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CEE Bankwatch Network and Counter Balance contribution to the UN Special Rapporteur Inputs in relation to his forthcoming work on resettlement as a human rights issue.

CEE Bankwatch Network and Counter Balance welcome the initiative of the Special Rapporteur for setting of guidelines at the international level to ensure that resettlement and relocation are carried out in compliance with the international human rights framework.

In our monitoring work we came across several projects financially supported by multilateral development banks (such as European Investment Bank or European Bank for Reconstruction and Development) which caused involuntary resettlement which resulted in negative socioeconomic impacts. We observe that despite resettlement safeguards adopted by these public development banks negative impacts still occur regularly. In theory, in line with social standards of the EIB or EBRD, involuntary resettlement, if unavoidable should not lead to deterioration of living conditions but on the contrary, it should aim at improving the livelihood of the resettled population.

Here are just few examples of such projects with negative socioeconomic impacts:

Serbia solid waste incinerator project, EBRD

The Vinča landfill on the Danube has been piling up over more than 40 years with no lining or collection of the water leaching out underneath. More than 80 people were living in informal accommodation and trying to eke out a living from discarded waste at the site, part of the 12 000 people estimated to be involved in waste collection throughout the city.

In 2019 the EBRD provided EUR 70 million to 'Beo Cista Energija d.o.o Beograd' for the construction of a solid waste incinerator and the remediation of this old landfill in the Serbian capital.

In late 2018 some residents of the informal settlement were relocated to social housing units, while a number of individuals were left without any alternative form of housing. This resettlement was said to violate Serbian law and the International Covenant on Economic, Social and Cultural Rights because the housing that was allocated was not affordable for its users.

International human rights standards define the affordability of housing at a cost to an individual or household at a level that does not jeopardize the fulfilment of other basic needs. However, the majority of relocated households were already burdened with the costs of rent and utility services.

Also, only residents of the informal settlement that were there as of 8 June 2016 were offered relocation. As a result, some families who arrived after this census date were left without any alternative accommodation.

Moreover, many waste pickers have lost their main source of income because of the unilateral termination of their contracts with the public utility 'Gradska Čistoća'. Despite the obligation of the city of Belgrade to ensure economic opportunities for income generation, a few people were offered only short term seasonal jobs, which were poorly compensated. At the same time, picking of recyclables from the streets of Belgrade has been prohibited, and thus their livelihood criminalised. Again, the rights of waste pickers are ignored by the lenders and local government as the new solid waste PPP project is being set up.

Akiira Geothermal Project, EIB

For several years, Bankwatch and other civil society groups have **been** raising the alarm about the risk of grave human rights violations around the Akiira geothermal energy project in Kenya. In June 2019 we warned that the local community is facing an imminent forced eviction to make room for the energy project. At the time, the European Investment Bank (EIB) was considering a EUR 155 million loan to the controversial project. Four months later, the Bank informed us it had decided to pull out. Few weeks later the village – home to 47 families living in abject conditions – was burned down in its entirety, and the local residents were chased away by the police. Our investigation revealed that while the EIB has stopped considering a loan to the Akiira project, it has in fact already been financing it through the Global Energy Efficiency and Renewable Energy Fund of Funds (GEEREF), a joint initiative of the EIB and the European Commission in which the Bank plays both an advisory and investor roles. In GEEREF's Impact Report for 2015, Akiira is mentioned as an example of good stakeholder engagement. Yet, in August 2021, the EIB's Complain Mechanism confirmed that the violent eviction of the villagers constitutes a breach of the Bank's standards. In its response to members of the impacted community, the Mechanism also admitted that the EIB's monitoring of the GEEREF's social performance was insufficient. As a result, the bank commissioned an expert who prepared a corrective action plan assuming financial compensation for affected people.

Mombasa Port Access Road in Kenya, EIB

The European Investment Bank and German development bank KfW are among the lenders supporting a 41 kilometre extension of the road from Mombasa towards Nairobi, one of the most important in Kenya. Over the last four years, the resettlement of those along the transport corridor has created severe problems for residents of Mombasa's suburbs. They were subject to forced evictions and intimidation and are under imminent threat of losing businesses. Life in fear and uncertainty has become a reality for hundreds of people.

In 2015 forced and unlawful evictions in the Jomvu area led to a mediation process facilitated by the EIB, covering more than 300 affected people. On 11 December 2019 the EIB's Complaints Mechanism (CM) closed another investigation into more than 200 complaints, including from those living around the Changamwe roundabout.

The report concludes that there were shortcomings in the implementation of the resettlement process, but the mechanism notes the considerable efforts of the project promoter KENHA to address these challenges. As a way forward, it finds that the EIB should continue to cooperate with other lenders and the KENHA to address these issues.

Despite the mechanism's findings and conclusions, the tenants and traders from Changamwe expect that the area will be demolished on 22 December even though a number of affected persons claim

they have not received compensation and relocation assistance. In some cases only an oral resettlement notice was provided, while others received a written, one month notice instead of the three months that is in line with the adopted resettlement action plan.

From 2016 to 2019, there have been around 600 complaints (most likely from individuals) related to the project sent to the EIB Complaints Mechanism. This is the result of negligence in the resettlement process, including forced evictions.

Conclusions and recommendations

The existing social policies and standards of the public development banks do not guarantee the rights of the impacted people who must be resettled. The existing safeguards neither sufficiently prevent intimidation, threats and forced evictions nor protect the existence and well-being of the most vulnerable project stakeholders. In many cases this is caused by the inefficient implementation of the standards, the lack of enforcement mechanisms and proper monitoring.

In our opinion, a thorough human rights due diligence is a prerequisite for the proper implementation of the environmental and social standards. The public development banks should in first step develop proper human rights due diligence as an ongoing risk management process which aims to identify, prevent, mitigate and redress the potential adverse human rights impacts of its operations. It should provide information about the likelihood and severity of impacts – taking into account the country context, project specificity and promoter's track record – and should explain how applying the environmental and social standards will remedy potential human rights impacts.

Other recommendations for enhancing human rights protection and enforcement of the standard on adequate housing by the public development banks:

- In each case of physical resettlement the project should prove that it is unavoidable and represents exceptional circumstances.
- All projects which trigger resettlement (economic and physical) should be subject to human rights due diligence which clearly identify all the rights which are at risk, including property, health, education and cultural, family rights and privacy.
- Direct engagement with impacted people, field visits and engagement in public consultations.
- Provide trainings for project promoters on human rights, adequate housing and social standards.
- Establish on the ground independent monitoring and evaluation ensuring continuous monitoring of the project implementation.
- The resettlement process must involve a mutual agreement between affected people and the Promoters, while ensuring that the process is safe and regulated. Peoples affected by resettlement should have improved Standards of living after project completion.
- Ensure legal and technical assistance to enable those being resettled to access assistance they may need to protect their rights and interests during the resettlement process.
- Involuntary resettlement of Indigenous Peoples or other local communities with customary or traditional land right land rights should never be an acceptable outcome of a project. Involuntary curtailment of rights, such as access to resources, should also never be an acceptable outcome of a project. Resettlement is only acceptable in scenarios where the affected community/ies have given their free, prior, and informed consent.

- Only in limited circumstances land-for-land compensation should at all be allowed and only under the clear and informed agreement from the resettled persons. Land-for-land compensation should apply to all cases of physical displacement.
- Any monetary compensation should be a subject of independent evaluation based on the expertise by a selection of independent experts.
- All resettlement processes should be subject to independent audits (independent from the project promoters and authorities) which should confirm the improvement of the livelihood of resettled people.