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Via Electronic Mail

Sub: Complaint and request for mediation regarding the Nepal Power System Expansion Project (including the 220 kV Marsyangdi Corridor Transmission Line) European Investment Bank Project # 2013-0599

Dear Ms. Derkum and Mr. Abad:

We, the Free Prior and Informed Consent (“FPIC”) and Rights Forum (the “FPIC & Rights Forum”) from Lamjung district of Nepal hereby submit a request for mediation to the Complaints Mechanism regarding the European Investment Bank (“EIB”) funded 220 kV Marsyangdi Corridor high voltage transmission line (the “220 kV Marsyangdi Corridor”) and associated hydropower sector development in the region¹.

The 220 kV Marsyangdi Corridor is part of the EIB funded Nepal Power System Expansion Project² (“Nepal PSEP”). The Nepal PSEP is a necessary and integral part of planned hydropower sector development in the region, providing a way to transport electricity from the region towards Kathmandu and India. The FPIC & Rights Forum is a collective of Indigenous and other local peoples in Lamjung district, who are affected by maladministration in the Nepal PSEP, and associated projects.³

While our primary ask from the Complaints Mechanism is mediation, if a collaborative process is not possible or concludes without resolution of our issues, then the Complaints Mechanism should initiate a robust compliance review investigation.

We urge you to commence a mediation process as soon as possible. Construction of the 220 kV Marsyangdi Corridor is slated to start soon or may have started already in some places. Any construction on the ground would have irreversible impacts on communities, especially since we want to have a say on the route of the line as well.

¹ The people in Lamjung district are affected by multiple hydropower generation projects (for example, the Nyadi and the Dordi hydropower projects) and transmission lines (for example, the European Investment Bank funded 220 kV Marsyangdi Corridor and the 132 kV Bhulbhule Mid-Marsyangdi high voltage transmission lines) which are all associated facilities.

² See, European Investment Bank, *Project webpage - Nepal Power System Expansion Project*, available at <http://www.eib.org/en/projects/pipelines/pipeline/20130599>. [hereinafter, “EIB Nepal PSEP webpage”]

³ European Investment Bank, *Statement of Environmental and Social Principles and Standards* (2009), at paras 66, available at http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf [hereinafter, “EIB E&S Principles and Standards (2009)”]. “Maladministration covers the failure to act in accordance with the requirements of the Bank, including applicable legislation and/or respect for human rights and the principles of good administration.” *Id.*

This complaint starts with providing information about the Nepal PSEP, the 220 kV Marsyangdi Corridor, and the FPIC & Rights Forum. Next, the complaint requests the EIB's engagement on social and environmental gaps in the implementation of the Nepal PSEP. To support a high level of engagement and accountability, we urge the Complaints Mechanism to offer your good offices to help mediate a multi-party dialogue between affected communities and funders, authorities and promoters who have decision making power in the Nepal PSEP, and as necessary, its associated hydropower sector projects.

The bulk of the complaint provides communities' perspectives about the impacts of the Nepal PSEP, especially the 220 kV Marsyangdi Corridor, and how it fits in with hydropower sector development in Lamjung district. There is significant explanation about how the Nepal PSEP is failing to comply with the EIB's requirements, and international and domestic law. The complaint also provides information about steps that communities have taken thus far to raise their voices with the project implementer and the EIB.

The complaint urges the Complaints Mechanism and the EIB to ensure there is no retaliation against local communities for filing this complaint. The complaint ends by offering some concrete proposals to the EIB, and a logistical note on our advisors and how we would like communication to occur in this process.

Please note:

1. While English is not our language, we are filing the complaint in both Khas Nepali and English to expedite the process on your end. As you know, the EIB's environmental and social standards, and the Complaints Mechanism's current policy and procedures are available in English and some other European languages, but not in Nepali. For purposes of consistency with terminology used by the EIB and Complaints Mechanism, please consider the English version of the complaint as the primary text, and determinative in case of any conflict with the Nepali version.
2. We have drafted this complaint on the basis of the Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (dated October 31, 2012, *hereinafter*, the "Complaints Mechanism's current policy"),⁴ and Operating Procedures (dated August 2013, *hereinafter*, the "Complaints Mechanism's current procedures").⁵ We expect our complaint to be processed under the Complaints Mechanism's current policy and current procedures as these are in place when our complaint reaches your inbox. To ensure this, we are filing the complaint electronically before any new policy and procedure has been discussed or adopted by the EIB's Board of Directors. We expect our complaint will be received by the Complaints Mechanism instantaneously through email. We understand the EIB is currently in the midst of a public consultation on the Complaints Mechanism policy and procedures, and the EIB's Board of Directors may discuss and adopt new policies and procedures on October

⁴ EIB, Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (October 31, 2012), available online at: http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf [*hereinafter*, "Complaints Mechanism's current policy"].

⁵ EIB, Operating Procedures (August 2013), available online at: http://www.eib.org/attachments/strategies/complaints_mechanism_operating_procedures_en.pdf [*hereinafter*, "Complaints Mechanism's current procedures"].

- 9, 2018.⁶ The Complaints Mechanism should avoid attempting retrospective or retroactive application of its new policy and procedure to our complaint in whole or in part.
3. We reserve the right to provide additional material, including regarding non-compliance, maladministration, and/or our demands.

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⁶ EIB, *Public consultation on the EIB Group Complaints Mechanism Policy*, available online at <http://www.eib.org/en/about/partners/cso/consultations/item/public-consultation-on-eib-group-complaints-mechanism.htm>.

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I. About the project

In April 2015, the EIB committed to providing approximately Euro 95 million in financing to the Government of Nepal. The money is for the Nepal Electricity Authority (NEA) to develop the Marsyangdi and Kali Gandaki high voltage transmission line corridors, named after the river valleys they traverse along. These corridors, are part of the Nepal PSEP, which is a part of the larger Asian Development Bank (ADB) hosted South Asia Subregional Economic Cooperation (SASEC) program and SASEC Power System Expansion Project.⁷

The Nepal PSEP has been approved by the EIB's board and a loan agreement has been signed with the Government of Nepal. According to the EIB, individual components of the Nepal PSEP "are at various stages of project implementation, with some not yet having been tendered and others under construction."⁸

⁷ Asian Development Bank, *Project Data Sheet – South Asia Subregional Economic Cooperation Power System Expansion Project*, available online at <https://www.adb.org/projects/44219-014/main#project-pds>.

⁸ Email from EIB's Civil Society Division, dated December 28, 2017.

EIB management’s proposal to its board of directors – seeking the board’s approval to finance the Nepal PSEP – suggests that the ADB and Norwegian Agency for Development Cooperation (NORAD) are co-financing the Nepal PSEP.⁹ The EIB indicated its understanding is “that both ADB and NORAD are still considering supporting this project” but was unable to confirm their involvement.¹⁰ Associated hydropower sector projects in the region are also receiving significant international (including Chinese, World Bank, etc.) financing, and domestic financing.

A. Purpose of Nepal PSEP

EIB management’s proposal to its board states:

The project comprises priority investments in the national power transmission grid, including the construction of seven new high voltage transmission lines and associated substations and the expansion and upgrading of several existing substations. The project will contribute to meeting domestic demand by connecting new hydroelectric schemes in the Western Development Region of Nepal to the national grid. This will help alleviate the acute power deficit in Nepal, which results in extensive load shedding, particularly during the winter (dry season). The project will also facilitate cross-border power exchange with India. In the short term, electricity trading will mainly concern imports from India in order to reduce the incidence of load shedding.¹¹

B. Components of Nepal PSEP

Nepal PSEP includes the design, supply, installation, testing, commissioning, and operation of transmission infrastructure to take hydropower generated in the Western region of Nepal to markets in Kathmandu and India. It includes the following main components:

- (i) Transmission system expansion:
 - a. between the Kali Gandaki basin and the Indian border (220 kV – 38 km, and 400 kV – 117 km);
 - b. along the Marsyangdi corridor (220 kV – 135 km);
 - c. between Marsyangdi and Kathmandu (220 kV – 85 km); and
 - d. between Samundratar and Trishuli 3B hub (132 kV – 24 km); and
- (ii) Construction and/or replacement of grid service substations at various locations.¹²

Currently, the FPIC & Rights Forum’s main concerns relate to the 220 kV Marsyangdi Corridor, which is a key component of Nepal PSEP.

C. About the 220 kV Marsyangdi Corridor transmission line

⁹ European Investment Bank, *Proposal from the Management Committee to the Board of Directors* (September 16, 2014) at 2 [hereinafter, “EIB proposal to its Board”].

¹⁰ Email from EIB’s Civil Society Division, dated August 8, 2018.

¹¹ EIB proposal to its Board, at 2.

¹² *Nepal Power System Expansion Project Finance Contract between Nepal and European Investment Bank* (Signed: Kathmandu, 19 March 2015, and Luxembourg, 20 April 2015).

The 220 kV Marsyangdi Corridor has been broken into multiple transmission line segments:

- from Ghalechowk (in Manang district) to Khudi (in Lamjung district);
- from Khudi to Udipur (in Lamjung district); and
- then from Udipur to Markichowk (in Tanahu district) to Bharatpur (in Chitawn district).

According to the EIB, the goal of the Nepal PSEP is to increase power evacuation capacity from these valleys by approximately 1,000 MW.¹³

1. Udipur - Bharatpur segment of 220 kV Marsyangdi Corridor

Within the 220 kV Marsyangdi Corridor, the NEA appears to be starting with the 64.5 km long Udipur-Markichowk-Bharatpur transmission line segment – from Udipur (Lamjung district) via Markichowk (Tanahu district) up to Bharatpur (Chitawn district).

Pinggao Group Company Limited was recently awarded a USD 16.7 million contract to design, supply, install, and commission the Udipur-Markichowk-Bharatpur segment.¹⁴ The contract for the Udipur-Bharatpur segment was signed on November 5th, 2017 with a contract execution period of 36 months.¹⁵

This suggests that construction on this segment of the transmission line has started or is expected to start imminently.

2. Ghalechowk - Udipur segment of 220 kV Marsyangdi Corridor

The next major component of the 220 kV Marsyangdi Corridor that the NEA is moving ahead with appears to be the 45-km long Ghalechowk-Khudi-Udipur segment. This segment passes through the Annapurna Conservation Area, and connects hydropower generation in the area to the rest of the Nepal PSEP. The NEA is reportedly currently working on an Environmental Impact Assessment (EIA) for this segment, with tendering for construction expected to start soon after.¹⁶ As of the sending of this complaint, to our knowledge, the EIA has still not been made available on the EIB's website.¹⁷

II. About the FPIC & Rights Forum

The FPIC & Rights Forum is a grouping of local Indigenous and non-Indigenous peoples in Lamjung district, who are organizing together in solidarity to demand that hydropower sector development in our region is rights-based. The FPIC & Rights Forum is the umbrella organization of local Struggle Committees that have been formed at the village level. Currently, the FPIC & Rights Forum includes numerous local-level Struggle Committees – in different communities in Lamjung

¹³ EIB, *Results Measurement Framework* (July 16, 2014), at page 2 [*hereinafter*, “EIB Results Framework”].

¹⁴ European Union Tenders Electronic Daily, *European Investment Bank - Works - Contract award notice - Open procedure (Works - 452615-2017)*, available online at <https://ted.europa.eu/udl?uri=TED:NOTICE:452615-2017:TEXT:EN:HTML&tabId=1> [*hereinafter*, “Udipur Bharatpur Contract Award notice”].

¹⁵ Email from EIB's Civil Society Division, dated December 28, 2017.

¹⁶ *Id.*

¹⁷ EIB Nepal PSEP webpage.

district – that are in the path of the 220 kV Marsyangdi Corridor, and are also affected by other associated projects, including sometimes by multiple projects simultaneously.

Local people are concerned the Nepal PSEP, especially the 220 kV Marsyangdi Corridor, is being implemented without information disclosure about the project and its impacts, consultation or our agreement. We are demanding the Nepal PSEP and associated hydropower sector projects in Lamjung district adopt a robust FPIC process, and respect our rights as required under the EIB’s rules, and Nepali and international laws, policies, and practices.

III. Requesting EIB’s engagement on environmental and social matters

We understand the EIB is a European Union institution. The European Union promotes environmental sustainability and social wellbeing as part of its commitment to sustainable development, and all EIB “projects must comply with the environmental and social requirements of the Bank.”¹⁸ We welcome the EIB’s “aim to add value by enhancing the environmental and social sustainability of all the projects that it is financing” including by “providing finance in a way that encourages transparency, participation and consultation, social inclusion, integrated planning and more equitable access to goods and services.”¹⁹

When we personally raised our issues with the highest level of the project promoter, the Managing Director of the NEA, in late 2017 and then again in April 2018, he said that our concerns relate to Nepali transmission line policy and acknowledged there is a need to change policy. We know also that the government has set up a right of way taskforce to address some of these issues. But there has been little disclosure about the process. Even though we are affected by transmission lines, we have not been consulted on any transmission line policy drafts, or seen any policies released. We have valuable inputs to any such policy discussions. Still, we see the 220 kV Marsyangdi Corridor moving ahead, without any due consideration for our concerns.

We would like the EIB to have a positive influence with Nepali authorities and ensure the Nepal PSEP, including the 220 kV Marsyangdi Corridor, and associated hydropower sector development in Lamjung, are done in compliance with the EIB’s requirements under EU laws, norms, and practices.

IV. Request for mediation on an urgent basis

As described in detail in the next section of this complaint, there has been maladministration in the Nepal PSEP, related to EIB’s due diligence and supervision. The EIB’s maladministration has resulted in actual or potential harms. The FPIC & Rights Forum is looking for this maladministration, and the resulting harms, to be remedied.

The Complaints Mechanism’s current policy allows complainants to expressly request for problem solving and/or mediation.²⁰ The FPIC & Rights Forum requests the Complaints Mechanism to accept our complaint, and coordinate a collaborative dispute resolution process between communities in

¹⁸ EIB E&S Principles and Standards (2009), at paras. 2 to 3.

¹⁹ EIB E&S Principles and Standards (2009), at paras. 3 and 11.

²⁰ Complaints Mechanism current policy, at §IV.4.2.

Lamjung district, EIB's Management and Services team, the project promoter (the NEA), national authorities, including the Ministry for Energy, Water Resources, and Irrigation, and as necessary hydropower sector developers for associated projects in the region.²¹

We believe formal complex mediation / conciliation processes – in accordance with the Complaints Mechanism's current procedures – will help:

- (i) Improve trust between local affected communities, the EIB, NEA, and national authorities;
- (ii) Ensure adequate participation of affected communities as rights holders in project decisions;
- (iii) Facilitate adequate information sharing, consultations, and the space to seek additional clarifications and independent advice, so that communities in Lamjung can better understand the Nepal PSEP's impacts in the context of related hydropower sector development in the district;
- (iv) Funders, promoters and authorities driving hydropower development in Lamjung have a better understanding of communities' issues;
- (v) Facilitate an agreement for just and sustainable development which:
 - a. addresses communities' concerns about the impacts of the Nepal PSEP and associated hydropower sector projects;
 - b. clearly states how each individual and collective impact can be best avoided, mitigated, compensated or offset;
 - c. respects communities' rights to FPIC, collective and individual human rights, and their environment; and
 - d. includes a plan to implement the agreement and monitor its implementation.²²

We urge you to recognize the urgency of the situation for the communities. Time is of the essence. Project authorities are moving ahead with the project despite its impacts on our human rights and the environment. We need an amicable resolution to our issues as soon as possible. Construction of the 220 kV Marsyangdi Corridor is slated to start soon or may have started already in some places. Construction in some other parts of the Nepal PSEP has already started. Any construction on the ground would have irreversible impacts on communities, especially since we want to have a say on transmission line routes as well. It is important to request the EIB and NEA to put a hold on all construction forthwith, at least for the 220 kV Marsyangdi Corridor, and commence a mediation process with the communities, as soon as possible.

We understand that the Complaints Mechanism's current policy, procedures and practices allow for your in-house mediation experts to attend the initial assessment visit, to help plan potential mediation processes. To expedite the process, we urge you to ensure that your in-house mediation expert is integral to your initial assessment process, including the visit, and that they are taking steps to start the mediation process (in consultation with affected communities, and the other parties) as soon as possible, even before the initial assessment process is complete. Additionally we would like to have a say in the selection of any consulting experts or lead mediators, and their terms of reference, and the rules and parameters for any collaborative dispute resolution process.

²¹ Complaints Mechanism current procedures, at page 3.

²² *Id.*, at page 14.

Please note: While our primary ask from the Complaints Mechanism is mediation, if a collaborative process is not possible or such a process concludes without resolution of our issues, then the Complaints Mechanism should initiate a robust compliance review investigation, issuing recommendations to remedy any findings of maladministration. ²³

V. Community perspectives

Affected communities are concerned about the lack of environmental and social justice in the way the Nepal PSEP and associated projects have been moving ahead. We are substantially excluded from decision making about the projects, and the projects, especially transmission lines, do not adequately share benefits with us even though we bear significant burdens to host the projects. This is not just or sustainable.

The FPIC & Rights Forum is asking that all plans for construction be put on hold until the maladministration in the Nepal PSEP has been remedied. This means the project should adopt a robust FPIC process. Additionally, the EIB should work with communities to remedy the gaps in its environmental and social due diligence and supervision for the project, and the resulting negative impacts on communities.

Local peoples in Lamjung district have had poor experiences with other projects in the region. There have been multiple hydropower generation and transmission line projects that have been completed without adequate consultation with, and information disclosure to, local communities. The other projects did not use a process to seek the FPIC of local Indigenous communities, even though there have been impacts on our community resources, including forests, sacred sites, etc.

As a result, we are asking for an FPIC process that must address communities' concerns about the Nepal PSEP and associated development, including the following:

- i. Lack of adequate information disclosure and consultation about the project and its impacts;
- ii. Lack of participation of local people in the decision-making processes of the project;
- iii. Lack of FPIC for the project from affected communities, especially Indigenous Peoples;
- iv. The project taking land or putting restrictions on how affected landholders and other users can use their own land;
- v. Economic impacts to land under and adjacent to the right of way, including:
 - a. Devaluation of property values during construction and operation;
 - b. Difficulty to secure mortgages for affected land, and
 - c. Lack of adequate compensation for affected land;
- vi. Impacts on community resources, including forest resources and community infrastructure like schools and temples;
- vii. Impacts on sacred sites and Indigenous Peoples' spiritual relation to their lands and natural resources;
- viii. Lack of adequate benefits sharing by the project, and its associated projects;
- ix. Environmental impacts, including cutting trees, and electrocution of birds and animals;
- x. Safety fears about toppling of towers, electrocution by wires and increased lightning;
- xi. Visual impacts;
- xii. Sound impacts;

²³ Complaints Mechanism current procedures, at § 4.6.

- xiii. Fears about impacts of electromagnetic radiation on the health of children, elderly people, women, livestock, and crops;
- xiv. Impacts during the construction phase; and
- xv. Gender related impacts.

The FPIC & Rights Forum wants hydropower sector development in Lamjung district and the region to be rights-based. We hope the EIB can play a leadership role in raising the standards of project implementation in the district. Ensuring that the 220 kV Marsyangdi Corridor, and all associated hydropower sector development projects in the region, are implemented in a rights-respecting manner, would contribute to raising environmental and social standards. Raising environmental and social standards would help the EIB fulfil Pillar 3 – ‘EIB Additionality’ – identified in its Results Measurement Framework.²⁴

This section of the complaint describes some of the impacts and gaps stated above in greater detail. Where possible recommendations to remedy maladministration in the project, and address the affected communities’ concerns are also provided. In all cases, the project promoter and EIB should treat this complaint as a starting point to frame the discussion on each issue. A dispute resolution process should make the space for the project teams and local authorities to explain their approach towards each issue and impact and allow communities to raise their concerns. Information disclosure should be in an accessible manner, and independent experts should be used as necessary. The EIB, NEA, Nepali authorities and other funders should participate with an open mind to listen and willingness to address communities’ concerns including through changes to project design and implementation. In summary, all parties should approach the dispute resolution process with good faith.

A. Holistic assessments needed to account for associated hydropower sector development in Lamjung district and surrounding region

The 220 kV Marsyangdi Corridor is a necessary and integral part of broader plans for hydropower sector development in the region, with the aim of connecting existing and planned hydropower capacity in and around the Marsyangdi river with demand centers in Kathmandu and India.²⁵

The hydropower sector development goals in the region are quite ambitious. Nepali newspaper articles suggest that the hydropower projects currently operating in the country have a total installed capacity of around 1,100 MW.²⁶ Under the Transmission System Development Plan of Nepal, there are plans to have a total installed capacity of more than 7,000 MW in the Western region by 2040.²⁷ As mentioned previously, the Nepal PSEP is an integral part of this plan, being built to evacuate

²⁴ EIB Results Framework, at pages 7 to 8.

²⁵ For a list of these projects in Lamjung included on the Department of Energy website that have been issued construction licenses, see: http://www.doed.gov.np/construction_license_for_generation.php and http://www.doed.gov.np/transmission_construction_license.php.

²⁶ Bibek Subedi, *Power Generation to increase by 750 MW* (August 17, 2018) available online at <https://kathmandupost.ekantipur.com/news/2018-08-17/power-generation-to-increase-by-750-mw.html>.

²⁷ Rastriya Prasaran Grid Company Limited, *Transmission System Development Plan of Nepal* (July 2018) at 72, available online at <http://www.doed.gov.np/download/Transmission-System-Development-Plan-of-Nepal.pdf>. [*hereinafter*, “Nepal government transmission system plan”]

over 1,000 MW of electricity, making numerous as yet unbuilt projects viable by offering them a way to transport their product to demand centers.

The environmental and social impacts of the project, must be assessed in the context of the project's area of influence, which according to the EIB's Environmental and Social Handbook should encompass:

- other hydropower generation and transmission assets or facilities, and or associated works, directly owned or managed by the NEA that can be considered as an integral part of the Nepal PSEP, by virtue, *inter alia*, of their purpose, nature, characteristics, and location;
- supporting hydropower generation and transmission assets or facilities owned or under the control of parties the NEA has contracted or subcontracted with;
- associated facilities and businesses that are not funded as part of the Nepal PSEP but which require or are essential for the successful operation of the Nepal PSEP from a grid integrity and electricity trade perspective;
- areas and communities likely to be affected by: cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the further planned development of the Nepal PSEP or other transmission and distribution system projects in the geographical area, any existing project and/or condition, and other project-related developments than can realistically be expected at the time when the assessment is undertaken;
- areas and communities potentially affected by impacts from unplanned but predictable developments caused by the Nepal PSEP that may occur later or at another location.²⁸

Instead we have seen scope of environmental and social assessment processes in the Nepal PSEP being conducted at the subproject level, and have not seen any Cumulative Impact Analysis (CIA) or Strategic Environmental Assessment (SEA).

Such assessments are required given the scope of development in the region, and must be done in close consultation with affected Indigenous Peoples and other local communities.

1. Stop salami-slicing project while evaluating impacts

Environmental and social impacts assessments for the Nepal PSEP appear to be happening in bits and pieces. In December 2017, the EIB indicated that “the final IEE report for the Udipur-Bharatpur segment [...] is currently the only environmental and social report available for the 220kV Marsyangdi Corridor and...” and there is a separate EIA process for the segment of the line from Ghalechowk to Udipur.²⁹ It's notable that a higher EIA standard for assessments is only being used for a smaller segment of the transmission line, and the rest of the project's assessments appear to be conducted at the less stringent IEE standard. There also appears to be some environmental and social documentation for the Samundratar-Trishuli Transmission Line Project and also separately for one of its substations.³⁰ Presumably, other portions of the Nepal PSEP like the Kali Gandaki Corridor, and Marsyangdi-Kathmandu line will also be similarly reviewed at the subproject level.

²⁸ EIB E&S Handbook, at para. 27.

²⁹ Email from EIB's Civil Society Division, dated December 28, 2017.

³⁰ See section titled 'Related Documents (in the Public Register)' on EIB's project webpage for Nepal Power System Expansion Plan, available online at <http://www.eib.org/en/projects/pipelines/pipeline/20130599>.

Construction for various subprojects of the Nepal PSEP also appear to be moving ahead, typically after completion of at least part of the subproject level environmental and social assessment processes.

It is important to note that the 220 kV Marsyangdi Corridor is itself one component of the Nepal PSEP, which appears to be part of the international SASEC Power System Expansion Project. The EIB's environmental and social rules preclude "salami-slicing" projects precisely because project impacts can be underestimated when assessments are done for smaller parts of a project. As a result, an IEE for the Udipur-Markichowk-Bharatpur segment of the transmission line on its own, and a separate EIA for the Manang-Udipur segment, and separate documents for other parts of the Nepal PSEP could be misleading. The environmental and social assessment for the Nepal PSEP, or at least the 220 kV Marsyangdi Corridor and associated hydropower sector development, should be done together as a whole. Additionally, the higher EIA standard should be used for these holistic assessments, rather than the IEE standard, as the project goes through the Annapurna Conservation Area.

2. Must account for poor experiences with the 132 kV Bhulbhule Mid-Marsyangdi transmission line

Communities and community members who are affected by the planned 220 kV Marsyangdi Corridor have also faced significant negative impacts from the recently completed 132 kV Bhulbhule Mid-Marsyangdi transmission line, an associated facility to the 220 kV Marsyangdi Corridor according to the EIB's Environmental and Social Handbook.³¹

The 132 kV Bhulbhule Mid-Marsyangdi transmission line was built to move electricity generated by the 50 MW Upper Marsyangdi-A Hydropower Project to the 220 kV Marsyangdi Corridor.³² We are not sure who owns the 132 kV Bhulbhule Mid-Marsyangdi transmission line, but if it is the NEA, then it would be considered an associated facility as it is "directly owned or managed by the promoter" and "can be considered as an integral part of the main project intervention, by virtue, inter alia, of [its] purpose, nature, characteristics or location."³³

Transporting electricity is the key purpose of the Nepal PSEP, and the 132 kV Bhulbhule Mid-Marsyangdi transmission line directly feeds the Nepal PSEP electricity to transport. It does not matter according to the EIB's Environmental and Social Handbook that the 132 kV Bhulbhule Mid-Marsyangdi transmission line is "not funded as part of the project", since it plugs directly into the Nepal PSEP, and is in fact "essential for the successful operation of the" Nepal PSEP³⁴ as it connects the 50 MW Upper Marsyangdi-A Hydropower Project to the Nepal PSEP.

Like the 220 kV Marsyangdi Corridor, the 132 kV Bhulbhule Mid-Marsyangdi transmission line also passes through Lamjung peoples' forests, community resources, homes, structures, and lands. In

³¹ EIB E&S Handbook, at page 16 – para 27.

³² Post Report, *Sino-Sagarmatha agrees to build 132kV power line* (Kathmandu Post: December 22, 2014), available online at: <http://kathmandupost.ekantipur.com/printedition/news/2014-12-21/sino-sagarmatha-agrees-to-build-132kv-power-line.html>.

³³ EIB E&S Handbook, at page 16 – para 27.

³⁴ *Id.*

fact, the 132 kV Bhulbhule Mid-Marsyangdi transmission line and the 220 kV Marsyangdi Corridor will be running alongside each other from Bhulbhule to Udipur. Additionally, some community members, including small landowners, whose land was secured for the 132 kV Bhulbhule Mid-Marsyangdi transmission line, are seeing their limited land now being marked out for the 220 kV Marsyangdi Corridor as well, with no perceptible change in the way the project is being implemented.

Like other hydropower sector projects in the region, the 132 kV Bhulbhule Mid-Marsyangdi transmission line was also completed without adequate consultation, information disclosure, and compensation, and without seeking the FPIC of locally affected peoples. Maladministration in the 132 kV Bhulbhule Mid-Marsyangdi transmission line, and other completed projects associated with the Nepal PSEP, has informed the communities' concerns about the different kinds of impacts (including potential impacts) of the Nepal PSEP. Given that the 132 kV Bhulbhule Mid-Marsyangdi transmission line and the 220 kV Marsyangdi Corridor are both high voltage lines, community members are acutely concerned that violations of domestic and international law, policies and practices by the 132 kV Bhulbhule Mid-Marsyangdi transmission line,³⁵ are being or will be repeated by the 220 kV Marsyangdi Corridor.

a) *Transmission line consultation and compensation inadequate*

In Nepal, the practice has tended to be that transmission line developers will purchase land where structures like transmission towers and substations are built, but not the land through which the wires pass. A narrow strip of land under the transmission wires is designated as a right of way. Our understanding is that for the 132 kV Bhulbhule Mid-Marsyangdi transmission line the right of way width was set at 9 meters on either side of the wire.

Only landowners whose land was under the right of way of the transmission line were given any compensation, and even they were only given 10% compensation for that narrow strip of land. Affected peoples feel this is too low because there are serious restrictions on use of the land under the right of way. For example, landowners cannot plant trees on land under the right of way, and banks do not accept the property as collateral for loans.

Additionally, negative impacts extend to the whole parcel of land, and to proximate parcels of land as well. Many affected communities are also concerned about health, safety, and environmental impacts of the project and do not want to live near the transmission line. These factors have led to a drop in land value of the land in the communities through which the transmission line is built. There have also been negative impacts on community resources like trees and sacred places.

For these reasons, communities in Lamjung have been demanding consultation, information disclosure, and an FPIC process for the 132 kV Bhulbhule Mid-Marsyangdi transmission line.

b) *Concerns about corruption*

³⁵ LAHURNIP (website), *Bhulbhule Mid-Marshyangdi 132 kV Transmission Line Project Violated the IPs rights* (September 3, 2016), available online at <http://www.lahurnip.org/news-details/42.html>.

Another concern is that money, which had been set aside for compensation and community benefits in the 132 kV Bhulbhule Mid-Marsyangdi transmission line, has not always reached the stated purposes or beneficiaries. We have even complained to local authorities about what we felt was potential corruption in the environmental and social impacts mitigation program of the 132 kV Bhulbhule Mid-Marsyangdi transmission line. We are concerned this could create potential retaliation from people in positions of power and influence.

We see from project documents that the government and projects set aside a budget for consultation and community benefits, but we do not see the results on the ground, and it appears that money is being potentially mismanaged or misappropriated.

We realized when we spoke to the government about the 132 kV Bhulbhule Mid-Marsyangdi transmission line, that various amounts had been set aside for community benefits like a water supply project, and for health. However, we have not seen the money being spent and are concerned it has been lost to corruption. As a result, we filed a complaint against the Commission for the Investigation of Abuse of Authority in Nepal.

Having seen firsthand the negative impacts from the 132 kV Bhulbhule Mid-Marsyangdi transmission line, and other hydropower sector projects in the region, we are well aware of potential negative effects of projects like the 220 kV Marsyangdi Corridor, and would like for all these issues to be resolved in conjunction.

c) Resolve issues from 132 kV Bhulbhule Mid-Marsyangdi transmission line first

As a mark of good faith by the authorities, we would like the issues that arose in the 132 kV Bhulbhule Mid-Marsyangdi transmission line to be remedied before any further work is done on the 220 kV Marsyangdi Corridor. This includes creating policy and practice changes that meaningfully address the glaring shortcomings of the 132 kV Bhulbhule Mid-Marsyangdi transmission line to ensure they are not repeated in the 220 kV Marsyangdi Corridor, or anywhere in Nepal. We hope such a process will lead to information disclosure, consultation, an FPIC process, community level benefit sharing for communities who are hosting the line, resettlement support, 100% or more of the market value for private land under the right of way, compensation to those who may not have title, and compensation for devaluation and other impacts for land inside and adjacent to the right of way.

When community leaders from the FPIC & Rights Forum raised these issues with the NEA, including with the Managing Director of the NEA, NEA representatives gave us verbal assurances that the way the 132 kV Bhulbhule Mid-Marsyangdi transmission line was implemented will not be repeated in the 220 kV Marsyangdi Corridor. The NEA has also given us verbal assurances of fairer compensation. However, there has been no concrete indication of what the policy changes could be and no formal consultation on any anticipated policy changes.

Despite its vague verbal assurances, the NEA is continuing to push the 220 kV Marsyangdi Corridor forward, without any newer fairer policies in place, and without the issues regarding the 132 kV Bhulbhule Mid-Marsyangdi transmission line resolved. As a result, we are deeply concerned the 220

kV Marsyangdi Corridor will repeat the shortcomings of the 132 kV Bhulbhule Mid-Marsyangdi transmission line.

We do not want the ongoing negative experience from the 132 kV Bhulbhule Mid-Marsyangdi transmission line to repeat itself with the 220 kV Marsyangdi Corridor. In fact, the 132 kV Bhulbhule Mid-Marsyangdi transmission line was pushed ahead without our consent. But back then we did not fully know the impacts of high voltage transmission lines and we did not know that the 132 kV Bhulbhule Mid-Marsyangdi transmission line was only a small part and a beginning to more hydropower sector development in our homes, lands, communities and forests. We would appreciate the Complaints Mechanism to help build trust between communities and the project implementers while recognizing the legacy of impacts of poor project implementation of associated facilities like the 132 kV Bhulbhule Mid-Marsyangdi transmission line. Getting these issues right will set strong precedential value for the 220 kV Marsyangdi Corridor, Nepal PSEP, and associated hydropower sector development in the region.

3. Need for Cumulative Impacts Analysis (CIA)

The communities are concerned about the impacts of the 220 kV Marsyangdi Corridor, and its impacts in conjunction with the other projects in the region.

The FPIC & Rights Forum in Lamjung has advocated on behalf of communities affected by other hydropower generation and transmission line projects in Lamjung district. This includes projects such as the 132 kV Bhulbhule Mid-Marsyangdi transmission line discussed above, but also numerous hydrogeneration projects with names including Nyadi Hydropower, Peoples Hydro, Liberty Hydro Chotokhola Lamjung, Himal Hydro, Ledko Dordi 6, and Kisedi Khola projects. An adequate CIA would entail an analysis of the impacts of all these different projects and other associated projects, accounting for how they fit together. The NEA and Nepali authorities are ultimately best placed to identify the universe of projects in the region whose impacts will need to be assessed cumulatively.

Nepal's *National Environmental Impact Assessment Guidelines* of 2050 BS (1993 AD) include the following text about CIAs:

Environmental impact caused by a single activity may not be significant. However, a series of similar types of impacts created by more than one project or the combined effect of several impacts created by one project may be significant. As a result, an ecosystem may be dramatically affected by such cumulative impacts. Therefore, it is necessary to pay special attention to cumulative impacts likely to be caused by those projects sharing mutual resources and affecting a particular area.³⁶

Directive 2011/92/EU of the European Parliament – and of the Council on the assessment of the effects of certain public and private projects on the environment – states that: the description of the

³⁶ National Planning Commission, HMG Nepal and IUCN (1993), *National Environmental Impact Assessment Guidelines*, available online <https://portals.iucn.org/library/sites/library/files/documents/1994-009.pdf>.

likely significant effects of the proposed project on the environment should include cumulative effects of the project.³⁷

According to the EIB's Environmental and Social Handbook, if a project goes through a protected area, then the EIB project has to play a leadership role in conducting a CIA.³⁸ The 220 kV Marsyangdi Corridor goes through the Annapurna Conservation Area, a protected area under the *National Parks and Wildlife Conservation Act* of 2029 BS (1973 AD). Not only will there be direct environmental and social impacts from the transmission line, there will also be an increase in other related hydropower sector activity in the protected area and near it. This heightens the need for a CIA process of all hydropower sector projects in Lamjung district and the region in and near the Annapurna Conservation Area.

Increased hydropower sector development amplifies negative impacts on community and individual resources, including increased environmental, economic and social impacts. For example, some community members who have lost land at substantially inadequate compensation to one transmission line rights of way are seeing a repeat with the Nepal PSEP. Others are concerned about amplification of cutting of trees and disappearance of birds. Still others fear that multiple transmission lines amplify health and safety risks. Communities need to be led through a cumulative impacts identification and assessment process to understand in an integrated manner the environmental and social impacts of hydropower sector development in Lamjung district and the surrounding region.

We have not been part of any such CIA process. Nor have we received information about such cumulative impacts. We urge the EIB to consult with the Nepali authorities and the project promoter, and support them in conducting a CIA for the Nepal PSEP and its associated projects. This CIA must be done with ongoing meaningful participation of affected communities.

4. Need for Strategic Environmental Assessment (SEA)

The SEA process is a sector-based planning tool in which multiple but related projects within the same sector are grouped together for a comprehensive analysis. The EIB's Environmental and Social Principles and Standards states that even outside the European Union, the EIB's borrower is required to include strategic aspects and have a broad scope, if a project forms part of a program or plan, prepared or adopted by a national, regional or local authority that would require an SEA in the European Union.³⁹ The Nepali government's transmission system plan divides the country into five

³⁷ Directive 2011/92/EU of the European Parliament and of the Council, available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L009>.

³⁸ European Investment Bank, *Environmental and Social Handbook* (Version 9.0, 02/12/2013), at para. 69, available online at http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf [hereinafter, "EIB E&S Handbook"]. EIB's E&S Handbook states "if the project is located in a legally protected area or an area of biodiversity importance (e.g. key biodiversity area) the promoter should consult with the authorities responsible for the designation in order to gather information on all projects developed in the area and support them in conducting a cumulative impact assessment of all projects." *Id.*

³⁹ European Investment Bank, *Environmental and Social Principles and Standards* (2009) at page 13, available online at: http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf [hereinafter, "EIB E&S Principles and Standards (2009)"]. See, "Where a project forms part of a program or plan, prepared or adopted by a national, regional or local authority, in the EU a formal Strategic Environmental Assessment (SEA) may be required, in order to judge the

zones, and lists transmission lines per zone. The plan lists 220 kV Marsyangdi Corridor as a key part of Zone 3.⁴⁰

However, the national transmission system plan gives little to no consideration of strategic environmental impacts at the national or zonal level. Given the significant scope of planned hydropower sector development in Lamjung district and the surrounding area, such a plan or goal would require an SEA if conducted in the European Union. As a result, under the EIB's environmental and social assessment requirements, an SEA is also required here to strategically assess impacts from hydropower sector development in Lamjung and the surrounding region.

The EIB's Environmental and Social Handbook reiterates the EIB's commitment to "developing a holistic approach to impact assessment and risk management by promoting the strategic environmental assessment as an "upstream" tool used to identify the best available options at an early planning stage and to improve the organization and structure of the planning process."⁴¹

The Handbook further states that one of the EIB's objectives is to improve "the planning process through the performance of a strategic environmental assessment, so that environmental and social considerations are taken into account in the selection of alternatives, for cumulative and large-scale effects to be addressed, and a participatory approach applied in the engagement with project-affected individuals, communities, as well as other relevant stakeholders."⁴²

There are numerous examples where international funders have applied an SEA as a planning tool for multiple but related projects within the energy sector. See, for example, ADB's report titled "Integrating strategic environmental assessment into power planning",⁴³ and IFC's work on Strategic Environmental Assessment for the Hydropower Sector in Myanmar.⁴⁴

We urge the EIB to lead an SEA process in Lamjung, and surrounding region, prior to moving forward with any further development. If necessary and appropriate, this could include collaboration with the EIB's co-financiers operating in the region, including funders of hydropower sector projects associated with the Nepal PSEP, such as Chinese funders, World Bank, ADB, etc.

5. Moving forward

As is apparent, there are significant gaps in the environmental and social due diligence for the project. Project evaluations are at too small in scope. They do not include impacts of associated facilities, and have little to no consideration for strategic and cumulative impacts. Moving forward,

environmental acceptability of a project, according to the requirements of the SEA Directive. Outside the EU, for a project that would be subject to the SEA Directive within the EU, the information provided by the promoter should include strategic aspects and have a broad scope." *Id.*

⁴⁰ Nepal government transmission system plan, at p. 71.

⁴¹ European Investment Bank, Environmental and Social Handbook Version 9.0 of 02/12/2013 at page 12.

http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

⁴² EIB E&S Handbook, at page 13.

⁴³ Available online at: <https://www.adb.org/sites/default/files/publication/162112/strategic-environmental-assessment-power-planning.pdf>

⁴⁴ Available online at:

https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/events/strategic+environmental+assessment+of+the+hydropower+sector+in+myanmar+meeting, and <https://www.ifc.org/wps/wcm/connect/defccabd-906e-48e5-ab6c-1cbe5db05da0/SEA+objectives+and+process.pdf>

communities would like these gaps in the environmental and social documentation remedied before any further action is taken on the project.

B. Communities' concerns about project's failures to follow international and domestic law and practices

The project has failed to follow international and domestic law and legal practices. This has included significant gaps in the project's environmental and social documentation, lack of information disclosure and consultation, lack of an FPIC process, gaps in land acquisition process, inadequate compensation, environmental impacts, health and safety impacts, and other deficiencies in the design and implementation of the project.

1. Gaps in existing environmental and social documentation for Nepal PSEP, especially the 220 kV Marsyangdi Corridor

We are concerned that Nepal PSEP is moving ahead without key environmental and social impact assessments being conducted in a manner that is commensurate with the risks of the project.

The Nepali *Constitution* guarantees a fundamental right to clean environment.⁴⁵ Section 3 of the *Environment Protection Act* of 2053 BS (1997 AD) requires the promoter to conduct an IEE or EIA, as prescribed. Section (9)(1) of the Act stipulates protection of national heritages. Section 10(1) enables the government to declare Environment Protection Areas to protect natural heritage or aesthetic, rare wildlife, biological diversity, plant, and places of historical and cultural importance.

Since the Nepal PSEP passes through the Annapurna Conservation Area, a protected area, the project is required to ensure that national heritage especially natural and cultural heritage of the local Indigenous peoples – and other peoples living in the region for generations – is being protected, especially since the project enables more hydropower sector development in the region.

In addition to a lack of SEA and CIA, as noted below, there are also other gaps in the project's environmental and social documentation.

a) Independent analysis of IEE for Udipur-Bharatpur segment of the 220 kV Marsyangdi Corridor

At the request of the FPIC & Rights Forum, an independent scientist from the international organization Environmental Law Alliance Worldwide (ELAW) reviewed the IEE for the Udipur-Markichowk-Bharatpur segment of the 220 kV Marsyangdi Corridor. While the EIB has determined that the IEE satisfies its environmental and social assessment requirements, the independent scientist found glaring errors in the IEE, calling into question the design, planning, and implementation of the project.⁴⁶

⁴⁵ Nepal's *Constitution* of 2015, at Article 30, available online at https://www.constituteproject.org/constitution/Nepal_2015.pdf [hereinafter, "Constitution"].

⁴⁶ Mark Cherniak, Ph.D., Staff Scientist, Environmental Law Alliance Worldwide, *Evaluation of the Initial Environmental Examination (IEE) for the Marsyangdi Corridor (Udipur – New Bharatpur) 220 kV Double Circuit*

The errors ELAW's scientist found, included:

1. Incorrect geographic coordinates for the location of the transmission line;
2. Failure to consult with people under the transmission wires;
3. Analysis for route selection does not appear to have been done properly;
4. Public safety impacts were not properly addressed;
5. Inadequate assessment of existing flora and fauna in the area;
6. Impacts to forests do not appear to be credibly minimized;
7. Assessment was done for smaller parts of the project separately, rather than holistically for the full project together;
8. Failure to look at cumulative impacts from all projects in Lamjung; and
9. Failure to conduct an SEA prior to the IEE.

Our advisors sent ELAW's report to the EIB as an enclosure to a letter by email on August 9, 2018. We are yet to receive a comprehensive response to the errors raised in ELAW's report.

b) EIB not keeping its environmental and social commitments

The EIB appears to have reneged on its original commitments to complete the Resettlement and Indigenous People's Plan (RIPP) and Grievance Redress Mechanism (GRM) prior to awarding contracts. Additionally, there has been a lack of monitoring reporting on environmental and social impacts

The EIB's Environmental and Social Data Sheet for the Nepal PSEP – which we understand bank management submitted to the EIB's Board of Directors – states that “[t]he Borrower will be required to ensure that no works contract which involves involuntary resettlement or impacts on indigenous peoples is awarded until the final versions of the [RIPP and GRM], approved by the competent authorities, has been provided to the Bank.”⁴⁷

However, despite these commitments to wait until the required documents have been finalized, in December 2017, the EIB indicated that the “RIPP process for the entire 220 kV Marsyangdi Corridor is also ongoing and will be finalized following completion of the final design after the award of the contracts.”⁴⁸

The EIB also informed our advisors that the RIPP for project-affected people impacted by the tower foundations is expected to be prepared and implemented after the contractor is mobilized and the final tower spotting is completed, but before the tower erection starts; and that the RIPP for project-

Transmission Line (August 9, 2018), available online at <https://elaw.org/system/files/attachments/publicresource/Adequacy%20of%20IEE%20for%20Marsyangdi%20Corridor%20220%20kv%20TL%20.pdf> [*hereinafter*, “ELAW Report (2018)”].

⁴⁷ EIB, *Nepal PSEP – Environmental and Social Data Sheet* (September 16, 2014), at 2, available online at <http://www.eib.org/en/infocentre/registers/register/55531964> [*hereinafter*, “EIB E&S Datasheet (2014)”].

⁴⁸ Email from EIB's Civil Society Division, dated December 28, 2017.

affected people impacted by the 220 kV Marsyangdi Corridor right of way (under the wires, between the towers) is expected to be finalized and implemented after tower erection, but before stringing.⁴⁹

The email tried to justify the timing for the RIPP for land under the right of way by suggesting the RIPP will still occur before any physical or economic displacement occurs along the right of way.⁵⁰ However, this is misleading because at that stage the route of the project will be a *fait accompli*, and any consultations with affected peoples cannot be considered genuine consultations that allow for changes to project design, planning, and implementation.

The EIB also indicated that the GRM is included in the IEE for the Udipur-Markichowk-Bharatpur segment.⁵¹ However, the IEE only has a paragraph regarding GRMs. In this paragraph, the IEE commits to creating a “Grievance Redressal Cell” at the district level which will have representation from the project, local authorities, civil society, and project affected people, and will be tasked with receiving and addressing environmental and social complaints.⁵² We have not been informed about any such GRM, and are not sure if it has been created yet.

As of the submitting of this complaint, the Manang-Udipur EIA and the RIPP have not yet been made available on the Bank’s website. In December 2017, the EIB had indicated that the “EIA process for the Manang-Udipur transmission line is ongoing and a draft report is expected in the first half of next year.”⁵³ When we followed up after the first half of 2018 passed, the EIB replied that it “does not hold a final version of the [Manang-Udipur EIA] document yet.”⁵⁴

The EIB’s Environmental and Social Data Sheet states that the “NEA will be required to provide the Bank with semi-annual monitoring reports.”⁵⁵ However, to our knowledge there have not yet been any environmental and social monitoring reports. The Bank indicated these would start only after the implementation of the project’s RIPP and Environmental and Social Management Programme.⁵⁶ However, given that crucial planning, design, and implementation works for the project are already taking place, and decisions have been taken that will have material environmental and social impacts, the EIB is missing out on crucial monitoring information without such reports. The lack of these monitoring reports is also a missed opportunity to offer transparency in the project.

c) Moving forward

Project specific gaps in existing environmental and social documentation for Nepal PSEP, especially the 220 kV Marsyangdi Corridor, must be remedied before any further steps are taken to implement the project on the ground.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² IEE, at pages 157 and 158.

⁵³ Email from EIB’s Civil Society Division, dated December 28, 2017.

⁵⁴ Email from EIB’s Civil Society Division, dated August 8, 2018.

⁵⁵ EIB E&S Datasheet (2014), at page 5.

⁵⁶ Email from EIB’s Civil Society Division, dated December 28, 2017.

2. Lack of adequate information disclosure and consultation about the project and its impacts

The project has failed to provide information disclosure and consultation as required under the EIB's environmental and social standards requiring, and guaranteed to locals under various constitutionally protected rights.

a) EIB requirements for consultation and information disclosure

The EIB's Environmental and Social Principles and Standards define Public Consultation as follows:

A process through which the public is informed about proposals fashioned by a planning authority or developer and invited to submit comments on them. Public consultation is often a significant part of public participation and is always included in an EIA. Consultation is defined as a tool for managing culturally appropriate two-way communications between project sponsors and the public. Its goal is to improve decision-making and build understanding, by actively involving individuals, groups, and organizations with a stake in the project. This involvement increases a project's long-term viability and enhances its benefits to locally affected people and other stakeholders.⁵⁷

The EIB's Environmental and Social Principles and Standards recognize that participation of affected communities through a rigorous consultation and information disclosure process is crucial for project success:

Consultation and participation are essential for investment sustainability through increased local ownership and support through informed involvement. Moreover, meaningful dialogue and participation is crucial to promoting and supporting the rights of people affected by a project. This includes the rights to due process via recourse to independent appeal and arbitration procedures in the case of disputes. As such, public consultation is a general requirement of the environmental and social safeguards of the Bank, as well as being applied to specific social issues, e.g. involuntary resettlement.⁵⁸

Additionally, EIB's Environmental and Social Principles and Standards state that "outside the EU, national law sets the minimum disclosure, consultation and participation requirements of the Bank."⁵⁹ However as the following subsections demonstrate, the Nepal PSEP is being implemented in way that is violating Nepali law, including constitutional rights to information, language, and dignity.

b) Nepal PSEP violating right to information

⁵⁷ EIB E&S Principles and Standards (2009), at page 29.

⁵⁸ *Id.*, at para 64.

⁵⁹ *Id.*, at para 63.

Rights of local people are enumerated in several provisions in the *Constitution*,⁶⁰ laws,⁶¹ and policies⁶² in relation to access to resources. The Nepal PSEP, and associated hydropower sector development in the Lamjung district, violate these rights by failing to conduct the requisite individual and group consultations.

The right to information – that concerns oneself and public matters – is a fundamental right guaranteed under Article 27 of the Nepali *Constitution*. It is a right of an individual to ask and to receive information. The *Right to Information Act* of 2064 BS (2007 AD) defines “Right to Information” as “the right to ask for and obtain information of public importance held in the Public Bodies and this term shall also include the right to study or observation of any written document, material held in Public Body or proceedings of such Public Body; to obtain a verified copy of such document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any material or to obtain information held in any type of machine through such machine.”⁶³

The *Local Self-Governance Act* of 2055 BS (1999 AD) stipulates that the process of development must include the participation of Indigenous and local people – in project identification, formulation, planning, and implementation – through local councils.⁶⁴ This Act was in force until the *Local Government Operations Act* of 2074 BS (2017 AD) came into force less than a year ago and would have governed the Nepal PSEP. Additionally, the *Environment Protection Rules* of 2054 BS (1997 AD) requires public consultations on the proposed project plan.⁶⁵

However, in Lamjung, public consultations for the 220 kV Marsyangdi Corridor – and associated projects – appear to have been omitted, and/or conducted without ensuring affected peoples’ participation. There has been a lack of meaningful one-on-one or group level consultation about the project.

Any environmental and social assessment must consult with local people affected by the project. The Marsyangdi Corridor project consists of towers and wires (which are hung in between the towers). Less than 5% of the land for the project will be taken for the towers. The remaining 95% of land for the project will be below the transmission wires. The project has chosen to inappropriately delay meaningfully consulting with right of way affected communities until the towers are up.

The IEE for the Udipur-Markichowk-Bharatpur segment of the 220 kV Marsyangdi Corridor only appears to consider people whose land will be taken for transmission towers as project affected households. The IEE did not conduct surveys and robust consultations for people whose land falls under the transmission line right of way.⁶⁶ This fails to sufficiently recognize people whose land falls below the wires, and near the transmission line, who will suffer material impacts.⁶⁷ If local people

⁶⁰ Constitution, at Article 51(g)(1) and 51(f)(3).

⁶¹ *Land Act* of 2021 BS (1964 AD), at Section 21.

⁶² Fourteen Periodic Plan 073/074-075/076 of National Planning Commission.

⁶³ *Right to Information Act* of 2064 BS (2007 AD), at section 2(e), available online at <https://www.ccrinepal.org/legal-provision/rti-act-2007>.

⁶⁴ See, *Local Self-Governance Act* of 2055 BS (1999 AD), at sections 134, 135, 138, 197, 198, 200, and 201.

⁶⁵ *Environment Protection Rules* of 2054 BS (1997 AD), at section 7, available online at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87503/99800/F526920392/NPL87503.pdf>.

⁶⁶ IEE, at pages 18 and 65.

⁶⁷ ELAW Report (2018), at page 9.

within the right of way would be subject to restrictions and limitations, then they are entitled to have their views understood by decision-makers before the project is approved. It is imperative to consult with people in the right of way, not just where the towers would be erected.

Even though the IEE has been completed for one segment of the 220 kV Marsyangdi Corridor and the EIA is well underway for another segment, most people do not even know if the line passes over their lands.

People who are hosting towers also report lack of information and confusion about the project. Some are surprised to see stones, often marked with red paint, on their land. And on asking around, they may find out it is to mark the location of a tower for a high voltage transmission line.

Some community members or their families have been present when project team members come to stake out the land unannounced. The project team members have told some community members in an *ad hoc* manner that they will be project affected. However, community members have reported that when they ask the visiting team questions, they have received little to no information about the project and its impacts. Some community members report hearing about a public consultation after the fact, but say they did not attend because they had not been informed about it beforehand.

Many report that the FPIC & Rights Forum leadership has been key in giving them information about the project. However, this is too high a burden on private citizens. The FPIC & Rights Forum leadership has at times walked along parts of the route of the 220 kV Marsyangdi Corridor. The general observation has been that many people do not even know where the line runs and if it will affect them, even though a closer examination of the project maps suggests they are affected. This points to a lack of information disclosure and consultation with affected communities.

In summary, affected people in the right of way, hosting towers, or adjacent to the path of the transmission line have all received little to no information about the project and its impacts, and there has been a lack of adequate one-on-one and group consultations with affected peoples. Where consultations have happened, communities have not received notice and so have missed opportunities to participate meaningfully. Excluding affected people from the conversation or failing to inform them and leaving them in the dark cannot be considered adequate information disclosure or consultation.

c) Nepal PSEP violating right to language

Rights to language and culture that include participation in cultural life have also been guaranteed as fundamental rights in the *Constitution*.⁶⁸ These are free-standing rights under Article 32(3) of the *Constitution* which protect the rights of every community residing in Nepal to preserve and promote their language, script, culture, cultural civilization, and heritage. This necessarily requires a robust and accessible information disclosure and consultation process, so communities and promoters can understand cultural impacts. This is especially required where there are Indigenous communities who have a historical relationship with the land and continue to live of it in traditional ways governing themselves under customary laws, using their traditional language.

⁶⁸ Constitution, at Article 32(2).

The EIB and NEA’s environmental and social due diligence documents for the Nepal PSEP are primarily in the English language. However, many affected locals, including Indigenous Peoples, have lower levels of literacy even in Khas Nepali. Many Indigenous Peoples primarily speak their own language, for example, Gurung, Tamang, Ghale, Magar, Newar etc. Long technical documents in English are not accessible from an information disclosure perspective. More information must be given in Khas Nepali in an accessible manner, and ideally even in Indigenous languages.

d) Nepal PSEP violating right to dignity

Additionally, the right to life with dignity is guaranteed as a fundamental right,⁶⁹ and Indigenous Peoples have the right to life with dignity and identity.⁷⁰ Local regulation states that “No electric lines of any kind shall be carried out from above a house.”⁷¹

Despite the legal provisions, we are concerned that the current route of the 220 kV Marsyangdi Corridor transmission line runs over houses, communities, lands, buildings, community resources including ecological resources; and affected people have not been provided adequate and accurate information in an accessible manner.

As host communities, we should be provided information about the health, safety, economic, environmental, and social impacts of the Nepal PSEP and associated hydropower sector development in the region, so that we can participate in decision making for the project as equal and informed partners. Without such a process, the project violates our right to dignity.

e) Landmark Nepal Supreme Court decision supports communities

The Nepal Supreme Court’s recent landmark ruling – relating to the Kathmandu Roads Expansion project – confirms the importance of consultation with locally affected peoples as part of a larger framework of rights-based development. Forty-seven locals had filed a case against the Nepal government’s decision to expand the Tribhuvan Highway without paying adequate compensation to the affected parties. The Court reiterated that the government has to balance infrastructure development with civil rights, and avoid adverse impacts on the environment and sites of archeological importance.⁷²

The Nepal Supreme Court observed that when the government – through its officers or agencies – uses its power to forcefully intervene on private property, it directly implicates property rights and other constitutionally protected rights such as rights to clean environment, housing, mobility, and economic livelihoods. Additionally, the Court took a more holistic approach to acknowledge that forced displacement also impinges the rights to education, religious freedom, language and culture, recognizing that these negative impacts tend to particularly create injustice to citizens from economically deprived communities. The Court held that Nepal’s *Constitution* requires protecting

⁶⁹ *Id.*, at Article 16.

⁷⁰ *Id.*, at Article 51(j)(8).

⁷¹ *Electricity Regulation* of 2052 BS (1993 AD), regulation no. 52.

⁷² *Sanu Shreshtha et al v Nepal Government*, Nepal Supreme Court, Order 073-WF-0003 BS 2075 (2018), at para 31 [*hereinafter*, “Kathmandu Roads Expansion Case (2018)”].

the rights of economically deprived communities and increasing civil participation and community buy-in for projects, and noted this would result in timely completion of development projects which would be beneficial to all. The Court concluded by issuing directive orders requiring project development to be conducted in a rights respecting manner, while keeping conservation of the environment and sites of archeological significance at the center of developing and executing a development project.⁷³

Like the Kathmandu Roads Expansion case, the Marsyangdi Corridor is a linear infrastructure project where affected communities assert that there has been a failure to ensure adequate compensation and consultation despite the project's significant impacts to private land. There are stories that the community had started a paragliding tourism business, which had to be stopped when a new transmission line was built without giving communities adequate notice or consultation. This was an example of where infrastructure projects disrupted a community livelihood activity. Had there been better planning this might have been avoided.

At a psychosocial level, when large infrastructure projects are moved forward without information disclosure and consultation, they can cause psychological stress and divisions among the community. To have a rights-based community decision-making process, communities must be provided accurate and complete information including about how their compensation is calculated. However, as illustrated by ELAW's report, the information in the IEE is neither accurate nor complete.

Finally, as demonstrated by the deficiencies in the IEE, there has been a failure to give due consideration to environmental impacts.

f) Moving forward

To see communities asks regarding consultation and information disclosure please see Section V.B.3.d), on page 27 titled "Moving forward" in the subsection about resolving lack of FPIC.

3. Lack of FPIC for the project from affected communities, especially Indigenous Peoples

The Nepal PSEP and associated projects impacts Indigenous Peoples who identify as Gurung, Tamang, Ghale, Magar, Newar, etc. All these groups are constitutionally protected. The EIB and NEA do not appear to have accounted for their obligations towards Indigenous peoples in the design or implementation of the Nepal PSEP, as required under Nepali and international law.

a) Overview of Nepali law

⁷³ *Id.*, at para 32.

In Nepal, the rights of Indigenous Peoples are recognized constitutionally and under Nepali laws.⁷⁴ Indigenous Peoples are identified as *Adivasi/Janajati* under Nepal's *Constitution*,⁷⁵ and are enumerated under section 2 of the *National Foundation for Development of Indigenous Nationalities Act* of 2058 BC (2002 AD).⁷⁶ There are 59 Indigenous groups listed in the Act, although the actual number of groups are more numerous. Indigenous Peoples are also mentioned in various themes of the Periodic Plan of Nepal.⁷⁷ The *Constitution* also establishes an Indigenous Commission and Tharu Commission.⁷⁸

b) Overview of international law

International law takes precedence over national law according to Nepali law. The *Nepal Treaty Act* of 2047 BC (1991 AD) states that the provision of international law is equivalent to the national law, and in case of inconsistency the provision of international law prevails.⁷⁹

The Government of Nepal has signed a number of treaties creating international obligations to protect and promote human rights within its borders. Nepal is a signatory party to the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), International Labour Organization (ILO) Convention No. 169 on the Rights of Indigenous and Tribal Peoples ("ILO 169"), the United Nations International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), and the Universal Declaration on the Rights of Indigenous Peoples ("UNDRIP"). These treaties ensure Indigenous Peoples in Nepal the rights to: FPIC, their traditional livelihood and subsistence activities; their homelands and territories and the natural resources embedded within them; consultation; participation in decision-making; and, to determine their own development priorities.

Additionally, the EIB's Environmental and Social Principles and Standards clearly states that "promoters that seek EIB finance outside the EU are required to adopt the social standards regarding involuntary resettlement, indigenous people and other vulnerable groups, [...] and occupational and community health and safety."⁸⁰

Articles 19 and 32 of UNDRIP embody Indigenous Peoples' right to FPIC in relation to development projects undertaken on their lands. FPIC requires that Indigenous peoples who are affected by a development project be consulted in good faith, before the project is undertaken, and

⁷⁴ See, for e.g., *National Foundation for Development of Indigenous Nationalities Act* (2002). [*hereinafter*, "NFDIN Act (2002)"]

⁷⁵ Constitution, at Articles 18, 42, 51(j)(8) et.al.

⁷⁶ NFDIN Act (2002). The following Indigenous Peoples are listed: Kisan; Kumal; Kushwadiya; Kushunda; Gangai; Gurung; Chepang; Chhantyal; Chhaintan; Jirel; Jhangad; Dolpo; Tangbe; Tajpuriya; Tamang; TinGaunleThakali; Topkegola; Thakali; Thami; Tharu; Thudam ;Danuwar; Darai; Dura; Dhanuk (Rajbansi); Dhimal; Newar; Pahari; Free; Bankariya; Baramo; Bahra Gaunle; Bote; Bhujel; Bhote; Magar; Majhi; Marphali Thakali; Mugali; Meche (bodo); Yakkha; Rai; Raute; Rajbansi (Koch); Rajhi; Larke; Limbu; Lepcha; Lhopa; Lhomi (Shingsawa); Walung; Byasi; Sherpa; Satar (Santhal); Siya; Sunuwar; Surel; Hayu; and Hyolmo. *Id.*

⁷⁷ Fourteen Periodic Plan 073/074-075/076 of National Planning Commission

⁷⁸ Constitution, at Article 18(3).

⁷⁹ *Nepal Treaty Act* of 2047, at Section 9.

⁸⁰ EIB E&S Principles and Standards (2009), at para 50.

that they are provided with full information on the proposed project so that they can make a free choice to provide or withhold their consent.

Article 6 of ILO 169 also requires that Indigenous Peoples be consulted in relation to any decision which will affect their rights, and participate in decisions that affect them, through good faith processes with the aim of seeking consent including through modifications to project design, planning, implementation, and monitoring as necessary. Potential forced relocation of community members – resulting primarily from physical displacement but potentially also economic displacement – could trigger a higher standard for consultation under Article 16(2). This higher standard mirrors the requirements of UNDRIP insofar as it requires that consent from Indigenous Peoples be “free and informed.” Under both UNDRIP and ILO 169, Indigenous Peoples have the explicit right to determine their own development priorities and to make unhindered and informed choices about the use of their lands.

c) Violations of Nepali and international law

Implementation of the Nepal PSEP and associated hydropower sector development is violating Nepal’s domestic and international obligations. The Gurung people are the most populous group in Lamjung district. They are a “listed” Indigenous group under Nepali law. Other listed groups are also present in the region. The presence of Indigenous Peoples in Lamjung district triggers several domestic and international legal requirements; notably, the foundational requirement to consult with Indigenous Peoples.

According to community members in Lamjung district, little to no information has been provided about the Nepal PSEP and associated hydropower sector development. By being left in the dark, especially during project design and planning, communities are being deprived of the opportunity to give or withhold their consent to the project.

The consultation the IEE purports to do appears to be little more than paper compliance in some cases. For example, there are some signatures in the IEE for the Udipur-Markichowk-Bharatpur segment of the 220 kV Marsyangdi Corridor. But we have reason to believe that these are not all expressions of true consent. One of the FPIC & Rights Forum’s leaders had signed a document without knowing that he was giving clearance for use of forests. He says he signed because he was in the room as a member of the forest user’s group, not because he was approving the project’s taking of community forests. Now the IEE is characterizing his signatures, among others, out as evidence of true consultation and participation.

Indigenous Peoples in Lamjung district have repeatedly stated that they do not want the Nepal PSEP – and associated hydropower sector development in Lamjung district – to continue in its current manner. This should be respected as an expression of the will of the people. Our input for the Nepal PSEP and associated hydropower sector development which affects our homes, communities, lands, forest, and ecological resources should be considered.

d) Moving forward

Moving forward, to bring the Nepal PSEP back in compliance with domestic and international law, policies and practices, the EIB should consider providing project developers directives to manage their communications with communities. These directives should be applicable to community members affected by transmission towers and under the transmission line rights of way. Additionally, the EIB should also pay close attention to the implementation of such directives under its supervision obligations.

The directive should require the implementation of the following practices:

- Project-specific consultations should occur with a view to seek consensus among all stakeholders, and the free, prior and informed consent of Indigenous Peoples, and local communities, as rights holders.
- Project developers must first consult with communities on how communities would like to be consulted and participate in decisions that affect them.
- Project developers should inform communities who is or will be implementing the project, and where and how they can lodge any grievances they may have. If affected communities raise any concerns or grievances, they should be meaningfully addressed with the communities as early as possible. There should be no fear of retaliation. The information should be given in a language used by the affected people. Communities should also be given sufficient time to understand and evaluate the information.
- The project developer should have ongoing one-on-one contact with individual landowners. The project developer should also conduct community level negotiations with community leaders and conduct broader community outreach events. Consultations should occur at individual, group and sub-group levels adopting innovative approaches to include a diversity of ages, castes, genders, wealth-levels, land ownership statuses, Indigenous Peoples, and abilities.

4. Land acquisition and economic displacement through the taking of land and restrictions on its use

The Nepal PSEP and associated hydropower sector development in Lamjung is failing to adhere to special protections for involuntary displacement and land acquisition.

a) EIB's policies re: forced displacement and involuntary resettlement

The EIB's Handbook states that: "Land acquisition connotes the process whereby a person is compelled by a government agency to alienate all or part of the land that person owns or possesses to the ownership and possession of the government agency for public purpose in return for compensation. It **includes** purchases or **leasing of land** and purchases or **leasing of access rights (way-leave)**."⁸¹[emphasis added.] The Handbook also includes economic displacement in its definition of involuntary displacement triggered by such a process. Economic displacement is

⁸¹ EIB E&S Handbook, at para. 15.

described as “loss of assets or access to assets that leads to **loss of income sources** or means of livelihood) as a result of **project-related land acquisition or restriction of access to natural resources**.”⁸² [emphasis added.]

Additionally, for forced physical and/or economic displacement, the EIB requires the promoter to have a plan which incorporates and follows “the right to due process, and to meaningful and culturally appropriate consultation and participation, including that of host communities.”⁸³

b) Constitutional and legal rights to property

The right to property is guaranteed as a fundamental right under the Nepali *Constitution*.⁸⁴ The government can only acquire private property for public interest subject to providing compensation. In its recent decision in the Kathmandu Roads Expansion case, the Full Bench the Supreme Court of Nepal, reiterated that the government must provide compensation while acquiring private property, including land, and gave helpful guidance on the *Land Acquisition Act* of 2034 BS (1977 AD).⁸⁵

The *Land Acquisition Act* requires the government to provide compensation while acquiring lands of people.⁸⁶ This compensation has to be based on the market price at the time of acquisition.⁸⁷ Land can be acquired through a dialogue with the landowner.⁸⁸ Where the landholder does not consent, the Act outlines the procedure for land acquisition and communities’ rights in land acquisition.⁸⁹ Firstly, a notice should be given to the landholder proposing to acquire the land; a survey must be carried out and a report needs to be prepared exploring details of land acquisition. If the proposed land is appropriate to acquire, then a second notice should be published with full disclosure. If the landowner feels the procedure is unfair or their land should not be acquired, they should be given time to make a complaint.⁹⁰

Under Nepali law, landholders are entitled to *Muwabja* (compensation for the value of the land) and *Chattipoorti* (compensation for the income from the land). The NEA’s current practice with other transmission lines has been that land under transmission towers are considered acquired and are compensated as *Muwabja* and *Chattipoorti* that is supposed to be determined by a “Compensation Committee”. The general understanding is that the NEA’s current practice is that landowners whose land is under the transmission line rights of way are given only 10% compensation (only for *Chattipoorti*),⁹¹ although we understand that there have been *ad hoc* cases of higher compensation

⁸² *Id.*, at para. 12.

⁸³ EIB E&S Principles and Standards (2009), at para 51.

⁸⁴ Constitution, at Article 25.

⁸⁵ Kathmandu Roads Expansion Case (2018), at para 31.

⁸⁶ *Land Acquisition Act* of 2034 BS (1977 AD), at Section 3, available online at <http://extwprlegs1.fao.org/docs/pdf/nep6227.pdf>.

⁸⁷ *Id.*, at Section 16.

⁸⁸ *Id.*, at Section 27.

⁸⁹ *Id.*, at Sections 5 to 11.

⁹⁰ These provisions have been highlighted with interpretation in the Nepal Supreme Courts Kathmandu Roads Expansion Case (2018).

⁹¹ Aash Gurung, *Bharatpur-Manang power line to be built* (Kathmandu Post: November 9, 2017), available online at <http://kathmandupost.ekantipur.com/news/2017-11-09/bharatpur-manang-power-line-to-be-built.html> [*hereinafter*, “KTM Post – A. Gurung (November 2017)”].

including 100% compensation for a 3.85 km stretch of the right of way in the World Bank funded Khimti Dhalkebar transmission line.⁹² Additionally we hear reports of offers greater than 10% being made in areas where communities are demanding their rights from transmission line promoters.

c) Nepal PSEP violating Nepali Land Acquisition, Resettlement and Rehabilitation Policy

The *Land Acquisition, Resettlement and Rehabilitation Policy for Infrastructure Development Projects* of 2071 BS (2014 AD) applies to all infrastructure development (including hydropower sector projects) to address issues of compensation, resettlement and rehabilitation.⁹³ This is an integrated policy, which aims “to make land acquisition and valuation, compensation, resettlement and rehabilitation more simple, more managed, effective, fair, and transparent in line with contemporary international standards and practices so there is an environment for completing development projects on time.”⁹⁴ Please note, the policy protects against both physical and economic displacement, and as such would be triggered by the securing of land for the right of way for the 220 kV Marsyangdi Corridor.⁹⁵

The land acquisition policy aims to ensure that infrastructure projects create zero or minimal displacement of local individuals, families and communities, and where displacement occurs to minimize any impacts of displacement and ensure availability of adequate compensation and socioeconomic opportunities.⁹⁶

In order to meet these objectives, adverse impacts to communities must be assessed prior to the projects,⁹⁷ and there has to be a social impact assessment to identify impacts on affected people, communities and vulnerable groups.⁹⁸ There must be ongoing consultation with affected individuals, landless, elderly people, women, children, Dalits, Indigenous Peoples and affected people who may not have their land title.⁹⁹ A grievance handling mechanism must also be established on the ground.¹⁰⁰ Steps must be taken for the betterment of affected disadvantaged groups such as Dalits; Indigenous Peoples, and single women.¹⁰¹

⁹² World Bank, *First Progress Report on the Implementation of Management’s Action Plan in response to the Inspection Panel Investigation Report (INSP/93722-NP) on the Nepal Power Development Project (P043311)* (August 5, 2016), at page 2, available online at <http://documents.worldbank.org/curated/en/501291470764609305/pdf/NP-PDP-Progress-Report-No-1-for-Board-submission-August-5-2016-08052016.pdf>.

⁹³ *Land Acquisition, Resettlement and Rehabilitation Policy for Infrastructure Development Projects* of 2071 BS (2014 AD), available online at: https://countrysafeguardsystems.net/sites/default/files/ENG_Clean_Policy%20relating%20to%20Land%20Acquisition%2C%202014_0.pdf. [hereinafter, “Land Acquisition Policy (2014)”]

⁹⁴ *Id.*, at No. 5.

⁹⁵ *Id.*, at Nos. 7.1.2, 7.2.3, 8.1.3, 8.2.1, and page 23.

⁹⁶ *Id.*, at No. 6.4.

⁹⁷ *Id.*, at No. 7.1.1.

⁹⁸ *Id.*, at No. 7.2.1.

⁹⁹ *Id.*, at No. 7.3.1.

¹⁰⁰ *Id.*, at No. 7.3.3.

¹⁰¹ *Id.*, at No. 7.2.7.

d) 220 kV Marsyangdi Corridor is displacing people

Landholders affected by transmission lines, such as the 220 kV Marsyangdi Corridor and associated facilities and assets, experience numerous impacts, including:

- Permanent burdens on land title, and loss of property interests, including restrictions on use such as:
 - Loss of potential future revenue streams (for example, no fruit trees, cell towers, billboards, etc. on the land below, and potentially near, the transmission line);
 - Restrictions on building structures under the right of way;
 - The permanent clear cutting of the easement area, and/or restriction on height of vegetation, crop and crop trees;¹⁰²
- Fragmentation of land parcels;
- Challenges securing mortgages for entire property parcels;¹⁰³
- Paying property taxes on land that is no longer as usable;¹⁰⁴
- The loss of control over access, including potentially allowing blanket access across the landowner's whole property (for the project company to access the transmission line throughout the project's life) and creating the corresponding loss of quiet enjoyment of property;
- Reduced aesthetics, including above ground power lines, towers and appurtenances;
- Target land for future utility lines;
- Increased actual (or perceived) health and safety risks associated with the transmission line, including potential for:
 - Live wires breaking apart and electrocuting people;
 - Transmission towers collapsing or toppling over;
 - Increased lightning; and
 - The presence of electromagnetic fields on power lines, which are often perceived by the public as health risks and potentially lead to damaging disease; and
- A smaller pool of potential buyers interested in properties burdened by utility lines, resulting in land devaluation.

These effects extend beyond the right of way, including to land adjacent and proximate to the right of way, and result in involuntary displacement throughout the right of way of the line due to economic displacement, and physical displacement in situations where homes are under lines.

e) Involuntary displacement is occurring under the right of way

The IEE for the Udipur-Markichowk-Bharatpur segment of the 220 kV Marsyangdi Corridor only appears to consider people whose land will be taken for transmission towers as project affected households, and did not conduct surveys and robust consultations for people whose land falls under

¹⁰² *Electricity Regulation* of 2052 BC (1993 AD), regulation no. 50, prohibits constructing houses and planting trees under high tension power lines, which has immense effect on peoples' ability to use their land.

¹⁰³ In accordance with the *Collateral Directives of Commercial Bank* of 2068 BC (2007 AD), Section 7.1, Banks cannot accept as collateral any land or house in the right of way under transmission lines.

¹⁰⁴ We understand that the landowner has to pay tax under the transmission line, unless it is demarcated by the cadastral survey department and land tenure office (Malpot Karyalaya) which is a complex process.

the transmission wires.¹⁰⁵ The NEA stated reasoning is that use of land in the right of way should not be considered land acquisition because land title continues to vest with the landowner.

However, Nepal's land acquisition policy protects against both physical and economic displacement, and as such would be triggered by the securing of land for the right of way for the 220 kV Marsyangdi Corridor.¹⁰⁶ Additionally, the EIB's policies clearly show that especially given the restrictions on use and other impacts, the securing of land for the right of way is land acquisition and leads to involuntary resettlement, especially economic displacement.

f) Violating EIB requirements and national law and policy

Unfortunately, our experience has been that hydropower sector development in Lamjung, including the Nepal PSEP and associated facilities and assets, are not complying or following these procedures.

Even the EIB's Nepal PSEP is failing to follow the law. Many community members report not having knowledge about the 220 kV Marsyangdi Corridor. Some report discovering their land was going to host the transmission line after seeing small rocks with red marking on their land. After asking around they were told it was for a high voltage transmission line. It appears the communities have not been provided adequate notice and information, which is an integral part of the land acquisition process. Additionally, the communities are yet to see a plan regarding involuntary resettlement, which is required under the EIB's policies.¹⁰⁷

There is a near consensus among landholders in Lamjung district – and transmission line affected communities across Nepal – that 10% compensation is too low given all the impacts. Communities who have multiple transmission lines passing through their land feel their impacts multiplied since they lose more land for highly inadequate compensation.

The Nepal Ministry of Energy's National Energy Crisis Reduction Plan identifies problems of land acquisition due to inadequate compensation.¹⁰⁸ Newspaper articles have been reporting for more than a year now, that the government created a right of way taskforce because it knows the current practice of providing only 10% compensation is too low;¹⁰⁹ however, that taskforce has yet to come out with any public recommendations. Many in the government continue to refuse 100% or greater compensation arguing that land is not acquired as it is retained by the landholder, however this is not supported by how the national land acquisition policy and the EIB's environmental and social documentation describes land acquisition must take place.

Local communities, speaking from the experience of the 132 kV Bhulbhule Mid-Marsyangdi transmission line, report a lack of transparency in how *Muwabja* and *Chattipoorti* are calculated.

¹⁰⁵ IEE, at 18 and 65.

¹⁰⁶ Land Acquisition Policy (2014), at No. 7.1.2, 7.2.3, 8.1.3, 8.2.1, and p. 23.

¹⁰⁷ EIB E&S Principles and Standards (2009), at para 51.

¹⁰⁸ Translated from Nepal Ministry of Energy, *National Energy Crisis Reduction Plan* (January/February 2016) at section 5.1.4, available online at http://www.moен.gov.np/pdf_files/Rastriya-Urja-Sankat-Niwaran-2072.pdf#page=13 [hereinafter, "Nepal Energy Crisis Reduction Plan"]

¹⁰⁹ See, for e.g., KTM Post – A. Gurung (November 2017); and Post Report, *Lack of policies delay transmission line* (Kathmandu Post: April 23, 2017), available online at: <http://kathmandupost.ekantipur.com/printedition/news/2017-04-23/lack-of-policies-delay-transmission-line.html>.

They report the number being taken from a government ledger they have no input on. There is also no flexibility in negotiating how land parcel specific impacts can be mitigated or otherwise trigger reasonable grounds for additional compensation.

Without transparency, consultation, and community participation in land acquisition and compensation, the Nepal PSEP is in violation of the abovementioned constitutional and legal provisions.

g) Moving forward

Communities are calling for the creation of local compensation committees. Affected peoples must be included in the committee through election or some other representative process, and the community representatives should be an essential part of the committees' decision-making process.¹¹⁰ Issues such as compensation and rehabilitation of affected communities should be addressed transparently and consultatively across the path of the Nepal PSEP. Community representatives should fully participate in determining a legal formula or procedure for calculation of compensation.

Given the impacts on their land, Lamjung communities want at least 100% compensation to allow the transmission line on their project. This is in line with practices in European countries as well. Additionally, closer to Lamjung, Nepali authorities had provided 100% compensation for a 3.85 km stretch in the Sindhuli district of Nepal for communities in the right of way of the World-Bank funded Khimti Dhalkebar transmission line.¹¹¹ Despite sustained advocacy, the government has yet to agree to extend the same level of benefits to Lamjung communities.

There should be some flexibility for community members to negotiate for more than 100% compensation depending on specific impacts on individual plots of land. Additionally, any costs resulting from the construction or operation of the transmission line must be compensated. Many utilities across the world cover costs for affected landholders to get independent legal advice before agreeing to the right of way.¹¹² The Nepal PSEP should also cover costs for independent legal advice for landholders who are giving up rights to the land.

This would bring the Nepal PSEP and associated transmission and distributed lines up to standards practiced in many European countries and North American jurisdictions, and truly contribute towards EIB additionality in this project.¹¹³ Ideally, such decisions should be enumerated in a Resettlement Policy Framework that has been developed in close consultation with affected communities, as required by the EIB's Handbook.¹¹⁴

¹¹⁰ Memorandum dated 3 March, 2018 submitted to the project by the affected people.

¹¹¹ World Bank Inspection Panel, Nepal: Power Development Project (P043311) Investigation Report (February 12, 2015), at para. 117, available online at <http://ewebapps.worldbank.org/apps/ip/PanelCases/87-Investigation%20Report-Nepal%20Power%20Development%20Project.pdf>.

¹¹² See, for e.g., NextBridge Infrastructure, Proposed East West Transmission Line – Compensation Principles (in or about 2014), at 6, available online at: <http://www.nextbridge.ca/~media/Microsites/Nextbridge/Documents/EWTCompensationPrinciples.PDF>.

¹¹³ EIB Results Framework, at pages 7 to 8.

¹¹⁴ EIB E&S Handbook, at para. 20.

5. Impacts on community resources

The Nepal PSEP and associated hydropower sector development in Lamjung district encroaches on our community resources, including forest resources¹¹⁵, places of recreation and public congregation, and cultural, historical, religious and sacred sites¹¹⁶. The project should consult with local communities to map out community resources in the project area. Steps should be taken to avoid impacts, mitigate them, or compensate for them, as required under the EIB's environmental and social rules.¹¹⁷

Because of the impacts on community resources, many countries in Europe require transmission line promoters to provide community level benefits. These impacts are often defined in law, and can sometimes be set as a percentage of total project costs. In Italy we have seen 6%, and in France it can be 8% to 10%. Our understanding is these are in addition to individual benefits and the other environmental and social expenses. These funds are typically used for resources that are useful to communities like parks, streetlights, local roads and bike paths, etc., and are implemented with participation and direction of communities.¹¹⁸

According to the IEE for the Udipur-Markichowk-Bharatpur transmission line segment of the 220 kV Marsyangdi Corridor, the total cost for environmental and social mitigation and monitoring is NPR 132,563,030 (approximately Euro 1 million) including NPR 65,608,980 (approximately Euro 0.5 million) for measures for social impact mitigation (such as individual compensation) and enhancement (such as livelihood programs). The total contract for this segment of the transmission line was 16.7 million USD (approximately 14.4 Euro).¹¹⁹ This means the total environmental and social spending for the transmission lines is shy of 7% of contracted costs, and a much smaller portion of total project costs. It is very disappointing that countries in Europe are giving a larger percentage of total project costs for just community level compensations than what Nepal PSEP is budgeting for its entire environmental and social budget.

We urge the EIB to ensure that the high levels of project implementation in its home countries is replicated in Nepal.

6. Safety fears about electrocution by wires and increased lightning

There have been cases of children and adults in Nepal being electrocuted to death due to wires falling down and other accidents.¹²⁰ There have also been instances of transmission towers toppling

¹¹⁵ Including, for example: Champhwoti, Raniswara, Gaulitar, Manaslu, and Narighat community forests.

¹¹⁶ Including, for example: Chepe Ghat, Dordi Khola Ghat, Dordi Khola Ghat, Maran Ghat, Dordi Dobhan Triveni, and Shiva Mandir.

¹¹⁷ EIB E&S Handbook, at para. 65.

¹¹⁸ Renewables Grid Initiative, Community Payments: Case Studies from across Europe, available at https://renewables-grid.eu/fileadmin/user_upload/Files_RGI/RGI_Publications/Brochure_community_payments.pdf.

¹¹⁹ Udipur Bharatpur Contract Award notice.

¹²⁰ See, for e.g., The Himalayan Times, *Two kids die as high-tension wire snaps, falls upon them in Butwal* (16 August 2016), available at <https://thehimalayantimes.com/nepal/two-kids-die-touching-snapped-high-tension-transmission-line-butwal>.

over in the Himalayan weather conditions,¹²¹ and potential earthquakes or *force majeure* conditions. As ELAW's review found, initial due diligence by the Nepal PSEP does not seem to have sufficiently accounted for these kinds of increased public safety risks.¹²²

Additionally, the proposed width of the right of way (of 30 meters) in the IEE is too small. For public safety reasons, the right of way needs to be wider.¹²³

We are also concerned about increased lightning due to transmission lines. In the 2017 rainy season, our observation was that there was an increase in lightning. We are concerned this increase is because of completion of the 132 kV Bhulbhule Mid-Marsyangdi transmission line and the 33 kV distribution line. The wires shorted, animals died, and several people were injured. Reportedly, one person was killed by electric shock while ploughing in the paddy field. Fire was also triggered. Media reports blamed only the lightning, without considering the potential role of the transmission line in increasing lightning.

A preliminary review of scientific information from elsewhere suggests that there can be increased cloud-to-ground lightning at towers in general. For example, one study in Austria found as follows:

Flash densities in Austria are normally between 0.5 and 4 flashes km⁻² yr⁻¹ depending on terrain. Flash densities higher than 4 flashes km⁻² yr⁻¹ are typically related to mountain tops or high towers on elevated sites.¹²⁴

Does the EIB know if there has been a scientific review about whether transmission and distribution lines in Himalayan heights and weather conditions increase lightning strikes, and whether and how such impacts can be mitigated? If not, we would request the EIB and NEA to conduct the same. Here it is important to consider cumulative impacts associated with multiple transmission lines in the same area.

¹²¹ See, for e.g., Post Report, *Power restored in most districts in eastern Nepal* (Kathmandu Post: August 15, 2017), available online at: <http://kathmandupost.ekantipur.com/news/2017-08-15/power-restored-in-most-districts-in-eastern-nepal.html>.

¹²² ELAW Report (2018), at pages 9 to 10.

¹²³ *Id.*, at pages 10 to 11.

¹²⁴ W. Schulz, K. Cummins, G. Diendorfer & M. Dorninger, *Cloud-to-ground lightning in Austria: A 10-year study using data from a lightning location system* (2005), *Journal of Geophysical Research: Atmospheres*, 110(D9). https://www.aldis.at/fileadmin/user_upload/aldis/publication/2005/2_JGR2005_Schulz.pdf. See also quote from D.M. Kingfield, K. M. Calhoun, & K.M. Beurs, *Antenna Structures and Cloud-to-Ground Lightning Location: 1995-2015*, *Geophysical Research Letters* (2017):

“Spatial analyses of cloud-to-ground (CG) lightning occurrence due to a rapid expansion in the number of antenna towers across the United States are explored by gridding 20 years of National Lightning Detection Network data at 500 m spatial resolution. The 99.8% of grid cells with ≥ 100 CGs were within 1 km of an antenna tower registered with the Federal Communications Commission. Tower height is positively correlated with CG occurrence; towers taller than 400 m above ground level experience a median increase of 150% in CG lightning density compared to a region 2 km to 5 km away. In the northern Great Plains, the cumulative CG lightning density near the tower was around 138% (117%) higher than a region 2 to 5 km away in the September–February (March– August) months. Higher CG frequencies typically also occur in the first full year following new tower construction, creating new lightning hot spots.”

In 2017, when there were landslides, while planning landing spots for rescue helicopters, presence of transmission and distribution lines had been a complicating factor. Adding one more line is likely to add to that. At the very least, emergency preparedness and safety matters need advance planning in consultation with communities, so when events occur, rescue plans and necessary locations have been identified that account for obstructions including the Nepal PSEP or its associated projects.

Affected communities would like more information and consultation on what steps have been or will be taken to mitigate these impacts in designing, planning, building and operating the line. Additionally, there should be information sharing sessions, health and safety trainings, disaster preparedness, etc. with affected communities.

7. Environmental impacts

We have seen firsthand environmental impacts from the 132 kV Bhulbhule Mid-Marsyangdi transmission line, including cutting of trees, and absence of birds. Ecological resources are particularly important to Indigenous Peoples who have a unique relationship with the land for their livelihood and culture, but also for other people who have lived on the land for generations and rely on its ecological resources.

As ELAW's review of the IEE explains, a thorough characterization of the ecology of an area to be impacted by a transmission line is the necessary starting point for assessing the impact of a transmission line project.¹²⁵ This should include rigorous consultation with affected communities on the kinds of local flora and fauna they usually see. Unfortunately, the IEE for the Marsyangdi Corridor (Udipur – New Bharatpur) 220 kV Double Circuit transmission line failed this necessary step in a manner required under the EIB's environmental and social rules.¹²⁶

Many community members have expressed concerns that they are seeing a drop in the sightings of hawks and owls in their area since the 132 kV Bhulbhule Mid-Marsyangdi transmission line came up. We are concerned the situation will only get worse with the 220 kV Marsyangdi Corridor. It will be important to consult with communities on what other flora and fauna they are concerned about.

In the 132 kV Bhulbhule Mid-Marsyangdi transmission line, affected communities recollect demanding four to five trees to be planted per tree that was cut down. They report being promised reforestation and tree planting efforts but ultimately, we still do not know if and where offset trees were planted. It was not done in broad consultation with affected community members.

Communities understand the EIB and NEA have made some commitments to plant 25 trees per tree cut down by the project.¹²⁷ However implementation of such reforestation or afforestation has to be done in close consultation with communities, especially those who are dependent on forest resources. We should have a say in where the new trees will be planted, what kinds of trees, and when and how they will be maintained.

¹²⁵ ELAW Report (2018), at page 13.

¹²⁶ See, for e.g., EIB's E&S Handbook, at para. 39.

¹²⁷ IEE, at page 112.

8. Visual impacts and tourist impacts

The Marsyangdi valley is an iconic tourist area. Parts of it have been protected for generations by local Indigenous communities and their customary leadership. However, the crisscrossing of lines especially across the river has negative aesthetic and visual impacts, which we are concerned could have a potential negative impact on tourism. As noted previously, a community tourist business that offered paragliding services became unviable because of safety fears of getting entangled in electricity wires. Such tourist impacts should be identified beforehand and avoided, mitigated or compensated, as necessary.

9. Sound impacts

Some community members have expressed nuisance concerns from the humming sound of the 132 kV Bhulbhule Mid-Marsyangdi transmission line. Locals are not looking forward to potentially louder humming sounds from the 220 kV Marsyangdi Corridor, because it is higher voltage and due to resonance with the humming sound from existing lines, when they are proximate.

10. Fears about impacts of electromagnetic radiation on people, plants and creatures

Communities are fearful about the potential health impacts on humans through exposure to electromagnetic fields, including cancer. We do not know whether there should be extra precautions taken for children, pregnant women, and the elderly. Some community members say they are also concerned about the impacts of electromagnetic radiation on livestock, reporting stories of animals being born with deformities since the 132 kV Bhulbhule Mid-Marsyangdi transmission line has come up. Some of us also fear lower agricultural production.

Our advisors are telling us the science documenting impacts of electromagnetic radiation on people, plants and creatures is inconclusive. They have said that recent scientific research on the effects of electromagnetic fields on public health has not demonstrated the existence of a significant risk. However, they were unable to tell us that the absence of risk has been confirmed either. We would like an expert to explain, in an accessible manner, what electromagnetic radiation is, and what could be its impacts on the health of children, elderly people, women, livestock, and crops.

Additionally, reasonable precautions should be taken. For example, we understand transmission lines should be insulated for safety. But affected people want more information to better understand and assess any potential health, safety, and wellbeing issues, and any mitigatory and precautionary steps being taken (including insulation, and how it works).

Under the World Health Organizations' guidelines, a project promoter must have a proper dialogue with communities to discuss risks of electromagnetic field radiation from the transmission line.¹²⁸ We as affected communities are fearful about health impacts of long-term electromagnetic field

¹²⁸ World Health Organization, *Establishing a Dialogue on risks from electromagnetic fields* (2002), available online at: http://apps.who.int/iris/bitstream/handle/10665/42543/9241545712_eng.pdf;jsessionid=CFDDE48B8627DFCC6881D836D23BB532?sequence=1.

radiation, especially on vulnerable people like pregnant women, children, the elderly, etc. A dialogue on these health issues will help address our fears and concerns about the project.

11. Impacts during the construction phase

We also want to better understand the impacts of the line as they relate to the construction of the project. For instance, we would like greater clarity on where access roads will be made to tower sites, or where existing roads will be used. We also want to better understand the steps for implementation of the project and when construction will start where. Additionally, we would like to have a conversation about how construction impacts like increases in noise levels, waste from construction will be mitigated on a site-specific basis.

12. Social issues related to outside labor

We would prefer locals be trained and engaged in employment to design, construct, operate and maintain the line.

Even though this is a linear project, and camps are expected to move through the path of the line quickly, when outsiders are used, the influx can cause stress on the local health and sanitation situation, and on the local way of life and traditional cultural practices. For example, Lamjung communities have concerns about outside laborers entering their region, reporting higher incidences of prostitution and HIV incidence accompanying the influx of outside labor in previous hydropower sector projects.

Additionally, Lamjung communities have had poor experiences with other projects in the region especially Chinese projects that are implemented by Chinese workers. These foreigners do not speak Khas Nepali or even Hindi or English and so communities are unable to communicate with them at all, and are therefore unable to raise their concerns directly with the workers when relevant.

While some of these projects have offered local community members jobs, for both construction and operation, community members described exploitative conditions (such as overtime without additional pay) in jobs with the Chinese hydropower projects in the region.

It is important to note here that communities are not just looking for unskilled jobs, but we are also looking for semi-skilled and skilled jobs. Additionally, it will be helpful for locals to be trained to do semi-skilled and skilled jobs during the entire lifecycle of the project, if the skill level does not exist locally.

13. Gender related impacts.

Bringing outside labor, who tend to be male, also creates gendered impacts for women in the area. However, there are also other gender impacts.

The Norwegian Agency for Development Cooperation (NORAD) conducted some gender related analysis that was developed as part of Norway's Transmission Sector Cooperation in Uganda. Even

though the study is from Africa, it may be relevant as it is from a developing country context, and the author, NORAD, may also be co-financing the Nepal PSEP.

The NORAD study found that:

Construction of transmission lines can have negative impacts that are different for women and men. For example, compensation for land use generally paid to men, who own 94% of the land in Uganda, while women are the majority cultivators and responsible for providing safe drinking water and fuelwood. The influx of male workers and HIV/AIDS infections spread by construction crews affect women as the more vulnerable group. Few opportunities exist for women in local employment in construction projects, which is one of the major local benefits of transmission construction.¹²⁹

It is important to note that gender impacts are further complicated in Lamjung since many male family members are living and working outside Nepal, and so women are effectively leading their household, even though they may not be listed as heads of households on paper, and their properties may not be in their names. Some women (and other marginalized groups) may also have lower levels of education and commercial sophistication.

The NORAD study makes suggestions that may be relevant in Nepal as well. We have modified some of the recommendations from the NORAD study for the Nepal context, and have listed them below.

- Recommendations to mainstream gender issues in Nepal PSEP project implementation:
 - There should be dedicated fora for information exchange and dialogue with women, such as gender focal points at energy sector agencies, could be established. Project authorities should meet with women and women's groups separately to share information, consult, and seek consent. They should especially make efforts to engage directly with elderly women, uniquely-abled women, Indigenous women, Dalit women, women-led households, trans women, and young women.
 - Specific gender-focused interventions – with budget allocations – in livelihood support, training, safety nets, health and legal sensitization will also help.
 - The project should ensure participation by women in assessments and mitigation plans, community development activities, local employment opportunities, and compensation plans.
 - Gender considerations and gender-sensitive performance indicators could be included in project monitoring and evaluation strategies and frameworks.

- Recommendations to mainstream gender issues at NEA and hydropower sector companies:
 - Sensitize management and boards of directors of NEA and hydropower sector companies on gender issues.

¹²⁹ NORAD, *Gender in Norway's Transmission Sector Cooperation in Uganda - Entry Points, Challenges and Achievements* (June 2013), available at: <https://esmap.org/sites/default/files/resources-document/gender-in-norways-transmission-sector-cooperation-in-uganda-.pdf>.

- Encourage NEA and hydropower sector companies to develop more gender-sensitive human resources and staff development policies to encourage women’s participation in the industry.
- Specific gender training for project officers, practitioners and assessors, or for quality control and monitoring of compliance with commitments on gender.
- Set impact monitoring indicators and establish a monitoring mechanism both for performance indicators and for institutional capacity on gender.¹³⁰

VI. Steps taken by affected communities so far

We have been raising our issues at the local level with little tangible change to the Nepal PSEP and related hydropower sector development in Lamjung. The following chronology lists some of the steps we have taken since we learned about the EIB and NEA’s plans for the Nepal PSEP in the region:

- In late 2017, community leaders met with Mr. Kul Man Ghising, Managing Director of the NEA, who indicated the NEA plans to compensate more in the 220 kV Marsyangdi Corridor than for the 132 kV Bhulbhule Mid-Marsyangdi transmission line. We remember him suggesting 25%, but we had reiterated our demands for at least 100%.
- On or about March 3, 2018, the FPIC & Rights Forum submitted a 24-point list of demands to different concerned stakeholders (including district administration office, the Ministry of Energy, the Ministry of Environment, and different hydropower and transmission line projects.)¹³¹
- On or about March 23, 2018, the FPIC & Rights Forum did public demonstrations in Besisahar, Lamjung demanding hydropower sector projects in Lamjung district operate only after securing the FPIC of local peoples.
- On or about April 11, 2018, representatives of affected communities met Mr. Kul Man Ghising, Managing Director of the NEA.
- On or about June 21, 2018, community representatives had a meeting with Chief District Officer of Lamjung on the issues of the 132 kV Bhulbhule Mid-Marsyangdi transmission line.
- On or about July 1, 2018, community representatives had a discussion with officials from the NEA’s Environmental and Social department who work on transmission lines.
- At different times, community members have raised their issues with former and current members of government at all levels, and relevant political parties. Political leaders we have reached out to include the following:
 - Janardhan Sharma, former Energy Minister;

¹³⁰ *Id.*

¹³¹ Nepali original and English translation available upon request.

- Dev Gurung, former Minister of Law and Justice and Constituent Assembly member;
 - Bhisma Adhikari, former Member of Parliament;
 - Chandra Bahadur Kunwor, former Member of Parliament;
 - Dil Bahadur Gharti, former Member of Parliament;
 - Jamindra Man Ghale, former Member of Parliament;
 - Lal Bahadur Gurung, former Member of Parliament;
 - Mahendra Bahadur Sahi, current Chief Minister of Province No. 6 and former Minister of Energy;
 - Prithvi Scuba Gurung, Chief Minister, Province No.4;
 - Dhananjay Dawadi, Member of Provincial Parliament, Province No.4;
 - Madhu Adhikari, Member of Provincial Parliament, Province No.4;
 - Maha Nath Adhikari, Member of Provincial Parliament, Province No.4;
 - Singh Bahadur Thapa, Mayor of Rainas Municipality; and
 - Bhesh Bahadur Poudel, district leader for National Congress party.
- Additionally, we believe that Members of Parliament Rajendra Shrestha, Renuka Gurung and Uma Shankar have raised our concerns in the federal parliament.
 - Community representatives have filed a complaint with the Commission for the Investigation of Abuse of Authority in Nepal against what we feel was potential corruption in the delivery of community level benefits for the 132 kV Bhulbhule Mid-Marsyangdi transmission line.
 - On August 9, 2018 the FPIC & Rights Forum’s supporting organizations and representatives, the Lawyers’ Association for the Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and Accountability Counsel, sent a letter to the EIB setting out gaps in the EIB’s planning, design, and implementation of the Marsyangdi Corridor, including failures to follow international and domestic law, gaps in existing environmental and social documentation, and lack of information disclosure, consultation and the adoption of an FPIC process. Our advisors also attached ELAW’s report reviewing the IEE for Udipur-Markichowk-Bharatpur segment of the 220 kV Marsyangdi Corridor to the EIB as an enclosure to that letter by email. Mr. Donal Cannon replied promptly confirming receipt. The EIB’s Civil Society Division sent a follow up letter by email on September 12, 2018. Our advisors discussed the EIB’s response with us, and sent a reply on October 5, 2018 at our request. The Complaints Mechanism has been copied in this email correspondence and should have an electronic copy of ELAW’s report, the August 8 letter, and all follow up exchanges between the EIB and the communities’ advisors. These documents and correspondences should be considered a part of this complaint and its record.

VII. Preventing retaliation

We request that the EIB and the Complaints Mechanism work according to the Complaints Mechanism’s policy to ensure that the complainants are not subject to any form of retaliation, abuse or any kind of discrimination based on the fact that they exercised their right to complain.¹³²

¹³² Complaints Mechanism’s current policy, at para. 15.1.

Affected communities in Lamjung have already been directly or indirectly threatened or otherwise intimidated by local authorities in relation to the project. Leadership of the FPIC & Rights Forum have been threatened at times, and falsely accused of instigating the communities. In one incident, a Chief District Officer (CDO) told the Secretary of the FPIC & Rights Forum that he will arrest us at any cost and acquire the land for the project. The Secretary quoted legal provisions governing the CDO's authority and reminded him he is supposed to be a guardian of the district rather than a bully who says he can take our land. This did help diffuse that particular incident but was still troubling. In another incident, police were by called by project staff when they were visiting communities, which had an intimidating effect on communities. Filing a corruption complaint against the 132 kV Bhulbhule Mid-Marsyangdi transmission line likely also created retaliatory risk from people in influence.

At the national level, communities who are raising their concerns about development have at times faced police violence, false criminal charges, overnight detention, and other threats. For example, the World Bank-funded 220 kV Khimti Dhalkebar transmission line was completed under the presence of the paramilitary Armed Police Force. In that case, the community members peacefully protesting the project were repeatedly subjected to police violence. Twice in 2016, community members were detained overnight and threatened with criminal sanctions and further detention unless they agreed to sign documents waiving their opposition to the project.¹³³ Similarly, in the Kathmandu Roads Expansion matter, the police reportedly used water cannons and then tear gas to disperse protestors who were concerned about the project taking their ancestral property without adequate compensation.¹³⁴

Given these instances of violence, we are concerned by statements in the Ministry of Energy's energy crisis reduction plan which state that if an electricity sector project asks the Nepali government to provide security, the government will deploy the Nepal Army or Armed Police Force, provided that the project company bears the expenses.¹³⁵

We request the EIB and the Complaints Mechanism to consult closely with the communities affected by the Marsyangdi Corridor to develop a proactive approach to ensure we are not subject to any form of retaliation, abuse or any kind of discrimination based on the fact that we are raising our voices about the project and are exercising our right to complain.

VIII. Solutions requested from EIB

We, the undersigned Complainants, request that the Complaints Mechanism use its good offices to mediate a solution between communities, the project authorities, and other stakeholders. We hope such a process will result in the EIB taking steps to remedy the issues raised in this complaint.

The EIB should persuade its client to halt construction plans, until such time as an FPIC process is established, and the rights and needs of people affected by the Nepal PSEP are made the priority. An

¹³³ LAHURNIP and Accountability Counsel, *Development at Gunpoint: World Bank's Duty to Address Police Violence and Rights Violations in Nepal's Khimti-Dhalkebar Transmission Line* (April 2016), available at <http://www.lahurnip.org/uploads/articles/files/Briefing%20Paper-Khimti%20-%20April%202016.pdf>.

¹³⁴ See for e.g., Nepali Times, *Crackdown on anti-road expansion protesters* (March 28, 2018), available at <https://www.nepalitimes.com/here-now/crackdown-on-anti-road-expansion-protesters/>.

¹³⁵ Nepal Energy Crisis Reduction Plan, at section 5.1.5.

FPIC process must necessarily provide affected local communities adequate information disclosure and consultation in an accessible manner, and allow for community participation in decisions that affect them and which they are concerned about. Additionally, one of the outcomes of such a process should be fair benefits sharing with communities at an individual and collective level.

The 220 kV Marsyangdi Corridor, and the rest of the Nepal PSEP must be carried out in full compliance with Nepali law, international law, and the EIB's policies.

There have also been concerns about the multiple transmission lines coming up the region. Communities are wondering if it is possible to streamline transmission lines and integrate multiple high voltage transmission lines into one ultra or extreme high voltage transmission line. Additionally, it would be helpful to evaluate the costs and benefits with communities about moving transmission lines and distribution lines underground, at least in some locations. This will help with safety and aesthetics.

Additionally, there has to be a recognition that if transmission lines are crucial to developing Nepal's hydropower sector, then communities in their path should share in the benefits of the project. There are reports of steps being taken to better share benefits and communicate with communities affected by hydropower generation projects. Unfortunately, the asks of communities affected by transmission lines are tending to be ignored and they continue to pay a high price for the transportation of electricity with little benefits in exchange. They are not even given space or opportunities to participate in crucial project and related policy decisions that affect them. Our experience has been that transmission lines in Nepal currently offer a raw deal for affected communities.

Finally, we request that all baseline studies and future monitoring reports be done with full transparency and participation of affected communities, and the results made public.

IX. Contact information and advisors' details

The following organizations supported in drafting this complaint:

- *Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)*: a Kathmandu (Nepal) based civil society organization of Indigenous lawyers. LAHURNIP provides free legal aid services, and works to promote, protect and defend the human rights of Indigenous peoples in Nepal.
- *Accountability Counsel*: a non-profit, non-governmental legal organization based in the United States. Accountability Counsel's lawyers assist communities to use non-judicial complaint offices located within international financial institutions, to raise community concerns about the environmental and social harms of internationally-financed projects.

We have also asked them to help us during the Complaint Mechanism's process including any mediation or other processes.

Formal communications about the complaint should be sent in Khas Nepali and English. Where possible summaries should also be provided in Gurung language. Additionally, it is not enough to just provide written text. We urge you to also conduct in-person information exchange sessions with

us the affected communities in Lamjung, when releasing key documents related to this complaint and request for mediation.

For less formal communication, to facilitate greater ease and faster response times, complainants give permission for the Complaints Mechanism to communicate in English directly with our advisors from LAHURNIP and Accountability Counsel, who have committed to keep us up to date on all developments.

Please do not hesitate to contact us with any questions you may have. Please send correspondence to Shankar Limbu (shankar1database@gmail.com) and Siddharth Akali (siddharth@accountabilitycounsel.org). We look forward to hearing from you.

Sincerely,

Khem Jung
Chairperson
FPIC & Rights Forum
Lamjung district, Nepal

Chandra Misra
Secretary
FPIC & Rights Forum
Lamjung district, Nepal

n.b. This complaint will be made public.