

Amnesty International

Comments to the European Investment Bank Environmental and Social Handbook (Draft 5)

Amnesty International welcomes the opportunity to provide comments on Draft 5 of the European Investment Bank (EIB) Environmental and Social Handbook (the Handbook). Please note that this submission identifies our main recommendations for consideration by the EIB and is not intended to reflect a detailed line-by-line review of the document nor of all of its different parts. Amnesty International encourages the EIB to ensure that civil society organizations and other experts are given an opportunity to comment on the final draft as it becomes available.

Amnesty International calls on the EIB to consider the following modifications:

1) Ensure all references to human rights in the text are consistent and coherent throughout the Handbook and the Environmental and Social Statement.

Amnesty International recognizes the efforts the EIB has made to improve environmental and social standards and practices, and notes the incorporation of some human rights language into the draft Handbook (e.g. explicit references to some of the key relevant international human rights laws and standards). However, we are concerned about an overriding failure to acknowledge that a robust human rights due diligence mechanism is central to any genuine efforts to identify, address and mitigate potential and actual adverse human rights impacts arising within activities that EIB supports.

While the EIB Statement on ‘Environmental and Social Principles and Standards’ states at page 10 paragraph 6 “that the Bank will not finance projects which result in a violation of human rights...” it is essential to specifically reflect this commitment (i.e. to respect human rights and to take all steps necessary to ensure this happens) in the introduction of the Handbook (page 13 paragraph 2). Suitable language could include:

“The Bank will not support projects or activities that are likely to contribute to human rights violations and will take all steps necessary to ensure that human rights are respected. The Bank will identify the risks to human rights using the human rights framework. Where human rights risks are detected, the Bank will require that Promoters carry out and disclose human rights due diligence, including a human rights risk assessment and plan to identify, address and mitigate negative human rights impacts.”

This modification, and implementation of the suggested measures, would help to ensure that better human rights safeguards are well integrated into projects and activities supported by the EIB.

While the reviewed Handbook states that due diligence should be conducted to identify environmental and social impacts, this is insufficient for capturing human rights impacts. The EIB appears to use the term “social” impact to capture or as equivalent to human rights impacts – but while an assessment of social impacts may identify some human rights impacts, it runs the risk of overlooking others. This is because social impacts may not be assessed or construed within the context of international human rights laws and standards (human rights framework). It is important to measure the impacts of EIB-supported projects in relation to the human rights framework since this is anchored in law, defines the legal obligations of states, and has a high degree of consensus among states.

For example, Section B2.3 describes the elements required to conduct an appraisal of social issues (paragraph 121) but misses any reference to the human rights framework. Similarly, special tools developed for the assessment, for example the tools given to Promoters to conduct a social and environmental appraisal (Annex 11), focus only on the EIB standards and lack a further reference to the human rights framework. This creates the risk that Promoters will fail to consider human rights risks that might be at stake when they perform their assessment (e.g. sanitation, non discrimination etc) or underestimate their importance. For example, a human rights assessment could reveal the potentially unlawful detention of community leaders known to express opinions in opposition to a project which the EIB is considering funding. Had this approach not been used, abuses of civil and political rights could have gone undetected.

Finally, Section B.2.3 outlines the social appraisal procedures in relation to standards on vulnerable groups. Paragraph 131 lists examples on harmful impacts on these groups. While practical examples have their merit, there is also the danger that other possible human rights impacts may be overlooked. For example, segregation of a vulnerable group after resettlement, or restricted access to services for disabled individuals as a consequence of changes made in an infrastructure project.

2) Clarify explicitly that the EIB will undertake human rights due diligence across all of its activities in line with international human rights standards.¹

The Handbook should clearly state EIB’s commitment to respect international human rights vis-à-vis the projects it supports and to undertake all steps necessary, using the human rights framework, to ensure that this happens namely by carrying out human rights due diligence. If a decision is made to lend support to a project despite the potential that adverse impacts on human rights may arise, it is particularly important that the EIB also require that the Promoter carry out human rights due diligence, and disclose the process undertaken and its findings. Genuine consultation with individuals and communities likely to be affected should be included and their views incorporated into the assessment.

Robust human rights due diligence mechanisms should be based on the principles of non-discrimination and participation. They should also incorporate adequate implementation and monitoring mechanisms to verify whether human rights are being respected throughout the entire project process from conception, to design and implementation including before and after the disbursement of EIB funds. An effective accountability mechanism should be put in place.²

3) Ensure that the respective roles and responsibilities of the EIB and Promoters are clearly defined in the text.

Section A.3 ‘Roles and responsibilities’ and in particular paragraph 9 on the role of the EIB require further clarification to define exactly what the respective roles of the EIB and the Promoter are for carrying out human rights due diligence. This lack of clarity results in a dilution of the human rights responsibilities of the EIB in relation to environmental, social and human rights impact appraisals, and the monitoring and implementation of projects.

Specifically, this section fails to clarify that as an EU institution, the EIB has an independent responsibility to determine whether projects or activities that it chooses to support may lead to negative human rights impacts. This requires that the EIB undertake a human rights risk assessment at an early stage and throughout the decision making process, starting at the pre-appraisal stage.

Risks to human rights should be assessed against criteria based on relevant international human rights laws and standards and consider potentially affected individuals and communities. The identified human rights risks and impact must then inform the categorisation of projects. Currently, while paragraphs 9 and 25 require the EIB to assess the project against the relevant ‘legal’ framework, it does not specify international human rights laws and standards.

All relevant decisions and procedures should be made public. This includes among others all human rights impact assessments, decision making procedures, management plans and reporting.

Amnesty International is further concerned that the Handbook closely follows the International Financial Corporation’s (IFC) model, which relies heavily on information provided by their clients and does not account for independent fact-finding. This model, as we have stated in previous submissions to both the IFC and the World Bank, presents fundamental problems, as it relies on information provided by actors who have a vested interest in ensuring the project continues to receive funding regardless of any adverse impacts. The Handbook appears to permit this to be the basis upon which the EIB makes critical decisions in relation to project lending. In turn, this practice of mainly relying on assessments made by Promoters is insufficient to ensure that the EIB itself takes adequate steps to become aware of and prevent human rights abuses.

An independent assessment by the EIB is therefore required. However, this should be in addition to the Promoter’s own due diligence process. The process undertaken by the Promoter should include conducting a human rights risk assessment and proposing strategies for addressing and mitigating any negative human rights impacts.

4) Ensure consultation in all phases of the projects, including during appraisals and monitoring by the EIB.

Amnesty International welcomes the EIB’s commitment to improve consultation and strengthen its standards on ‘stakeholder engagement’ as referred to in the Handbook.

However, while the EIB stresses that an open, transparent and accountable dialogue should take place in all phases of a project, the duty appears to only apply to Promoters and not within its own procedures (e.g. assessment, monitoring of projects, etc.). This reflects a weakness in the EIB’s approach. The Handbook should be modified to reflect that situations may arise which warrant direct engagement with project-affected individuals and project-affected communities.

5) Ensure alignment of its own standards with relevant international human rights laws and standards as part of its human rights due diligence: The Belvil example.

Amnesty International notes the references to relevant international human rights law and standards in the Handbook (see below). We also acknowledge that the EIB has based the review of the Handbook on a gap analysis of the previous version. However, again in line with the transparency principle, we request that the EIB make this previous study publicly available to enable informed and comprehensive analysis of the review process.

The EIB has integrated the principle of non-discrimination in several of its social standards (labour rights, vulnerable groups, informal settlement). However, projects might contribute to or benefit from discrimination in areas outside of these standards.

The EIB should therefore commit to applying the principle of non-discrimination throughout all its projects and processes. Language in that regard should be clear and should be based on and reflect international human rights law in this area. Currently, the language the EIB uses to describe its commitment to non-discrimination leaves question marks with regards to its actual dedication to prevent and address discrimination. For example, the EIB commits to “avoid” discrimination instead of “refraining” from discrimination (see page 186).

Lastly, the handbook fails to provide guidance and the necessary tools to promoters and EIB staff which would allow them to recognise and prevent discrimination. Such guidance should take into consideration international and European frameworks that address discrimination, such as the Convention on the Elimination of All Forms of Racial Discrimination and the EU Equality Directives (2000/78/EC and 2000/43/EC).

Given our research and advocacy focus on the issue, Amnesty International has reviewed EIB’s standard on involuntary resettlement with respect to its alignment with international human rights law and standards. In this context, it would be useful to draw on some of Amnesty International’s recent research on the EIB in relation to forced evictions of a Roma community in Serbia, in order to demonstrate some of the deficiencies of the current Handbook draft in this area.

One significant example where the EIB failed to respect international standards and guidelines related to the prevention of forced evictions³, is the planned eviction and resettlement of Roma families living in an informal settlement at Belvil, in Belgrade.⁴ The EIB’s Guidance note 1 on Involuntary resettlement, the EIB standard currently in effect, sets the objective of mitigating negative social impacts through “ensuring that resettlement measures are implemented with meaningful consultation and the informed participation of the affected people”.⁵

Yet when the eviction of Belvil was announced in the media in March 2010, the affected Roma had not been informed officially by the City of Belgrade authorities, who had made no attempt in advance to consult with them on feasible alternatives to evictions or on resettlement options; nor were they informed of, or offered, any alternative adequate housing. No adequate consultation has taken place in the past three years: affected Roma were provided with information on only five occasions.⁶ Further, while a survey of the affected Roma families was conducted in advance of a Resettlement Action Plan (RAP), the RAP was not consulted with the community.

In its reviewed standard, the EIB has strengthened stakeholder engagement. Amnesty International welcomes the enhanced application of human rights standards in the section, particularly in relation to the right to adequate housing and the prevention of forced evictions. However, AI maintains that the reviewed handbook, as it is currently presented, would still not adequately prevent future violations such as those that took place in Belvil. In particular, although the handbook makes clear that forced evictions should be avoided and/or prevented, which is a positive step forward, it still fails to give sufficient recognition to the human rights due diligence that is required whilst continuing to delegate too great a responsibility to the Promoter. Most significantly, it is vital that the EIB will not base its monitoring only on information provided by the Promoter – in the case of Serbia, the EIB should have checked whether the notification of resettlement was received by the communities by directly engaging with them.

In addition AI recommends some technical improvements that could be made to strengthen the human rights language of standard 6:

- It would be beneficial to reflect human rights in the Introduction both for consistency and to ensure that rights are given sufficient priority from the outset. For example, it would be preferable to state in the second paragraph ‘negatively impact the economic, social and cultural rights/human rights of affected people’ rather than ‘economic and social well-being.’
- It would be useful both in the definitions section (and elsewhere where relevant) to highlight the fact that forced evictions are prohibited under all circumstances.
- On page 186 it would be good to extend the application of Standard 6 to other rights beyond those listed such as water and sanitation and health in order to reflect the range of rights potentially impacted.
- On page 187 it would be helpful to elaborate in more detail the range of safeguards as contained in General Comment 7 and the UN Basic Principles that must be adhered to both prior to and during an eviction; e.g. genuine consultation, adequate notice; mandatory presence of government officials; access for neutral observers; evictions not to be carried out during inclement weather or at night; ensuring that nobody is subject to direct or indiscriminate attacks or other acts of violence; and that nobody is rendered homeless.
- The elaboration of relocation standards is welcome on page 187 but could be developed further to include, for example, the need to ensure “At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f)

fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.” (UN Basic Principles para 52). In this respect the annexing of key human rights documents such as the UN Basic Principles to the Handbook would be useful.

- The section on compensation provision is also welcome but could be further strengthened to reflect the full spectrum of remedies that should be available whilst also ensuring that the right to challenge resettlement decisions and processes is recognised and elaborated.

6) The EIB should identify clear steps and require robust human rights due diligence when funding through financial intermediaries.

Projects carried out by financial intermediaries (FI) can carry a high risk of negative human rights impacts and by their nature can be more difficult to screen, monitor and implement. While the Handbook at page 69 speaks about the need to consider the “current environmental and social policies and procedures of the FI and track records, it does not provide clear indications as to how such an evaluation should be carried out by EIB staff.

We look forward to discussing the above comments in greater detail.

¹ Amnesty International has addressed other International Financial Institutions with similar calls. See for example *Amnesty International submission: Revision of European Bank for Reconstruction: 2008 Environmental and Social Policy*, July 2013, Index: IOR 80/003/2013, available at <http://www.amnesty.org/en/library/info/IO80/003/2013/en>

² For more information on the main elements of a Human Rights Due Diligence for International Financial Institutions please see for example the following Amnesty International publications: *Time to invest in Human Rights : A human rights due diligence framework for the International Finance Corporation*, Sep 2010, Index IOR 80/004/2010; *Amnesty International submission to the World Bank Safeguards Policies Review and Update*, April 2013, Index: IOR 80/002/2013; and *Amnesty International submission: Revision of European Bank for Reconstruction: 2008 Environmental and Social Policy*, July 2013, Index IOR 80/003/2013.

³ As elaborated in UN Basic Principles And Guidelines On Development-Based Evictions And Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18 paras. 37-44, available at http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

⁴ See Amnesty International, *Home is more than a roof over your head: Roma denied adequate housing in Serbia*, April 2011, Index EUR 70/001/2011; and *After Belvil, Serbia needs new laws against forced eviction*, October 2012, Index EUR 70/015/2012

⁵ See footnote 1, *ibid.*, para 38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider.

⁶ October 2010, April 2011, June 2012 and February 2013.