

The background of the entire page is a photograph of a mountainous region in Nepal. In the foreground, a village with traditional stone and wood houses is built on a hillside. A prominent multi-story building with a golden roof and prayer flags is visible. The middle ground shows lush green hills. In the background, majestic snow-capped mountain peaks rise against a blue sky with scattered white clouds. The text is overlaid on this scene.

# **FREE, PRIOR, AND INFORMED CONSENT PROTOCOL**

BY COMMUNITIES  
AFFECTED BY THE  
EIB FUNDED 220  
KV MARSYANGDI  
CORRIDOR IN  
NEPAL

**FPIC & RIGHTS FORUM  
OCTOBER 8, 2020**



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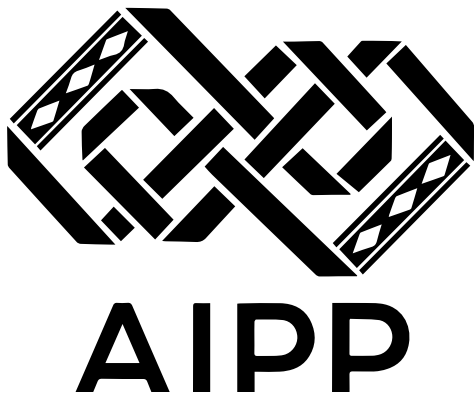
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Our thanks go to Accountability Counsel, a US based organization who has been providing technical support to affected communities throughout the complaint process to the European Investment Bank (EIB), for sharing FPIC protocols and other related resources from other projects and institutions to support the development of the Lamjung and Manang communities' FPIC protocol, and for providing feedback on the protocol to align it with the EIB's social and environmental framework.

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FPIC & Rights Forum  
LAHURNIP

# TABLE OF CONTENTS



<b>1.BACKGROUND, OBJECTIVES AND METHODOLOGY</b>	<b>01</b>
1.1. Background	02
1.2. Methodology	04
<b>2. PROCEDURAL PROTOCOL FOR IMPLEMENTATION OF FPIC</b>	<b>05</b>
<b>2.1. PART 1: FPIC PROTOCOL RELATING TO INDIGENOUS PEOPLES</b>	<b>08</b>
2.1.1. Stage 1: Pre-Consent	09
2.1.1.1. Put the project on hold until Indigenous Peoples give their consent	
2.1.1.2. Determine the project areas, and communities affected by the project	
2.1.1.3. FPIC process implementation committee and conducting of studies	
2.1.1.4. Ensure a free environment for FPIC	
2.1.1.5. Information Dissemination in languages Indigenous Peoples understand	
2.1.1.6. Consultations for additional information, including with LAHURNIP and Accountability Counsel on legal implications	
2.1.1.7. Direct discussion with the Government / NEA and EIB on outstanding issues	
2.1.1.8. Community Meeting at the Cluster Level	
2.1.2. Stage 2: Consent	15
2.1.3. Stage 3: Post Consent	16
<b>2.2. PART 2: CONSULTATION WITH NON- INDIGENOUS PEOPLES LEADING TO BROAD COMMUNITY SUPPORT</b>	<b>17</b>
2.2.1. Determine the project areas and non-Indigenous population affected by the project	
2.2.2.Stage 1: Pre-Consultation	
2.2.3. Stage 2: Consultation Leading to Broad Community Support	
2.2.4. Stage 3: Post Consultation	

# 01

## BACKGROUND, OBJECTIVES, AND METHODOLOGY

### 1.1 BACKGROUND

In October 2018, the FPIC & Rights Forum filed a complaint to the EIB's Complaints Mechanism on behalf of community members in Lamjung and Manang districts affected by the EIB funded 220 kV Marsyangdi Corridor transmission line project, including Indigenous Peoples who argue the line is being built on their ancestral lands and territories without seeking their Free Prior and Informed Consent (FPIC).

The 220 kV Marsyangdi Corridor has been divided into multiple segments: from Manang district to Khudi (in Lamjung district), Khudi to Udipur (in Lamjung district), then from Udipur to Markichowk (in Tanahu district) and Markichowk to Bharatpur (in Chitwan district).

The FPIC & Rights Forum is an umbrella organization for local-level Struggle Committees of peoples affected by various power sector projects in the region including the EIB funded 220 kV Marsyangdi Corridor. As the project went ahead with its implementation without providing information and securing the FPIC of Indigenous Peoples and without meaningful consultation with non-Indigenous Peoples, both Indigenous and non-Indigenous Peoples have been mobilizing at the community level and formed the FPIC & Rights Forum at the district level, with wings at the community level. Such groups are formed in Dhamil Kuwa, Archalbot, Banjhakhet, Khudi, and Ghermu in Lamjung. Formation of such a group at Taal in Manang is in progress.

The FPIC & Rights Forum has estimated that around 1500 (70% Indigenous) community members are affected by the project in those areas. The FPIC & Rights Forum in collaboration with NEFIN-Lamjung and LAHURNIP are facilitating the process of mobilization and representative selection.

The map below marks approximate locations of some of the communities mentioned. The string of black circles marks the route of the transmission line by mapping geographic coordinates for key towers provided in the project's documentation.

LAHURNIP and the FPIC & Rights Forum, together with the help of an Indigenous expert, and in consultation with community members, including both Indigenous and non-Indigenous Peoples, have prepared a protocol for how Indigenous Peoples would like outsiders to seek their consent, including Marsyangdi Corridor project authorities, the Nepal Government/Ministry of Energy, and the EIB. Seeking the FPIC of Indigenous Peoples is mandatory as per the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and the EIB's own Environmental and Social Standards. For non-Indigenous communities, while consent is not required, achieving "broad community support" through information disclosure and meaningful consultation is required. Hence, this document is divided into two parts: part one contains an FPIC protocol and part two a Consultation protocol.







### 1.2 METHODOLOGY

An Indigenous expert, the FPIC & Rights Forum, NEFIN-Lamjung, and LAHURNIP jointly carried out field work in Dhamil Kuwa and Archalbot in Lamjung among non-Indigenous communities, and in Ghermu in Lamjung and Taal in Manang among Indigenous Peoples from 24 to 29 April 2019. Accountability Counsel, as requested by LAHURNIP, researched and shared FPIC protocols, and other related resources, from other projects and jurisdictions, to support the development of the Lamjung and Manang communities' FPIC protocol. Before carrying out consultation with Indigenous Peoples and other communities, representatives of LAHURNIP, the FPIC & Rights Forum, NEFIN-Lamjung, and the Indigenous expert held a whole day meeting in Kathmandu about consultation meetings in Lamjung and Manang. Later, the same were carried out with Indigenous Peoples in Khudi and Ghermu in Lamjung and Dharapani in Manang, and with non-Indigenous communities at Dhamil Kuwa, Archalbot, and with mixed communities of Indigenous and non-Indigenous Peoples at Banjhakhet, with participation of affected people from nearby Sundarbazar, in Lamjung from 24 to 31 May 2019. Although, Indigenous Peoples from Khasur had participated in a community meeting held at Banjhakhet, a separate meeting was held with community members at Khasur. Representatives of LAHURNIP, the FPIC & Rights Forum and the Indigenous expert discussed and finalized this report with feedback and support from Accountability Counsel.





# 02

## PROCEDURAL PROTOCOL FOR IMPLEMENTATION OF FPIC

BY INDIGENOUS PEOPLES AND  
CONSULTATION WITH NON-  
INDIGENOUS PEOPLES

FPIC is mandatory, in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), where it is specifically mentioned five times (Articles 10, 11, 19, 28, and 29). The duty to consult is further reflected in Articles 19 and 32. It is also protected under the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention no. 169). Article 6 requires that consultation with Indigenous Peoples be carried out and specifies that Indigenous People should control the process by which representatives are determined. Finally, it is also mentioned in the Outcome Document of the World Conference on Indigenous Peoples (WCIP) of 2014. These instruments require the consent of Indigenous Peoples before planning, making decisions, implementing and monitoring any external administrative and legal intervention that directly or indirectly affects Indigenous Peoples.

The EIB funded 220 kV Marsyangdi Corridor Project has already begun to be implemented despite the process of FPIC not having been carried out. It should be recalled that Nepal is a party to many international laws, including ILO Convention No. 169 that was ratified in 2007, UNDRIP that was adopted in 2007 and the Outcome Document of the WCIP that was adopted in 2014. In the case of non-Indigenous Peoples who are affected by the project, meaningful consultation leading to broad community support is required by international standards, including the EIB's own social and environmental safeguards.

Both the Nepal Government and the EIB cannot and should not implement the project without getting affected communities' FPIC, in line with UNDRIP (Core Articles 10, 11, 19, 28, 29, and 32, and related Articles 18, 27, and 41), ILO Convention No. 169 (Articles 6, 7(1), 15), the Committee on the Elimination of Racial Discrimination (CERD) General Recommendation XXIII on the Rights of Indigenous Peoples (paragraph 4d), and the Outcome Document (Para, 3, and 20). Article 19 of UNDRIP states, "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." According to Article 6(1)a of ILO Convention No. 169, governments shall "Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly".

According to Article 6(2): "The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures." In paragraph 20, the WCIP Outcome Document states, "We recognize commitments made by States, with regard to the United Nations Declaration on the Rights of Indigenous Peoples, to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources."

Although this FPIC protocol is about securing the consent of Indigenous Peoples, for practical purposes and given the ground reality of having a mixed population of both Indigenous and non-Indigenous people living together in some parts of ancestral lands of Indigenous Peoples, and the project affecting not only Indigenous Peoples but also non-Indigenous Peoples, especially Bahun-Chhetri people and Dalits, their cooperation is also required for the project. In the case of non-Indigenous Peoples, meaningful consultation leading to broad community support is required.

**The EIB's own social and environmental standards state:**

*"The FPIC process should produce a clear endorsement or rejection by the Indigenous Peoples concerned of the proposed intervention and a statement of all accompanying mitigating and remedial measures and benefit-sharing agreements. As such, it is the main instrument ensuring that at the project level the Indigenous Peoples' priorities for economic, social and cultural development and environmental protection are promoted, as duly informed by their traditional cultures, knowledge and practices. It is fundamental to the exercise of their inherent right to self-determination. In those cases where the host government has already approved the project considered by the EIB for financing, the promoter will nonetheless need to verify, by way of the FPIC process, the levels and nature of free, prior and informed consent to the undertaking by the Indigenous Peoples concerned, as well as the adequacy and compliance with EIB standards of the mitigation measures and benefit-sharing arrangements proposed."*



**PRE-  
CONSENT**

**STAGE 1**

**CONSENT**

**STAGE 2**

**POST-  
CONSENT**

**STAGE 3**

# 2.1. PART 1

**FPIC PROTOCOL RELATING TO  
INDIGENOUS PEOPLES**



# 2.1.1. STAGE 1 PRE-CONSENT

The Nepal Government failed to get the consent of Indigenous Peoples before finalizing the design of the 220 kV Marsyangdi Corridor project and both the Nepal Government and the EIB failed to obtain their consent before beginning the implementation of the project. The project authorities have missed out several initial steps/activities of the FPIC process, including providing communities information about the project, allowing the communities to get independent legal and technical advice from lawyers and NGOs early on, and to hold discussions in their community about the planned project, in order to decide on how they want to make decisions in their communities about the project. These mistakes need to be corrected. The remaining pre-consent stages are as follows:

## 2.1.1.1. PUT THE PROJECT ON HOLD UNTIL INDIGENOUS PEOPLES GIVE THEIR CONSENT

*Though both the NEA and EIB are intent on implementing the project as soon as possible, the EIB, the NEA and the project authorities must halt all project related work until Indigenous Peoples decide and give their consent.*

Instead, the project authorities have used bulldozers in Ramchowk Fant in Besisahar 11 to construct a tower pad without prior information to the landowner and the FPIC & Rights Forum. Later, they stopped their activities after protest from the landowner and the FPIC & Rights Forum. After field work was conducted for this FPIC protocol, two EIB officials visited Khudi, Belauti, Bisauni, and Udipur for consultation with project officials and local political representatives but bypassed meetings with affected community members and the FPIC & Rights Forum.

## 2.1.1.2. DETERMINE THE PROJECT AREA, AND COMMUNITIES AFFECTED BY THE PROJECT

The proposed project areas and the affected Indigenous Peoples and people belonging to other caste and ethnic groups must be determined first in order to administer an FPIC process. During field work conducted for this FPIC protocol, Indigenous Peoples and non-Indigenous Peoples reported that they did not get any information about the project, including the number of “mudka” or “towers” to be

constructed, the proposed location of towers, the lands that would be covered by the transmission line’s right of way, and the impacts of the project. Based on whatever little information they and the FPIC & Rights Forum have received, the participants of community level consultation meetings suggested to divide, for the purpose of FPIC, in the following geographical clusters:

### CLUSTER 1 DHARAPANI IN MANANG

Indigenous Peoples of Manang suggested that a collective meeting of all Indigenous Peoples of Manang should be held in Dharapani which is convenient for all. The project affected (both directly and/or indirectly) Gurung (Tamu) and Ghale Indigenous Peoples, who comprise the overwhelming majority of the total population living in their ancestral lands, namely, Taal (Ward no. 1), Nache (Ward no. 2), Dharapani (Ward no. 3), Ghelanchok and Odar (Ward no. 4), Thonche (Ward no. 5), Tachai (word no.8), Bagarchhapand and Danakyu (Ward no. 9), of the Nasong Village Council. A very small percentage of the population is Tibetan Lama among ethnic groups and Dalit (Kami and Damai) among the caste groups. Participants belonging to Tibetan Lama and Dalit groups said there is no need to consult them separately and negotiate with them; they will participate during the consultation meetings with the Gurung (Tamu) and Ghale Indigenous Peoples. The participants belonging to Gurung (Tamu) and Ghale Indigenous Peoples also said they have always included community members belonging to other caste and ethnic groups in all their meetings and make collective decisions.

### CLUSTER 2 GHERMU IN LAMJUNG

Indigenous Peoples of Ghermu of Ward no. 5, and Jagatand Chyamche, Sir Chaur, and Syange of Ward number 4, of the Marsyangdi Village Council suggested that a collective meeting of all Indigenous Peoples of these two settlements in Lamjung be done in Ghermu which is convenient for all. In these settlements, of the project affected Indigenous Peoples, Gurung (Tamu), Ghale and Tamang peoples comprise the overwhelming population. Thakali comprise only one household in Jagat. There are few project affected people from Dalit households, whose number is relatively more in Ghermu. No Bahun-Chhetri people live in any of these settlements. During consultation meetings, participants belonging to both Dalits and Indigenous Peoples said that there is no need to carry out consultation leading to broad community support with non-Indigenous Peoples, as they will participate in the consultations with Indigenous Peoples and whatever collective decision is made by Indigenous Peoples are acceptable for them as well.

*Ghermu is a remote community about two and a half hours away from Besisahar close to the border with Manang district. As it is a remote location, the communities have expressed particular frustration about the lack of communication about the project and the cumulative impacts of this project together with other projects in the vicinity, including an existing lower voltage line and the prospective Upper Marsyangdi hydropower project, to be implemented by the GMR company. The transmission line also goes through the Manaslu community forest which communities use for fodder, firewood, amongst other things.*

### CLUSTER 3 KHUDI IN LAMJUNG

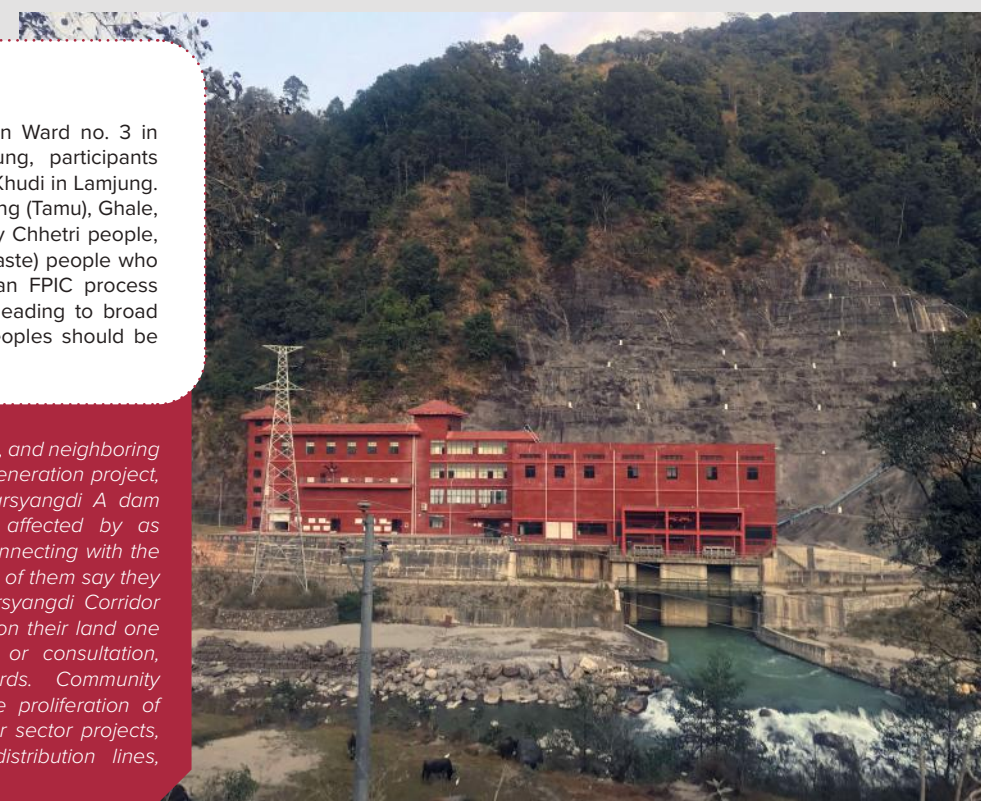
During the consultation meeting in Khudi in Ward no. 3 in the Marsyangdi Village Council in Lamjung, participants suggested to carry out the FPIC meeting at Khudi in Lamjung. Affected Indigenous Peoples comprise Gurung (Tamu), Ghale, Tamang, and Bhujel groups. There are many Chhetri people, followed by Bahun and Dalit (Biswakarma caste) people who are also affected by the project. Hence, an FPIC process with Indigenous Peoples and consultation leading to broad community support with non-Indigenous Peoples should be carried out separately in Khudi.

*Communities in Khudi, Bhulbhule, and neighboring areas live near a hydropower generation project, SinoHydro’s 50 MW Upper Marsyangdi A dam (pictured). They report being affected by as many as five electricity lines, connecting with the massive Khudi substation. Some of them say they learned about the 220 kV Marsyangdi Corridor as a result of seeing markings on their land one day, without prior information or consultation, or any explanation afterwards. Community members are frustrated by the proliferation of poorly implemented hydropower sector projects, especially transmission and distribution lines, affecting their community.*

### CLUSTER 4 KHASUR IN LAMJUNG

Therefore, it is suggested to hold FPIC meeting in Khasur with Indigenous Peoples of these settlements as Khasur is still inhabited by Gurung (Tamu) and Ghale Indigenous Peoples only.

*Khasur is a traditional Indigenous Gurung village. Like other traditional Gurung villages, Khasur has a cluster of settlements on the top of the mountain, where most people live. They traditionally use the land below for social, cultural, economic and other purposes. Over the years, people from Khasur village have been increasingly moving to their lands below, to respond to the requirements of modern life, including access to schools and other public resources. The Khasuris are concerned about the proliferation of hydropower sector projects on their traditional land without their consent or consultation. With respect to the 220 kV Marsyangdi Corridor, the Khasuris are concerned their traditional forests and lands near the Marsyangdi river will be impacted by the project and its associated facilities. Many people who live in Khasur village, have their agricultural lands below in Letephat, a community of under 20 settlements near the Marsyangdi river. The 220 kV Marsyangdi Corridor will be running parallel to the already constructed 132 kV Bhulbhule Mid Marsyangdi line in Letephat. The community will be sandwiched between these two transmission lines, exacerbating concern about the lines’ health and safety impacts. Multiple lines further devalue lands, and fragment communities, impacting their access to community resources.*





**2.1.1.3. FPIC PROCESS IMPLEMENTATION COMMITTEE AND CONDUCTING OF STUDIES**

An FPIC Process Implementation Committee should be formed with representation of the Indigenous Peoples of each cluster, the NEA-Project, the EIB, the FPIC & Rights Forum, NEFIN-Lamjung and LAHURNIP. Each cluster of Indigenous Peoples and each organization should assign two representatives with at least one woman, to this Committee (chosen among themselves). This Committee will implement activities as per this protocol.

**The Indigenous Peoples’ Development Plan (IPDP) should be clearly designed with consultation, participation and consent of Indigenous Peoples as required under the EIB’s social and environmental safeguards.** As it has not yet been done and the existing Initial Environmental Examination and Environmental Impact Assessment Report were not done in line with UNDRIP and ILO Convention no. 169, a separate impact assessment on Indigenous Peoples should be done by Indigenous experts and representatives of FPIC & Rights Forum, NEFIN-Lamjung and LAHURNIP.

The research team who carried out the Initial Environmental Examination (IEE) comprised six experts, including a Socio-Economist with sociology background, who belongs to the Bahun caste (see Table 5.2 in the IIE report). Similarly, the Environment and Social Studies Department from Bhaktapur had carried out the Environmental Impact Assessment (EIA). No names of the study team are provided in the report. Some participants of the consultation meetings report that the four researchers of EIA were male Bahuns. It appears there was no Indigenous expert or Socio-economist with expertise on Indigenous Peoples, or experts who belonged to Indigenous Peoples involved in drafting these studies and that those who worked on these two studies had little expertise on Indigenous Peoples and their rights/issues. Therefore, both the Government/NEA and EIB must carry out a separate study on the Project’s impacts on Indigenous Peoples and provide clarity on plans for due compensation and rehabilitation in case of displacement by a team of Indigenous experts agreed by the FPIC & Rights Forum. The study would take time, but Indigenous Peoples would be unable to make their decision without such prior information.

The EIB should carry out a cumulative impacts assessment on affected Indigenous Peoples and other communities, supported by a team comprising of Indigenous experts and representation from the FPIC & Rights Forum, NEFIN-Lamjung, and LAHURNIP, and the assessment should be in line with UNDRIP and ILO Convention No. 169.

There is no effective grievance redress mechanism. This mechanism, its process, and system should be designed and finalized before the FPIC process, with consultation and participation of representatives of Indigenous Peoples, FPIC & Rights Forum, NEFIN-Lamjung, and LAHURNIP.

**2.1.1.4. ENSURE A FREE ENVIRONMENT FOR FPIC**

The NEA, project authorities and the EIB should organize community level meetings in each of the four FPIC areas, namely, Dharapani in Manang, and Ghermu, Khudi, and Khasur in Lamjung. It should be ensured that the project authorities, NEA, Chief District Officer (CDO), local political leaders, and federal, provincial and local governments are not using coercion, intimidation, force, threats, pressure, fear, undue incentives, conspiracy, trickery, deception, or

divide and rule tactics against Indigenous Peoples and the local community. If any such cases are reported, they should be investigated by a Joint Committee comprising of representatives from the EIB, the FPIC & Rights Forum, NEFIN-Lamjung <sup>1</sup> and LAHURNIP, and the following steps followed:

- If there is evidence that Indigenous Peoples are not in a position to give their consent freely, the EIB should communicate with the NEA and Project authorities to take necessary and adequate steps to ensure such activities are stopped, and the NEA should inform the EIB that Indigenous Peoples can give their consent freely. Project authorities should then hold a community meeting to make sure there are no such complaints and that Indigenous Peoples are confident they can give their consent freely.
- If this issue remains, the above steps should be repeated, and if this issue resurfaces during any time of the FPIC process, the process should be halted and the issue resolved in order to maintain an environment where Indigenous Peoples can participate in the FPIC process and give their consent freely.

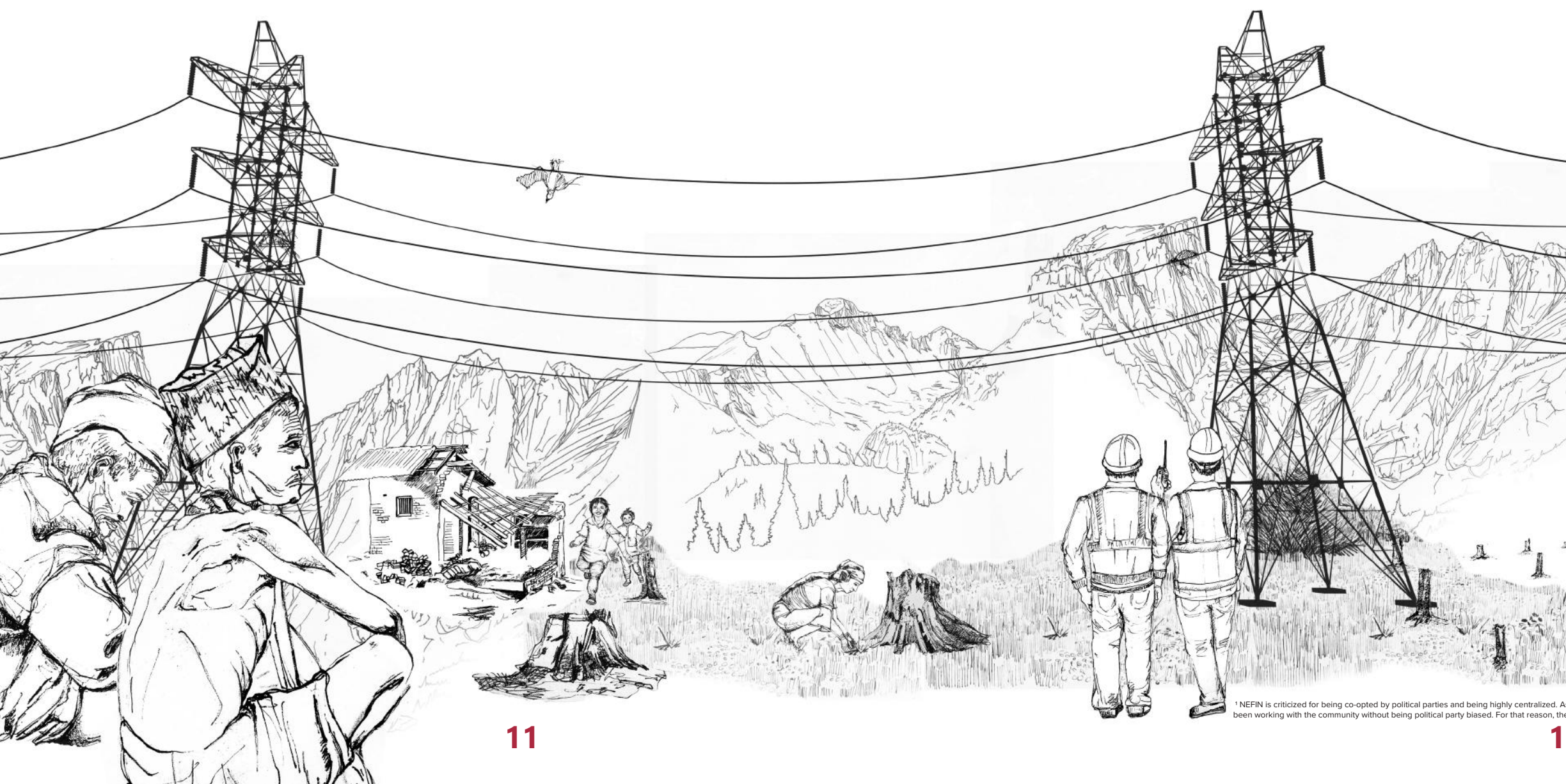
**2.1.1.5. INFORMATION DISSEMINATION IN LANGUAGES INDIGENOUS PEOPLES UNDERSTAND**

The NEA and EIB should provide all project documentation (outlined below) during these community meetings in languages understood by Indigenous Peoples to discuss the documents made available. The cost of the community meetings (including translation and interpretation) should be covered by the EIB and NEA.

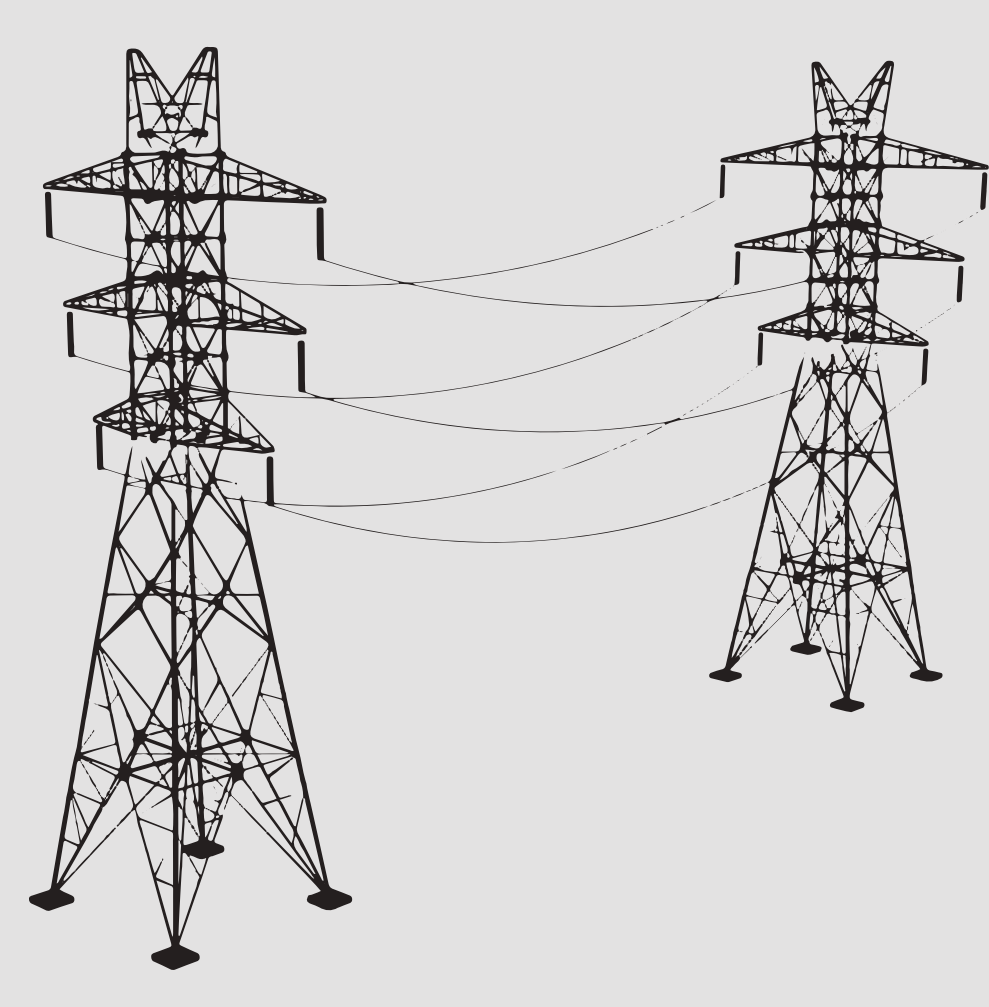
All related project plans and documents, including information (full disclosure) documents, information on the towers (numbers and location), right of way (meters), compensation (for land purchase, and land use including for housing, farming, industrial or commercial use), benefit sharing, (participatory) environmental and social impact assessments and mapping, and the EIB’s documents related to the project, including EIB’s Statement of Environmental and Social Principles and Standards, EIB’s Environmental and Social Handbook, and other EIB Indigenous Peoples’ policies and plans, the EIB’s agreement with the Nepal Government/NEA, and cumulative impacts assessments should be provided to communities. Neither the community members of Indigenous Peoples nor the FPIC & Rights Forum and its local wings have received these documents.

What the FPIC & Rights Forum has received, although not in good faith from the NEA and EIB, but only after demanding the documents, include a brochure of the project, the Initial Environmental Assessment (IEE), draft Environmental Impact Assessment (EIA) report, and the number of towers, land owners and coordinates of the tower points. Both the Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) are in English, and only a summary is in Khas Nepali. The NEA and/or EIB should translate and make all these documents available in the communities’ languages, including Khas Nepali and Tamu (Gurung), Lila Kai and Tamang languages. During community level meetings, the NEA-Project and/or the

<sup>1</sup> NEFIN is criticized for being co-opted by political parties and being highly centralized. As an exception, a few of NEFIN’s local wings, such as NEFIN-Lamjung have gained the trust of the community and has been working with the community without being political party biased. For that reason, the community would like them to be part of the implementation committee.







EIB should provide services of translators in themother tongues of communities, from both English and/or Khas Nepali languages. Translation from English and/or Khas Nepali should be done by translators who are familiar with Indigenous Peoples’ issues.

The EIB and the Government-NEA should provide information that was not yet provided, about the following issues to Indigenous Peoples in the above languages:

- Number of proposed towers and their placement, and names of affected landowners.
- Right of way: Current NEA policy on right of way is 15 meters on either side of the mid-point, however a study carried out by Accountability Counsel and LAHURNIP on international best practices for high voltage transmission lines shows rights of way as high as 200 meters internationally. <sup>2</sup>
- Compensation: Current NEA practice of compensation are of two types, one is Muwabja (compensation for the land) and the other is Chattipurthi (compensation for the income from the land). Muwabja are of two types, one is land for land of the same quality, and the other is in monetary form. The first is the priority of the requirement by law and expected by Indigenous Peoples. In practice, Muwabja is given to purchase land under the towers and Chattipurthi for houses, buildings, commercial or industrial activities, agriculture crops etc. covered by the right of way. The current practice is exploitative as landowners have no say in determining the price of their land; instead, the government forms a committee without community participation to determine the price

of land as per market price, but, in practice, it is very low. Only up to 10 – 20 percent of the total land value is said to be given as compensation for lands covered by the right of way. In practice, often large amounts of compensation are provided to a political party affiliated person and nominal amounts to a few other persons in order to divide and rule. The FPIC & Rights Forum has been frequently demanding the CDO to provide data of compensation, but they have not yet provided any such data. There is no representation of Indigenous Peoples in the valuation of land and properties. Hence, the EIB and the government should provide information about composition of and representation in land valuation committees and due process.

Indigenous cultural heritage and physical cultural resources that will potentially be damaged by the project: Cultural heritage includes sacred sites, for example graveyard, gumba (monastery), and a sacred river in Taal in Manang. As these sites are not adequately included in the IEE and EIA, detailed information about cultural heritage and physical cultural resources potentially affected by the project should be provided by Indigenous Peoples to the EIB to include in the EIA report.

The number of Indigenous Peoples’ families who would be potentially displaced by the project.

Benefit sharing in fixed percentage of total income generated that Indigenous Peoples would receive as well as a projection of what they can expect.

No information has been shared about the project permission letter and agreements between the Government/NEA, and the EIB. Such documents should



be provided to Indigenous Peoples and the FPIC & Rights Forum.

/ NEA and the EIB. The cost of such meetings should be borne by the Government / NEA and/or the EIB.

#### 2.1.1.6. CONSULTATIONS FOR ADDITIONAL INFORMATION, INCLUDING WITH LAHURNIP AND ACCOUNTABILITY COUNSEL ON LEGAL IMPLICATIONS

The FPIC & Rights Forum and its wings will hold community level meetings about the provided information and will decide what additional information or clarification they need. Community members will deliberate and discuss among themselves about the information and documents provided and may demand additional information or clarification from NEA/Project authorities and/or the EIB in writing, which the latter should provide promptly. If the meeting should find outstanding project issues that need to be discussed directly with the Government/NEA and the EIB, before going further, they may ask to hold such discussion first. If not, the second stage of consent would be activated.

The FPIC & Rights Forum and its wings will consult with LAHURNIP, Accountability Counsel, and others such as NEFIN-Lamjung, as needed, on legal implications and rights of Indigenous Peoples about the documents made available.

#### 2.1.1.7. DIRECT DISCUSSION WITH THE GOVERNMENT/ NEA AND EIB ON OUTSTANDING ISSUES

If consultations reveal there are outstanding issues that should be discussed directly with the Government / NEA and EIB, such meetings should be organized by the Government

#### 2.1.1.8. COMMUNITY MEETING AT THE CLUSTER LEVEL

The FPIC & Rights Forum, with technical support of LAHURNIP, will orient community members and their representatives about the FPIC process. The community meeting of Indigenous Peoples would select their representatives to provide their consent. The meeting will clarify roles of the representatives, determine whether or not to give consent, or may decide any other modality of making decisions about community consent. Also, they will decide a Consent Process Agreement (CPA), i.e. the most appropriate venue, date and time, and also the process and approval of obtaining such consent. All participants of the consultation meetings said that peak agriculture season is not a good time for community level consultation meetings. The participants agreed that the FPIC & Rights Forum and LAHURNIP would help to facilitate this process. The representatives at any time have the right to stop the negotiations if they feel that they need to consult with their community or if they need time to discuss alone with their legal advisors, LAHURNIP and Accountability Counsel.

<sup>2</sup> Investing In The Right of Way: International Best Practices to Secure Community Consent for Transmission Lines in Nepal, November 2019, page 8, available at: <https://bit.ly/30CDZxv>



# 2.1.2. STAGE 2 CONSENT

The Government / NEA and EIB should write to the Chief of the concerned Ward Offices, with a copy of the letter to Chon Mama/Jyon (Ama Samuha in Khas Nepali and Mother's Group in English), to circulate the notice to the villagers about the cluster level meetings of Indigenous Peoples to provide their FPIC decision. In addition to selected representatives from Indigenous Peoples, interested Indigenous Peoples could attend the meeting. The cost of the FPIC meeting should be borne by the Government / NEA and EIB.

During the meeting, the Government / NEA and EIB, and Indigenous Peoples should confirm:

- that Indigenous Peoples are present in the meeting to give their consent freely. If they share their experience that the government, federal, provincial and local governments, including NEA, the Project authorities or staff, Chief District Officer (CDO), and police have used coercion, intimidation, force, or threats, pressure, fear, undue incentives, or conspiracy, trickery, deception, or divide and rule tactics against Indigenous Peoples and the local community, the meeting should be stopped immediately;
- that they have been provided all the information (full disclosure) about the project.
- that project authorities will fully abide with whatever type of consent ("Yes" or "No" or "Withhold Decision for Some Time") Indigenous Peoples give;

Then, Indigenous Peoples' designated representatives should share:

- Whether they are giving their consent freely or not; and if not what the problems are;
- Whether they have prior information or not; and if not, what information is missing.

If Indigenous Peoples report any case that undermines their free and/or prior informed decision, it should be investigated by a Joint Committee comprising representatives of EIB, the FPIC & Rights Forum, NEFIN-Lamjung and LAHURNIP and should ensure a free environment first, and/or provide needed information, then repeat the process from the beginning;

If Indigenous Peoples report no problem regarding free and prior information, whatever FPIC decision would be taken would be based on the information provided by the Government / NEA and EIB. The decision could be "yes" or "no" or to "withhold the decision for some time". If new information emerges after the decision is made, Indigenous Peoples have every right to revise the decision given, based on the new information.

Based on the decision made by the Indigenous Peoples prior to coming to this meeting- either to provide their consent, refuse consent, or withhold their consent for some time, they should convey this in writing in the language(s) defined by the community.

- If the FPIC decision is 'Yes', the Government / NEA and EIB can go ahead to carry out the project. Final consultations with non-Indigenous Peoples should be done only if Indigenous Peoples have consented to a project.
- **If the FPIC decision is 'No', the project must be stopped. If the Government / NEA and EIB wish to revise their policies, plans, programs and activities, a new FPIC process should start from the beginning.**
- If the FPIC decision is to withhold their FPIC decision, the Government / NEA and EIB must wait until communities are ready to give their consent and the project must be on hold.

# 2.1.3. STAGE 3 POST-CONSENT



If Indigenous Peoples provide consent in the form "No", the project should be stopped; and any new process with revisions may begin from stage 1. If they request for more time, they must be given time to give their consent. The consent stage could take place at the date, time and place they provide to the Government / NEA and the EIB.

If Indigenous Peoples provide consent in the form of "Yes", the following activities should be done with meaningful participation of Indigenous Peoples, NEFIN-Lamjung and the FPIC & Rights Forum:

- Provide compensation (both Muwabaja and Chattipurthi) as agreed;
- Provide benefit sharing as agreed;
- Implement the Indigenous Peoples' Plan;
- Address grievances and immediately provide redress; and
- Seek consent of Indigenous Peoples if there are any changes from what was agreed on.



## POST-CONSULTATION

### STAGE 3

## CONSULTATION

### STAGE 2

## PRE-CONSULTATION

### STAGE 1

# 2.2. PART 2

## CONSULTATION WITH NON-INDIGENOUS PEOPLES LEADING TO BROAD COMMUNITY SUPPORT

There are three stages for consultation leading to broad community support with other community members belonging to non-Indigenous groups, i.e. caste groups, namely Bahun, Chhetri, Dasnami, Damai, Kami and Sarki groups.

### 2.2.1. DETERMINE THE PROJECT AREAS AND NON-INDIGENOUS POPULATION AFFECTED BY THE PROJECT

As with Indigenous Peoples, during the field work that was undertaken, non-Indigenous Peoples also complained they received little information about the project, including the number of “mudka” or “towers”, the location of their construction, and the land to be covered by the right of way. Based on the little information they and the FPIC & Rights Forum have received, the participants of the community level consultation meetings suggested to divide, for the purpose of consultation, in the following geographical clusters:

#### CLUSTER 1 ARCHALBOT IN LAMJUNG

There are project affected non-Indigenous Peoples in Archalbot in Ward no. 2 of the Dordi Village Council, in Dhamil Kuwan in Ward no. 6 of the Rainus Municipality, Udipur in Ward no. 1, Chitiin Ward no. 11, and Banjhakhet in Ward no. 10 of the Besisahar Municipality, Sundarbazar in Ward no. 9 of the Sundarbazar Municipality, and Khasur in Ward no. 10 of the Besisahar Municipality in Lamjung.

#### CLUSTER 2 KHUDI IN LAMJUNG

As mentioned above, in addition to Indigenous Peoples, there are many Chhetri, followed by Bahun and Dalit (BK) people who are also affected by the project. Hence, FPIC with Indigenous Peoples and consultation leading to broad community support with non-Indigenous Peoples should be carried out separately in Khudi.



### 2.2.2. STAGE 1: PRE-CONSULTATION

The steps outlined above with respect to a process implementation committee, information dissemination, consultation with the community and legal advisors, discussions with the Government / NEA and EIB for clarification and community meetings at the area level also apply to non-Indigenous Peoples in the pre-consultation stage.

### 2.2.3. STAGE 2: CONSULTATION LEADING TO BROAD COMMUNITY SUPPORT

This stage cannot and should not begin without first securing the FPIC of Indigenous Peoples and getting their consent (“yes”). If Indigenous Peoples say “No” or prefer to withhold their consent for some time, the project cannot and should not be implemented. The cost of the meeting should be borne by the Government / NEA and EIB.

After securing consent from Indigenous Peoples, the Government / NEA and EIB should write to the Chief of the concerned Ward Offices, with a copy of the letter to Chon Mama/Jyon (Ama Samuha in Khas Nepali and Mother’s Group in English) to circulate the notice to the villagers about the cluster level meeting of non-Indigenous Peoples for consultation. In addition to selected representatives of non-Indigenous Peoples, interested non-Indigenous Peoples could attend the meeting. Based on the decision made by the non-Indigenous Peoples prior to coming to the meeting, and also based on the discussion during this session both parties may negotiate and the outcomes should be written down.

### 2.2.4. STAGE 3: POST-CONSULTATION

The following activities should be done with meaningful participation of non-Indigenous Peoples, NEFIN and FPIC & Rights Forum:

- Provide compensation (both Muwabaja and Chattipurthi as agreed);
- Provide benefit sharing, as agreed;
- Address grievances immediately; and
- Consult with non-Indigenous Peoples if changes arise from what was agreed.





**AIPP**



**IWGIA**