

## Nepal Power System Expansion Project

Complaint SG/E/2018/39

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# INITIAL ASSESSMENT REPORT

22 July 2019<sup>1</sup>

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<sup>1</sup> The report contains events until 5 June 2019.

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## The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group has done something wrong, i.e. if a member of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group’s response have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as cited by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group’s activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

## The Initial Assessment Report

As outlined in the EIB-CM Principles, Terms of Reference and Rules of Procedure, the initial assessment is fact finding-oriented and generally aims to:

- clarify the concerns raised by the Complainants, to better understand the Complainants’ allegations and the views of other project stakeholders and establish a position on the situation in the field;
- understand the validity of the concerns raised for those projects that cause substantial concerns regarding social or environmental outcomes and/or seriously question the governance of EIB financing;
- assess whether and how the project stakeholders (e.g. Complainants, the Bank’s services and the project promoter) could seek resolution in respect of the allegations;
- determine if further work by the EIB-CM is necessary and/or possible to resolve the issues raised by the Complainants (such as, but not limited to, investigation, compliance review, facilitation or mediation between the parties).

## Glossary

ACA	Annapurna Conservation Area
CIA	Cumulative Impacts Assessment
CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism
EMF	Electric and Magnetic Fields
EMP	Environmental Management Programme
EO	European Ombudsman
EU	European Union
FPIC	Free, prior and informed consent
GPS	Global Positioning System
GRM	Grievance Redress Mechanism
IEE	Initial Environmental Examination
ILO	International Labour Organisation
km	Kilometre
kV	Kilovolt
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
NEA	Nepal Electricity Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NGO	Non-Governmental Organisation
PAP	Project-Affected Person
PSEP	Power System Expansion Project
RIPP	Resettlement and Indigenous Peoples Plan
RoW	Right of Way
SEA	Strategic Environmental Assessment
UNDRIP	Universal Declaration on the Rights of Indigenous Peoples
UTM	Universal Transverse Mercator

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## INITIAL ASSESSMENT REPORT

**Complainants:** Free Prior and Informed Consent (“FPIC”) and Rights Forum

**Date received:** 8 October 2018

**Main subject of complaint:** Inadequate consultation and lack of FPIC where applicable; lack of proper evaluation of the environmental and social impacts; inadequate compensation for the PAPs.

### 1. THE COMPLAINT

- 1.1 On 8 October 2018 the Free Prior and Informed Consent (“FPIC”) and Rights Forum (“the Complainants”) sent a letter to the EIB Complaints Mechanism (EIB-CM) submitting a request for mediation regarding part of the EIB-funded 220 kV Marsyangdi Corridor high voltage transmission line and other hydropower sector development in the region. The allegations leading to the request for mediation are outlined in table 1 below. In case a collaborative resolution process is not possible or concludes without resolution of the issues, the Complainants request a compliance review.

*Table 1 – Summary of allegations*

The allegations raised by the Complainants relate to the following:

- 1) Lack of adequate consultation, agreement seeking and information sharing/disclosure about the project, its impacts and how each impact can be avoided, mitigated or compensated;
- 2) Inadequate compensation and lack of proper compensation process, benefit sharing scheme and appropriate census;
- 3) Lack of adequate FPIC process concerning the indigenous communities affected by the project;
- 4) Insufficiencies in terms of the substance and timing of the environmental and social studies performed (alleged “salami-slicing” of the studies and lack of a cumulative impact assessment).

- 1.2 The Complainants also raised concerns relating to possible corruption practices regarding to the 132 kV Bhulbhule Mid-Marsyangdi transmission line, which is not financed by the EIB. The Complainants raised these issues out of concern that similar practices could repeat themselves in the Project. The concerns about corruption practices were forwarded to the fraud investigation service of the EIB.

## 2. **BACKGROUND INFORMATION**

- 2.1 The Complainants make reference to multiple hydropower projects and transmission lines in the Lamjung district, including the 220 kV Marsyangdi transmission line which is part of the EIB-financed Power System Expansion Project (“PSEP” or “the Project”). The EIB-CM takes note that the other projects mentioned in the complaint are not financed by the EIB.
- 2.2 The Project comprises priority investments in the national power transmission grid, including the construction of seven new high-voltage transmission lines, associated substations and the expansion and upgrading of several existing substations. A major component of the Project is the 220 kV transmission line from Manang to Bharatpur called the Marsyangdi Corridor with five new substations at Manang, Khudi, Udipur, Markichowk and Bharatpur. The Project is intended to contribute to meeting domestic demand by connecting new hydroelectric schemes to the national grid.
- 2.3 The European Investment Bank (EIB) is providing an investment loan for the Project of up to EUR 95m. The loan was approved by the EIB’s Board of Directors on 16 September 2014. The borrower is the Federal Democratic Republic of Nepal represented by the Ministry of Finance while the final beneficiary and project-implementing agency is the Nepal Electricity Authority (NEA or the Promoter). The EIB is financing two separate components of the Project, notably the 220 kV transmission line from Manang to Bharatpur (estimated length 109.7 km) with the associated substations Manang, Khudi, Udipur and Bharatpur, and a 132 kV transmission line from Samundratar to Trishuli with the associated substation at Samundratar and a bay extension at Trishuli substation.<sup>2</sup>
- 2.4 The Complainants argue that other hydropower generation projects and transmission lines such as the 132 kV Bhulbhule Mid-Marsyangdi transmission line qualify to be considered associated facilities in accordance with the EIB’s Environmental and Social Handbook. Whether the other projects mentioned by the Complainants can be considered associated facilities in accordance with the EIB’s Environmental and Social Handbook cannot be determined at this stage and would need to be subject to a full compliance review.
- 2.5 During the Bank’s appraisal, the social and environmental risk as well as the implementation risk were assessed to be among the main project risks. The report to the Board of Directors stated that measures to avoid, minimise and mitigate potential negative impacts of the Project were identified in the Environmental Management Programme (EMP) and that it would be updated to take into account the findings and recommendations of the Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) procedures. To mitigate implementation risks, it was foreseen to strengthen the Promoter’s capacity through project preparation support services in order to assist NEA with the development and implementation of the EMP and the Resettlement and Indigenous Peoples Plan (RIPP). Furthermore, the EIB services recommended that a project supervision consultant be appointed to provide support to NEA during project implementation.

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<sup>2</sup> Other components of the Project are covered by other funding sources.

### **3. WORK PERFORMED BY THE EIB-CM**

- 3.1 On 19 October 2018, the EIB-CM acknowledged receipt of the complaint and informed the Complainants that it was carrying out a review of their case and notified them of the dates by which they could expect a formal reply.
- 3.2 The EIB-CM held a first meeting with the EIB services involved in the Project on 7 November 2018 in order to obtain further information related to the Project, the allegations and the situation of the local community. In this context, the EIB-CM received information notably related to the advancement of the Project and to the fact that a reply to an information request addressed to the EIB services by the NGOs supporting the Complainants was under preparation. A number of other issues such as the confusion regarding different names for the same locations and differences in GPS systems for measuring latitudes were also discussed. The EIB services also informed the EIB-CM that they had asked NEA for clarifications on the consultation and FPIC process.
- 3.3 On 5 December 2018, the EIB-CM met with the responsible engineer to obtain a detailed explanation of the components financed by the EIB and a better understanding of the overall Project as well as the challenges that the Promoter is facing according to the services.
- 3.4 Between 14 and 20 March 2019, the EIB-CM went on mission to Nepal to meet with the communities affected by the Project as well as the Promoter and national authorities. Between 15 and 18 March, the EIB-CM met with communities in five villages and visited several sites proposed for the 220 kV towers in the Lamjung district and sites supposedly under or adjacent to the RoW. While in Lamjung, the EIB-CM also met with representatives of the Complainants' advisors Accountability Counsel<sup>3</sup> and the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)<sup>4</sup>. On 19 and 20 March, the EIB-CM met in Kathmandu with the Ministry of Energy, the Ministry of Forests and Environment, NEA, the EU Delegation and a national expert on indigenous peoples.

### **4. REGULATORY FRAMEWORK**

- 4.1 *The EIB Complaints Mechanism mandate*
- 4.1.1 The EIB-CM policy and operational procedures apply to complaints of maladministration lodged against the EIB Group (Article 4.1 of Title II "Principles" of the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure – CMPTR).<sup>5</sup> Complaints may concern any alleged maladministration by the EIB Group in its actions and/or omissions (Article 4.1 of Title IV "Rules of Procedure" of the EIB CMPTR).

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<sup>3</sup> <https://www.accountabilitycounsel.org/>.

<sup>4</sup> <https://www.lahurnip.org/>.

<sup>5</sup> Since the Complaint was received on 8 October 2018, the EIB-CM Principles, Terms of Reference and Rules of Procedure in its revised version as of 31 October 2012 apply.



4.1.2 Pursuant to Article 4.2 of Title III, the EIB-CM gathers and reviews existing information on the subject under complaint, makes appropriate enquiries with a view to assessing whether the EIB Group's policies and procedures have been followed and fosters adherence to the EIB Group's policies, in particular those regarding good administration, disclosure and transparency. The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with according to the highest standards of objectiveness whilst safeguarding the interests of all the internal and external stakeholders of the EIB Group according to Article 2.1 of Title III "Terms of Reference" of the CMPTR.

#### 4.2 *EIB standards*

The following texts could apply based on the contractual obligations established in the Finance Contract and the Subsidiary Loan Agreement:

- The EIB Statement of Environmental and Social Principles and Standards<sup>6</sup>
- The EIB's Environmental and Social Handbook (2013 version)<sup>7</sup>

#### 4.3 *International standards*

Nepal has ratified or supported the following international standards that could potentially apply in the present case:

- The International Covenant on Economic, Social and Cultural Rights 1976, ratified by Nepal in 1991
- ILO Convention 169 on the Rights of Indigenous and Tribal Peoples, ratified by Nepal in 2007
- The Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), supported by Nepal in 2007

#### 4.4 *National law and regulation*

The following national legislation amongst other could apply in the present case:

- The Constitution of Nepal<sup>8</sup> which guarantees a fundamental right to clean environment, right to information, rights to language and culture, rights of indigenous peoples, right to property
- National Foundation for Development of Indigenous Nationalities Act, 2058 (2002)
- Environment Protection Act, 2053 (1997)<sup>9</sup>
- Environment Protection Rules, 2054 (1997)<sup>10</sup>

<sup>6</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), 2009.

<sup>7</sup> [http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf).

<sup>8</sup> <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/constitution/constitution-of-nepal>.

<sup>9</sup> <http://extwprlegs1.fao.org/docs/pdf/nep52633.pdf>.

<sup>10</sup> <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/rules-and-regulations/environment-protection-rules-2054-1997>.

- Right to Information Act, 2064 (2007)<sup>11</sup>
- Land Acquisition Act, 2034 (1977)<sup>12</sup>
- Land Acquisition, Resettlement and Rehabilitation Policy for Infrastructure Development Projects, 2071 (2014)<sup>13</sup>
- National Environmental Impact Assessment Guidelines, 2050 (1993)<sup>14</sup>
- National Parks and Wildlife Conservation Act, 2029 (1973)<sup>15</sup>
- Forest Act, 2049 (1993)<sup>16</sup>
- Local Self-Governance Act, 2055 (1999)<sup>17</sup>
- Electricity Regulation, 2050 (1993)<sup>18</sup>
- The Nepal Treaty Act, 2047 (1990)<sup>19</sup>

4.5 Furthermore, the national regulatory framework of local banks might become relevant to assess the impact of the Project on the use of land under the RoW as collateral.

## 5. **INITIAL ASSESSMENT**

5.1 In the course of the initial assessment, the EIB-CM reviewed the project documentation and available pertinent communications, the documents and testimonies received from the Complainants, other stakeholders and the relevant regulatory framework.

5.2 The EIB-CM considers that the submissions and allegations made by the Complainants can be characterised as falling under four main groups of issues, which will be addressed in turn below:

- (i) alleged lack of adequate consultation, agreement seeking and information sharing/disclosure on the Project, its impacts and how each impact can be avoided, mitigated or compensated for;
- (ii) alleged inadequate compensation and lack of proper compensation process, benefit-sharing scheme and appropriate census;
- (iii) alleged lack of adequate FPIC process concerning the indigenous communities affected by the Project;
- (iv) alleged insufficiencies in terms of substance and timing of the environmental and social studies performed.

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<sup>11</sup> <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>.

<sup>12</sup> <http://www.lawcommission.gov.np/en/archives/16301>.

<sup>13</sup> [https://www.npc.gov.np/images/category/Land\\_Policy\\_Book\\_and\\_Cover\\_page2.pdf](https://www.npc.gov.np/images/category/Land_Policy_Book_and_Cover_page2.pdf).

<sup>14</sup> <https://portals.iucn.org/library/sites/library/files/documents/1994-009.pdf>.

<sup>15</sup> <http://www.lawcommission.gov.np/en/archives/13512>.

<sup>16</sup> <http://www.lawcommission.gov.np/en/archives/15933>.

<sup>17</sup> [https://www.undp.org/content/dam/nepal/docs/reports/governance/UNDP\\_NP\\_Local%20Self-Governance%20Act%201999,%20MoLJ,HMG.pdf](https://www.undp.org/content/dam/nepal/docs/reports/governance/UNDP_NP_Local%20Self-Governance%20Act%201999,%20MoLJ,HMG.pdf).

<sup>18</sup> [http://www.doed.gov.np/policy/Electricity\\_Regulation\\_2050-english.pdf](http://www.doed.gov.np/policy/Electricity_Regulation_2050-english.pdf).

<sup>19</sup> <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/treaty-act-2047-1990.pdf>.

- 5.3 *Alleged lack of adequate consultation, agreement seeking and information sharing about the Project, its impacts and how each impact can be avoided, mitigated or compensated for*
- 5.3.1 The Complainants consider that most of the environmental and social studies have not been released and that, for example, the RIPP will only be available after the tower placement decisions have been taken and therefore any consultation with affected people cannot be considered as genuine. They also allege that there was no proper consultation on the draft of the transmission line policy, which is carried out by Nepali authorities. The Complainants also explain that they have raised their concerns in a personal meeting with the Managing Director of the Promoter but to no avail. The Complainants therefore request the EIB-CM to facilitate a mediation process involving the communities, the Promoter, national authorities, the EIB's services and, as necessary, hydropower sector developers in the region that will allow for more effective communications with communities to enable them to have a say on the route of the transmission line and the placement of the towers.
- 5.3.2 The Complainants claim that the technical documents are available only in English and that the consultation was not done in local languages but only in Khas Nepali.
- 5.3.3 They also claim that there is a lack of recognition of and consultation with affected individuals by the Promoter, which is not in compliance with local standards that require ongoing consultation with affected individuals, including the landless, elderly people, women, children, Dalits, indigenous peoples and people who may not have their land title. During the mission of the EIB-CM, various community members allegedly affected by the 220kV transmission line explained that they had not learned about the Project until they spotted red markings in their fields. Further, the EIB-CM learned during its mission that certain vulnerable groups (e.g. Dalit women) did not feel comfortable expressing their concerns in larger community settings.
- 5.3.4 The Complainants claim that local people have been directly or indirectly threatened or otherwise intimidated by local authorities. Likewise, they claim that the leadership of the Complainants have been threatened and accused of provoking the communities.
- 5.3.5 The EIB-CM takes note that in a letter to Accountability Counsel and LAHURNIP dated 5 December 2018, the EIB services state that NEA clarified that all the landowners affected by the tower pads had been notified of the possible acquisition of their land and that they were consequently consulted. Further, the letter mentions that all the available people with land and properties under the proposed transmission line as well as people with land affected by the transmission towers were invited to public consultation meetings. According to the letter, NEA provided evidence that discerns between indigenous peoples, Dalits, and men and women. It is also mentioned in the letter that a household survey was carried out.<sup>20</sup> The EIB services further informed the EIB-CM that the EIA was shared for comments with the Nepal Federation of Indigenous Nationalities (NEFIN).
- 5.3.6 The EIB services have furthermore asked NEA to: (i) clearly specify those people with land and assets in the RoW; (ii) provide information on the representativeness of the attendees of the consultation events and on concrete outcomes and agreements made; (iii) consider re-doing

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<sup>20</sup> The EIB-CM has not received the household survey. In the view of the EIB-CM, its disclosure should be assessed during a collaborative resolution process which is discussed in section 6.

the consultation of people affected by the RoW at a time and in a manner convenient to them; and (iv) re-apply FPIC principles in the event that FPIC process was deemed inadequate.

5.3.7 NEA argued during the meeting with the EIB-CM that there was enough consultation for the part of the line covered by the IEE and that the consultation was described in the final document and was done in accordance with the applicable social and environmental standards. Notably, NEA stated that the information concerning the consultation meetings was publicised through the NEA local officers working in the area, local teachers and some civil society organisations to make sure that the information was passed on. NEA further stated during the meeting with EIB-CM that the meetings with the communities had been conducted in Nepali but that there were local officers to translate into the local languages as needed. According to NEA, details of the Project and information on the kind of benefits that will be provided (entitlement matrix)<sup>21</sup> were provided during the consultation meetings. NEA also stated that consultation subsequently took place with local municipalities and other local authorities who provided their comments after having consulted the communities. According to NEA, some of the comments received were included in the final report.

5.3.8 As far as the EIA for the part of the line passing through the ACA is concerned, NEA argued that more than 30 meetings were held in different locations.<sup>22</sup> According to NEA all local committees, institutions and NGOs were consulted. NEA also mentioned that house-to-house consultation was conducted and had been announced in advance. Following this consultation, the draft report was published and submitted to the Ministry of Forests and Environment which also published a notice shared with every local rural municipality (the summary of the draft report was provided in Nepali). According to NEA, after 30 days public notification, a EIA review meeting was organized to discuss the draft for approval. Following the approval of the EIA it becomes a public document.

5.3.9 In May 2019, the Complainants shared a community survey with the EIB services and the EIB-CM which was conducted by the Complainants with support from Accountability Counsel and LAHURNIP from July to September 2018.<sup>23</sup> According to this survey, out of the 123 survey respondents who reported to be affected by the Project<sup>24</sup>, only 30% said to have (at least also) learned about the Project from official authorities, e.g. project authorities or local government officials.

5.4 *Alleged inadequate compensation and lack of proper compensation process, benefit sharing scheme and appropriate census*

5.4.1 The Complainants allege that no proper census was performed to identify the properties and owners affected by the transmission lines. They claim there was a lack of recognition and information concerning the people whose land falls below and near the transmission lines. Based on past experience, they believe that the value of those properties will go down during

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<sup>21</sup> The EIB-CM has not received the entitlement matrix or similar document. It suggests that the document be shared with the Complainants as part of the collaborative resolution process.

<sup>22</sup> The EIB-CM has not received similar information on the number of meetings for the Udipur to Bharatpur segment.

<sup>23</sup> A draft survey was already shared with the EIB-CM during the mission of the EIB-CM.

<sup>24</sup> Out of a total 175 survey responses (one having been excluded).

construction and operation of the Project and that it will be difficult for instance to secure a mortgage for the affected land. The EIB-CM notes that the devaluation of land and the difficulty to obtain mortgages represented the main concerns of affected communities in the above-mentioned survey carried out by the Complainants. They also believe the transmission line will potentially negatively affect tourism revenue in the area. The Complainants further explain that the affected people are concerned about restrictions on the use of land under the RoW such as the plantation of trees or the building of structures. According to the Complainants, the compensation being proposed does not take into account any of the above. In particular, the Complainants argue that the current practice of 10% compensation for land under the RoW is insufficient and explain that the Lamjung communities request at least 100% compensation.

- 5.4.2 According to the Complainants there is a lack of adequate benefit sharing for the communities, including for instance ongoing sharing of profits, hiring and training possibilities for skilled positions and other livelihood restoration initiatives. According to NEA, provisions have been made in the EIA for the hiring and training of local workers and livelihood restoration. NEA referred to examples such as agricultural training and assistance (livestock, citrus and apple) as well as microenterprise training. Further, NEA mentioned community based programmes such as the school renovation, construction of public meeting places and the renovation of playgrounds.
- 5.4.3 NEA argues that most of the Project-Affected Persons (PAPs) have accepted the compensation, but agree that the concern over the value of land is legitimate. NEA specified that for the Project the compensation for land under the RoW can be up to 20%. NEA also stated that banks do not accept the land as collateral once it is under the RoW. NEA believes that the government should pass legislation to change this practice. NEA also agrees that the compensation payment modalities should be revised but – NEA only being an implementing agency – such policy issues need to be raised with the government. In response to the alleged lack of benefit sharing, NEA explains that the sharing of revenues is established by law between the central government and the different levels of local government.
- 5.5 *Alleged lack of adequate FPIC process concerning the indigenous communities affected by the Project*
- 5.5.1 Given the presence of indigenous peoples, the Complainants allege that a robust FPIC process should have taken place. As part of such FPIC process, according to the Complainants the indigenous communities should have been consulted in good faith and provided with enough information in order for them to freely provide or withhold their consent. According to the Complainants, inadequate information disclosure and consultation about the Project and its impacts were provided. The Complainants claim that the local people were not involved in the decision-making process of the Project.
- 5.5.2 The Complainants further state that the communities are concerned about the impacts of the Project on community resources such as forests and community infrastructure like schools and temples as well as impacts on sacred sites and indigenous peoples' spiritual relation to their lands and natural resources. The Complainants request that these concerns be properly

addressed in a FPIC process. As mentioned under 5.4.2, NEA stressed that education support to schools, renovation of school buildings, a community forest office and other community buildings are envisaged.

5.5.3 NEA agrees that with transmission lines the consent from indigenous peoples is an issue, because no one will agree to have a transmission line above their property. Individual consent being impossible, NEA explained to EIB-CM that it had sought consent from local leaders.

5.6 *Alleged insufficiencies in terms of the substance and timing of the environmental and social studies performed (“salami-slicing” of the studies and no cumulative impact assessment)*

5.6.1 The Complainants claim that separate environmental and social assessments were conducted for different parts of the Project and that the Promoter uses the less stringent IEE standard for a segment of the line instead of using the EIA standard for all parts of the Project. EIB-CM takes note that there is an IEE for the Udipur-Bharatpur<sup>25</sup> segment and a separate EIA for the Manang-Udipur segment.

5.6.2 Furthermore, the Complainants claim that the IEE for the Udipur-Bharatpur segment carries significant errors that call into question the design, planning and implementation of the Project. The alleged errors comprise the following:

- incorrect geographic coordinates for the location of the transmission line;
- failure to consult with people under the transmission wires;
- analysis for route selection does not appear to have been done properly;
- public safety impacts were not properly addressed;
- inadequate assessment of existing flora and fauna in the area;
- impacts to forests do not appear to be credibly minimised;
- assessment was done for smaller parts of the Project separately, rather than holistically for the full Project together;
- failure to look at cumulative impacts from all projects in Lamjung; and
- failure to conduct a Strategic Environmental Assessment (SEA) prior to the IEE.

5.6.3 The Complainants claim that the 132 kV Bhulbhule line is to be considered an associated facility of the Project, as it plugs directly into the Nepal PSEP and is essential for the successful operation of the Project.<sup>26</sup> The Complainants request that issues that arose in the 132 kV Bhulbhule line be remedied before any further work is conducted on the 220 kV Marsyangdi Corridor.

5.6.4 Allegedly, the Project does not seem to sufficiently account for Himalayan weather conditions and other environmental and social concerns of the impacted communities, notably:

- cutting trees and electrocution of birds and animals
- visual impacts and noise impacts
- impact of electromagnetic radiation on the health of children, elderly people, women, livestock and crops
- impacts during the construction phase
- gender-related impacts

<sup>25</sup> Available on EIB’s website: <https://www.eib.org/en/registers/all/80938653>.

<sup>26</sup> Regarding the categorisation as “associated facility” see also point 2.1.4 above.

- a wider RoW for public safety reasons
  - other safety issues (toppling of towers, electrocution, etc).
- 5.6.5 In this context, the Complainants believe that the communities affected should have a say in most of these issues, like for instance where the reforestation trees will be placed, how to handle gender issues, etc.
- 5.6.6 The Complainants also request that a Cumulative Impacts Assessment (CIA) be performed including all the projects in the area in close consultation with the local communities. In this regard, the Complainants argue that according to the community survey, mentioned in paragraph 5.3.9 above, 76% of the respondents who report to be affected by the Project declare that they are also affected by hydropower generation projects or other power lines. The Complainants have further requested a Strategic Environmental Assessment for the hydropower sector in the region.
- 5.6.7 The Complainants furthermore criticize that the EIB only requests the RIPP process to be finalised by NEA upon completion of the final design after the contracts have been awarded. The Complainants highlight that this goes against previous commitments by the EIB that state that no works contract involving involuntary resettlement or impacts on indigenous peoples shall be awarded until the final version of the RIPP and GRM has been provided.
- 5.6.8 The EIB-CM takes note, that in the letter of 5 December 2018, the EIB services provide the Complainants with a list of criteria that NEA used for the selection and placing of the route. In the letter, the EIB services further mention that flora and fauna surveys were conducted by qualified consultants over a period that sufficiently took into account seasonal variations. Regarding impacts to forests, the letter states that the proposed routing of the transmission line seeks to minimise damage to forested areas. The services also state that the EIB will work with NEA to elaborate on these measures further and to ensure they are included in management actions.
- 5.6.9 As to grievances raised, the EIB services take note of NEA's opinion that grievances received so far in regard to the placing of the line and towers have been properly addressed. In relation to alleged incorrect geographic coordinates, the EIB services write that the coordinates in the IEE are correct, as they are based on the Nepalese modified UTM co-ordinate system.
- 5.6.10 On the question of alleged "salami-slicing", the EIB services argue that the IEE report content and format are consistent with the EIB Environmental and Social Statement 2009 and the Environmental and Social Standards 2013. They mention that outside the EU, a promoter is encouraged to apply the principles of the SEA, but that Nepal does not have any specific legislation pertaining to SEAs. A link though is provided for an Environmental Impact Assessment, which was conducted for the whole Project by NEA in 2014.
- 5.6.11 Regarding the health concerns raised, the EIB services state that the line is being built according to standards to minimise exposure to typical electric magnetic field (EMF) levels from power transmission lines and equipment. They further mention mitigation measures that NEA will implement in this regard.
- 5.6.12 According to NEA a separate stand-alone cumulative impact assessment document was not required by the EIB. However, NEA believes to have tried to minimise the impacts both on private lands and in the forests. In this regard, NEA mentioned that it will plant 25 trees for loss of one tree and land for land compensation will be given for permanently acquired forest

area. NEA has the impression that the 132 kV line, which is not financed by the EIB, was not managed appropriately and that the communities are now apprehensive.

5.6.13 According to NEA they are currently putting in place a grievance redress committee for the 220 kV transmission line and the affected people will have the opportunity to raise their issues in this committee or to go to court, if they wish.

5.6.14 Regarding gender issues, NEA mentioned that the EIA foresees ample provisions, including the prohibition of gender discrimination, priority in skill training to female members of the community and the inclusion of women representatives on the GRM.

#### 5.7 *Meetings with other stakeholders*

5.7.1 The EIB-CM also met with the Ministry of Forests and Environment which explained their own usual process for approval of an EIA, which includes the FPIC process. The process includes publication in national newspapers first for comments by all stakeholders. This publication is followed by a notice for a public hearing on the project site. The public hearing is attended by representatives of several ministries and the relevant project promoter and is based on a scoping document presented in the local languages. Issues raised are compiled during the hearing to see which ones can be accommodated.

5.7.2 During the meeting with the Ministry of Energy it was explained that the Ministry is responsible for the approval of the IEE and also provides recommendations to the different ministries on actions needed. The Ministry of Energy is not involved with issues relating to land acquisition or compensation. The Ministry confirmed that it has approved the IEE for the concerned section of the 220 kV transmission line (Udipur – New Bharatpur).

5.7.3 Following the suggestion and referral of the Complainants, the EIB-CM also met with a specialist of Nepalese indigenous peoples to have a better idea of the issues affecting these communities. This expert stated that the government of Nepal had ratified various international instruments such as the ILO Convention 169 on the rights of indigenous peoples but had not passed legislation that would allow the enforcement of these instruments and therefore, in his opinion, the instruments are not being properly implemented in Nepal. He also expressed the opinion that the hydropower projects are sensitive and that they substantially affect the lives of the communities. The communities are worried due to the lack of proper consultation and related lack of access to accurate information. He believes that there is public consensus that indigenous peoples are marginalised and that this is illustrated for instance by the high rates of indigenous children who drop out of school at an early age and low numbers of indigenous university students.



## 6. **PROPOSED WAY FORWARD**

- 6.1 From the information available at the moment, it seems that most of the issues derive from what the Complainants perceive as insufficient or inappropriate communication and consultation. As such, many of the points raised seem well suited for a collaborative resolution process between the Complainants and the Promoter to be facilitated by the EIB-CM. A collaborative resolution process is forward-looking in nature in seeking to come to mutually accepted and sustainable solutions in response to the issues raised.
- 6.2 Such collaborative resolution process can take various forms and the exact process and scope would be determined further by the EIB-CM in close concertation with all stakeholders following the agreement in principle by both the Complainants and the Promoter to engage in such collaborative resolution process. If both parties agree to participate in the collaborative resolution process, the participation of additional stakeholders will be discussed during the preparation phase and agreement from stakeholders such as national authorities and/or the EIB services will be sought. As of today, the EIB-CM suggests a problem-solving approach, focusing in particular on strengthening the consultation process. Such approach should include:
- Enhancing communication between the Promoter and the Complainants, inter alia, by
    - o clarifying and communicating all relevant documents to the Complainants in a constructive and interactive manner and in the appropriate languages, including in relation to livelihood restoration and environmental impacts;
    - o aiding to establish means of communication between the stakeholders, including agreement on the languages used for communication and the way to announce and carry out public meetings;
    - o information sharing of elements unclear to the Complainants;
    - o clarifying the FPIC requirements and supporting the setting up of an enhanced FPIC process that suits the parties;
    - o seeking to establish an effective local Grievance Redress Mechanism (building on the existing structures if possible).
  - Enhancing an ongoing consultation structure at project level, inter alia, by
    - o building the communication channels that can be extrapolated at all levels;
    - o assessing the necessary human, technical and financial resources;
    - o addressing some of the major practical issues such as consultation of people with land and assets under the RoW, consultation of indigenous peoples in accordance with the FPIC guidelines, verifying the census and exploring options for conducting a CIA process.
- 6.3 The EIB-CM considers that such collaborative resolution process could constitute an important opportunity to strengthen the relationship between the various stakeholders and could be used as a learning process for future projects. Putting in place robust processes for interacting with communities is an important tool for all concerned and is usually seen by other promoters as a tool to strengthen the reputation of the agency, enhance the capacity to mobilise future resources (including financing), improve social relations and foster social peace.
- 6.4 With the submission of this report, the Complainants and the Promoter are requested to confirm their willingness in principle to engage in a collaborative resolution process.

- 6.5 After having heard from the Complainants and the Promoter, the EIB-CM will take a decision on whether there is agreement to initiate a collaborative resolution process or, in the absence of such agreement, whether to continue with a compliance review of the allegations in the complaints at issue.

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22 07 2019

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