

COMPLAINTS MECHANISM

SG/E/2022/05

SRWB WATER SUPPLY AND SANITATION PROGRAMME (MALAWI)

INITIAL ASSESSMENT REPORT

25 AUGUST 2022



SG/E/2022/05

SRWB Water Supply and Sanitation Programme (Malawi)

Initial Assessment Report

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This report is based on the information available to the EIB Group Complaints Mechanism up to 21 July 2022.

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The EIB Group Complaints Mechanism

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

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

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

The initial assessment report

The initial assessment generally aims to¹:

- Clarify the concerns raised by the complainants and gain a better understanding of the complainants' position as well as the views of other stakeholders (e.g. project promoter, national authorities).
- Understand the validity of the concerns raised.
- Assess whether and how the stakeholders (e.g. the complainants, the relevant EIB Group services and the project promoter) could seek resolution of the issues raised by the complainants.
- Determine if further work by the Complaints Mechanism is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainants.

¹ As outlined in article 2.2.1 of the [EIB Group Complaints Mechanism procedures](#).

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GLOSSARY

CHIA	Cultural Heritage Impact Assessment
EPO	Environment Protection Order
E&S	Environmental and Social
ESDS	Environmental and Social Data Sheet
ESPS	The EIB Statement of Environmental and Social Principles and Standards
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism
EIB-CS	EIB Civil Society division
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
€	Euro
EU	European Union
GRM	Grievance Mechanism
ICOMOS	International Council of Monuments and Sites
IUCN	International Union for Conservation of Nature
KBA	Key Biodiversity Area
LMNP	Lake Malawi National Park
MEPA	Malawi Environment Protection Agency
NGO	Non-governmental organisation
Project	SRWB Water Supply and Sanitation Programme
Promoter	Southern Region Water Board (SRWB)
SEP	Stakeholder Engagement Plan
TA	Technical Assistance

EXECUTIVE SUMMARY

In March 2022, the EIB Group Complaints Mechanism (EIB-CM) received complaints regarding the SRWB Water Supply and Sanitation Programme in Liwonde, Balaka and Mangochi provinces in Malawi (the project). The EIB has approved financing the project; in particular the Liwonde and Balaka components, while the Mangochi component is financed by the Kuwait Fund for Arab Economic Development. The complaints concern the Mangochi component, with some facilities located within the Lake Malawi National Park (LMNP), a UNESCO World Heritage Site designated for its outstanding biodiversity and landscape value. The complainants comprise (i) the founding trustees of a local NGO that has been active in the creation and preservation of the park as well as (ii) some individuals.

The complaints include multiple allegations of gaps with EIB E&S Standards, which the EIB-CM grouped as follows: i) non-compliance of the Environmental and Social Impact Assessment (ESIA), in particular gaps in alternative assessment, pollution prevention, biodiversity, cultural heritage and natural hazards; ii) gaps in stakeholder engagement; iii) gaps in the assessment of alternatives; iv) failure to confirm the absence/presence of critical habitats and to comply with the Bank's requirements for such habitats; v) failure to avoid the UNESCO heritage site and non-compliance with UNESCO Convention and recommendations; vi) promoter's non-compliance with environmental permit conditions and lack of monitoring of contractor and construction works compliance with environmental, social, public health and safety requirements.

The complainants' main expectation was the relocation of the site outside the park which was considered challenging by the promoter given the ongoing construction works, unless it would be funded by grants. Based on the initial assessment of the complaint and feedback from the promoter and the complainants, the EIB-CM has decided to proceed with a compliance review. The enquiry will focus on the project documentation and the reasonable due diligence and monitoring of the project by the Bank in relation to the allegations presented above.

A court case led by local NGOs is ongoing covering similar allegations including non-compliance with national law and international conventions. A UNESCO delegation has performed a site visit in April 2022. The report from UNESCO is expected to be finalised during Q3 2022. The EIB-CM's compliance review will take place in parallel to these processes, which outcome will be taken into consideration where relevant and to the extent possible, and taking into account the EIB-CM's mandate.

1 PROJECT

- 1.1 The SRWB Water Supply and Sanitation Programme aims to support the rehabilitation and extension of the water supply infrastructure in three towns located in the southern part of Malawi: Liwonde, Balaka and Mangochi (the project). The overall objective is to support the National Water Policy (2005) of the Government of Malawi and the Sustainable Development Goals to provide all population with access to safe water supply, more particularly in providing access to a reliable drinking water supply to the three towns.²
- 1.2 The borrower is the Republic of Malawi. The promoter of the project is the Southern Region Water Board (the promoter or SRWB), a public organization under the Ministry of Agriculture, Irrigation and Water Development, responsible for provision of potable water supply and waterborne sanitation services in the urban centres of the southern region of Malawi.
- 1.3 The investment in the project was approved by the European Investment Bank (EIB) Board of Directors in October 2020 and the loan agreement for the project (including the three components) signed in December 2020. The EIB has committed to financing the Liwonde and Balaka components of the project up to €26.5 million. The Mangochi component is financed by the Kuwait Fund for Arab Economic Development³. The total estimated cost of the project is approximately €41 million. At the time of the issuance of the report, the EIB has not made any disbursement yet.
- 1.4 The Mangochi component is located on the shore of the south-eastern branch of Lake Malawi. The complaint refers to the facilities located on Nkhudzi hill within Lake Malawi National Park (LMNP): a water reservoir of 4000m³ and its access road. The complaint also refers to other facilities and operations adjacent to the park such as the water intake system from the lake and wastes from treatment and maintenance operations at the water treatment plant.
- 1.5 LMNP is a UNESCO World Heritage Site⁴ since 1984. The site was selected for its outstanding landscape and biodiversity values, supporting habitats to many hundreds of fish species, nearly all endemic and of importance to the study of evolution⁵.

Figure 1 Location of Nkhudzi hill and LMNP approximate boundaries (in green)⁶



² [SRWB Water Supply and Sanitation Programme](#).

³ See <https://www.kuwait-fund.org/en/web/kfund>

⁴ Protected under the UNESCO World Heritage Convention of 1974. For more information visit <https://whc.unesco.org/>

⁵ See also description of Outstanding Universal Value criterion vii, ix and x of LMNP on UNESCO website: <https://whc.unesco.org/en/list/289/>

⁶ Map of LMNP available here: https://whc.unesco.org/en/list/289/multiple=1&unique_number=323 and <https://www.protectedplanet.net/2317>

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- 1.6 The loan is complemented with a technical assistance (TA) grant provided by a fund managed by the Bank and delivered by a service provider for the project preparation support (*SRWB Preparation Support*). The TA mission is focusing on the technical design⁷ of EIB financed components (Liwonde and Balaka) and on the review and update of the environmental and social (E&S) safeguards documentation of all components (Liwonde, Balaka and Mangochi)⁸.
- 1.7 During the initial assessment of the complaint (up to 21 July 2022), works were ongoing on Nkhudzi hill, finalizing the trees clearing and rocks blasting along the access road and starting the foundation works of the water reservoir as well as construction of the water treatment plant among others.

2 COMPLAINT

- 2.1 In March 2022, the EIB Group Complaints Mechanism (the EIB-CM) received two complaints regarding the Mangochi component.
- 2.2 The complainants comprise (i) two founding trustees of a local NGO *HEEED Malawi*⁹ that has been active in the creation, protection and promotion of LMNP¹⁰ and author of the book *Lake Malawi National Park World Heritage Site*¹¹, as well as (ii) some individuals. The latter requested their identity to be confidential but agreed for the initial assessment report to be published on the EIB-CM website.
- 2.3 According to the complainants, the development of the water system in Mangochi is partially constructed within the LMNP (in particular the water reservoir, access road and pipes), which was inscribed as a UNESCO World Heritage Site in 1984. According to them, the project has negative environmental and social impacts in the current location and does not comply with EIB's E&S standards. The complainants argue that the water reservoir should be built on an alternative site outside the UNESCO World Heritage Site. The complainants request the borrower and the promoter to stop works, remedy any damage the project may have already caused, and the EIB to freeze its funding until the promoter is honouring local and international laws.
- 2.4 The complainants raise a list of issues and allegations making reference to several EIB E&S standards as follows¹²:

Environmental and social impacts and risks

- 2.5 According to the complainants, the Environmental and Social Impact Assessment (ESIA) that was presented for this project was found to be flawed and biased. Baseline studies are largely not based on site surveys (allegation of gaps in baseline studies of ESIA).
- 2.6 In May 2021, as project construction started without an approved ESIA, the Malawi Environment Protection Agency (MEPA) issued an Environmental Protection Order (EPO) and fined SRWB Mwk 5,000,000. In July 2021, SRWB obtained a waiver allowing it to continue construction of staff houses and offices only. In breach of MEPA's EPO waiver, SRWB continued to carry out

⁷ This includes feasibility studies of options, technical surveys and studies, detailed drawings, and procurement support.

⁸ This includes scoping of impacts, scoping consultations, review and update of E&S Impact Assessment (ESIA), Resettlement Action Plan (RAP) if required, E&S Management Plans (ESMP), Draft and Final ESIA consultations, Stakeholder Engagement Plan (SEP) and Grievance Redress Mechanism (GRM).

⁹ <https://heeedmalawi.net>

¹⁰ <https://heeedmalawi.net/lake-malawi-national-park/>

¹¹ <https://www.heeedmalawi.net/wp-content/uploads/2013/10/Preface.pdf>

¹² The description of the allegations seeks to reflect to the extent possible the original complaints received. Where needed, the allegations have been reworded, supplemented (with additional information received from the complainants) or reorganized in order to simplify the reading. Allegations of fraud were shared with the Fraud investigation Division of the EIB for consideration.

the project fully. In November 2021, MEPA issued a Closure Order based on a breach of the EPO and waiver conditions. In December 2021, MEPA issued a notice to SRWB approving the project with conditions (also called environmental permit).

- 2.7 According to the complainants, alternative sites were not thoroughly investigated by the project while independent surveys have found locations nearby to be more suitable. Some of those alternative sites already have an access road, are not covered with forest and are not within the LMNP and UNESCO site. In their view, failure to consider alternative schemes breaches the UNESCO World Heritage Convention and the law (allegation of lack of alternative assessment and avoidance of critical habitats). Designs of the access road, reservoir and intake pipe into the lake were not provided for review. Given the sensitive nature of the UNESCO site and the lake, these should have been independently reviewed in order to avoid or minimize impacts where possible (allegation of lack of ESIA project description and compliance with mitigation hierarchy).
- 2.8 Nkhudzi hill is deemed unstable (with regular rock falls) and particularly exposed to earthquakes. There is a concern the 4000m³ water tank design and construction standard insufficiently take this environmental disaster risk into account. Other locations would be less exposed to such risk or its consequences according to a local engineer (allegations of lack of assessment of natural hazards, lack of adapted designs, gaps in assessment of alternatives).
- 2.9 Chemicals used in the treatment plant and reservoir are dangerous for the environment and any escape into the lake will threaten the endemic marine life.

Stakeholder Engagement

- 2.10 The complainants allege a failure of the promoter to perform a meaningful stakeholder engagement in the project area, including traditional chiefdoms, residence and cottage owners (failure to map, identify and engage with stakeholders in a culturally appropriate and inclusive manner).
- 2.11 Residents, cottage owners and other stakeholders were not engaged in the preliminary stage, and only became aware of the plans when the project was already well underway and an urgent public hearing was requested by concerned citizens and environmental groups. Many experts expressed their concerns in the project proceeding in this location when alternatives are more suitable. The reason given for not being able to adjust the plans to a more suitable site was that the project was already well underway (failure to ensure meaningful prior engagement).
- 2.12 In early March 2022, construction works and blasting continued during two funerals of traditional chiefs' relatives in disrespect of local traditions. The lack of notification of the blasting created panic during the ceremony (allegation of gaps in stakeholder engagement).

Resource efficiency and pollution prevention

- 2.13 According to the complainants, the largest threat to the endemic cichlids is overfishing and soil erosion that affects their feeding grounds. There are several species which exist only there, at the shores of this site.
- 2.14 The current works happening within the park have already caused streams to divert and heavy soil erosion into the 100m protected zone of the LMNP, which has been well documented. More heavy rains are expected with the tropical cyclone season and more erosion will result of these works. This project directly threatens the breeding grounds of the endemic cichlids, which are sensitive to erosion.
- 2.15 The construction of an access road will facilitate human access to this pristine site. This will result in deforestation, poaching, pollution, erosion and loss of habitat. A similar pattern occurred on several infrastructure projects. In this case, it will be disastrous for the animals that

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reside in the site, as there is nowhere for them to go outside of Nkhudzi hill (allegation of gaps in ESIA: identification of impacts and mitigation measures).

- 2.16 Since the start of the construction, there would be no access control at the entrance of the site within LMNP and lack of oversight of access and of the works from the LMNP guards. This situation is resulting in trees chopping, poaching, people accessing the top of the mountain for sight-viewing. There are no facilities for collecting garbage from tourists and workers (allegation of lack of monitoring of construction works). The EIB-CM was informed on 21st of July 2022 that a barrier was eventually erected at the entrance of the site.

Biodiversity and ecosystems

- 2.17 According to the complainants, the ESIA biodiversity document submitted by SRWB states that intensive bat survey was undertaken with a detailed methodology of fieldwork; however, in the mammal list presented in the document not a single species was named. It is suspected that the biodiversity survey is fundamentally flawed, underpinning the decision-making of this project (allegation of gaps in biodiversity baseline of ESIA).
- 2.18 Nkhudzi hill is unique from the other mountains in the LMNP due to its geographical location, and has not felt the pressures of humans until now. The dense pristine forest is surrounded by water on one side and maize fields on the other, and is home to several species of flora and fauna, which are threatened or endangered on the IUCN Red List. As well as the unique and endemic cichlids and other endangered aquatic life such as terrapins, there is the critically endangered pangolin, otters, birds, dragonflies, an endemic scorpion to name a few, as well as many protected and threatened tree and aloe species. In the complainants' view, realising the project in this location goes against the "no loss" of biodiversity and net positive impact of the EIB (allegations of gaps in ESIA, lack of identification of Critical Habitats and compliance with its associated requirements).

Climate change

- 2.19 According to the complainants, the Lake Malawi-Shire River hydrological system represents Malawi's single most important natural resource system, providing hydropower, agriculture, fisheries, transport, tourism, water supply as well as its environmental functions. The Nkhudzi hill makes up the southern part of the watershed of the Shire River. Preserving the watershed is crucial to Malawi and especially in the current context of climate change threatening the balance. Currently, Malawi is experiencing the effects of climate change coupled with extreme deforestation in recent years, causing massive siltation of the Shire River and having disastrous consequences for the whole of Malawi.
- 2.20 According to the complainants, the project does not follow EIB's enhanced climate action and sustainability ambitions and its 2021-2025 Climate Bank Roadmap. Furthermore, they contend the project would not follow the AICHI biodiversity targets, the Millennium Development Goals, the ZAMCOM shared waterway ratification and various other shared resource agreements, mandates and reforms of the government and agencies such as the World Bank, the Kuwait Fund, and the UNESCO 2020 plan for the LMNP World Heritage site. This site is part of the WWF Global 200 Freshwater Eco-region¹³ and its preservation is written and pledged in all these international organizations' mandates.

Public health and safety

- 2.21 According to the complainants, as of March 2022, almost all the conditions of the environmental permit have been breached causing serious damage to the LMNP, UNESCO World Heritage

¹³ See also <https://www.worldwildlife.org/publications/the-global-200-priority-ecoregions-for-global-conservation>

Site and the flora and fauna, especially as ongoing construction in LMNP coincides with the breeding season. Rock blasting for the road construction is affecting the people and the wildlife.

- 2.22 The bulldozers belonging to the contractor entered the LMNP on 16th February 2022 without following proper protocols. Stakeholders were not informed and no safety signs were placed. At the moment of submitting the complaint, there was still no access control to the site and no heritage or parks representatives were present to monitor works as per the environmental permit conditions.
- 2.23 Work regularly occurs throughout weekends, over hours and well into the night, against the measures specified of conducting work in a national park.
- 2.24 Unsafe behavior of workers together with the lack of safety measures and signage caused a near accident to an elderly citizen driving home in the evening. According to the complainants, that the project has failed to comply with almost all of the measures stipulated in the environmental permit.
- 2.25 As part of the road construction, loose rocks have been pushed down the mountain without concern for wildlife, erosion and risks of landslides. On 9th March 2022, uncontrolled open blasting was performed by the contractor, contrary to the specified controlled blasting which creates less impact. The neighbouring residences and their inhabitants were not informed; no sirens were sounded, resulting in shock and potential grievous harm to all that were within the 150m of the blasting site. Large rocks were found within the nearby residences, endangering the local population now fearing for their safety while the contractor was found 680m from the blast site. The EIB-CM received several emails following submission of the complaints with allegations of lack of notification and control of blasting while blasting activity was ongoing (allegations of non-compliance with permit conditions, lack of management of community safety and stakeholder engagement and lack of monitoring of contractor).
- 2.26 According to the complainants, in September 2021, a worker employed by the contractor attempted to rape a woman, which was reported in the national newspaper¹⁴. Instead of following the proper procedure of Malawi law, SRWB sent the worker in its home country. Workers' attendance to bars and increase in prostitution activity was also reported (allegations of non-compliance with public health and safety requirements regarding gender-based violence).

Cultural Heritage

- 2.27 Nkhudzi hill is sacred to the Chewa Tribe and is believed to contain substantial historical and archeological objects of importance to Malawi's cultural heritage. In ancient times, ceremonies were held on the mountain to bring rain, and many generations have used this site for their sacred practices. According to the complainants, the mountain has historically been the dividing line between the Yao and the Chewa tribes and even the language changes on the other side of the mountain. However, not all traditional chiefs have been consulted on the desacralisation of the mountain (allegations of gaps in stakeholder engagement, identification and assessment of intangible cultural heritage, gaps in the definition of culturally appropriate mitigations).
- 2.28 There are partially excavated archeological discoveries, which have been found on the proposed reservoir site, such as the Great Chewa Chief that point to the possibility of this site being the lost kingdom of Maravi. Cave paintings estimated from 250 AD have been found. There is an important burial site on the location of the proposed reservoir thought to belong to the Great Chewa Chief Sosola Kudzimakazulu. Since the start of the project, more than 20 more archeological sites of importance have been discovered and there are thought to be many more as the hill remains largely unexplored. The project in this location and the blasting of explosives is disastrous and disrespectful towards the sacred and cultural heritage of the Chewa people

¹⁴ See <https://malawi24.com/2021/09/06/pem-construction-indian-worker-attempts-to-rape-malawian-lady-in-mangochi/>

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and Malawi as a whole (allegation of gaps in Cultural Heritage Impact Assessment and the implementation of its mitigation measures).

3 WORK PERFORMED

Objective of EIB-CM's initial assessment

- 3.1 Paragraphs 4.2.1 and 4.2.2 of the EIB Group Complaints Mechanism Policy (Policy)¹⁵ and § 2.1.3 of the EIB Group Complaints Mechanism Procedures (Procedures)¹⁶ require the EIB-CM to carry out the initial assessment of the complaint¹⁷. The objective of the initial assessment is to clarify the concerns raised by the complainant, understand the complainant's position and the validity of the concerns raised as well as to determine if further work by the EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainant¹⁸. The further work may include a compliance review or a collaborative resolution process (e.g. mediation). This report contains the results of the EIB-CM's initial assessment.

Stakeholders' consultation and documentation review

- 3.2 The EIB-CM reviewed the complaint as well as previous communications from the complainants involving the Bank. The complainant communication of March 2022 was forwarded to the EIB-CM by the EIB Civil Society Division (EIB-CS) for including clear reference to a complaint. In July 2021, EIB-CS had received and answered an email with similar allegations from the complainants, which it treated as a request for information under the EIB Group Transparency Policy¹⁹. EIB-CS was kept in copy of subsequent exchanges from complainants to other project stakeholders, which it forwarded to EIB services. EIB services followed up on these emails providing reference to E&S standards and requesting from the promoter information in relation to the allegations raised. SRWB provided comprehensive answers to EIB services' request for information in July and August 2021 and in early 2022.
- 3.3 The EIB-CM had two meetings with the complainants to better understand their allegations and expectations. The EIB-CM explained its mandate and the possible ways forward to handle complaints either in the form of dispute resolution or compliance review; the latter focusing in particular on maladministration of the EIB and the project's compliance with the Bank's E&S standards. The complainants shared further information and materials with the EIB-CM during the initial assessment phase, which it reviewed as well.
- 3.4 The EIB-CM was informed by the complainants and the promoter of an ongoing court case brought by national NGOs (the claimants)²⁰ against the promoter. The claimants' allegations are partially overlapping with those of this complaint, in particular legal breaches in the permitting process and non-compliance with environmental conditions imposed by MEPA (see paragraph 2.6 among others) as well as non-compliance with the UNESCO World Heritage

¹⁵ Available at: [EIB GROUP COMPLAINTS MECHANISM POLICY](#).

¹⁶ Available at: [EIB GROUP COMPLAINTS MECHANISM PROCEDURES](#).

¹⁷ Please note that this complaint concerns environmental and social impacts of an EIB-financed project. As noted in § 2.1.2 of the Procedures, complaints related to environmental and social impacts of financed projects usually raise complex issues. For this reason, and because of the sensitivity of the relations involving the project promoter, national authorities, civil society organisations and project-affected people, particular attention needs to be paid to the specific processes regarding these types of complaints. In line with § 2.1.3 of the Procedures, for these types of complaint, the normal process is formally structured in two phases: an initial assessment phase and a compliance review or collaborative resolution process phase.

¹⁸ § 2.2.1 of the Procedures.

¹⁹ See also <https://www.eib.org/en/publications/eib-group-transparency-policy>

²⁰ Center for Environmental Policy (CEPA), National Youth Network on Climate Change (NYNCC) and Movement for Environmental Action (MEA).

Convention (1972) and the UNESCO Convention of Safeguarding of Intangible Cultural Heritage (2003).

- 3.5 According to the claimants, SRWB has not followed the recommendations from UNESCO Committee asking for a revision of the ESIA, in line with the IUCN World Heritage Advice Note on Environmental Assessment²¹ and ICOMOS Guidance on Heritage Impact Assessment²², and its resubmission to the UNESCO before taking a final decision on the project. The claimants state that unlawful works within the LMNP will result in a series of irreparable and irreversible damages and therefore request for a summary proceeding to stop works while waiting for the matter to be judged. A stop order was decided by the High Court of Malawi on 16 March 2022, decision which was subsequently suspended by the Supreme Court through a stay order. A court hearing was held on 20 May 2022 and the ruling was initially expected on 7 June 2022. The ruling was delayed to 9 June and later again delayed with no date provided.
- 3.6 The EIB-CM had meetings with the EIB services, reviewed relevant project documents, and met with the promoter twice (online calls) to gain a better understanding of the situation and issues raised, and the most appropriate way forward. The EIB-CM reviewed key project documentation, including the:
- i. Documents related to EIB's appraisal and EIB Environmental and Social Data Sheet (ESDS, 2020) for the project.²³
 - ii. Environmental and Social Impact Assessments (ESIA) of Mangochi component, version of 2019²⁴ and the revised final version of 2021²⁵.
 - iii. Other publicly available information from UNESCO, IUCN websites as well as from national and international media and civil society organisation platforms²⁶, including an online petition that collected at the time of publishing this report over 5200 signatures²⁷.
- 3.7 The EIB ESDS states that according to local law and the EU EIA Directive, the project is subject to an ESIA. It states that the Promoter already recruited a consultant to conduct the ESIA, which will be prepared in compliance with national law and EIB E&S Standards. The ESIA will be finalized during the detailed design phase with support of technical assistance grant provided by a fund managed by the Bank (see paragraph 1.6). The ESDS finds that the project areas and components are very close to the Liwonde National Park and Lake Malawi National Park, encroachment with the latter will be limited as much as possible for the Mangochi component. As per the ESDS, for this reason, the National Park has been consulted and shall comment on the ESIA. The fact that the park qualifies as a UNESCO Cultural Heritage Site is not mentioned in the ESDS. Conditions precedent foreseen for the first disbursement by EIB are the satisfactory completion of all ESIA, Environmental and Social Management Plan (ESMP), Resettlement Action Plan (if deemed necessary), and evidence of environmental authorization. Work-related disbursement conditions include the satisfactory evidence of implementation of ESMP and RAP including an operational grievance mechanism. As undertakings described is the requirement for all project personnel including contractors and sub-contractors to comply

²¹ In particular recommendations to assess the project impacts against the UNESCO site universal outstanding values criteria, the consideration of alternatives and that reasonable timeframe be factored in for the consultation process. See also:

https://www.iucn.org/sites/dev/files/import/downloads/iucn_advice_note_environmental_assessment_18_11_13_iucn_template.pdf

²² See also : https://www.icrom.org/sites/default/files/2018-07/icomos_guidance_on_heritage_impact_assessments_for_cultural_world_heritage_properties.pdf

²³ [EIB Environmental and Social Data Sheet dated 13 October 2020.](#)

²⁴ [Environmental and social impact assessment for the extension of Mangochi potable water supply project dated 10 September 2019.](#)

²⁵ Revised ESIA dated 15 June 2021.

²⁶ See Mongabay article : <https://news.mongabay.com/2022/07/construction-begins-on-controversial-water-project-inside-lake-malawi-national-park/>

²⁷ See <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>

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with a Code of Conduct to the satisfaction of the Bank as well as an independent audit to verify the implementation of the RAP.

- 3.8 According to the promoter's response to the services (see paragraph 3.2), the ESIA was upgraded following comments from stakeholders and revision by the Malawi Environmental Protection Agency (MEPA) including based on UNESCO guidelines on World Heritage Sites. In particular, an addendum Cultural Heritage Impact Assessment was developed by the Department of Museums and Monuments and findings of a standalone assessment by the Department of Parks and Wildlife were incorporated. Public consultation of the revised ESIA occurred in July 2021 and the ESIA was approved in December 2021 with conditions. As part of the conditions, a Memorandum of Understanding highlighting roles and responsibilities of key stakeholders in the E&S management and supervision of the project was signed.
- 3.9 The EIB-CM reviewed an IUCN report on Conservation Priorities for Freshwater Biodiversity in the Lake Malawi (2019). According to this report, the south-east branch of the Lake, where the project is located, has the highest number of potential Key Biodiversity Areas (KBA) triggers in water and on land with the Lake Malawi Southeast Arm designated as a new KBA.²⁸ Key Biodiversity Areas are areas that are considered to contribute significantly to the planet's biodiversity and overall health²⁹. KBA are designated based on a set of 5 criteria and thresholds: threatened biodiversity (A), geographically restricted (B), ecological integrity (C), biological processes (D), irreplaceability(E)³⁰. According to the KBA database, Lake Malawi Southeast Arm is confirmed as KBA for qualifying to criteria A1a, A1c, A1d and B1³¹.
- 3.10 The EIB-CM also had a call with representatives from UNESCO. A UNESCO delegation made of IUCN biodiversity experts and cultural heritage experts performed a site visit end of March 2022. The EIB-CM is expecting to receive a report from UNESCO with their findings and recommendations during Q3 2022.
- 3.11 From a careful review of the complaint and meetings with the complainants, the EIB-CM understood that the complainants' main concerns are the potential impacts on the biodiversity and cultural heritage of the project on Nkhudzi hill for being located within LMNP, a UNESCO World Heritage Site. The complainants' main expectations are therefore that the water reservoir is moved to an alternative site and that construction works are stopped as soon as possible and materialized impacts remediated for.

Assessment of the possibility for a dispute resolution process as the way forward

- 3.12 Both the complainants and the promoter expressed their willingness to engage in a dialogue facilitated by the Dispute Resolution Unit of the EIB-CM. Nevertheless, both parties acknowledged the limitation of such a process considering that the complainants' main objective is to change the location of the reservoir.
- 3.13 The complainants provided to the EIB-CM a detailed qualitative and quantitative assessment by a water engineer comparing Nkhudzi water system with alternative location in Nkope. According to the assessment, the alternative would reduce environmental and social impacts and safety risks and significantly reduce investments, operational and maintenance costs³². This analysis was shared by the EIB services with the promoter. The EIB-CM notes that the same engineer had shared an assessment of safety and environmental risks associated to

²⁸ See Chapter 10, Freshwater Key Biodiversity Areas in the Lake Malawi (illustrated by figures in p148 and 152): <https://portals.iucn.org/library/sites/library/files/documents/RL-2019-001-En.pdf> .

²⁹ For more information on KBA visit : <https://www.iucn.org/resources/key-biodiversity-areas>.

³⁰ See A Global Standard for the Identification of Key Biodiversity Areas (IUCN): <https://portals.iucn.org/library/sites/library/files/documents/2016-048.pdf>

³¹ For more information on criteria and threatened species triggered for this KBA, visit : <https://www.keybiodiversityareas.org/site/factsheet/48986>

³² According to the bill of quantities and estimated operational costs, total investment savings would be of 2.6 to 3.8M and operations savings over a 10 year period would be approximately of 3 to 3.8M USD.

Nkhudzi hill and a preliminary assessment of the Nkope alternative to the promoter in September 2021 with EIB-CS in copy.

- 3.14 According to the promoter's feedback provided during the two meetings, the EIB-CM understood that changing the location of the reservoir would have significant impacts on the project implementation timeline and financing. It would indeed require dismantling and rehabilitation of existing construction sites but also, among others, to perform new design studies, adapt tenders, conduct a new ESIA and permitting process. The promoter expressed his openness to change the site location, should the associated cost be financed by grants.
- 3.15 The EIB-CM proposed to set-up a meeting to share views from the different parties on the alternatives. This meeting, facilitated by the EIB services, took place on 21 June 2022. The promoter's feedback on the proposed alternatives is that the assessment was a concept only design that does not include all the details of more advanced comprehensive design. According to the promoter, the concept study does not consider the higher cost of pumping and distribution of water to the population that the alternative entails. It does also not consider the time and resources incurred so far on the project as described in paragraph 3.11. The promoter offered to have a meeting with the engineer who prepared the proposed alternatives to discuss the above.
- 3.16 Given the challenges linked to a potential change of location (see paragraph 3.14), the EIB-CM deemed appropriate to proceed with a compliance review. The complainants after a while also expressed their interest in moving forward with a compliance review of EIB potential maladministration instead of a dispute resolution process.

4 REGULATORY FRAMEWORK

- 4.1 The EIB Group Complaints Mechanism Policy tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB Group. Maladministration means poor or failed administration. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities.
- 4.2 As per article 4.3.8 of the Policy, pending or concluded reviews of complaints against a third party before other administrative or judicial review mechanisms will not preclude the EIB-CM from reviewing the actions of the EIB Group for acts of maladministration.
- 4.3 The Policy in its article 2.6 states that complainants to the EIB Group Complaints Mechanism must not be subject to any form of retaliation, abuse or any kind of discrimination based on the fact that they have exercised their right to complain. This shall apply to the EIB Group as well as to any counterpart that is in a business relationship with the EIB Group. The EIB Group is committed to taking steps to prevent and address potential risks of reprisal against complainants and complaint-related people.
- 4.4 As part of its initial assessment, the EIB-CM identified the regulatory framework which is relevant to the present complaints, including:
- i. Laws and regulations and conventions³³ to which the borrower, the promoter or the project are subject.
 - ii. The EIB Statement of Environmental and Social Principles and Standards (ESPS).³⁴

³³ These include the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage, the 1993 United Nations Convention on Biological Diversity. Malawi has ratified these conventions which are expected to be transposed in national law. These conventions are also reflected in the EIB E&S standards, in particular standards 3 and 5.

³⁴ See https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

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- iii. The EIB Environmental and Social Handbook, Volume II which describes the E&S practices and procedures applicable to the Bank in the appraisal and monitoring of projects.³⁵
- iv. The EIB Environmental and Social Standards³⁶ against which EIB E&S appraisal and monitoring applies and outlining the promoter's responsibilities, in particular:

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

- 4.5 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 (para. 5). It applies to all operations 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 all the technical planning and decision-making processes (para. 6).
- 4.6 Projects which are likely to have significant and material impacts and risks that would affect the environment, human health and well-being and interfere with human rights will also be subject to an Environmental and Social Impact Assessment (ESIA) procedure (para.11). The assessment must be consistent with the principles contained in the European Union Environmental Impact Assessment Directive³⁷ and best international practice. Specific attention should be given to integrating the impact on, among others, human rights, biodiversity, cultural heritage and disasters risks into the overall ESIA as provided by relevant 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.
- 4.7 EIB E&S Standard 1 further outlines the requirements applicable for:
 - i. The identification of significant impacts and risks, the definition of the assessment area and the content of an ESIA (incl. project description, assessment of alternatives, baseline studies, assessment of impacts, mitigation measures, natural hazards and emergency prevention & response) and its associated E&S management plans (ESMP) (para. 23 to 49).
 - ii. The necessary organisation capacity and competencies for the management of E&S risks and impacts during project implementation (para. 50 to 52).
 - iii. The prevention, preparedness and response to emergencies (para. 53 to 57).
 - iv. The monitoring system, plans and measures to review the effective implementation of the ESMP and compliance against the contractual obligations and regulatory requirements.

Standard 2 – Pollution prevention and abatement

- 4.8 An objective of this standard is to promote an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to accident prevention for the protection of the environment and avoiding the shift of pollution from one environmental medium to another (para. 3).
- 4.9 The Standard applies during the environmental and social impacts and risks identification process. The implementation of the actions necessary to meet the requirements contained in this standard is managed by the promoter's overall ESMP, the elements of which are outlined in Standard 1 (para. 4).
- 4.10 In order to prevent, reduce and as far as possible eliminate pollution arising from different activities and to establish a general framework for the control of these activities (this includes project design, construction, operation and decommissioning), the promoter shall provide that:

³⁵ See https://consult.eib.org/consultation/essf-2021-en/user_uploads/eib-environmental-and-social-handbook.pdf

³⁶ See https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

³⁷ [Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.](#)

all appropriate prevention measures are taken, best available techniques are applied, no significant pollution is caused, waste generation is by order of preference: prevented, prepared for re-use, recycled, recovered and eventually disposed while minimizing impacts to the environment.

- 4.11 The standard further describes requirements applicable to the emission levels to the air, water and soil (para. 11 to 15), the consideration of ambient conditions such as natural sensitivity and overall quality of the receiving environment (para. 18-19), waste management (para. 20-25), the management of chemicals and dangerous substances (para. 26-30) and the prevention, preparedness and response to emergency situations (para. 31-33).

Standard 3 — Biodiversity and ecosystems

- 4.12 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 (para. 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 (para. 4). Promoters are further expected to identify risks to biodiversity and ecosystems following a credible and evidence-based process of impact assessment and to incorporate effective mitigation and management measures in their management systems, plans and procedures.
- 4.13 Standard 3 outlines the requirements for promoters to identify, classify and map habitats 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 (para. 8-9).
- 4.14 More stringent requirements apply where projects are located in areas or ecosystems that are considered to represent “critical habitat”, including a presumption in favour of avoidance and a requirement to demonstrate positive outcomes (net gain) of biodiversity in cases where projects do take place. Promoters are therefore required to determine through an assessment whether their projects are located within, or could affect any areas of critical habitat. (para. 10)
- 4.15 An area will be considered critical if it supports any of the following features, and is needed to sustain them in a viable state: highly threatened or unique ecosystem; population of critically endangered, endangered or vulnerable species (as defined by IUCN Red List and in relevant legislation); endemic, restricted range, or highly distinctive assemblages of species; 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; habitat of key scientific value or associated with key evolutionary processes. (See also paragraph 3.9 of the report on Key Biodiversity Area criteria triggered in the project area).³⁸
- 4.16 Given that biodiversity has an intrinsic value, for all types of habitats, there is a presumption of criticality if one or more of these criteria are 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 (e.g. local communities and conservation experts), whose opinions and conclusions should be attached to the assessment. (para. 12)
- 4.17 Development within or affecting a critical habitat should be avoided and can only go ahead if (para. 14):
- i. No other viable alternatives for the project exist both in terms of location and design, and there is a rigorous justification for overriding public interest;

³⁸ Note that Critical Habitats criteria of the EIB E&S Standards are similar or overlap with Key Biodiversity Areas criteria, including some that are triggered for the designation of the South-eastern arm KBA as described in paragraph 3.8.

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- ii. 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;
 - iii. Impacts will be avoided and minimised to the extent possible through changes in footprint or design;
 - iv. Positive conservation outcomes (net gain) are achievable through appropriate compensation or offset measures for residual impacts that would otherwise occur despite impact avoidance and minimisation measures; and,
 - v. A robust, appropriately designed, and long-term biodiversity monitoring and evaluation programme aimed at assessing the status of the critical habitat is integrated into the promoter's adaptive management programme.
- 4.18 If critical habitats have been identified, it is recommended that the promoter seek an external review of the impact assessment by a qualified, recognised and independent organisation in the field. (para. 26)
- 4.19 The significance of impacts on natural features is strongly influenced by their relative irreplaceability and vulnerability. Features which are highly rare, unique and irreplaceable as well as very vulnerable to a project's impacts are less likely to recover, requiring compensation or offsets to achieve not net loss or net gain in a critical habitat. In some cases, impacts on highly irreplaceable and vulnerable features may be impossible to compensate or offset, or the necessary techniques may be uncertain. To avoid risk of irreversible impacts on highly irreplaceable and vulnerable features, the EIB will not finance projects likely to have significant adverse effects on such features, regardless of compensation or offset measures. (para. 15)
- 4.20 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. (para. 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 (this includes 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. (para. 17)
- 4.21 It is necessary to demonstrate that there are no alternatives to 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. Different alternatives have to be sufficiently analysed with regards to their impacts on biodiversity, ecosystems and their associated services. The reference parameters for such comparisons are the conservation of biodiversity and maintenance of the integrity of habitats. Economic criteria cannot be seen as overruling the ecological criteria.
- 4.22 The standard further describes applicable requirements in terms of stakeholder engagement (para. 43 and 44); mitigation hierarchy including avoidance, minimisation, restoration, compensation or offsets (para. 45-61); biodiversity management and monitoring plans (para. 62 to 66) as well as risks associated with climate change (para. 72-75).

Standard 4 – EIB Climate related standards³⁹

- 4.23 This standard require that EIB financing as a whole is aligned with EU climate policy (para.1). In practice, climate change considerations should be taken into account during the project cycle,

³⁹ It must be noted that the EIB Climate Bank Roadmap referred to in the complaint (see 2.20) was approved in November 2020 after the project appraisal (see 1.3) and therefore does not apply to the project.

in particular during appraisal by carrying out the following analysis and tasks selectively: carbon footprint assessment, climate vulnerability assessment for sectors most at risk, aim to ensure that climate change vulnerability is addressed in the ESIA (para. 2).

- 4.24 Promoters must comply with appropriate national and -where applicable- EU legal requirements, including multilateral agreements, related to climate change policy (para. 7).
- 4.25 When significant climate change risks on projects and surrounding ecosystems are identified, the EIB requires the promoter to identify and apply the necessary physical and soft measures at planning, design and implementation stage to reduce and monitor these risks (para.8).

Standard 5 — Cultural heritage

- 4.26 The EIB recognises the significance of cultural heritage as part of individual and collective identity, 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 it operates in. Consistent with the UNESCO 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, this Standard aims at safeguarding unique and irreplaceable cultural heritage and at guiding 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 (para. 1).
- 4.27 If confirmed as applicable (para. 5-7 & 10-11), the promoter will undertake a cultural heritage impact assessment (CHIA) according to a set of principles amongst which constructive relationship with affected communities, (para. 8) and it will seek to actively protect culturally significant places, objects and practices in relation to the threats they face (para. 9). Paragraphs 12 to 17 describe the content and methodology of the CHIA.
- 4.28 Paragraph 18 details the promoter obligations and provisions for managing chance finds, defined as physical cultural heritage encountered unexpectedly during project implementation.
- 4.29 Where a project may affect cultural heritage, the promoter will consult with affected communities who use or have used the cultural heritage within living memory for longstanding cultural purposes to identify cultural heritage of importance, and to incorporate into the promoter's decision-making process the views of the affected communities on such cultural heritage (para.19). How inclusive stakeholder engagement should be put in practice by the promoter is detailed in paragraph 20.

Standard 9 – Occupational and public health, safety and security

- 4.30 An objective of this standard is to ensure that promoters duly anticipate, avoid or minimise, and effectively mitigate risks and adverse impacts to the health and safety of host communities during both construction and operation phases (para. 4, objectives).
- 4.31 Risks to public health and safety are normally expected to be identified at ESIA stage (para. 39). Potential negative impacts affecting the public may be triggered by: i) resource use related impacts (e.g. through modification of water courses, changes from earth movements), ii) structural components impacts (e.g. from failure of structures such as dams, faulty design, disruption of existing access) and, iii) in-migration labour force, opportunity seekers or sex workers, exposure to sexually transmitted/communicable diseases, increased vulnerability of local population (para. 40). If such risk is identified, the management of such risk will be reflected in the ESMP (para. 13).
- 4.32 Projects will be designed and will be operated consistent with EU Occupational and Public Health and Safety requirements. However the promoter will adhere to international good practice and to any obligations and standards to which the host country is party to. (para. 19)

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- 4.33 Where justified, a Hazard Assessment establishes the risk as a result of the transport, operation or decommissioning related activities of a project. The assessment requires the analysis of the types and amounts of hazardous materials, the potential spill and release scenarios and potential uncontrolled reactions. The analysis takes into consideration the location and characteristics of the project site including distance to settlements, water resources or environmentally sensitive areas. (para. 9, definition)
- 4.34 When justified, the promoter will develop and implement the necessary health and safety management plans, including emergency prevention, preparedness and response (para. 26). An Emergency Preparedness Plan describes the procedures and practices to allow for quick and efficient responses to accidents that could result in human injury or damage to the environment. It is necessary when hazard risks have been identified. The plan usually covers the procedures to alert emergency agencies, workers and the public about an accident; the emergency response actions to be carried out; the measures regarding the use, inspection, test, and maintenance of the emergency response equipment; the training and communication requirements to ensure that employees and contractors can implement the plan and are duly informed about any update or revision in the procedures. (para. 6, definition)
- 4.35 To the extent possible, the promoter will take measures to avoid, mitigate and manage risks on public health and safety arising from influx project workers. Such risk may be associated with exposure to communicable diseases, increased vulnerability of communities. The Promoter will especially endeavour to protect women and girls from sexual violence and harassment; and avoid the spread of communicable/sexually transmitted diseases. To these ends, the promoter shall organise training and awareness programmes and ensure that the codes of conduct for workers are implemented (para. 43).
- 4.36 The promoter will ensure that all project workers have access to adequate, safe and hygienic basic facilities, if living on-site and that qualified first-aid can be provided at all times. The promoter shall provide basic services including water, sanitation, and, in certain cases when the scale or the nature of the activity being carried out so requires, availability of medical care, based on the principles of non-discrimination and equal opportunity, and will organise awareness-raising sessions on health and safety as required. Workers accommodation must meet minimum size⁴⁰, hygiene standards and respect basic living needs. Policies on the quality and management of the labour camps will be put in place and implemented. (para. 37 et 38)
- 4.37 In line with the freedom of expression and information and the right of the public to information and consultation, the promoter will ensure that the affected stakeholders within the project's area of influence are properly identified, consulted and informed of their rights in terms of health, safety and security (refer to Standard 10 on stakeholder engagement). The promoter will further ensure that they can freely convene and express their views on project risks, impacts and the proposed health and safety management plans (para. 25). The promoter will grant the potentially affected communities with free and easy access to a grievance mechanism and shall address their safety concerns in a timely and effective manner (para. 30).

Standard 10 — Stakeholder engagement

- 4.38 This standard affirms the EIB's expectation that the promoter uphold stakeholder engagement according to the *Free, prior and informed engagement* principle (para. 6 & para. 17). That means an engagement process that is inclusive and iterative involving, in 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 (para. 2). It is important that views, interests and concerns of

⁴⁰ See also IFC and EBRD guidance note on workers' accommodation: https://www.ebrd.com/downloads/about/sustainability/Workers_accomodation.pdf

project-affected communities and other stakeholders are heard, understood, and taken into account throughout the project lifecycle (para. 1).

- 4.39 How stakeholder engagement must be put in to practice is detailed in the standard: stakeholder identification and analysis (para. 21-26), engagement planning (para. 27-31), information disclosure (para. 32-34), public consultation (para. 35-38), grievance mechanism (para. 45-50). This shall be reflected in a stakeholder engagement plan (SEP) outlining the project's stakeholder engagement strategy and implementation. It describes, among others, how stakeholder engagement activities will be incorporated into the promoter's environmental and social management system, and it establishes firm references and links to the operation's grievance mechanism (para. 2).
- 4.40 As per the EIB Guidance Note on Stakeholder Engagement⁴¹, the EIB does not tolerate any action by, or on behalf of, a promoter that amounts to retaliation within the context of the projects it finances. It takes seriously, and follows up on, as and when appropriate, allegations of intimidation or reprisals. The European Union, and the EIB as one of its bodies, acknowledges that civil society, including human rights defenders and environmental activists, plays an important role in sustainable development, and specifically in promoting human rights in development activities. It is therefore important to address risks of intimidation or reprisals in relation to any EIB-financed activity. Where such risk exists, the promoter is expected to give priority to the safety and well-being of individuals at risk, send clear signals to all parties, including staff, contractors, authorities, that any form of intimidation or reprisal will not be tolerated; issuing a public statement that this its policy, take actions to minimize polarization, prevent threats of reprisals and consider taking measure to ensure safety of activists in the engagement process.

5 WAY FORWARD

- 5.1 Based on the initial assessment of the complaint, the EIB-CM has decided to proceed with a compliance review (see paragraphs 3.12 to 3.16).
- 5.2 Based on the written complaint and the EIB-CM's further exchanges with the complainants, the EIB-CM has grouped the allegations as follows:
- i. Non-compliance of the ESIA with EIB E&S standards. Gaps mentioned include: incomplete project description, lack of on-site surveys for the E&S baseline, 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 & natural hazards, biodiversity and cultural heritage).
 - ii. Gaps in the stakeholder engagement process of the project with the EIB E&S Standards, in particular lack of timely and meaningful consultation with all project stakeholders.
 - iii. Gaps in the assessment of alternatives in line with the EIB E&S Standards, in particular for failing to compare environmental and social impacts together with other technical constraints.
 - iv. Biodiversity baseline and impact assessment failing to confirm the absence/presence of critical habitats and, as applicable, to comply with EIB E&S requirements for such habitats (avoid, reduce, offset to achieve net gains).
 - v. Failure to avoid UNESCO Heritage site and to comply with Malawi obligations under the UNESCO Convention and to follow UNESCO Commission recommendations.
 - vi. Project non-compliance with environmental permit conditions and lack of monitoring by promoter of contractor and construction works compliance with environmental, social, public health and safety requirements.

⁴¹ See https://www.eib.org/attachments/guidance_note_on_stakeholder_engagement_in_eib_operations_en.pdf

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- 5.3 As far as allegation (v) (in paragraph 5.2) is concerned, the EIB-CM will base itself on the report of UNESCO.
- 5.4 The court case referred to in paragraphs 3.4 and 3.5 is ongoing at the time of the publication of this report. Should the case be settled in court during the course of the EIB-CM compliance review, the EIB-CM will take the court's decision into account and reflect it in its findings on the allegations of project's non-compliance with the E&S national law and permit conditions. As per article 2.4.1 of the EIB-CM Procedures, it must be noted that the EIB-CM is not a legal enforcement mechanism and will not substitute for the judgment of competent judicial authorities. In line with article 4.3.8 of the EIB Group Complaints Mechanism Policy, pending or concluded reviews of complaints against a third party before a judicial review mechanism does not preclude the EIB-CM from reviewing the actions of the EIB as regards possible maladministration.
- 5.5 The EIB-CM will review the above allegations in the context of good administration by the EIB, including compliance with the regulatory framework and the policies, procedures and standards of the Bank (see section 4). The enquiry will assess the project documentation and the reasonable due diligence and monitoring of the project by the Bank in relation to the above allegations.
- 5.6 The outcome of the compliance review will be communicated to the complainants through a conclusions report in line with articles 1.6 and 2.4.6 of the Procedures⁴².
- 5.7 In the meanwhile, the EIB-CM encourages the Bank services to actively monitor and verify the project's compliance with its E&S standards and where gaps may be identified to advise and/or take the necessary actions in line with its own procedures (see paragraph 4.4iii) and loan agreement (see para. 3.7). To further support the promoter in closing the gaps identified, the Bank services may consider using its technical assistance (see paragraph 1.6).

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⁴² See also <https://www.eib.org/en/publications/complaints-mechanism-procedures>