CM did not find that the mechanism was being publicised and no grievance had yet been received. In June 2023, it was found by an audit of the technical assistance that the Project Mangochi component should reinforce its grievance mechanism.

4.1.15 With regard to the sub-allegation of a lack of engagement with the chief of Namaso village, located on the other side of the hill to Mwanyama, the village is a key stakeholder, as it is located next to the hill access road and tank site. The EIB-CM finds that there is no direct representative of this village in the task force team or on the grievance redress mechanism committee. During its site visit, the EIB-CM was, however, informed by the representative of Namaso that they have a direct communication line with the Mwanyama chief, who is a member of the team and sits in the committee.

Environmental and social impact assessment

4.1.16 The allegation of the ESIA's (the September 2019 ESIA available at the time to the public) non-compliance with the Standards covers the following topics:

- gaps in the Project's Mangochi component description in the ESIA with regard to the design of the tank access road, reservoir and intake pipes;
- the lack of on-site surveys for the E&S baseline;
- the lack of adequate impact assessment of pollution prevention, safety and natural hazards, biodiversity and cultural heritage.

4.1.17 Gaps in the September 2019 ESIA regarding the lack of alternative assessments, baseline surveys and assessment of E&S impacts — in particular on cultural heritage, biodiversity and UNESCO's site OUV — were raised by the public and UNESCO in July 2021 (see paragraphs 4.1.7 and 4.1.8). These gaps had also been previously identified (May/June 2021) by the authorities involved in the Project (see paragraph 4.1.6), which required additional studies to be undertaken and the ESIA to be improved accordingly (see paragraph 4.1.9).

4.1.18 In particular, an addendum on cultural heritage impact assessment was developed by the Department of Museums and Monuments and findings of a standalone assessment by the Department of National Parks and Wildlife were incorporated into the ESIA. The EIB-CM has reviewed the assessment report, which is aligned with international good practice and the Standards on E&S impact assessment (see paragraph 3.3.4) and cultural heritage (see paragraph 3.3.19).

4.1.19 A geological survey, including an assessment of natural hazards such as landslides and seismicity, was performed in 2021 by the Department of Geology of the Southern Region Water Board. The main findings of the study were included in the ESIA. The study concludes that the flat area of the tank on the hill is stable and has no fault-related origin. Its recommendations include designing and building the tank in line with construction standards to withstand the maximum seismic occurrences projected in the area.

4.1.20 With regard to the sub-allegation of lack of a Project description for this component, the final version of the ESIA provides a description of the access road, reservoir and intake pipes that is found to be aligned with ESIA's standard practice and appears sufficient to assess its potential impacts. This description includes the location of the tank on Nkhudzi Hill and of the intake water point as well as maps and layouts of the main infrastructures including the tank access road.

4.1.21 On this basis, the EIB-CM finds that the September 2019 ESIA did not align with the Standards (see paragraph 4.1.17) but that the revised December 2021 ESIA, approved at the same time by the environmental authorities, eventually addresses the above allegations (not considering biodiversity) of the complainants. The allegation of the ESIA non-compliance with the EIB E&S standard for biodiversity is covered in the next section.

Biodiversity

4.1.22 The following biodiversity work was also completed, led by the Department of National Parks and Wildlife: an E&S screening report in May 2021 and an environmental audit report dated August 2021, which is mostly a survey of trees and vegetation within the project footprint in the

LMNP, completed with lists of mammals, fish and birds sighted during the vegetation survey, 2009–2014 animal counts and a literature review. These studies were integrated into the revised 2021 ESIA to assess impacts on biodiversity and on the UNESCO site OUV criteria.

4.1.23 In EIB-CM's view, these efforts (see paragraph 4.1.22) are positive and could have been considered sufficient if the Project's Mangochi component was located in an area with limited biodiversity value and ecosystem role. However, Nkhudzi Hill is a protected area of the LMNP and a UNESCO site mostly for its biodiversity OUVs including its role in protecting the nearshore water quality on which the cichlids breeding habitats depend. Also, the hill is adjacent to and supports the water quality of a key biodiversity area and some of the Mangochi component's infrastructures (water intake bridge and pipe) are located within a Key Biodiversity Area (KBA) and UNESCO site⁵³. Therefore, and as explained below, the full set of requirements of the Standards on biodiversity should have been applied.

4.1.24 According to the IUCN's report *Conservation priorities for freshwater biodiversity in the Lake Malawi/Nyasa/Niassa catchment* (2019), the southeast part of the lake has the highest number of potential key biodiversity area triggers in water and on land. Therefore, Lake Malawi's southeast arm was designated as a new key biodiversity area in 2018,⁵⁴ which means it is an area considered to contribute significantly to the planet's biodiversity and overall health.⁵⁵ Such areas are designated if they meet one or more of 11 criteria. Lake Malawi's southeast arm meets a total of four criteria under category A (threatened biodiversity) and B (geographically restricted biodiversity) (see Table 1).⁵⁶ The Mangochi component's intake pipe and pier bridge are located in this KBA and the tank is located on a hill next to the KBA. According to the IUCN, sedimentation from habitat degradation and soil erosion are amongst the main threats for freshwater species conservation. In some cases, threats can originate from outside the KBA and require coordinating conservation and development planning⁵⁷.

Table 1: Key biodiversity area criteria triggered in Lake Malawi's southeast arm

Key biodiversity area code	Criteria	Assessment parameters
A1a: threatened species	Above 0.5% of global population size and more than five reproductive units of a critically endangered/endangered species	i. Number of mature individuals
A1c: threatened species	Above 0.1% of global population size and five reproductive units of a species listed as critically endangered/endangered due only to past/current decline	ii. Area of occupancy iii. Extent of suitable habitat iv. Range
A1d: threatened species	Above 0.2% of global population and ten reproductive units of a species listed as vulnerable due only to past/current decline	v. Number of localities
B1: individual geographically restricted species	Above 10% of global population size and ten reproductive units of any species	vi. Distinct genetic diversity

4.1.25 The LMNP was established in 1980. It comprises a large mainland area (Cape Maclear peninsula), three other mainland areas (including Nkhudzi Hill), 12 islands and a freshwater

⁵³ See the figures on pp. 148 and 152 of Chapter 10, 'Freshwater key biodiversity areas in the Lake Malawi/Nyasa/Niassa catchment', available at: <https://portals.iucn.org/library/sites/library/files/documents/RL-2019-001-En.pdf>.

⁵⁴ See *Key biodiversity areas factsheet: Lake Malawi southeast arm*. Also see the figures on pp. 148 and 152 of Chapter 10, 'Freshwater key biodiversity areas in the Lake Malawi/Nyasa/Niassa catchment', available at: <https://portals.iucn.org/library/sites/library/files/documents/RL-2019-001-En.pdf>.

⁵⁵ For more information on the key biodiversity areas, see <https://www.iucn.org/resources/key-biodiversity-areas>.

⁵⁶ See the IUCN report *A global standard for the identification of key biodiversity areas*, available at: <https://portals.iucn.org/library/sites/library/files/documents/2016-048.pdf>. For more information on the criteria triggered for and threatened species identified in this key biodiversity area, see <https://www.keybiodiversityareas.org/site/factsheet/48986>.

⁵⁷ See p156 and 162 of Chapter 10, 'Freshwater key biodiversity areas in the Lake Malawi/Nyasa/Niassa catchment', available at: <https://portals.iucn.org/library/sites/library/files/documents/RL-2019-001-En.pdf>.

area 100 metres from the shoreline. The park was added to the UNESCO World Heritage List in 1984 on the basis of three OUV criteria: (i) its exceptional natural beauty, (ii) its outstanding example of biological evolution, as shown by the adaptive radiation and speciation in the rocky shore haplochromine cichlids (also called Mbuna) and (iii) the outstanding diversity of freshwater fish that it hosts. **The mainland areas were protected also for their role in preventing erosion and siltation of the lake, which would affect cichlid breeding areas.**⁵⁸

- 4.1.26 **As per Standard 3 on biodiversity, paragraphs 11 and 12, Nkhudzi Hill and the lake area of the Project Mangochi component must be presumed to be a critical habitat, unless proven otherwise (see paragraph 4.1.27),** since it supports the following features: populations of critically endangered, endangered or vulnerable species and endemic, restricted range or highly distinctive assemblages of species (see paragraphs 4.1.22 and 4.1.25), and a habitat that is of key scientific value or associated with key evolutionary processes (see paragraph 4.1.25).
- 4.1.27 According to Standard 3, the burden of proof to characterise the absence of critical habitat in the entire area of influence of the Project (even in urban habitats) is on the Promoter (see paragraph 3.3.10). This should be done through an assessment where each criterion is screened by conservation experts in consultation with relevant stakeholders (for example, local communities and conservation experts), whose opinions and conclusions should be attached to the assessment.
- 4.1.28 According to Standard 3, the ESIA should identify and map habitats, classify them into natural, semi-natural and urban habitats (see paragraph 3.3.7), and assess and confirm the presence or absence of critical habitats if one of the criterion is met, with the help of conservation experts (see paragraph 3.3.10). The EIB-CM finds that the ESIA did not classify and map habitats, nor did it assess the presence of a critical habitat in the Project Mangochi component area, despite the fact that several criteria were met (see paragraph 4.1.26).
- 4.1.29 According to Standard 3, if the absence of critical habitat is not confirmed, there is a presumption in favour of avoidance of the habitat (see paragraph 3.3.8). However, if the presence of critical habitat is confirmed, development should be avoided. It could only go ahead if it can be demonstrated that: there is an overriding public interest; there are no viable alternatives; further studies are carried out to show that impacts will not result in any measurable decline in status of the feature or the area needed to sustain the features in a viable state, and the impacts on biodiversity can be mitigated, compensated and offset to achieve a positive biodiversity outcome (net gain); there is a robust long-term biodiversity monitoring and evaluation programme (see paragraph 3.3.11); and the impact assessment goes through an external review by a qualified, recognised and independent organisation in the field (see paragraph 3.3.12). **Since in this case the Project Mangochi component presumably lies within a critical habitat (see paragraph 4.1.26)⁵⁹, the EIB-CM finds that the Project did not comply with EIB's Standard 3. Development should have either been avoided or the assessments listed in this paragraph carried out (i.e. to confirm the site is not a critical habitat or to assess impacts and offset residual impacts).**
- 4.1.30 In addition, the assessment of alternatives does not comply with Standard 3, paragraph 28, as it requires demonstration that there are no alternatives to development affecting natural, semi-natural or critical habitats. Moreover, alternatives should be compared with regard to their impacts on biodiversity, while economic criteria should not be seen as overruling the ecological criteria (see paragraph 3.3.15).
- 4.1.31 The complementary biodiversity assessment dated August 2021 is mostly a survey of trees and vegetation within the project footprint in the LMNP, completed with a list of mammals and birds sighted during the vegetation survey, an outdated (2009–2014) and short list of animal counts

⁵⁸ <https://whc.unesco.org/en/list/289/>.

⁵⁹ Since it was not proven otherwise as per EIB procedures.

and a literature review (see paragraph 4.1.22). The EIB-CM finds that, considering the sensitivity of the site, the biodiversity component of the ESIA has limitations. In addition, according to the complementary biodiversity assessment (August 2021), the Leopard (*Panthera pardus*, critically endangered) is sighted, although rarely on Nkhudzi hill. It is unclear why this information is not reflected in the ESIA. Also, according to a fish abundance and diversity monitoring study performed under the umbrella of the work of the task force team in 2022, several fish species listed in the ESIA are extinct, could not be sampled by scientific studies despite comprehensive samples or are riverine species not expected to be in Lake Malawi's southeast arm. In the EIB-CM's view, this may cast doubt on the quality of the biodiversity baseline studies and secondary information used in the ESIA, which, according to Standard 3, must be credible and evidence-based (see paragraph 3.3.6).

United Nations Educational, Scientific and Cultural Organization convention and Commission recommendations

4.1.32 A UNESCO delegation made up of IUCN's biodiversity experts and cultural heritage experts performed a site visit at the end of March 2022. The findings of the UNESCO mission report include the following.⁶⁰

- There were significant shortcomings in the early design stages of the Project Mangochi component.
- Owing to non-financial factors, possible alternative sites outside the property were not sufficiently considered at the appropriate stage.
- The participation of stakeholders — internal and external (including UNESCO) — was sporadic at best, particularly during the early stages. Stakeholders' opinions and concerns could therefore not be incorporated in the site selection, design and the ESIA.
- The construction site was handed over to the contractor before completion and approval of the ESIA. Project construction commenced without due regard to the ESIA review comments (July 2021) and subsequent recommendations (December 2021) that UNESCO provided.
- The 2019 ESIA was not prepared in accordance with the UNESCO *Operational guidelines for the implementation of the World Heritage Convention* and was not submitted to the World Heritage Centre for review in a timely manner. Similarly, the feasibility study report that is said to predate the ESIA was not provided to UNESCO for review.
- Construction of infrastructure with a potential adverse impact on the OUV of a UNESCO World Heritage Site and without due diligence to environmental concerns sets a concerning precedent, nationally and internationally.
- Malawi's strong network of civil society organisations played an important, commendable and effective role in challenging the planning and implementation weaknesses.
- Earlier recommendations by the UNESCO World Heritage Centre/IUCN were not followed or fully responded to (see paragraph 4.1.7). As a result, avoidable environmental damage has been caused to the property.

4.1.33 The EIB-CM therefore, in its findings, builds on the conclusion of the UNESCO report, which states that the Project Mangochi component had a multiplicity of inherent inconsistencies with the requirements of the UNESCO's *Operational guidelines for the implementation of the World Heritage Convention*.⁶¹

4.1.34 Considering that changing the location is no longer an option, UNESCO has suggested strengthening the ESIA as deemed necessary and recommended:

⁶⁰ See UNESCO's [Report on the joint World Heritage Centre/IUCN reactive monitoring mission to Lake Malawi National Park](#).

⁶¹ See UNESCO's [Operational guidelines for the implementation of the World Heritage Convention](#).

- repairing as fully as possible the environmental damage that has been caused by the construction works associated with the Mangochi water storage tank.
- minimising the inevitable damage to the property's OUV through full implementation of independently verified mitigation measures as set out in the ESIA, and in particular (i) minimising the run-off and the siltation of waters along the shoreline, (ii) ensuring that as many mature trees as possible are maintained close to the water tank and (iii) mitigating indirect impacts on biodiversity caused by access to the forest via the road.

Monitoring of environment and social management plan implementation and of compliance with law and environmental permit conditions

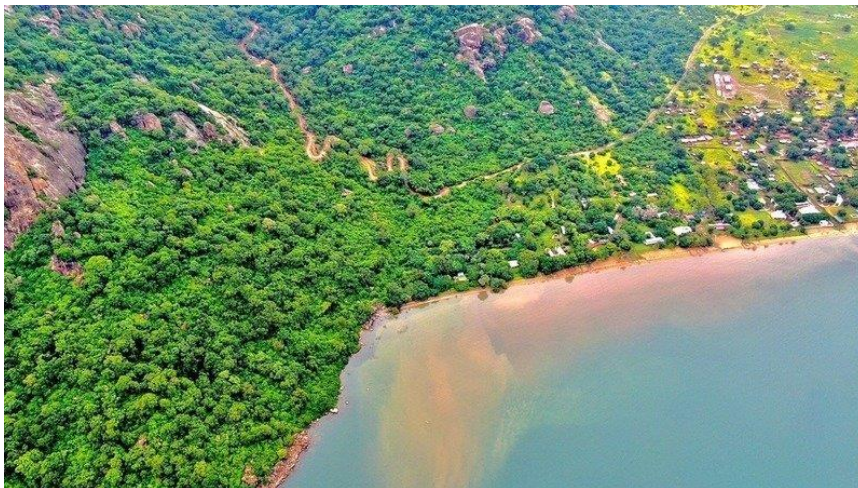
- 4.1.35 The complainants' main allegations regarding the lack of implementation and monitoring of the ESMP and the permit conditions relate to gaps regarding (i) implementation of the controlled rock-blasting procedure, (ii) signage and access control to the site to avoid safety risks, wood cutting and poaching, (iii) erosion and siltation caused by the construction works, the temporary unpaved road and a lack of erosion prevention measures, (iv) erosion, landslide and safety risks from loose blasted rocks and soil dumped along the access road and (v) monitoring.
- 4.1.36 The contractor developed a procedure for **controlled blasting** that includes signage, demarcation and pre-blasting notification measures. The EIB-CM documentation review and site visit provide sufficient evidence that notifications to local residents were made prior to the blasting events. The EIB-CM did not find evidence supporting complainants' allegations that, in early March 2022, such notifications were not made.
- 4.1.37 During its site visit, the EIB-CM witnessed the presence of **signage and communication boards** on the construction works. An **access control barrier** and guard house were also installed at the entrance of the access road to Nkhudzi Hill in July 2022. The Promoter committed to ensuring presence of a guard at all times. A rangers' camp was also constructed to support the LMNP's activities next to the tank. However, according to information received, the barrier would often remain unguarded, which would result in intrusion into the park for wood cutting and collection. A task force team's monthly report also confirms an instance of intrusion into the park for poaching, which was followed by sensitisation actions for the workers. Other monthly reports refer to the risk of increased access to the park due to the road and pipeline corridor and to community sensitisation campaigns about park access rights. There is evidence that a permanent fence has been constructed as part of the Project Mangochi component's completion. The EIB-CM finds that the risk of increased access created by the road is being mitigated, but that a system to ensure the permanent presence of guards and continuous awareness-raising of the communities should be put in place during operations.
- 4.1.38 With regard to **erosion** from construction works and the temporary unpaved access road, the following findings are made.
- i. According to the Promoter, the delay in delivering the tank rooftop, required before paving the road, is due to external factors beyond its control. As a result, the road was not paved before the rainy season of Q4 2022 to Q1 2023.
 - ii. At the time of the EIB-CM's visit in November 2022, just before the rainy season, loose rocks were dumped along the unpaved road, thus creating risks of additional erosion and soil instability. Only one culvert was being installed and ditches or silt traps were yet to be installed in preparation for the rainy season.
 - iii. During the rainy season from the end of 2022 to early 2023, which was also affected by Tropical Cyclone Freddy in March 2023,⁶² the complainants shared several videos, pictures and reports showing significant erosion from the area, the road and siltation into the lake (see Figure 2).

⁶² See the [Global Flood Awareness System article on the cyclone](#).

- iv. In January 2023, temporary ditches and siltation traps were built and vetiver grass was planted by the contractor along the construction road. These measures seem to have had limited effects, as evidence of further erosion and siltation was received. According to the Promoter, natural streams run parallel to the road, one of which splits and then crosses the road in two places, and naturally end up in the lake (see Figure 3).
- v. Road-paving works resumed after the rainy season. They were reported to be completed at the time of this report's cut-off date⁶³. The design of the road has a lined drainage system, culverts, check dams, drifts and chutes for water dissipation. According to the Promoter, this should prevent project-related erosion.
- vi. The Promoter called on the Roads Authority, which visited the access road in mid- February 2023 and reviewed the proposed design. The authority's conclusion was that the design is adequate, but it suggested also considering vegetation cover on the western side of the road on sections free of side drains. It also recommended providing well-defined outlets on the same side in the form of chutes to avoid embankment erosion. Reportedly, according to the Mangochi component consultant engineers, the access road and drainage system is completed. It is expected that maintenance will be necessary during operation.
- vii. It can be concluded that, it is likely that some level of erosion occurs annually in the area, but that this level was reinforced by construction works and delays in the completion of paving the road, despite it being a key measure in the ESIA to mitigate siltation of the lake and impacts on water biodiversity.
- viii. To monitor the level of siltation and its effects, the task force team supervised three monitoring studies of **fish abundance and diversity**, water quality and lake bottom conditions prior to, during, and after the rainy season. The conclusions of the assessment during the rainy season are that, compared with the dry season baseline study, turbidity was high, in particular at the LMNP site, where there was no visibility and from which started a 0.5 km plume that may have disrupted the nearshore habitat characteristic of most Mbuna fish. The study after the rainy season finds there is good water clarity and suitable conditions for freshwater fish, and that habitats had largely recovered after the disruption from sediment loads during the rainy season. According to the study, cichlid diversity remains high, including the presence of a critically endangered species, but that it is lower at the LMNP site than at the intake site, which opposes the findings of the previous studies. The future monitoring studies are reportedly expected to reveal if these findings are a one-off or a result of the Project.

⁶³ Cut off date of 31 October 2023

Figure 2: Aerial photograph of the siltation in the lake



Source: Complainant, February 2023

Figure 3: Satellite image and natural water run-off



Source: Promoter

- 4.1.39 With regard to **monitoring**, the EIB-CM notes that the task force team was set up in line with the memorandum of understanding and that regular monthly visits and monitoring activities are performed (see paragraph 4.1.13). Monthly progress reports are also submitted by the contractor to the Promoter. The Promoter has hired a junior E&S specialist to supervise works on-site. MEPA has also performed environmental audits. However, according to the Promoter, the project implementation unit does not have effective in-house E&S expertise. The EIB-CM finds that there is a need to strengthen in-house E&S expertise in the PIU (see paragraph 4.2.4).
- 4.1.40 With regard to **replanting**, the Promoter intends to plant ten trees of native species for each of the trees removed along the access road. According to the Promoter's reporting, out of 10 000 trees to be planted, 6 000 were planted during the rainy season in Q1 2023 and the remaining 4 000 will be planted during the next rainy season. All trees were indigenous species recommended by the Department of National Parks and Wildlife. The trees were planted in the LMNP and in the neighbouring villages of Mwanyama and Namaso. All trees were purchased from community-based organisations (village natural resources committees), who were also employed for the planting. Reportedly, other trees were used to replace those that did not germinate. Although some reports on the replantation have been produced, **there is currently no information on the existence of a replantation management plan and survival monitoring plan.**
- 4.1.41 Overall, the EIB-CM finds that the Project follows a reasonable level of monitoring of the construction and that the establishment of a task force team to reinforce E&S monitoring activities is a good practice. **Nevertheless, in line with the Standards, areas for**

improvement include: better controlling of the access road and improving awareness raising (see paragraph 4.1.37), preventing further rainwater siltation into the lake (see paragraph 4.1.38), increasing in-house E&S expertise (see paragraph 4.1.39), developing a replantation management and monitoring plan (see paragraph 4.1.40) and a stakeholder engagement plan (see paragraph 4.1.11) to support dialogue and community awareness and support of access control measures, rules to access and use the LMNP resources and the replantation programme.

- 4.1.42 Ensuring the quality of the works of the paved road, the removal of dumped soil along the road and the success of the vegetation restoration measures before the contractor is released from its duties and completion is confirmed is critical to limit Project-induced erosion over the years. According to the Project's consultant engineers, the works were completed before October 2023. The EIB has however limited leverage regarding the contractor's work or confirmation of construction completion of a component it does not finance.
- 4.1.43 In the EIB-CM's view, there is sufficient information to support the finding that **erosion and potential damage to the Mbuna habitats** occurred, partially because of the delays in finishing the paved road works before the rainy season (see paragraph 4.1.38). According to the latest water and fish diversity survey of June 2023, habitats have largely restored since the early 2023 rain-season, but fish diversity is now lower at the LMNP site than at the intake site, which is the opposite of the findings of the previous studies (see paragraph 4.1.38viii). It can also be expected that natural erosion from the hill into the lake will continue during rainy seasons.
- 4.1.44 In addition, during the EIB-CM's visit and based on stakeholder interviews, it was evident that the LMNP guards lack resources⁶⁴ to control the access and the use of natural terrestrial and water resources within the park including within the Project's site, especially since it is spread over different areas (see paragraph 4.1.25).
- 4.1.45 With regard to the sub-allegation of non-compliance with public health and safety requirements regarding gender-based violence, there is evidence that the task force team has conducted at least one community sensitisation campaign on the topic. The workers' code of conduct covers awareness of sexually transmitted diseases, gender-based violence, induction and training of workers and the grievance redress mechanism. Employees must sign their agreement to the code of conduct.

Other sub-allegations

- 4.1.46 According to the complainants, the Project's Mangochi component does not follow the EIB's enhanced climate action and sustainability ambitions and its 2021–2025 Climate Bank Roadmap. The EIB Climate Bank Roadmap was approved in November 2020, after the Project's appraisal, and became effective as from January 2021, and therefore does not apply to the Project.
- 4.1.47 The EIB appraised the Project's investment contribution to climate change and found it to contribute to the country climate adaptation in terms of water availability, which is threatened by extreme weather events and droughts.
- 4.1.48 With regard to the allegation of breach of the Zambezi Watercourse Commission (ZAMCOM) agreement, the promoter consulted the commission, requesting its position on the proposed project. After consulting its member states, the commission provided its consent in July 2019 in a letter that is annexed to the ESIA report.

4.2 Responsibilities of the Bank

- 4.2.1 Under parallel financing, co-lenders generally administer their own part of a project although joint supervision or agreements are possible (see paragraphs 3.4.1, 3.4.4). The Mangochi

⁶⁴ For example, they have only one operational car for transporting park management and patrolling the entire park.

component was integrated into the EIB-financed Project but ultimately not financed by the Bank. In this case, the Bank had a duty to appraise E&S risks associated to that component under the Project it finances, assess the co-lender's (KF) E&S standards and how these are generally implemented, and to take appropriate mitigation measures (see paragraph 3.4.2). However, since it does not supervise the procurement process nor the disbursement for the works related to a component it does not finance, the EIB has limited control over the implementation of that component (i.e. during monitoring). Coordination of the due diligence and monitoring with the parallel co-lender is understood to be on a best effort basis (see paragraphs 3.4.3, 3.4.4).

- 4.2.2 Although EIB funds are not allocated to the financing of the Mangochi component per se and the EIB has therefore limited control on the implementation of that component, the component makes an integral part of the Project, which was subject to EIB appraisal. The Finance Contract entered into by the EIB, the Borrower and the Promoter defines the Project as including the three components (Liwonde, Balaka and Mangochi) (see paragraph 3.2.1). The Finance Contract includes an undertaking of compliance of the Project with the Standards (see paragraph 3.2.2) as well as E&S conditions precedent for disbursement (see paragraph 3.2.4) and reporting obligations (see paragraph 3.2.5).
- 4.2.3 According to the Finance Contract, the Standards apply to the Project as a whole, including the Mangochi component (see section 3.2). In line with the EIB E&S Procedures, the EIB has a duty to perform due diligence and monitoring of all Project components to which the Standards apply. In line with Standard 1, when the EIB is co-financing and even when a common approach is agreed and the other lender has developed and applies similar E&S standards, the EIB is still under the obligation to conduct its own E&S due diligence and any identified gaps must be taken into account (see paragraph 3.3.3). In this case, the KF had signed the financing agreement before the EIB started appraising the Project (see paragraph 1.1.3). The EIB-CM has found no evidence of a common agreed approach nor that the other lender (KF) has developed or applies E&S standards and procedures similar to those of the EIB. It has also not found evidence that any gap analysis had been performed nor that any gaps duly accounted for.

Appraisal

- 4.2.4 The EIB's appraisal of the Project includes an assessment of the management capacity of the Promoter, further mentioning that the Promoter is supported by a trained and experienced E&S safeguards officer and a community mobilisation officer. It also mentions that the Bank will mobilise technical assistance through a consulting firm for the Project preparation phase (financed by the Dutch Water Fund⁶⁵), and a Project implementation consultant (funded with Cotonou funds⁶⁶). The creation and staffing of a Project implementation unit and the mobilisation of a Project management consultant are defined as conditions precedent to the first disbursement (see paragraph 3.2.4). Accordingly, the technical assistance provided for Project preparation aimed at updating the ESIA and working on detailed Project designs, including the E&S documentation, when necessary. The implementation phase technical assistance includes E&S monitoring.
- 4.2.5 The EIB E&S appraisal of the Project is reflected in the ESDS (which was published upon approval of the financing for the Project by the EIB Board of Directors).⁶⁷ The ESDS states that, according to local law and the EU environmental impact assessment directive, the Project is subject to an ESIA. It also states that the Promoter had already recruited a consultant to conduct the ESIA, to be prepared **in compliance** with national law and **the Standards**. The ESIA **was to be finalised during the detailed Project design phase, with the support of technical assistance financed** by a fund managed by the Bank (see paragraph 1.1.6). In addition to the conditions referred in paragraph 4.2.4 above, the disbursement by the EIB of the first tranche under the Finance Contract was subject to the satisfactory completion of the ESIA (where

⁶⁵ See [The EIB Water Sector Fund](#), p.8

⁶⁶ See [EIB launches the Cotonou Agreement Investment Facility](#)

⁶⁷ See the EIB [Environmental and social data sheet dated 13 October 2020](#).

appropriate), the ESMP (where appropriate) and to evidence of the environmental authorisation for implementation of the Project (see paragraph 3.2.4 above). The Finance Contract further requires that all Project personnel, including contractors and subcontractors, comply with a workers' code of conduct to the satisfaction of the Bank.

- 4.2.6 In 2020, during the appraisal (see paragraph 1.1.3), the EIB services received the 2019 ESIAAs for the Balaka, Liwonde and Mangochi components. As part of Project appraisal, the EIB E&S Procedures state that the ESIA plays a key role in the EIB's due diligence and further require that each Project ESIA is reviewed (see paragraph 3.4.5 and 3.4.6). As further detailed below, there is no evidence such a review took place at appraisal. The EIB-CM considers that performing such analyses might have led the EIB services to have identified (and possibly thereby supported the Promoter in addressing) the gaps in stakeholder engagement and in the ESIA that were highlighted one year later by most stakeholders consulted on the same ESIA report of the Mangochi component (see paragraphs 4.1.6, 4.1.7 and 4.1.8). The EIB however foresaw a technical assistance to review and if necessary, upgrade the ESIA to reach compliance with EIB E&S Standards.
- 4.2.7 According to the EIB E&S Procedures, at appraisal the ESIA should be completed and confirmed satisfactory before submission of a project for approval by the EIB Board of Directors. Only in exceptional cases (e.g. investment programme), can it be set as a condition for signature or disbursement (see paragraph 3.4.6). In this case, the draft ESIAAs were available at appraisal (see paragraph 1.1.3), and their satisfactory completion was set as a condition precedent for disbursement. Since the Project is multi-scheme, this approach can be considered justified.
- 4.2.8 The Bank's due diligence should review the consultations carried out under the ESIA process, as well as the relevant stakeholder engagement plan and determine if further consultation is required (para. 3.4.5). The appraisal refers to broad consultations carried out in 2019 as part of the ESIA studies. In fact, broad consultations, including public consultations, had not yet taken place (see paragraphs 4.1.10 and 4.1.11). The appraisal states that national parks were consulted, which is in fact erroneous (based on erroneous information taken from the draft ESIA, see paragraph 4.1.6). The EIB-CM finds that the ESIA was used as a source of information for the ESDS, but the Bank, during its E&S appraisal, did not substantially review the ESIA nor the Project's Mangochi compliance with the Standards with regards to public consultations. The appraisal did not determine if further consultation was required nor did it request the development of a stakeholder engagement plan while this is required for projects outside the EU (paragraph 3.4.8).
- 4.2.9 As per the EIB E&S Procedures (see paragraphs 3.4.9 to 3.4.13), due to the complexity of biodiversity issues, the EIB at appraisal should look in depth into the ESIA and take an integrated and ecosystems approach. All projects have to be screened for their potential direct and indirect impacts on biodiversity and ecosystems, taking into account the proximity to areas that have important biodiversity values (including world heritage sites, KBA, etc.) and risks should be flagged. For projects outside of the EU, this screening should confirm if a biodiversity assessment is required. Such assessment should be based on views and roles of NGOs and local communities. A biodiversity action plan should then be prepared to the satisfaction of the EIB, including possible additional studies. To the EIB-CM's knowledge, no biodiversity screening or assessment was performed nor was it required by the EIB. The ESDS does not include the conclusions of such assessment as required by the procedures (see paragraph 3.4.12).
- 4.2.10 The Bank's E&S assessment categorises the initial E&S risk of the Project as "moderate" (at the pre-appraisal stage) and the overall and residual⁶⁸ E&S risk after appraisal as "B" (acceptable, with minimum negative impact). Particularly on the nature conservation side, it is indicated that there is no significant impact (which as per the paragraphs above should include potential direct and indirect impacts), with no further assessment required. This indication is

⁶⁸ Residual risk is the risk after the implementation of the foreseen E&S mitigation measures.

based neither on a biodiversity screening nor on expert judgement. Given the biodiversity value of the site and since the Project showed clear indications of significantly affecting (directly or indirectly) or at least causing disturbance to a conservation site, the EIB-CM finds that a form B⁶⁹ or equivalent (similar to appropriate assessment within EU) should have been required and its result taken into account by the Bank in the risk categorisation and appraisal.

- 4.2.11 Even though the Project's Mangochi component is located in a KBA (see paragraph 4.1.22) and Nkhudzi Hill is a UNESCO site, which is public information (see paragraph 4.1.25), as well as considering similarities between the EIB's, UNESCO's and the IUCN's biodiversity criteria (see paragraph 4.1.26), the Bank did not identify this risk and did not assess against the presumption of the area being a critical habitat as per its procedures. There is no mention in the ESDS of Nkhudzi Hill potentially being a critical habitat. Therefore, there were no requirements set for the Promoter to demonstrate the opposite, or to avoid, mitigate and offset the Project's impacts on biodiversity, as required by Standard 3 (see paragraph 4.1.29) and the EIB E&S Procedures (see paragraphs 3.4.10, 3.4.11).
- 4.2.12 Furthermore, the ESDS mentions that encroachment on the LMNP will be limited as much as possible for the Mangochi component. It further states that for this reason, the National Park has been consulted and shall comment on the ESIA. It is unclear to the EIB-CM how encroachment on the park will be limited as much as possible given the absence of a meaningful assessment of alternatives (see paragraph 4.1.4) and the lack of a demonstration of avoidance (see paragraphs 4.1.29 and 4.1.30). Furthermore, the information on which the national park was consulted was in fact erroneous in the ESIA (see paragraph 4.1.6).
- 4.2.13 The fact that the LMNP qualifies as a UNESCO Cultural Heritage Site is not mentioned in the ESDS. It could have been reflected in the sheet and in the information about the investment loan submitted for approval to the EIB's governing bodies. According to Standard 3, the EIB will not finance a Project with significant impacts on any UNESCO World Heritage Site unless very specific conditions are met (see paragraph 3.3.14). The ESDS mentions that the LMNP managing authorities will comment on the ESIA and that evidence of environmental authorisation is a condition precedent to (first) disbursement. This requirement does not, however, fully meet the specific conditions imposed by the Standard 3: the Promoter must demonstrate that the development is legally permitted and that the design of the Project is consistent with a management plan for such areas that is recognised by the relevant authorities. In the absence of a recognised plan, projects should be compatible with the achievement of the conservation objectives used to designate the area in question. For Mangochi, the 2019 ESIA made available to the Bank during the Project appraisal did not include any assessment of the impacts on the conservation objectives of the LMNP (see paragraph 4.1.17).

Monitoring phase

Stakeholder engagement and access to information

- 4.2.14 The EIB-CM reviewed communications from the complainants involving the Bank prior to the registration of the complaints in 2022. In July 2021, the Bank received an email with allegations similar to those ultimately raised by the complainants, which it treated as a request for information under the *EIB Group Transparency Policy*.⁷⁰ The Bank followed up on the issues raised and replied accordingly (see paragraph 4.2.16). In March 2022, following a complaint to

⁶⁹ See E&S Handbook 2013, vol 2, footnote F, p, 102 : Nature/ biodiversity Assessment will be carried out for all projects having an impact on sites of nature conservation (marine or terrestrial), protected species or areas of important biodiversity value, irrespective of their conservation status. In EU-28, Candidate and potential Candidate countries, Form A or equivalent declaration under the Habitats Directive is required for projects without significant impact on sites of nature conservation and Form B or equivalent declaration under the Habitats Directive for projects with significant impacts on sites of nature conservation, to be signed by the relevant authority responsible for monitoring sites of nature conservation. **In all other countries, the EIB uses the same approach**, with similar declaration from the relevant authority responsible for monitoring national and/or internationally protected sites and species.

⁷⁰ <https://www.eib.org/en/publications/eib-group-transparency-policy>.

the Bank, the Services forwarded the communication to the EIB-CM, which then registered the complaint.

- 4.2.15 The 2019 version of the Mangochi ESIA was initially published on the Bank's website. In July 2022, the complainants informed the EIB-CM that the draft ESIA was no longer available on the EIB's website. The EIB-CM asked the EIB services to consider publishing the final ESIA. In March 2024, the Bank published a link to the Promoter's website providing access to the final ESIA⁷¹. In order to address the findings about the allegation of gaps in the ESIA's biodiversity assessments (see paragraph 1.2.3 and 4.1.23), the EIB-CM makes a suggestion in paragraph 6.1.3.

Project component monitoring

- 4.2.16 During the second half of 2021, the Bank was copied into several communications from the complainants to other Project stakeholders. The Services followed up on these emails, requested information from the Promoter on the allegations and reminded the requirement that the Project complies with the Standards. The Services seemed satisfied with the detailed answers provided by the Promoter and considered using the technical assistance to perform a quality check and support the ESIA process locally. The Promoter systematically provided comprehensive answers to the EIB.
- 4.2.17 The original technical assistance contract (provided by the EIB) included baseline field data collection (including on biodiversity), stakeholder engagement, and the update of the three ESIA reports. For the Mangochi project, these tasks and deliverables were not provided by the end of the contract period despite its extension. After the ESIA approval by the environmental authorities, other services to be provided by the technical assistance were agreed and included a detailed review of the Mangochi ESIA against the Standards. It also aimed to collect additional baseline data and review the monitoring system of the Mangochi works against the ESIA authorisation and the Standards based on a documentation review and perform a site visit and stakeholders' interviews.
- 4.2.18 In April 2022, following a request by the Services, the Promoter provided the Bank with a detailed update on the progress of the implementation of the ESIA mitigation measures and environmental permit conditions. The information provided confirmed that such mitigation measures and conditions were being implemented and evidence was provided to that effect.
- 4.2.19 During the rainy season in Q1 2023, the EIB-CM and the Bank received different communications from the complainants on erosion and siltation issues occurring at the Nkhudzi site (see paragraph 4.1.38). The EIB-CM shared these communications with the Services and provided a reply to the complainants. A meeting between the EIB-CM and the Services followed, during which the EIB-CM was informed that the Bank would monitor the implementation of the ESMP and use technical assistance to support the Promoter with erosion management.
- 4.2.20 The Bank's Services organised a call with the Promoter in April 2023 to discuss the matter. Subsequently, the Promoter provided information to the Bank on the road design, water quality and fish diversity monitoring and on the site visit by the Roads Authority, besides providing a monitoring progress report on the mitigation measures (see paragraphs 4.1.38–4.1.40). In these replies, the Promoter confirmed that the delays in paving the road were due to external factors. Once constructed, the paved road would resolve the issue of sedimentation. According to the Promoter, the monitoring study of the water quality was satisfactory. It thus confirmed that there were no issues (see paragraph 4.1.38). It was reported that the Services insisted that the Promoter actively monitors the water quality and fish and ensure protection of the park forest.
- 4.2.21 The EIB-CM finds that, in line with the Bank's procedures (see paragraph 3.4.3), the EIB Services followed up on a best effort basis the Mangochi component by systematically

⁷¹ See <https://www.eib.org/en/projects/pipelines/all/20180238> and <https://www.eib.org/en/registers/all/191630820>

requesting information from the Promoter after being informed of allegations of the Project's non-compliance and/or issues on the site. It is noted that the Promoter also systematically replied with detailed reports and supporting documents.

- 4.2.22 The Promoter shared two quarterly project construction reports and a completion report with the EIB as well as ad-hoc reports following the Bank requests to provide information on allegations raised (see paragraph 4.2.21). This follows from the Promoter's reporting obligations under the Finance Contract (see paragraph 3.2.5).
- 4.2.23 In June 2023, two and a half years after the signature of the Finance Contract, the technical assistance provider shared its first draft findings on the Mangochi component's E&S compliance. The report found that there was a lack of (i) assessment of alternatives, (ii) prior public consultations, (iii) effective grievance mechanism and (iv) sufficient budget for the implementation of the ESMP. These findings are in line with the EIB-CM's findings — see paragraphs 4.1.4, 4.1.11, 4.1.14 and 4.1.44).
- 4.2.24 Therefore, the EIB-CM notes that the objectives of the technical assistance were not achieved even though they were eventually modified to include a biodiversity baseline data collection and the review and upgrade of the ESIA (see paragraph 4.2.17). The EIB services are reportedly setting up further technical assistance to support the monitoring of the Project.

5 CONCLUSIONS

- 5.1.1 The Mangochi component financed solely by the KF was integrated as a third component into the Project (see paragraph 3.4.1). The EIB is financing the two other components of the Project. By doing so, the EIB and the KF are considered parallel co-lenders. Under parallel co-financing, lenders generally administer their own part of a project although joint supervision or agreements are possible, on a best effort basis (see paragraphs 3.4.3, 3.4.4). The Bank must assess the differences between the co-lender's (joint or parallel) standards and has a duty to appraise E&S risks associated to the co-lender's component and to take appropriate mitigation measures (see paragraph 3.2.1, 3.2.2, 3.4.2). However, since it does not supervise the procurement process nor the disbursement for the works of a component it does not finance, the EIB has limited control over the implementation of that component (i.e. during monitoring, see paragraph 3.4.1).
- 5.1.2 The EIB-CM finds non-compliance with the relevant Standards regarding most of the allegations raised (see section 4.1). It concludes that the Bank did not assess the gaps between its Standards and the co-lender's (KF's) E&S standards, despite the Bank's E&S appraisal having covered the Mangochi component. The EIB-CM's compliance review finds that there were shortcomings in the EIB's appraisal of that component since the Bank did not review in substance the assessment of alternatives, the ESIA, the consultations undertaken nor the biodiversity risks (see paragraphs 4.2.6- 4.2.9). The Bank's E&S risk categorisation was also insufficient (see paragraph 4.2.10). According to the EIB E&S Procedures, an assessment of potential biodiversity impacts of projects located in protected areas or with high biodiversity value should be undertaken (see paragraph 4.2.11). Had these risks been identified, the Bank could have taken more appropriate mitigation measures at appraisal and provided better tailored support to help guide the Promoter as regards the implementation of that component in line with the Standards.
- 5.1.3 On the positive side, the EIB made sure, through its Finance Contract, that the Promoter committed to implementing the Project in compliance with the Standards (see paragraph 3.2.2). The EIB also provided technical assistance aiming to support the implementation of Mangochi component in line with the Standards (see paragraphs 1.1.6, 4.1.17).
- 5.1.4 Despite the work described in paragraph 5.1.3 above, the EIB-CM finds that relying only on technical assistance to update the ESIA, without further identifying and specifying the gaps in the ESIA, the E&S risks of the site and the applicable requirements and assessment

methodology, was insufficient at appraisal and does not meet the requirements of the EIB E&S Procedures. After appraisal, it became clear that the technical assistance provider did not update the ESIA before authorisation by environmental authorities (see paragraph 4.2.17) and construction started before consultation of the UNESCO World Heritage Centre (see paragraph 4.1.32) and prior to obtaining the environmental permit (see paragraph 4.1.10).

- 5.1.5 The EIB-CM finds that the Bank adequately followed up on the Mangochi component on a best effort basis (see paragraph 4.2.21) and recognises that the EIB has limited leverage on the implementation of that component, as it does not finance it. The EIB had no role in the selection of the contractor nor on the disbursement related to the carrying out of works. Hence, the EIB-CM concludes that there is no maladministration by the Bank with regards to the allegations that construction works started before the public consultations, the upgrade of the ESIA and its approval by environmental authorities.
- 5.1.6 During monitoring, the technical assistance was supposed to support the improvement of the ESIA for the three components (see paragraph 4.2.17). The initial objectives of the technical assistance were not achieved (see paragraph 4.2.23). The EIB-CM notes that the satisfactory completion of an ESIA, which the ESDS reiterates must comply with the Standards, is a condition precedent to disbursement and will be subject to confirmation by the Bank (see paragraph 3.2.4).
- 5.1.7 The EIB-CM finds that there is a lack of E&S expertise to support the Project implementation unit of the Promoter (see paragraph 4.1.39). The EIB-CM notes that the condition precedent in relation to the Promoter's capacity will be subject to confirmation by the Bank (see paragraph 3.2.4).

6 OUTCOME

- 6.1.1 In line with the above-mentioned conclusions **for appraisal** (see paragraphs 5.1.1 to 5.1.4), **the EIB-CM recommends** that the Bank:
- Clarifies the E&S risk categorisation and associated minimum appraisal required (by end 2024), through its ongoing revision of the EIB E&S Procedures (as committed when adopting the EIB Environmental and Social Sustainability Framework of 2022),
 - Ensures, that a biodiversity assessment is undertaken for the Mangochi component to the satisfaction of the Bank in order to confirm whether the site is a critical habitat or not and accordingly if residual impacts (taking into account the implementation of existing mitigations) need to be further mitigated or offset. This is also in line with the UNESCO main recommendation (see paragraph 4.1.34) (by Q4 2025).
- 6.1.2 In line with the above conclusions **for monitoring** (see paragraphs 5.1.6, 5.1.7), **the EIB-CM suggests** that the Bank **verifies that** the Promoter's E&S expertise (both at its headquarters and on-site) in support of the Project implementation unit is reinforced and satisfactory to the Bank to support all components of the Project to comply with EIB E&S standards (before first disbursement). An improvement in this area is particularly important for the two components financed by the EIB.
- 6.1.3 To allow public access to environmental information on allegations investigated in this report, **the EIB-CM suggests** that the Bank requests the Promoter to publish the biodiversity study complementary to the ESIA once available (by Q1 2026) and considers publishing the document through a link to the Promoter's website (by Q1 2026) (see paragraph 4.2.15).