


2017



STUDY ON THE IMPACT OF THE UPPER TRISHULI-1, 216 MW HYDROPOWER PROJECT ON THE INDIGENOUS COMMUNITIES OF RASUWA

LEAD RESEARCHERS SUBHA GHALE & SHRADHA GHALE

2017



STUDY ON THE IMPACT OF THE UPPER TRISHULI-1, 216 MW HYDROPOWER PROJECT ON THE INDIGENOUS COMMUNITIES OF RASUWA

LEAD RESEARCHERS SUBHA GHALE & SHRADHA GHALE



LAWYERS' ASSOCIATION FOR
HUMAN RIGHTS OF NEPALESE
INDIGENOUS PEOPLES

FIELD SUPPORT

BIBA TAMANG, BOM BAHADUR TAMANG
BUTI TAMANG, KARSANG TAMANG

Published by



Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

Anamnagar, Kathmandu

P.O. Box 11179

Contact: +977-01-4268510

Email: lahurnip.nepal@gmail.com

Website: www.lahurnip.org

© LAHURNIP 2017

Printed in Nepal

ISBN 978-9937-9135-6-0

Design and Layout

Ramesh Maharjan, Utkarsha Design

Cover Photo

Shradha Ghale

**STUDY ON THE IMPACT OF THE UPPER TRISHULI-1, 216 MW HYDROPOWER PROJECT
ON THE INDIGENOUS COMMUNITIES OF RASUWA**

FOREWORD

This publication provides an assessment of the impact of the Upper Trishuli-1, 216 MW hydropower project on the indigenous Tamang community of Rasuwa district. The study has succeeded in unveiling the situation of Tamang in the project-affected areas, particularly Haku, Ramche and Dhunche of Rasuwa.

International human rights instruments pertaining to indigenous peoples (IPs) provide IPs the right to free, prior and informed consent (FPIC) and meaningful participation in development projects carried out in their lands and territories. Similarly, private sector actors are also obliged to respect the human rights of affected communities prior to, during and after the implementation of the project. But both the government and private sector often ignore the presence of IPs in the project site and engage in violation of rights of IPs and local communities in the project area.

The Upper Trishuli-1 project is a representative case where provisions of international human rights instruments including the principle of FPIC have been violated. Many other projects being run across the country fall into this category.

The study has revealed the lack of implementation of international human rights instruments pertaining to IPs. The larger question it raises is: How can we ensure that such instruments are implemented to protect their rights? A lot more work is still needed to make the government and private sector respect the rights of marginalized IPs and redress past and ongoing violations.

LAHURNIP would like to thank the research team for putting together this valuable document. We would also like to thank the Global Greengrants Fund (GGF) and the Asia Indigenous Peoples Pact (AIPP) for their technical and financial support for this study. We are grateful to the community members of Rasuwa for providing a wealth of information and insights. Last but not least, thanks to all the LAHURNIP team members involved in the study and publication process.

Shanti Kumari Rai
Chairperson

ACRONYMS

CC	Concern Committee
CIAA	Commission for the Investigation of Abuse of Authority
CPN-UML	Communist Party of Nepal-United Marxist Leninist
EIA	Environmental Impact Assessment
EPR	Environment Protection Rules
FDG	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GGF	Global Greengrants Fund
GLOFs	glacial lake outburst floods
HH	household
IDP	Internally Displaced People
IEE	Initial Environmental Examination
IFC	International Finance Corporation
ILO	International Labour Organisation
IPOs	Indigenous Peoples' Organisations
IPPAN	Independent Power Producers Association
IPs	Indigenous Peoples
MoE	Ministry of Energy
MoHA	Ministry of Home Affairs
MoSTE	Ministry of Science, Technology, and Environment
MW	megawatt
NC	Nepali Congress
NEA	Nepal Electricity Authority
NGO	Non-Governmental Organisation
NPR	Nepali Rupees
NWEDC	Nepal Water and Electricity Development Company
PDA	Project Development Agreement
PS	Performance Standards
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UT-1	Upper Trishuli-1
VDC	Village Development Committee

CONTENTS

Foreword	I
Acronyms	II
1. Context of hydroelectricity development in Nepal	1
2. Research objectives	6
3. Methodology	7
4. Overview of the project	9
5. Salient features of the project	16
6. About the inhabitants in the project area	18
7. Relevant legal framework	22
7.1. Free Informed Prior Consent in relation to the project	23
7.2. Physical and economic displacement related to land acquisition	26
7.3. Displacement and damage related to project's access road	31
Impact of access road – Personal testimony of Dawa Gyalbo Ghale	36
7.4. Inadequate participation of women	38
8. Conclusion	40
9. Key recommendations:	42
9.1. For UT-1 project	42
9.2. For IFC and World Bank	44
9.3. For the Government of Nepal	44
9.4. For existing and prospective international lenders	45
9.5. For civil society organizations, NGOs, and media	45
9.6. For donor agencies	45
9.7. For the UN Human rights bodies & mechanisms specific to indigenous peoples	46
References	47



1. CONTEXT OF HYDROELECTRICITY DEVELOPMENT IN NEPAL

Nepal is considered an ideal location for large-scale hydropower development because of its numerous perennial rivers and steep topography. Nepal has estimated potential to generate 43,000 MW of hydroelectricity. However, only a fraction of this amount has been developed so far. The bulk of the energy need is met by biomass. As of 2010, only 48 percent of Nepal's population had access to electricity.¹ Since 2005 until recently, Nepali people faced 10-16 hours of daily load shedding, including in the capital city Kathmandu. In this context the government of Nepal has identified hydropower development as a national priority. The government, private sector and international donors see hydropower development not only as a means to end the energy shortage, but also as a definite path to Nepal's economic growth. National and foreign companies and global financial institutions such as the World Bank, the Asian Development Bank and the International Monetary Fund have made large investments in hydropower development in Nepal. The government plans to generate 10,000 MW of electricity within the next decade.² Currently 63 hydropower projects with a combined capacity of 907 MW are under operation; 144 projects (3891 MW) have obtained construction licenses; 214 projects (11,155 MW) have obtained survey licenses; 118 (3857 MW) are in the "government basket" category.³ The total number of displaced families and households affected by hydropower projects across Nepal remains unclear. Similarly, there has been no assessment of the cumulative social, cultural and environmental impact of hydropower projects.

The majority of hydro projects in Nepal are diversion run-of-river schemes. Run-of-river hydropower is promoted as a "low carbon" solution to the energy crisis,

1 Water and Energy Commission Secretariat, *Energy Sector Synopsis Report*, Kathmandu, Water and Energy Commission Secretariat, 2010, p. 86.

2 National Planning Commission, 'Plan and Programme for FY 2073/74–2075/76 BS (2017 to 2018)', 2017.

3 Ministry of Energy, Department of Electricity Development, 2017, www.doed.gov.np (accessed 25 October 2017).

but studies have shown they are not as “green” as their proponents claim.⁴ Tunnels are dug into mountains to divert the river flow and long stretches of the river get dewatered as a result. This not only fragments the river, but also causes changes in its temperature, velocity and depth, threatening to destroy aquatic life. Further, as run-of-river projects depend on consistent river flows, they are particularly vulnerable to climate-induced changes in rainfall patterns. In Nepal such projects are mostly located in remote mountainous areas with fragile geological conditions and high seismic activity. The terrain is highly vulnerable to geo-hazards like landslides, flash floods, and glacial lake outburst floods (GLOFs).⁵ Tunnelling and construction of access road involves blasting and deforestation, which makes mountain slopes unstable and increases the risk of landslides.

The 7.9 magnitude earthquake of April 2015 has raised further questions about the safety and feasibility of large hydropower dams. The quake damaged hydropower facilities at 19 sites,⁶ and killed workers in at least 3 sites (Upper Trishuli 3A, Mailung and Rasuwagadhi). Out of the total installed capacity of 787 MW (including on-grid and off-grid) hydropower facilities in Nepal, facilities with a combined capacity of 115 MW (14.6 percent) were severely damaged, and facilities with 60 MW (7.6 percent) were partially damaged.⁷ An environmental assessment conducted in the aftermath of the earthquake found that “additional safety assessment is needed at all major hydropower dams in the earthquake-affected areas” to ensure full recovery and minimize future risks.⁸ But such assessments have not been carried out, and most projects have resumed construction or operation.

4 International Rivers, ‘Swindling Rivers: Run-of-River Hydro Fact Sheet’, 2016, https://www.internationalrivers.org/sites/default/files/attached-files/run_of_river_fact_sheet.pdf (accessed 7 April 2017).

5 Ministry of Science, Technology and Environment (MoSTE), *Nepal Earthquake 2015: Rapid Environmental Assessment*, Kathmandu, MoSTE, 2015, p. 5.

6 ‘Energy Sector Suffered Losses of Rs 18.75b due to Quake’, *The Kathmandu Post*, 10 June 2015, <http://kathmandupost.ekantipur.com/news/2015-06-10/energy-sector-suffered-losses-of-rs1875b-due-to-quake.html>, (assessed 8 April 2017).

7 A.B. Shrestha, S.R. Bajracharya, J.S. Kargel, and N.R. Khanal, *The Impact of Nepal’s 2015 Gorkha Earthquake-Induced Geohazards*, Kathmandu, International Centre for Integrated Mountain Development, 2016, p. 16.

8 MoSTE, op.cit. 2015, p. 34.

Hydro projects have direct impact on the local and indigenous population in and around the project sites. People in large hydro project sites have faced involuntary displacement, lost their livelihoods and become further impoverished. Projects that displace more than 100 people are required to conduct an Environmental Impact Assessment (EIA), but solutions proposed in such assessments are either inadequate or poorly implemented.⁹ Large hydro projects in Nepal are typically established in territories inhabited by indigenous peoples, without their free prior informed consent (FPIC) and participation.¹⁰

In the dominant narrative, the principle of FPIC is often portrayed as illegitimate, 'anti-development' or a threat to development. While the practical application of FPIC can be complex and needs to be debated, the dominant view is based on misinformation and grossly misrepresents FPIC. It is important to understand FPIC in light of the broader historical context in which indigenous communities all over the world have been brutally exploited and persecuted in the process of colonisation, invasion, and corporate expansion. Indigenous communities continue to be pushed out of their ancestral homelands in the name of development and industrialisation. In many cases the principle of FPIC has been instrumental in defending the rights of indigenous communities who are at the margins. A case in point is the landmark ruling of the Supreme Court of India that upheld the principle of FPIC for protecting the rights of the affected indigenous Dongria Kondh communities.¹¹ On 18 April 2012 the Supreme Court of India instructed the Odisha state government to seek consent from affected Dongria Kondh communities regarding the proposed plan for a bauxite mine by a subsidiary of UK-based Vedanta Resources in Niyamgiri hills of Odisha.¹² Many locals and international organisations, including Survival

9 S. Koirala, *Hydropower Induced Displacement in Nepal*, PhD Thesis, University of Otago, 2015, p. 9.

10 D.K. Sunuwar, 'Power to the People- At What Cost?', *Cultural Survival Quarterly Magazine*, 2017, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/power-people-what-cost>, (accessed on 10 March 2017).

11 Amnesty International, 'India: Landmark Supreme Court Ruling a Great Victory for Indigenous Rights', 18 April 2013, Amnesty <https://www.amnesty.org/en/latest/news/2013/04/india-landmark-supreme-court-ruling-great-victory-indigenous->, (accessed 8 April 2017).

12 B.B. Srivastava, 'Land Governance: Issues, Challenges and Way forward', in B. Bhagat-Ganguly (ed.), *Land Rights in India: Policies, Movement and Challenges*, New York, Routledge, 2016, pp. 221-222.

International and Amnesty International, supported the struggle of the Dongria Kondh community against the mining project.¹³ For nearly a decade, the Dongria community relentlessly struggled against the mining project to defend their scared Niyamgiri hills, their livelihoods, and ways of life.¹⁴ On 19 August 2013, the Dongria community unanimously rejected Vedanta's proposed plan through the *gram sabha*¹⁵ of 12 affected villages.¹⁶ In January 2014, the Ministry for Environment, Forest and Climate Change decided to stop the mining project.¹⁷

"In plain terms, FPIC is knocking on somebody's door and asking for permission before you come in," states Grand Chief John, a prominent indigenous leader from Canada.¹⁸ According to the Forest Peoples Programme (FPP), an NGO working for indigenous peoples, FPIC not only protects the rights of indigenous communities but is also in the long-term interest of investors/project developers: "The right of FPIC is necessary to ensure a level playing field between communities and the government or companies and, where it results in negotiated agreements, provides companies with greater security and less risky investments."¹⁹ FPIC is a core principle of international human rights instruments for indigenous peoples such as the International Labour Organization (ILO) Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The government of Nepal has ratified and formally endorsed both these instruments and therefore has the obligation to uphold the principle of FPIC.

13 J. Woodman, 'India's Rejection of Vedanta's Bauxite Mine is a Victory for Tribal Rights', *The Guardian*, 14 January 2014, <https://www.theguardian.com/global-development/poverty-matters/2014/jan/14/india-rejection-vedanta-mine-victory-tribal-rights> (accessed 17 April 2017).

14 Ibid.

15 Gram Sabha means a village assembly comprising all adult members of the village.

16 Woodman, op. cit.

17 International Fund for Agricultural Development (IFAD), *How to do - Seeking Free, Prior and Informed Consent in IFAD Investment Project*, 2015, p. 30, <https://www.ifad.org/documents/10180/beec86e1-270d-45a1-8786-4b749c9db733> (accessed 10 April 2017).

18 A. Portalewska, 'Free, Prior and Informed Consent: Protecting Indigenous Peoples' Rights to Self-Determination, Participation, and Decisions-making', *Cultural Survival Quarterly Magazine*, December 2012, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous> (accessed 12 April 2017).

19 J. Kenrick, 'Extractive Industries Conservation and Indigenous Peoples' Rights', *Occasional Paper for Extractive Industries and Ape Conservation*, Forest Peoples Program, November 2012, p.10.

As hydropower is constantly touted as the means to lift Nepal out of poverty, the hydropower sector in Nepal remains largely insulated from criticism. Criticism of the sector amounts to lamenting the technical, political and bureaucratic challenges faced by project developers. The impacts of hydropower projects on the environment and the local/indigenous populations at the project sites have received little attention. To ensure just and inclusive development of Nepal, the debate on hydropower must move beyond the techno-bureaucratic concerns of power developers and address critical questions related to the environment and vulnerable populations severely affected by hydro projects.

2. RESEARCH OBJECTIVES

The main objectives of the study are to:

- Assess the impact of the Upper Trishuli-1 hydro-electricity project on the indigenous and local communities in the project-affected areas
- Examine compliance with IFC performance standards and other relevant laws and policies
- Analyse the Environmental Impact Assessment (EIA) and supplementary studies in light of the concerns of the affected communities
- Provide recommendations to key stakeholders

3. METHODOLOGY

The study used qualitative research methods. Fieldwork was conducted from 24-29 March 2017 in multiple locations of Dhunche and Laharepauwa²⁰ VDCs in Rasuwa district. A total of 25 in-depth interviews, 3 focus group discussions, and 6 key informant interviews were carried out during fieldwork. During fieldwork, most of the respondents were living in temporary shelters in IDP (internally displaced people) camps. Follow-up interviews were conducted over the phone between April and May 2017.

One focus group discussion (FGD) and 20 in-depth interviews were conducted with members of families whose lands were acquired by the project. Another FGD was conducted with women from project-affected households so that they could share their particular experiences and challenges. Two in-depth interviews were conducted with representatives of the Community Forest User Committees in Haku VDC. One FGD and three in-depth interviews were conducted with people affected by the construction of the access road. Key informant interviews were conducted with the Local Development Officer and Program Officer at the District Development Committee; District Forest Officer and Assistant Program Officer at the District Forest Office, former VDC Secretary of Haku, community liaison officer of UT-1 project, and representatives of the Concern Committee and Coordination Committee. Interpreters were used to communicate with the elderly and women in the local Tamang language. Project related reports and documents, and relevant national and international laws and policies were reviewed and analysed before and after the study.

The study has three major limitations. First, the study examines the impact of the UT-1 project on affected communities in project areas primarily in light of the IFC performance standards, as IFC is a shareholder and a major lender. Despite its inadequacies,²¹ the IFC performance standards (PS) are considered a

20 Laharepauwa VDC now falls in Uttargaya rural municipality.

21 'IFC Updated Performance Standards', 14 September 2011, <http://www.brettonwoodsproject.org/2011/09/art-568878/> (accessed 11 March 2017).

leading benchmark for environmental and social risk management in the private sector. However, more studies need to be conducted to examine the project's compliance with the policies and standards of other lending banks, and relevant national and international laws and standards. Second, this study is just an initial effort towards gauging the experiences and challenges faced by affected communities. The project is still unfolding, and more studies are needed to learn about the multiple challenges faced by the affected communities. The project can become more effective and sustainable if it is constantly held accountable to affected communities and pushed to meet the environmental safeguard standards. Finally, much of the project's impact discussed in this report covers the time period when the local bodies – VDCs and municipalities – were still under the unitary system of government. Therefore, the project-affected areas are referred to by their old names in this report. On 10 March 2017, the government of Nepal announced the new local level structure in line with the Constitution of Nepal 2015. The new federal structure comprises seven provinces and a total of 753 local units – 6 metropolitan cities, 11 sub-metropolitan cities, 276 municipalities, and 460 village councils.

4. OVERVIEW OF THE PROJECT

The Upper Trishuli-1 (UT-1) hydroelectricity project is a run-of-river scheme with 216 MW capacity. It is located in the upper part of the Trishuli watershed, in Rasuwa district, which falls in Province 3 in the new federal map of Nepal. The project area covers Haku, Ramche, and Dhunche VDCs in Rasuwa. Out of the three VDCs, Haku VDC is most affected by the project. In the new federal structure, Haku VDC falls in ward 8 and 9 of Uttargaya rural municipality, and ward 1, 2, 3 and 7 of Parbatikunda rural municipality. Likewise, Ramche VDC falls in Kalika rural municipality, and Dhunche falls in Gosaikunda rural municipality.

Among the 33 hydropower projects that are in various phases of development in the Trishuli watershed – in operation, under construction, and planning – UT-1 will have the highest generation capacity after completion.²² As the project will divert water from the river channel, long stretches of the river, several kilometres in each project, will be effectively dewatered. If completed as planned, the Trishuli River would see diversion projects constructed one after another, with more water of the river flowing through tunnels than through the river channel.²³

The project is a joint venture between a consortium of three Korean companies, the International Finance Corporation (IFC),²⁴ which is the private sector lending arm of the World Bank Group, and a Nepali investor. The largest shareholder is the Korea South East Power, which owns 52 percent of the shares, followed by the other

22 The Trishuli watershed occupies 13% of the Gandaki basin, and is undergoing highest-intensity hydropower development within the basin: 5 hydropower projects are already in operation; 9 are under construction or have received construction permits; and 19 are in the planning phase and have obtained survey licenses. (ESSA Technologies Ltd, *Final Report: Supplemental Environmental and Social Impact Assessment*, Ottawa, ESSA Technologies Ltd, 2014, p. 12.)

23 For more information on the impacts of river diversion projects, see International Rivers, 'Swindling Rivers: Run-of-River Hydropower Fact Sheet' https://www.internationalrivers.org/sites/default/files/attached-files/run_of_river_fact_sheet.pdf.

24 "IFC is considering providing an A loan of up to USD 90 million, a B loan/parallel loan of up to USD 320 million, and equity of up to USD 27 million (for 15 percent stake in the project company). The project is expected to be the first large domestic IPP in Nepal with a PDA/PPA and sizable financing provided by international lenders." See International Financial Corporation (IFC), 'IFC Project Information Portal', 11 February 2015, <https://disclosures.ifc.org/#/projectDetail/ED/35701> (accessed 8 February 2017).

Korean companies, Daelim (16 percent) and Kyeryong Construction (10 percent). IFC has 12 percent of the shares, and the Nepali investor Bikesh Pradhananga owns 10 percent. According to EIA, the operation is expected to generate 1533.1 GWh (gross) of clean and renewable energy: 306.7 GWh in the dry season and 1,149.7 GWh in the wet season, with an annual sale of energy worth USD 63 million 188 thousand 6 hundred and eighty-eight.²⁵ The estimated total cost of environmental mitigation, monitoring, audit and enhancement is USD 3 million 722 thousand 6 hundred and fifty eight,²⁶ which is 1.046 percent of the project cost.

On 23 March 2002, Nepal Water and Electricity Development Company (NWEDC) was established as a private limited company under the Companies Act to develop the UT-1 project.²⁷ The Environmental Impact Assessment (EIA) was approved by the Ministry of Science, Technology, and Environment (MoSTE) on 20 February 2013.²⁸ Under the Environment Protection Rules (EPR) 1997, EIA is mandatory for both the government and private sector. Prior to the approval, one obligatory public hearing of the EIA was conducted for the project-affected communities on 5 November 2011 in Haku VDC. The Project Development Agreement (PDA) for UT-1 was finally signed on 29 December 2016.²⁹ The project has started the process for obtaining debt finance from IFC and other international lenders including the Asian Development Bank, German Investment Corporation (DEG), and PROPARGO, a development financial institution in France, for the development of the project.³⁰

25 Nepal Water and Energy Development Company (NWEDC), *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, Kathmandu, NWEDC, 2012, p.v, <https://disclosures.ifc.org/#/projectDetail/ED/35701> (accessed 9 February 2017). Also see Nepal Water and Energy Development Company (NWEDC), 'Project Summary', <http://nwedcpl.com/project/projectsummary> (accessed 15 February 2017).

26 Ibid, NWDEC, p. v.

27 NWDEC, 'Project Summary', op. cit.

28 Ministry of Energy, 'Project Development Agreement-Upper Trishuli-1 Hydropower Project', 29 December 2016, http://www.moen.gov.np/pdf_files/PDA-UT1.pdf (accessed 2 March 2017).

29 Ibid.

30 Nepal Water and Energy Development Company (NWEDC), 'Project Structure', http://nwedcpl.com/project/project_structure (accessed 1 March 2017).

Decision making related to hydropower projects is highly centralised and top-down. It took around 15 years for the project to sign the PDA after establishing NWDEC in 2002. The project's involvement in two major court battles raised questions as to whether the project should move forward in the first place. The first court case began after the Commission for the Investigation of Abuse of Authority (CIAA) asked the government to cancel the project's survey license soon after it was granted in 2007.³¹ NWDEC won the battle in the court two years later.³²

Prior to the second court case, the Ministry of Energy (MoE) scrapped NWEDC's license on 3 July 2012, because it had failed to complete its assigned tasks on time.³³ This led to a tussle between high-level actors who either supported or opposed the license renewal. The process of license renewal was highly politicised.³⁴ Consequently, NWEDC was caught up in a protracted court battle. After three years the decision was finally made in favour of the project in September 2015.³⁵ However, a Power Purchase Agreement has not materialized even at the time of writing. NWEDC is currently negotiating with the Nepal

31 Nepal Energy Forum, 'Troubled Waters', <http://www.nepalenergyforum.com/troubled-waters/> (accessed 27 March 2017).

32 Ibid.

33 After the cancellation of the license, donor agencies like the IFC requested the top political leaders and government officials to restore the license. Subsequently, on 19 August 2012, the Economic Infrastructure Committee (EIC) of the Cabinet decided to re-award the license to NWEDC. The decision of the EIC contradicted the move of the MoE. Consequently, a writ petition was filed at the Supreme Court where the petitioners claimed that the decision of the Cabinet went against the provisions of the Electricity Act 1996, which says a licence "cannot be re-awarded to the same person or company once it is scrapped." For details, see 'Upper Trishuli Licence Restoration Row: Court Stays Project Development', 22 August 2012, *The Kathmandu Post*, <http://kathmandupost.ekantipur.com/printedition/news/2012-08-22/upper-trishuli-licence-restoration-row-court-stays-project-development.html> (accessed 24 March 2017).

34 It was reported that just two days before the cancellation of NWEDC's license, Secretary of the Ministry of Energy had asked Hydro China and IDS to apply for a license. IDS reportedly belonged to Sujit Acharya, a relative of former finance minister and UML leader Bharatmohan Adhikari. For details, see 'Trouble in Trishuli', *Nepali Times*, 14 August 2012, <http://www.nepalitimes.com/blogs/thebrief/2012/08/14/trouble-in-trishuli/> (accessed 26 March 2017).

35 Independent Power Producers' Association Nepal (IPPAN), *Walking with Ten Thousand Megawatts in Ten Years*, Kathmandu, IPPAN, 2017, p. 35, http://www.siurihydro.com/dwd/uploads/files/Powe%20Summit%20Book_final.pdf (accessed February 2017).

Electricity Authority (NEA), the sole buyer of electricity in Nepal, to sign a Power Purchase Agreement.³⁶

The above instances illustrate how the stakes and concerns of the indigenous and local communities, whose ancestral lands, community forests and rivers the project will use, are hardly taken into consideration in high-level negotiations. In line with the IFC's policy on environmental and social sustainability, the project is labelled 'Category A' operation, i.e., it falls under the category of projects with the highest risks. The project will potentially generate "significant adverse environmental and social impacts, that are diverse and irreversible,"³⁷ and thus jeopardize the safety and well-being of the project-affected communities. In view of the IFC's Performance Standard 1 on the Assessment and Management of Environmental and Social Risks and Impacts, at least eight critical issues have been identified by the IFC:

(a) the acquisition of approximately 96 ha of land, (b) the economic displacement of 40 Tamang households and physical displacement of 5-6 houses (final numbers yet to be confirmed), mainly composed of the marginalized indigenous group Adivasi/Janajati, (c) significant conversion of natural riparian and aquatic habitat in the 11-kilometer dewatered section of the Trishuli river where the water will be diverted from the weir to the powerhouse, and (d) impaired upstream and downstream aquatic and riparian connectivity/ migration from the barrier effect caused by the diversion weir. Additionally, there could be significant environmental and social impacts associated with (e) the influx of the temporary construction work-force, (f) excavation and disposal soil from approximately 10

36 Given the policy reform of the Ministry of Energy (MOE) in 2016, NEA is likely to sign the PPA with hydropower projects on 'take and pay' basis, which means NEA will purchase all the electricity generated by hydropower projects. In the older 'take or pay' basis, NEA could purchase electricity according to its need. This new policy creates a favourable environment for investors and shareholders in the hydropower project. For details, see B. Subedi, 'Preparation over PPA Talks', *The Kathmandu Post*, 16 May 2017, <http://kathmandupost.ekantipur.com/news/2017-05-16/preparations-over-for-ppa-talks-nea.html> (accessed 5 April 2017).

37 International Finance Corporation, *Environmental and Social Review Procedures Manual*, 2016, p. 2, http://www.ifc.org/wps/wcm/connect/d0db8c41-cfb0-45e9-b66a-522c88f270a5/ESRP_Oct2016.pdf?MOD=AJPERES (accessed 28 March 2017).

kilometers of tunnel, (g) construction of 19 kilometers of new road to connect the powerhouse with the dam site, and (h) occupational health and safety risks associated with construction and excavation works.³⁸

Whereas the IFC has placed the project under Category A, the Environmental Impact Assessment (EIA) approved by the MoSTE in 2013 concludes that “the study [EIA] is found to be feasible from environmental perspective as it causes minimal impacts to the surrounding environment and society.”³⁹ This contradictory finding calls into question the very process and standards used for the EIA, a key step in the development of hydropower projects. The approved EIA forms the basis for granting a construction license to the proponent (i.e., NWDEC), but in this case the EIA itself is inadequate and falls below the standards set by IFC.

A Concern Committee (CC)⁴⁰ composed of representatives from project-affected VDCs was formed in 2013 and registered at the Chief District Office. The composition of the committee also illustrates how the hydro sector is rampantly politicised from the central to bottom level. The members of the Committee are from the major political parties – the Nepali Congress (NC), Communist Party of Nepal-United Marxists Leninists (CPN-UML), and Communist Party of Nepal (Maoist-Centre). According to Sangtempa Tamang, chairperson of the Concern Committee, “Our main goal is to ensure the rights of project-affected communities and address their grievances related to the project. We try to act as a bridge between the project and the affected communities.” Another Coordination Committee was formed on 3 February 2017. Lakpa Tamang, chairperson of the Coordination Committee, said that the Committee’s main objective is to resolve the differences and conflicts between the project and affected communities. Representatives of the two Committees said that they were working jointly.

38 World Bank, ‘Integrated Safeguard Data Sheet’, Report no. 95297, 10 March 2015, <http://documents.worldbank.org/curated/en/201561468279349162/pdf/952970ISDS0Con00Box385460B00PUBLIC0.pdf> (accessed 17 March 2017).

39 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 421.

40 There are over 100 members in the Committee, 56 members in its working committee, and 11 members in the Assessment Committee. There are no women in the Committee.

Some of the short and long-term concerns raised by the Coordination Committees were: provision of employment to affected communities; formation of the long overdue grievance mechanism; provision of free electricity to Haku VDC and shares to affected communities. None of these demands have materialised. During the Coordination Committee meeting⁴¹ held on 2 February 2017, some priority issues regarding the project were discussed and endorsed. One urgent issue raised was that the project's petty construction contractor had not only bypassed the Coordination Committee and locals, but also used threat and intimidation to suppress the Committee's concerns.⁴² To address the issues identified, the Coordination Committee decided to focus on ensuring three things: participation of the local communities in the project; quality of the construction contractor's work; and coordination between the project and the Committee during the recruitment of petty contractors.

Representatives of both the Concern Committee and the Coordination Committee said that whenever any kind of committee is formed on behalf of project-affected communities, the project tries to divide the community to weaken advocacy. "The project pits one group of people against another," said Lakpa Tamang. On the other hand, some of the project-affected individuals said that people most affected by the project are neither included in the Committees nor consulted. They claimed that the Committees are politicised and do not really intend to serve the people the Committees claim to represent. Irrespective of the performance of the two Committees, the importance of a strong body that can advocate on behalf of the most affected communities cannot be over-emphasized. This is even more urgent in view of the low socio-economic status of affected communities and their further impoverishment after the earthquake. If bodies meant to protect and advocate for the rights of affected communities are compromised and co-opted, vulnerable project-affected communities will be pushed further to the margins.

At present, the project is constructing an access road. The project resumed its

41 The meeting had a total of 40 participants, including members of the Coordination Committee and Concern Committee, representatives of the political parties, and community leaders.

42 Minutes of the meeting organised by the Coordination Committee on 2 February 2017.

construction work towards the end of 2016 after the April 2015 earthquake. A 5.3 km stretch of the road had already been built by 2015 but got destroyed in the earthquake along with the project office and camp facilities. The land acquisition process for the project began in 2013, and was completed in 2014.⁴³ As of June 2014, the land requirement of the project was approximately 99.89 hectares. Out of this, government land comprised 79.27 ha Guthi⁴⁴ land was 15.69 ha, private land was 3.90 ha, and private land (five-year lease) was 1.01 ha.⁴⁵ Details of the actual or final land acquisition are not available. According to the project report, the number of households (HHs) displaced from their private and Guthi lands is 40 (approx. 240 people). Similarly, about 15 HHs (approx.) lost their houses, which stood on the land acquired by the project.⁴⁶ A 2014 study by the project suggests that the project purchased houses from 11 displaced HHs, but the amount paid is not indicated.⁴⁷ All the displaced HHs that owned private and Guthi lands were given cash compensation at the rate of NPR 500,000⁴⁸ per 0.05 hectare of land. The number of displaced households will increase significantly if we take into account the 15 households that have not received compensation for the loss of their houses, as well as households that have been economically displaced by the acquisition of the six community forests (approx. 76.7 ha). Issues related to project-induced displacement will be discussed in the following sections.

43 Kim Joon Hyung, powerpoint presentation on 'Upper Trishuli 1 HEP - Four Years to Project Development Agreement', Power Summit-10,000 MW in 10 years, Kathmandu, 15-16 December 2016.

44 Guthi land, or trust land includes land and property donated by the government, or state or individuals for social and religious purposes.

45 Nepal Environmental & Scientific Services Pvt Ltd (NESS), *Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment, Upper Trishuli-1 Hydropower Project*, December 2014, p. 75.

46 The figure for the total number of houses acquired by the project, i.e. 15, is based on information provided in the report *Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment*. According to the report, four houses (three belonging to Dalits and one to Tamang) and four cowsheds were acquired by the project. The report also provides a name list of owners of 11 other houses purchased by the project. Based on this, the total number of houses lost would be 15.

47 *Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment Report*

48 1 USD is approximately equivalent to NPR 100.

5. SALIENT FEATURES OF THE PROJECT

Some of the key features of the project are:

- The weir site is situated on the left bank of the Trishuli River (in Dhunche VDC) and the right bank of the Trishuli (Haku VDC), near Haku Besi. The powerhouse is situated in Baluwa Phant of Haku VDC on the right bank of the Trishuli River.⁴⁹
- A 77 m wide diversion dam will be located 275 m downstream of the confluence of the Trishuli and Bhotekosi rivers. The weir, designed as a concrete gravity dam, stands 30 m above the ground and has a 26.3 m deep concrete foundation.⁵⁰
- As a run-of-river facility, the project will be constantly diverting water up to the maximum diversion capacity of 76 m³/s. A 9.82 km headrace tunnel will be built to transport the diverted water to an underground power station where three 72 MW Francis turbines will be installed.⁵¹ A 19.3 km long access road will be built to connect the power station (Mailung Dovan) with the dam site.⁵²
- The project includes an approximately 8 km long, 220kV transmission line.⁵³ The transmission survey license was issued on 20 February 2017 and remains valid for a year.⁵⁴ The Initial Environmental Examination (IEE) was completed and submitted to the Nepal government for approval in December 2014.⁵⁵ Information on the impact of the transmission line on the environment and communities is not available.

49 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 86.

50 ESSA Technologies Ltd, op. cit., p. 7.

51 Ibid, p. 7.

52 Ibid, p. 8.

53 World Bank, 'Integrated Safeguard Data Sheet', Report no. 95297, 10 March 2015, p. 2, <http://documents.worldbank.org/curated/en/201561468279349162/pdf/952970ISDS0Con00Box385460B00PUBLIC0.pdf> (accessed 17 March 2017).

54 Ministry of Energy, Department of Electricity Development, 2017, www.doed.gov.np, (accessed 25 October 2017).

55 ESSA Technologies Ltd, op. cit., p. 9.

- The concession period of the project is 35 years, including approximately 5 years of construction period.⁵⁶ The total workforce including skilled, semi-skilled, and unskilled labour during the peak construction period of the proposed project will comprise about 1100 people.

56 NWDEC, 'Project Summary', op. cit.

6. ABOUT THE INHABITANTS IN THE PROJECT AREA

Rasuwa is part of the ancestral homeland of the Tamang people. It falls within the territory popularly known as Tamsaling, meaning 'the land of the Tamang people'. Before the conquest of Nepal in the eighteenth century, this territory stretched from the Budhi Gandaki River in the west to the Dudh Koshi in the east.⁵⁷ Tamangs are a historically marginalized indigenous group that has faced widespread exploitation at the hands of the ruling elite. Since the formation of the Nepali state, the high-caste rulers at the centre subjected the Tamang to forced labour, appropriated their land, suppressed their language and culture, and violently quelled their attempts at resistance.⁵⁸ Centuries of oppression has left the Tamang impoverished and desolate. The Tamang people have long demanded an autonomous Tamsaling province in their traditional homeland. But the demand was crushed amid the political developments that followed the dissolution of the first Constituent Assembly in 2012.

A total of 7181 people, i.e. 1646 households, live in the three project-affected VDCs – Haku, Ramche, and Dhunche.⁵⁹ Haku has a total population of 2169 (443 HH), Ramche has 2268 (489 HH), and Dhunche has 2744 (714 HH).⁶⁰ Tamang is the major ethnic group in all the project-affected VDCs – Haku (93 percent), Dhunche (49 percent), and Ramche (96 percent).⁶¹ Other ethnic groups in the project-affected VDCs include Dalit, Gurung, Magar, Newar, Tharu, Chhetri and Brahmin.

Haku is by far the most affected VDC because the majority of the lands and forest areas acquired for the project lie in Haku VDC. The residents of Haku will bear some of the most severe impacts of the project such as displacement from

57 M.S. Tamang, 'Tamang Activism, history and territorial consciousness', in D. Gellner (ed.), *Ethnic Activism and Civil Society in South Asia*, New Delhi, Sage Publications, p. 271.

58 D. Holmberg et al., 'Local Production/Local Knowledge: Forced Labour From Below', *Studies in Nepali History and Society*, vol. 4, no. 1, 1999, pp. 5-64.

59 NESS, op. cit., p. 13.

60 Ibid, p. 13.

61 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 198.

ancestral lands, loss of livelihoods, and restriction on access to community forests. In the most affected settlements of Haku VDC – such as Haku Besi, Gogane and Mailung – Tamangs comprise 94 percent of the population; the remaining 6 percent are Dalits.⁶² Dalits make up a highly disadvantaged group that is placed in the lowest rung of the Hindu caste system.

The impact of the April 2015 earthquake further exacerbated the situation of the communities in Haku. The total death toll of the earthquake recorded by MoHA is 8979.⁶³ Over one-third of people who lost their lives in the earthquake belonged to the Tamang community.⁶⁴ In Haku, the earthquake killed over 60 people and destroyed all the houses. A quake-triggered landslide wiped out two settlements in wards 8 and 9.⁶⁵

About 95 percent of people in Haku and Ramche VDCs, and about 65 percent in Dhunche, speak the Tamang language, their mother tongue.⁶⁶ Many from the Tamang community either do not understand Nepali or have difficulty expressing themselves in Nepali. Although around 123 languages are currently spoken in Nepal, Nepali – or *Khas kura*, the mother tongue of the dominant group – is the official language of the country.⁶⁷ Given the widespread use of Tamang language in the project areas, the project should have used the Tamang language for most if not all their consultations and communication with the local people. However the project primarily used Nepali.

62 Ibid., p. 219.

63 Government of Nepal, 'Gorkha Earthquake 2072, Baishakh 12: District-wise Death toll', *Nepal Disaster Risk Reduction Portal*, <http://drrportal.gov.np/uploads/document/552.pdf>, (accessed 24 May 2017).

64 S. Subba, *Nepal Earthquake Report: Data Analysis from the Perspective of Caste/Ethnicity and Gender*, Anamnagar, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), May 2016, p. 4., unpublished; also see 'The Tamang Epicentre', *Nepali Times*, 10-16 July 2015, <http://nepalitimes.com/article/nation/April-25-earthquake-Tamang-epicentre,2407>.

65 S. Ghale, 'A Year After Nepal's Killer Quake, the Tamangs continue to Struggle on the Margins', *The Wire*, 22 May 2016, <https://thewire.in/37305/a-year-after-nepal-earthquake-tamang-community-continues-to-struggle/> (accessed 25 May 2017).

66 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 199.

67 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 199.

The literacy rate in the affected VDCs is much lower than the national average of 65.9 percent.⁶⁸ More than 60 percent of the population is non-literate – Haku (58 percent), Dhunche (49.01 percent), and Ramche (87.97 percent).⁶⁹ Low literacy rates among the project-affected communities should have led the project to spend more time and effort on explaining and clarifying the overall nature, as well as the adverse impact, of the project. However most of the project-affected families are ill informed about the project and their entitlements and rights. Lack of proper information makes affected communities vulnerable to exploitation.

Compared to Haku and Ramche VDCs, Dhunche, the district headquarters, has better infrastructure. People in Dhunche have a higher socio-economic status. Haku and Ramche lack adequate infrastructure such as roads, health services, drinking water supply, and schools. Dhunche has one district-level hospital, while Haku and Ramche each has one sub-health post that lacks adequate staff and facilities.⁷⁰ Interviews with displaced families suggested that the project was able to garner support from them by promising to invest in infrastructure like roads, schools, and health services. The state's inability to provide basic services and infrastructure created a favourable environment for the project to push through their agenda. There was little resistance from the affected communities when the project acquired lands, houses, and community forests.

Although agriculture is the main occupation in the project-affected VDCs, food sufficiency is low. Majority of the households (81.14 percent) in the project-affected VDCs are food sufficient for only three months a year, and only around 2.24 percent can sustain themselves for nine months.⁷¹ All wards of Ramche and Dhunche have access to electricity supplied from the national grid. But this is not the case for several wards of Haku VDC (ward 1, 8, 9, and parts of ward 7). Before the earthquake those wards of Haku used to rely on alternative sources of energy like peltric set, solar panel, kerosene, and micro hydro project. The EIA

68 Central Bureau of Statistics, *National Population and Housing Census 2011 - National Report*, Kathmandu, Central Bureau of Statistics, 2012, p. 4, <http://cbs.gov.np/image/data/Population/National%20Report/National%20Report.pdf> (accessed 16 February 2017).

69 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 199.

70 Ibid, op. cit., p. 204.

71 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 199.

suggests that each HH owns an average of 0.5 hectare of land, which is very low.⁷² Out of that land, *Khet* comprises 0.05 hectare (10.17 percent), *Pakho* 0.28 hectare (57.63 percent), and *Bari* 0.16 hectare (32.20 percent).⁷³

The Tamang people's deep ties to their ancestral lands, forests, and nature are still reflected in their beliefs, culture, traditional knowledge, and sustainable ways of life. For most Tamangs, mountains, forests and rivers are sacred places where powerful spirits reside. People believe that "human activities disturb the spirits... and therefore some sort of compensation is required."⁷⁴ The social structure and institutions in the project-affected areas have developed over a long period of time. Tamang settlements are usually made up of extended families. They are a close-knit community and practise a communal way of life, taking part in regular gatherings, rituals or ceremonies and festivals. The community members depend on each other for social, economic and psychological well-being. Although the role of Tamang traditional institutions in the project-affected areas is gradually declining, traditional leaders like Pombo, Bonbo, Labonbo, Labtaba and Lama still perform their social and cultural roles.⁷⁵ The cultural capital of the Tamangs and their community cohesion is undermined by project-induced displacement, restriction on access to ancestral territories and resources, and influx of workers and migrants into the project areas. In addition, Tamang communities spread across various parts of Rasuwa are connected through traditional practices such as herding sheep and yak.⁷⁶ It is also important to assess the implications of project-related activities for the broader community beyond the directly affected areas. Such intangible losses and long-term consequences faced by indigenous communities are not easy to quantify in monetary terms and often overlooked by project developers. To address this critical issue, the UT-1 project needs to develop appropriate solutions and remedies in consultation with project-affected communities, relevant stakeholders, and indigenous experts.

72 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, June 2012, Kathmandu, NWEDC, p. 209.

73 Ibid.

74 NESS, op. cit., pp. 47-48.

75 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, op. cit., p. 228.

76 Interview with project-affected families of Haku, wards 8 and 9.

7. RELEVANT LEGAL FRAMEWORK

National and international laws, regulations, policies and periodic plans form the basis of compliance for the project. In addition, the project has the obligation to comply with policies put in place by the project's lending organizations such as the IFC and other international banks for managing environmental and social risks.

Some of the most relevant national laws are related to electricity, hydro development, water, land acquisition, local governance, conservation, and forests. In addition, international instruments such as ILO Convention 169, the United Nations Declaration of the Rights of IPs, and the Outcome Document of the World Conference on IPS (WCIP) provide standards and guidelines for protecting the rights of indigenous peoples. The project also needs to take into account international environmental agreements ratified by Nepal. Article 51 (b) (3) of the Constitution of Nepal 2015 obligates the state to pursue policies related to the implementation of treaties and agreements to which it is a state party. Further, according to the Treaty Act,⁷⁷ treaties ratified by Nepal prevail over national laws that are inconsistent with them.

In keeping with the research objective, this study primarily focused on the project's compliance with IFC's Performance Standards. Out the eight IFC PS standards, PS 1 on the Assessment and Management of Environmental and Social Risks and Impacts, PS 5 on Land Acquisition and Involuntary Resettlement, and PS 7 on Indigenous Peoples are most relevant to the UT-1 project. Prior to IFC financing, the project is subject to a social and environmental review during which potential impacts are identified and remediation measures proposed. Since IFC is the shareholder and lender of the project, NWEDC is obliged to comply with IFC standards and policies. This is also a condition set forth in the Project Development Agreement (PDA).⁷⁸ At least seven supplementary

77 Section 9 (1) of the Treaty Act 1990. Likewise, Article 51 (b) (3) of the Constitution of Nepal 2015 obligates the state to pursue policies related to the implementation of treaties and agreements to which it is a state party.

78 Article 11.4.2 of the PDA states: "The Company shall comply with and carry out the Project in accordance with the Performance Standards and shall, in addition to its obligations under Section 11.3 (Plans), develop necessary guidelines and plans to ensure compliance with the Performance Standards [IFC]", Ministry of Energy, op. cit., p. 44.

and complementary studies⁷⁹ have been carried out to ensure that the project conforms to IFC standards.

The research focuses on four key aspects while assessing the project's compliance with IFC performance standards. They are related to: 1) free prior informed consent, 2) physical and economic displacement, 3) displacement and damage related to the project's access road, and 4) participation of women.

7.1. FREE INFORMED PRIOR CONSENT IN RELATION TO THE PROJECT

IFC has placed the project in 'A' category due to the high degree of social and environmental risk and impact associated with the project. The 99.79 ha of land acquired for the project falls in the ancestral territory of the Tamang community. An 11 km stretch of the Trishuli River will be dewatered and diverted to generate electricity, and this will affect the community's access to water resources. For generations the Tamang have depended on their ancestral lands, river and forests for their livelihood and cultural survival. Due to their low-intensity use of these resources, the Tamang have been able to protect them and use them sustainably. The project would not have been able to exploit the resources had the inhabitants not managed the resources well for generations. Studies carried out for the project have also documented the Tamang's ties to the land, forest and river in the area.

PS 7 on Indigenous Peoples recognizes that the culture, livelihoods, spiritual belief, social institutions, languages, and wellbeing of indigenous communities are threatened when their lands are encroached upon, transformed, or significantly degraded. Therefore, the main goal of PS 7 is to ensure that adverse impacts

79 Apart from the mandatory Environmental Impact Assessment (EIA) Study Report prepared in 2012, the project developer, i.e. NWEDC, prepared additional assessment reports and a plan to meet IFC policies and standards in 2014. The reports are: 1) Supplemental Environmental and Social Impact Assessment, 2) Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment, 3) Complementary Environmental Baseline, 4) GIS Mapping and Spatial Analysis, 5) Cumulative Impact Assessment, 6) Environmental Flows Assessment, and 6) Construction Environmental and Social Management Plan.

of projects on communities are avoided, and when avoidance is not possible, minimized and compensated. PS 7 and PS 1 on Assessment and Management of Environmental and Social Risks and Impacts require the project to obtain Free, Prior, and Informed Consent (FPIC) of the affected indigenous communities when projects are being developed in their territories. In line with the essence of FPIC, PS 7, para 12 also requires the client to document: "(i) the mutually accepted process between the client and affected communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations." However, the project has not disclosed evidence that it carried out negotiations with the affected communities to reach agreement. In addition, as Nepal is a party to ILO Convention 169 and has adopted UNDRIP, the project also needs to comply with these international instruments. FPIC is one of the key provisions in ILO 169 and UNDRIP.

Despite the scale of impact on indigenous communities, the project has not obtained their Free Prior and Informed Consent. According to PS 7, para 10 on Participation and Consent, "The engagement process includes stakeholder analysis and engagement planning, disclosure of information, consultation, and participation, in a culturally appropriate manner." Although all project-affected families, particularly women, speak the Tamang language as their mother tongue, all communication/consultation regarding the project was carried out in Nepali. Similarly, PS1 para 30, 31 and 32 mention specific steps that projects are required to follow during consultation and FPIC. Accordingly, the consultation process should have enabled the affected communities to fully understand the project's impact on their lives. Community members should have been involved in shaping key decisions and plans of the project. Interviews with affected community members and documentation related to consultation reveal that consultations were carried out as a mere formality; the opinions and perceptions of affected communities and stakeholders had no bearing on the project decisions. Many important concerns and suggestions of project-affected communities, as well as some recommendations of local government

authorities,⁸⁰ such as the Village Development Committee, are not reflected in the final project design and mitigation measures. The EIA report includes a budget of NPR 64 million 50 thousand under the heading 'Environmental Enhancement Programme'. The enhancement programme was designed with the objective of addressing some of the development related concerns raised by local communities and stakeholders during consultation meetings.⁸¹ It was planned as the project's corporate social responsibility towards the project-affected communities.⁸² However, many of the recommendations made by the communities and local government authorities during consultations remain unaddressed. For instance, one of the concerns that they raised most frequently was related to provision of jobs/employment for affected communities. But affected communities lamented that instead of giving them job opportunities as agreed upon during the consultation, the project brought most of the construction workers from outside Rasuwa district. Chegu Lama, a project-affected person from ward 8 of Haku, said that the project claims that they are hiring workers from outside Rasuwa due to a shortage of skilled workers in the project areas. "In reality the project wants cheap labour that they can exploit," he said. "They don't want affected communities to get information about the project through their involvement in the project."

A public hearing of the project was organised on 5 November 2011. Around 353 people from affected communities participated in the event. Although the number of participants was significant, only 12 of them voiced their concerns.⁸³

80 For instance, in a letter dated 26 August 2011 (letter no. 612) sent by the Ministry of Environment, the Ministry suggested including several points in the revised version of the EIA. One of the suggestions (no. 5) was to address questions related to the provision of shares to locals and benefit sharing. Despite this, the final EIA report doesn't address these questions. See the *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, vol. 2 (Annexes), June 2012, <https://disclosures.ifc.org/#/projectDetail/ED/35701>

81 Some of the areas supported under the Environmental Enhancement Programme are: education, health, road, sanitation, irrigation, water, agriculture, rural electrification, women development. NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA)*, op. cit., 339.

82 Ibid, p. 335.

83 Twelve participants who expressed their opinions were: Lakpa Tamang, Karsang Tamang, Santemba Tamang, Dawa Lakpa Tamang, Prakash Pd Kafle, Phurba Tamang, Risha Nurbu Tamang, Rimbarke Tamang, Nima Dinu Tamang, Kripa Tamang, Sedar Tamang, and a representative from mother's group. The list of participants is available in the *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*.

The low level of participation of affected families during such an important event indicates their level of awareness about the project. Project developers did not disclose adequate and relevant information about the project to affected communities during consultation, which is in breach of the provision PS 1 para 2. For instance, a synopsis of the EIA was distributed to participants during the public hearing, but the document didn't provide sufficient information on the project's impacts on affected communities. Furthermore, it downplayed the adverse impacts of the project and concluded that the project would cause minimal physical and biological harm.

During the baseline studies carried out for the project, the researchers/study team drew on the affected communities' knowledge of the environment and ecosystem in the project area. But the affected communities were not given a role in shaping decisions regarding the project. The knowledge that the communities generously shared with the project representatives was used largely for the benefit of the project. Meanwhile, project-related information/findings gathered by project representatives were not adequately disseminated to the affected communities. Contrary to the provisions PS 1, para 2, and PS 1, para 35, the project did not establish a grievance mechanism to receive and address the communities' concerns regarding the project's social and environmental performance. Due to the delay in establishing an effective grievance mechanism, affected communities have not been able to seek remedy for harms caused by the project. Timely resolution would have improved the situation of many affected communities and prevented it from deteriorating further.

7.2. PHYSICAL AND ECONOMIC DISPLACEMENT RELATED TO LAND ACQUISITION

IPS 5 and PS7 outline various measures aimed at mitigating and minimizing adverse impacts, and ensuring that livelihoods and living standards are restored, or improved. "Performance Standard 5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. Involuntary resettlement refers both to physical

displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use.”⁸⁴ As articulated in PS 5 and PS 7, the project has caused physical and economic displacement of Tamang communities in several ways – they will lose their ancestral lands and their access to six community forests and the river. With regard to ancestral land, 3.8 ha of private land inhabited by 21 families and 15.7 ha of Guthi land inhabited by 19 families in Haku VDC were acquired by the project.⁸⁵ Around 15 houses were also acquired.⁸⁶ Forty households whose private and Guthi land was acquired received compensation amounts at the rate of NPR 500,000 per 0.05 hectare. According to the project document, 15 houses got compensation for their houses that stood on the land acquired by the project. The compensation amount provided for the houses is not mentioned in the project documents. However, 15 HHs in wards 8 and 9 of Haku reported during interviews that the project has not provided them compensation for the houses that stood on the private land acquired by the project in 2013-2014. Some of the affected members said they had made several attempts to get the compensation amount, but the project representatives have been delaying the process. The exact number of displaced families remains unclear, and will have to be confirmed after a review. The project needs to review and update the data on displaced families, and provide compensation based on IFC standards and other laws applicable to project-affected people.

When asked how the project representatives approached the affected communities for land acquisition, displaced families said that the project representatives started

84 International Finance Corporation (IFC), ‘Performance Standard 5: Land Acquisition and Involuntary Resettlement’, 2012, p. 1.

85 NESS, op. cit., p. 53.

86 The figure for the total number of houses acquired by the project, i.e. 15, is based on information regarding the acquisition provided in the *Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment* report. According to the report, the project acquired four houses (three belonging to Dalits and one to Tamang) and four cowsheds. The report also provides the name list of owners of 11 more houses acquired by the project (Tamang families). Based on this, the sum total of the houses lost would be 15.

off by saying that their land fell in the project area and that the project would have to acquire it. Right from the start land acquisition was portrayed as something inevitable – a situation in which affected families had little or no choice to say no. The affected communities were not made aware of their rights and entitlements in relation to the project. As a result they had weak bargaining power and were unable to assert their rights. Displaced families said the project representatives persuaded the communities to sell their land in return for cash compensation. In addition, project representatives gave them false assurances that the project would build a house for each of the families that would lose their land, as well as provide them employment in the project. The families lamented that the project had neither built them houses nor given them jobs.

When a project is being built on lands that are traditionally owned by indigenous communities or under customary use, the project has to adopt the measures outlined under provision 14 of PS 7. One such measure is to provide land-based compensation or compensation-in-kind in lieu of cash compensation where feasible. If the project developers are not able to offer suitable replacement land, they must provide verification that such is the case. Affected IPs should then be provided non land-based income-earning opportunities over and above cash compensation. Although the livelihood of all the affected families was land-based, i.e. agriculture, the project did not offer a land-based solution as an alternative. In addition, not a single person interviewed knew that such an alternative existed.

Displaced families that were interviewed said that they were not provided compensation for their standing crop, trees, and medicinal plants in their land. Some complained they did not receive compensation for the animal sheds and shacks that stood on the land acquired by the project. Fifteen households⁸⁷ reported that they had not received cash compensation for houses built on the land acquired by the project, even though project representatives had told them

87 15 households of Haku: Phai Lama Tamang's house in ward 9, Wang Lama's in ward 9, Norsingi Tamang's in ward 8, Urchen Singi Tamang's in ward 8, Dawa Lama's in ward 8, Mingmar Tamang's in ward 8, Chegu Lama's in ward 8, Ladeu Ghale's in ward 9, Wangde Ghale's in ward 9, Yoyalbo Ghale's in ward 9, Langde Ghale's in ward 9, Sonam Tamang's in ward 8, Butti Tamang's in ward 9, Kesang Buti Tamang's in ward 9, and Urchi Tamang's in ward 8.

they would. While claims and grievances of the affected families have to be further investigated before the project addresses them, the compensation provided to the communities clearly fall below the standards outlined in PS 5 and PS 7.⁸⁸

Majority of the families who lost their land to the project were non-literate. They lacked the knowledge and skills required to manage the cash compensation they received. Also, the cash may seem large by village standards, but it was hardly enough for them to buy adequate land for resettlement in a new location. Many of those interviewed had already used the money to meet household expenses, such as their children's education, loan repayment, and daily necessities. They have not only lost their land but also lack the means to find their footing in a new place. As non-literate members of a marginalized community, they are likely to face numerous social challenges on top of financial hardship.

About 16 families who lived on the Guthi land were swindled out of NPR 1 million 5 hundred thousand after a local took their money promising to prepare their land ownership certificates.⁸⁹ The person who cheated them was eventually jailed but the families did not receive the money they lost. The compensation money also disrupted communal harmony and led to family feuds since it had to be divided among members of the family. The detrimental impact of cash compensation on vulnerable project-affected families has been documented in various hydropower projects such as Kulekhani, Kali Gandaki, and Mid-Marsyangdi.⁹⁰ In many cases

88 For instance PS 5 (20) mentions that in case of physical displacement, which involves the movement of people in the project area to another location, the client [project] will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons. New resettlement sites built for displaced persons must offer improved living conditions...". In case of economic displacement, PS 5 (28) states: "If circumstances prevent the client from providing land or similar resources as described above, alternative income earning opportunities may be provided, such as credit facilities, training, cash, or employment opportunities. Cash compensation alone, however, is frequently insufficient to restore livelihoods." See the IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement.

89 Displaced families claim they lost NPR 1 million 5 hundred thousand to Nirbahadur Lama.

90 'Financial Literacy Training Should be Part of Project Implementation', *IBN Dispatch*, Year 2, issue 2, 2016, pp. 4-5, <http://www.ibn.gov.np/financial-literacy-training-should-be-a-part-of-project-implementation>, (accessed 2 April 2017).

lack of knowledge about cash management has resulted in further impoverishment of project-affected families despite the compensation.

In April 2015 a massive earthquake struck Nepal. Rasuwa was one of the most affected districts. The social and economic situation of the project-affected families worsened after the disaster. Most of them continue to live in temporary shelters on rented or public land. Their future remains precarious and uncertain. If the displaced families had been provided necessary training, orientation, and other support in line with PS5 and PS7, the negative consequences could have been minimized or mitigated.

With regard to community forests, the project has acquired the land of six community forests⁹¹ (approx. 76.7 ha). The studies carried out for the project also reveal that many households in the area depend on community forest resources. Yet the project has not identified the number of households that will be affected by the loss of the community forests. This oversight is deeply problematic. For generations the affected communities have nurtured the forests and depended on them for their daily needs such as fuelwood, fodder, timber, and medicinal plants. Communities also use the grazing pastures (Kharka) in the community forests. PS 5 clearly states that involuntary restriction on land use and access to natural resources amounts to economic displacement.

The baseline studies of the project show that the project-affected families use the stretch of the Trishuli River in the area for various purposes like drinking, cattle feeding, bathing, washing, traditional water mill, irrigation, fishing, and recreation. Similarly, 8 Dalit households (50 people) have traditionally used the riverbank for cremation for generations. Although the project has identified the river's importance in the lives of the local people and the impact of the project on river resources, it has not outlined any compensatory measures in this regard.

91 Affected community forests are: 1) Larwang Pakha (area: 5 ha, No. of forest user households: 49, ward 3), 2) Thangsinh Pakha (area: 35 Ha, No. of forest user households: 61, ward 3), 3) Lumbu Danda (Buchet) (area: 5.60 ha, No. of forest user households: 25, ward 7), 4) Larwang Pakha Tudi Danga (area: 14.74 ha, No. of forest user households: 49, ward 3), 5); Dhanasila Kanya (Jongjang Pakha) (area: 30.18 ha, No. of forest user households: 50, ward 9) and 6); Dakshin Kali

According to the project document, acquisition of lands began in 2013 and was completed in 2014. The short time span indicates the degree of priority that project developers placed on land acquisition and the urgency with which they carried out the process. However, the same level of priority was not given to resettlement of communities who were physically and economically displaced by the project. The project has not yet prepared a Land Acquisition and Livelihood Restoration Management Plan to manage various forms of displacement in accordance with IFC PS5. The project was required to make this plan before the families were displaced.

The project-induced loss of livelihoods, joblessness, homelessness, food insecurity, loss of access to common resources like community forests, and disruption of community cohesion are likely to worsen the socio-economic situation of the displaced families. Through its Land Acquisition and Livelihood Restoration Management Plan, the project should ensure that the standard of living of the affected families does not deteriorate further. One of the main goals of development is poverty reduction. The project must ensure that development work does not contribute in further impoverishing some of the most marginalized sections of the society.

7.3. DISPLACEMENT AND DAMAGE RELATED TO PROJECT'S ACCESS ROAD

The construction of the access road in Haku VDC began in December 2013.⁹² The road runs along a steep slope. A 5.3 km stretch had been completed by April 2015. The earthquake damaged the stretch as well as the bridge and camp facilities. Cutting an access road into a steep slope in rugged terrain involves the use of high-intensity explosives to blast rocks, drilling, excavation of huge amounts of soil,⁹³ clearing of trees and vegetation from massive tracts, and use of heavy equipment and vehicles. Landslides linked to road construction are a common occurrence in mountainous terrain.

92 Interview with community liaison officer of the project

93 30,000-40,000 cubic meters soil is excavated to build just one kilometre-long road in the Himalaya. For details, see C.V.J. Varma, B.S.K. Naidu, and A.R.G. Rao, 'Siltng Problems in Hydro Power Plants', *Proceedings of the First International Conference*. Rotterdam, A.A Balkema Publishers, 1999, p. 60.

The earthquake threat identified in the Environmental Impact Assessment in 2011 became a reality in April 2015. The adverse impact of construction work on the environment and communities in Haku had been clearly identified in multiple sources – baselines studies, consultation with affected communities of Haku, and to some degree in the mitigation plan of the EIA. The high risks associated with landslides, GLOF, and seismic hazard in the project area have been discussed at length in the baseline studies. Likewise, documentation of consultation with affected communities prior to construction work reveals that affected communities had repeatedly stated that construction of access road would trigger massive landslides and pose a risk to entire villages situated above the proposed road.⁹⁴ In view of the possible adverse impact, the mitigation plan in EIA has allocated a small budget of NPR 500,000 to compensate for damages caused by the blasting operation.

The EIA contained a timely warning of the possible mega earthquake and its impact on the project area. The “seismic hazard risk” section in the EIA 2011 had identified a high degree of seismic risk in the project area because: 1) a mega earthquake was due in this segment of the Himalaya, and 2) the existence of the Main Central Thrust (MCT) in the project area further increased the seismic risk.⁹⁵ The study states that, “A detailed seismicity study is recommended to derive the seismic design coefficient during the detailed design study.” There are no available reports indicating that such a study was conducted. The findings of such a study would have been critical in shaping the design of the project and its mitigation measures. Likewise, the EIA states that since the construction work is likely to exceed the threshold for industrial and construction noise exposure – i.e., criterion level I 90dB (A) – it could affect humans, wildlife and livestock in the project area.⁹⁶ The report further states: “Noise exceeding 90 dB (A) has the potential of harming human health by psychological and ontological (sic) (ear

94 NESS, *opt. cit.*, p. 51.

95 NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, *op. cit.*, p. 122.

96 *ibid*, p. 236

diseases) effects.”⁹⁷ But even the potential harm related to noise exposure has not been addressed in the mitigation plan.

Despite identifying a range of severe risks, the project did not take adequate measures to mitigate and minimise such risks. The project has thus failed to comply with the IFC performance standards. PS 1, para 11, states: “Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate environmental and social impacts, the identification of risks and impacts will take into account the findings and conclusions of related and applicable plans, studies, or assessments prepared by relevant government authorities or other parties that are directly related to the project and its area of influence.” PS 1, para 17 further notes that “[t]he risks and impacts identification will take account of the outcome of the engagement process with Affected Communities as appropriate.”

One of the main objectives of PS 1 is: “To adopt a mitigation hierarchy to anticipate and avoid, or where avoidance is not possible, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to workers, Affected Communities, and the environment.”⁹⁸ By failing to take adequate measures commensurate with the identified risks in a timely manner, the project has failed to prevent and mitigate the devastating consequences – loss of lives, livelihoods, property, habitat – associated with the construction work.

All the houses in wards 8 and 9 of Haku VDC were completely destroyed by massive landslides triggered by the earthquake. Much of the land was swept away. At least 60 people lost their lives. The settlements in the two wards are located approximately 300 metres above the access road. According to affected communities, the drilling and blasting that went on continuously for about nine months made the land weak and increased its vulnerability to landslides. During

97 *ibid*, p. 236

98 International Finance Corporation (IFC), Performance Standard 1 Assessment and Management of Environmental and Social Risks and Impacts, *op. cit.*, p.1.

road construction, people who lived above the construction area felt strong vibrations on their land and on their mud-and-mortar houses. "Pots in our kitchen clattered and fell, and dust fell from our roofs," said one villager.

The construction had a particularly severe impact on the inhabitants of Gumchet village in ward 1, Dhunche. Gumchet is a settlement of 16 households, all members of an extended family. One of the most impoverished settlements in the project area, it lies along the Trishuli river, around 100 metres below the access road. Residents of Gumchet claim that the intensive construction works and blasting operation caused immense damage to their land and crop. The massive rocks and large amounts of debris that fell into the river caused the river to swell. Their land was inundated as a result and their fields were swept away. People from wards 8 and 9, and residents of Gumchet village said that the blasts were so loud their ears would feel clogged up for hours.

Affected communities believe that the damage and loss they suffered during the earthquake would have been less severe if the road construction hadn't made the mountainsides weak and vulnerable. Even at a cursory glance, one can see that settlements situated above the access road suffered the most damage, whereas parts further away from the access road are far less affected. Although the affected communities have raised grave concerns about this, the project has not followed up with necessary assessments. Instead dismissive counterclaims are made. For example, Suman Bhatta, Community Liaison Officer of the project, said, "A massive avalanche devastated Langtang even though there was no blasting operation there. Affected communities are making such claims because they lack awareness." Independent experts will need to analyse these claims and counterclaims and propose a way forward.

Since the earthquake, majority of affected families of wards 8 and 9,⁹⁹ and Gumchet have been living in poor conditions in temporary shelters on public or rented land. Most of them cannot go back to their villages because vast swathes

99 Eighty-two earthquake affected HHs of wards 8 and 9 of Haku VDC recently resettled in Battar, Nuwakot district through their personal initiative. They include households directly affected by the UT-1 project.

of their lands have become completely uninhabitable. All of the 16 households in Gumchet are reported to have received NPR 5000 (USD 50) each as compensation for the damage caused by the project. Apart from that the affected families in wards 8 and 9, and Gumchet have not received any compensation.¹⁰⁰

It was reported that the project provided NPR 40 million (USD 400,000) to provide post-earthquake relief and support in the project-affected VDCs.¹⁰¹ The money could have been used to buy land for resettlement but affected people said the political parties decided to spend it on other projects without consulting them.¹⁰² Displaced families of Haku said there was a lot of corruption involved. All they received was a 30 kg sack of rice and two bundles of corrugated zinc sheets for each household. Many families from wards 8 and 9 rejected the rice and zinc sheets in protest.

100 Interview with project-affected families of wards 8, 9 and Gumchet.

101 Interview with a member of the UT-1 Concern Committee.

102 The money was used to support a health post in Haku, a school in Ramche, and a hostel for students in Dhunche.

IMPACT OF ACCESS ROAD

Personal testimony of Dawa Gyalbo Ghale

Dawa Gyalbo Ghale, 35, is originally from Gumchet, Dhunche-1. His family has lived in Gumchet for six generations. They owned 0.81 hectare of land there (to be shared among his father and four brothers). Since the earthquake, Ghale has been living in a temporary shelter on public land in Thade,¹⁰³ ward 2 of Dhunche VDC.

There are 16 households in Gumchet village including Gyalbo's. Among the 16 households, Ghale's land was most at risk due to its proximity to the river. The project started constructing the access road from late 2013 on the steep hill facing the river and Gumchet village. The drilling and blasting operation lasted for about nine months. The blasting used to be carried out 4-5 times a day. Large amounts of rocks and debris fell into the river and on Ghale's field, and sometimes also on his house. A huge amount of construction waste was also disposed into the river. The project people would inform the locals about blasting on the same day that it was to be carried out. They would ask them not to come near the cliff and to remove their cattle from the area. But this didn't prevent damage. Rocks fell on Ghale's roof and made holes in it. They fell on his field, destroyed his crop and lowered the land quality. The blasting operation produced loud noise and vibration, and released thick dust in the air. The large rocks that fell into the river diverted the course of the river and washed away 9 ropanis of Gyalbo's land (out

103 Thade now falls in ward number 6 of Gosaikunda rural municipality.

of the 16 ropanis he owned). Before the earthquake, Ghale had complained at the project office in Mailung about the damage. But all he received was a cash amount of NPR 5000. In April 2015 the earthquake completely destroyed what remained of his house and land. His mother, sister-in-law, and 3-year-old nephew were killed in a quake-triggered landslide. His family was displaced.

Since the earthquake, Ghale has been living on public land in Thade. The temporary shelter he now lives in was built with the support of Goal Nepal. The NGO made five temporary shelters; Ghale's relatives live in the other four. He has four children to look after; two of them are in school. Ghale now works as a labourer and lives from hand to mouth. His wife earns a little by selling homemade liquor. When they were in Gumchet the corn and millet they grew on their land was enough to feed them for a year. Now they have to buy everything and struggle to survive. They have no access to safe drinking water; they drink unfiltered water from Thade Khola, a river close to their shelter. Among the 16 families (all extended family members) that got displaced from Gumchet, 5 families are in Thade (Ghale's and his brothers') and 11 are in Grang in Ramche VDC, ward 1). Ghale says that the project should support them to build a house, and also provide fertile agricultural land as compensation. He is worried that he and his family might be evicted anytime from the public land.

7.4. INADEQUATE PARTICIPATION OF WOMEN

PS 5 and PS 7 state that the project proponent is responsible for ensuring that the situation of women is not worsened by the project. PS 5, para 10 requires the project proponent to ensure that the preferences and priorities of women are identified, and addressed in the process of involuntary resettlement. Only meaningful participation and consultation can enable women to speak and articulate their concerns. However, participation of women in the entire consultation process was inadequate and tokenistic. While the project's baseline indicates that around 15 percent of the project-affected families are headed by women,¹⁰⁴ the project doesn't take into account women's specific concerns and challenges associated with the project. Most of the women in the project-affected community don't speak and understand Nepali. This was evident during our research where communication with women would not have been possible without interpreters. Yet interpreters/translators were not used during consultations carried out by the project. Nor was project information disseminated in a language that women (and many men) could understand easily.

PS 7 para 14 states: "The assessment of land and natural resource use should be gender inclusive and specifically consider women's role in the management and use of these resources." Women in Tamang communities have a significant role in using and managing agriculture and community forests. They hold indigenous knowledge and skills related to farming, seeds and medicinal plants, and weaving. These skills and practices could be severely hampered by the loss of lands and restriction on access to natural resources. The baseline study in the project-affected area shows that a larger proportion of women are engaged (66 percent of women) in agriculture, including in the sale of agricultural produce, than men.¹⁰⁵ It is evident that acquisition of agricultural lands and community forests would have serious consequences for women. But women's concerns were neither identified properly during consultations and baselines, nor reflected in the mitigation measures. Women whom we interviewed expressed

104 NESS, op. cit., p. 54.

105 Ibid, p. 36

a greater sense of loss for their ancestral lands and livelihoods. They said the compensation money was handled and managed by the male members of the household. Most of the women said they regretted selling their land and have finally realized the consequences. Karchong Tamang, 28, was displaced from Haku Besi (ward 3 of Haku) after the project took her family's land. Her family recently bought a small house in Dhunche. "These days we have a hard time even managing a square meal," she said. "We have four children to look after. My husband works as a porter now. Everything is so expensive in Dhunche, and we have to buy everything."

8. CONCLUSION

Hydropower is presented as an unequivocal boon for Nepal. However, the context within which the hydropower sector operates is rarely questioned in the public discourse. Hydropower sector in Nepal operates in a highly politicised and hierarchical society with deeply entrenched social and economic inequalities. State power in Nepal has been concentrated in the hands of “upper caste” elites for centuries. From the central to local level, these elites expanded their economic and political power through systematic extraction and rent seeking. Despite the democratic changes of 1990 and 2006, political party leaders and state functionaries continue past patterns of monopolisation of power and resources. State resources are captured by a handful of powerful people at the expense of large segments of the population. The hydropower sector, which has grown into a high-stakes, multi-million dollar industry, is owned and controlled by elites made up of political party leaders, high-level bureaucrats, and business people.

The majority of the large hydropower projects are established in the ancestral lands and territories of indigenous communities. These communities are thus disproportionately affected by large hydro projects. Yet losses suffered by the local and indigenous communities are often viewed as inevitable collateral damage of mega development. Technocrats and project developers who profit from the project often argue that some communities are bound to bear the brunt of development and economic growth. Affected communities are treated merely as an obstacle to be managed skilfully or coerced into submission.¹⁰⁶ But development that benefits some at the cost of others is neither sustainable nor ethical. The government and stakeholders need to seriously engage local and indigenous communities to avoid harm where possible, and adopt robust mitigation measures to ensure that development projects do not worsen the social and economic situation of the affected communities. How can the

106 For example, in 2016 the government deployed armed police force against the affected communities of Sindhuli who were protesting against the Khimti-Dhalkebar Transmission Line. For details, see: <http://www.accountabilitycounsel.org/communities/current-cases/high-voltage-power-line-nepal/nepal-the-case/>

concerns of Tamang and Dalit communities, as in the case of UT-1, be negotiated in a just manner when powerful players like the IFC, NWDEC, and the state are on the other side of the negotiating table? This question needs to be addressed properly through dialogue with all stakeholders.

Participation and consultation with affected communities often amounts to a mere formality. In case of the UT-1 project, this was evident in the project's failure to obtain the free, prior and informed consent of affected communities. Even the pressing concerns of affected communities raised during the consultation were not addressed. The poorly planned mitigation measures speak volumes about the lack of preparedness of the project developer. Safeguards such as the IFC PS 1, PS 5 and PS 7 put in place to protect the rights of IPs and vulnerable groups were not just poorly implemented but violated in several instances.

The construction and operation of the UT-1 project in the fragile landscape of Rasuwa poses serious environmental risks. However, such concerns are not given due consideration. This was particularly evident in the project's failure to carry out some critical environmental studies recommended by the World Bank and the EIA. Hydropower projects must address the pressing environmental concerns related to earthquake, floods, landslides, and GLOFs. The scale of devastation caused by the April 2015 earthquake should serve as a caution for development projects that involve high-intensity resource extraction.

The conflicts and contestations in the hydropower sector are likely to sharpen as Nepal transitions from a unitary to a federal system. If the current patterns of resource monopolisation and extraction persist, the vulnerable populations will be further marginalized and pushed to the very edge. This would create a breeding ground for conflict and political instability.

9. KEY RECOMMENDATIONS:

9.1. FOR UT-1 PROJECT

- Ensure compliance with IFC performance standards, particularly PS 1, PS 5 and PS 7.
- Follow due process of FPIC in the coming days since FPIC needs to be followed at every stage of the project, particularly for issues that could have serious impact on affected communities.¹⁰⁷
- Ensure meaningful participation of project-affected indigenous and local communities in all phases of the project – planning, implementing, monitoring and evaluation.
- Provide required information on the project to the affected communities.
- Ensure both quantity and quality with respect to the representation of women in project-related consultations and decision-making processes. Women's concerns should be clearly reflected in the mitigation plans/measures.
- Prepare a Land Acquisition and Livelihood Restoration Management Plan in accordance with IFC PS 5. The Plan must also address the loss and harm suffered by physically and economically displaced households due to the serious delay in formulating this plan.
- Reassess, document, and update the final number of project-affected households. Based on the reassessment, provide compensation to the remaining households that have not received compensation for their houses or lands. Compensation and support to the displaced communities should be in line with PS 5 and PS 7.
- Provide compensation for standing crop, trees, shacks, and animal sheds in the lands acquired by the project in line with the IFC PS 5.
- Identify the exact number of households affected by the loss of community

¹⁰⁷ Asia Indigenous Peoples Pact (AIPP), Training Manual for Indigenous Peoples on Free, Prior And Informed Consent, Chiang Mai, AIPP, 2014.

forests acquired by the project. Consult affected communities to discuss ways in which their loss of access to community forests can be compensated.

- Take into account women's crucial role in the management of agriculture and forest resources. The distinct impacts of land (and forest) acquisition on women should be documented and addressed properly to make sure women's status does not deteriorate further.
- Deploy a team of experts to assess the damage caused by the construction of the access road in wards 8 and 9 of Haku, and Gumchet. At least one expert should be a representative of an indigenous ethnic group and should have earned the trust of the broader community of indigenous peoples of Nepal.
- Provide compensation and support to the (approx.) 16 extremely vulnerable project-affected households in Gumchet.
- Prioritize project-affected households and locals for employment in project-related work. Provide required training and orientation to train and prepare them for the jobs.
- Use interpreters/translators while consulting and communicating with project-affected families and provide information in the Tamang language.
- The project must update the mitigation plan in the EIA by incorporating additional risks and hazards identified in IFC's supplementary studies. Similarly, the mitigation plan should also incorporate the concerns and recommendations of affected communities and local government bodies raised during consultation.
- Prepare a benefit-sharing plan in consultation with the affected communities and relevant stakeholders. The benefit-sharing plan should be separate from the mitigation plan.

- Conduct critical assessments and prepare management plans¹⁰⁸ in keeping with IFC requirements and international standards. In particular, the project must conduct a review of the design of the UT-1 project to assess its resilience to earthquakes,¹⁰⁹ as recommended by the World Bank.

9.2. FOR IFC AND WORLD BANK

- Review and assess the project's compliance with IFC policies and standards, and take necessary measures in case of violations, oversight, or negligence.
- Follow up and act on the recommendations made by the two missions – the World Bank mission and IFC-led mission (UT-1 lenders' mission) conducted from 16-23 March 2015, and 19-24 April 2015 respectively for the UT-1 project. In particular, ensure that the project conducts the recommended assessment of post-quake damage to the site, as well as a review of design from the standpoint of earthquake resilience.

9.3. FOR THE GOVERNMENT OF NEPAL

- Ensure the project's compliance with IFC policies and performance standards (also required by the PDA), relevant national laws, and international human rights laws ratified/adopted by Nepal.
- Respect and fulfil human rights obligations enshrined in ILO Convention 169 and UNDRIP for protecting the rights of indigenous peoples.
- Revise the EIA process and standards set for hydropower projects in line with international standards and best practices.

108 The project has yet to carry out the recommended actions in line with IFC requirements and international standards. Some of the recommended actions the project should have carried out before starting construction are: an updated Project-wide Environmental and Social Management System, Land Acquisition and Livelihood Restoration Plan, Vulnerable and Indigenous Peoples Plan, Biodiversity and Wildlife Conservation Management Plan, Reforestation Plan, Catchment Area Management and Treatment Plan. To date, these supplementary studies and management plans have not been conducted. For details, see ESSA Technologies Ltd, op. cit., pp. 26-27.

109 World Bank, 'Upper Trishuli 1 Hydro Project: Project Preparation Missions', Aide Memoire, no. 99241, 2015, p.1, <http://documents.worldbank.org/curated/en/649151468179351577/pdf/99241-AM-P154109-Box393191B-PUBLIC.pdf>, (accessed on 12 February 2017)

- Review and amend hydropower policy to address the risks posed by earthquake and other geohazards to hydropower projects. In particular, formulate and enforce standard guidelines/regulations for safety assessment and mitigation taking into consideration potential earthquakes and other recurrent geohazards such as floods and landslides.

9.4. FOR EXISTING AND PROSPECTIVE INTERNATIONAL LENDERS

- Ensure the project's compliance with required national and international laws, including IFC performance standards, before and after granting loans to the project.

9.5. FOR CIVIL SOCIETY ORGANIZATIONS, NGOS, AND MEDIA

- Strengthen the capacity of project-affected communities, including those most vulnerable to the impact of hydro projects, to organise, become informed about their rights, and demand accountability from the hydropower project developers and relevant government authorities.
- Draw attention to the challenges and human rights violations faced by project-affected communities through independent studies and fact-finding missions.

9.6. FOR DONOR AGENCIES

- While making an effort to boost economic growth through their support to hydropower projects, donors should be aware of the rights of local and indigenous communities and the adverse impacts of large hydro electricity on such communities.
- Ensure that hydro project developers/shareholders fully comply with safeguard policies, national laws, and international human rights standards.
- Ensure meaningful participation of project-affected communities in all stages of the project, from planning and implementation to monitoring and evaluation.

- Support indigenous and local communities in becoming aware of their rights and entitlements in relation to hydropower projects.
- Support the development and production of renewable energy such as solar power that causes less harm to the environment and local and indigenous communities than large hydro projects.

9.7. FOR THE UN HUMAN RIGHTS BODIES & MECHANISMS¹¹⁰ SPECIFIC TO INDIGENOUS PEOPLES

- Monitor and document the impact of hydropower projects on the indigenous communities of Nepal.
- Put pressure on the Government of Nepal to fulfil its international obligations related to the rights of indigenous peoples.

¹¹⁰ Expert Mechanism on the Rights of Indigenous Peoples, Special Rapporteur on the Rights of Indigenous Peoples, and UN Permanent Forum on Indigenous Issues.

REFERENCES

- Amnesty International, 'India: Landmark Supreme Court Ruling a Great Victory for Indigenous Rights', 18 April 2013, <https://www.amnesty.org/en/latest/news/2013/04/india-landmark-supreme-court-ruling-great-victory-indigenous-> (accessed 8 April 2017).
- Srivastava, B.B., 'Land Governance: Issues, Challenges and Way forward', in Bhagat-Ganguly, B. (ed.), *Land Rights in India: Policies, Movement and Challenges*, New York, Routledge, 2016, pp. 221-222.
- Central Bureau of Statistics, *National Population and Housing Census 2011 - National Report*, Kathmandu, Central Bureau of Statistics, 2012, <http://cbs.gov.np/image/data/Population/National%20Report/National%20Report.pdf> (accessed 16 February 2017).
- 'Energy Sector Suffered Losses of Rs 18.75b due to Quake', *The Kathmandu Post*, 10 June 2015, <http://kathmandupost.ekantipur.com/news/2015-06-10/energy-sector-suffered-losses-of-rs1875b-due-to-quake.html> (accessed 6 April 2017).
- ESSA Technologies Ltd, *Final Report: Supplemental Environmental and Social Impact Assessment*, Ottawa, ESSA Technologies Ltd, 2014.
- 'Financial Literacy Training Should be Part of Project Implementation', *IBN Dispatch*, Year 2, issue 2, 2016, pp. 4-5, <http://www.ibn.gov.np/financial-literacy-training-should-be-a-part-of-project-implementation> (accessed 2 April 2017).
- Ghale, S., 'A Year After Nepal's Killer Quake, the Tamangs continue to Struggle on the Margins', *The Wire*, 22 May 2016, <https://thewire.in/37305/a-year-after-nepal-earthquake-tamang-community-continues-to-struggle/> (accessed 25 May 2017).
- Government of Nepal, 'Gorkha Earthquake 2072, Baishak 12: District-wise Death toll', *Nepal Disaster Risk Reduction Portal*, <http://drrportal.gov.np/uploads/document/552.pdf> (accessed 24 May 2017).
- Holmberg, D. et al., 'Local Production/Local Knowledge: Forced Labour From Below', *Studies in Nepali History and Society*, vol. 4, no. 1, 1999, pp. 5-64.

International Finance Corporation (IFC), Performance Standard 1 Assessment and Management of Environmental and Social Risks and Impacts, 2012.

'IFC Updated Performance Standards', 14 September 2011, <http://www.brettonwoodsproject.org/2011/09/art-568878/> (accessed 11 March 2017).

Independent Power Producers' Association Nepal (IPPAN), *Walking with Ten Thousand Megawatts in Ten Years*, Kathmandu, IPPAN, p. 35, http://www.siurihydro.com/dwd/uploads/files/Powe%20Summit%20Book_final.pdf (accessed 27 April 2017).

International Finance Corporation, *Environmental and Social Review Procedures Manual*, 2016, p.2, http://www.ifc.org/wps/wcm/connect/d0db8c41-cfb0-45e9-b66a-522c88f270a5/ESRP_Oct2016.pdf?MOD=AJPERES (accessed 28 March 2017).

International Financial Corporation, 'IFC Project Information Portal', 11 February 2015, <https://disclosures.ifc.org/#/projectDetail/ED/35701> (accessed 8 February 2017).

International Fund for Agricultural Development (IFAD), *How to do - Seeking Free, Prior and Informed Consent in IFAD Investment Project*, 2015, p. 30, <https://www.ifad.org/documents/10180/beec86e1-270d-45a1-8786-4b749c9db733> (accessed 10 April 2017).

International Rivers, 'Swindling Rivers: Run-of-River Hydro Fact Sheet', 2016, https://www.internationalrivers.org/sites/default/files/attached-files/run_of_river_fact_sheet.pdf (accessed 7 April 2017).

Koirala, S., *Hydropower Induced Displacement in Nepal*, PhD Thesis, University of Otago, 2015.

Kenrick, J., 'Extractive Industries: Conservation and Indigenous Peoples' Rights', *Occasional Paper for Extractive Industries and Ape Conservation*, Forest Peoples Program, November 2012.

Ministry of Energy, 'Project Development Agreement- Upper Trishuli-1 Hydropower Project', 29 December 2016, http://www.moen.gov.np/pdf_files/PDA-UT1.pdf (accessed 1 March 2017).

Ministry of Science, Technology and Environment (MoSTE), *Nepal Earthquake 2015: Rapid Environmental Assessment*, Kathmandu, MoSTE, 2015.

National Planning Commission, 'Plan and Programme for FY 2073/74–2075/76 BS (2017 to 2018)', 2017.

Nepal Energy Forum, 'Troubled Waters', <http://www.nepalenergyforum.com/troubled-waters/> (accessed 27 March 2017).

Nepal Environmental & Scientific Services Pvt Ltd (NESS), *Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment, Upper Trishuli-1 Hydropower Project*, December 2014.

Nepal Water and Energy Development Company (NWEDC), 'Project Summary', <http://nwedcpl.com/project/projectssummary> (accessed 15 February 2017).

NWEDC, *Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report*, June 2012, Kathmandu, NWEDC, <https://disclosures.ifc.org/#/projectDetail/ED/35701> (accessed 9 February 2017).

Portalewska, A., 'Free, Prior and Informed Consent: Protecting Indigenous Peoples' Rights to Self-Determination, Participation, and Decisions-making', *Cultural Survival Quarterly Magazine*, December 2012, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous> (accessed 12 April 2017).

Shrestha, A.B, Bajracharya, S.R., Kargel, J.S. and Khanal, N.R., *The Impact of Nepal's 2015 Gorkha Earthquake-Induced Geohazards*, Kathmandu, International Centre for Integrated Mountain Development, 2016.

Subba, S., *Nepal Earthquake Report: Data Analysis from the Perspective of Caste/ Ethnicity and Gender*, Anamnagar, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), May 2016, p. 4., unpublished.

Subedi, B., 'Preparation over PPA Talks', *The Kathmandu Post*, 16 May 2017, <http://kathmandupost.ekantipur.com/news/2017-05-16/preparations-over-for-ppa-talks-nea.html> (accessed 5 April 2017).

Sunuwar, D.K., 'Power to the People - At What Cost?', *Cultural Survival Quarterly*

Magazine, 2017, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/power-people-what-cost> (accessed 10 March 2017).

Tamang, M.S. 'Tamang Activism, History and Territorial Consciousness', in Gellner, D. (ed.), *Ethnic Activism and Civil Society in South Asia*, New Delhi, Sage Publications, p. 271.

'Trouble in Trishuli', *Nepali Times*, 14 August 2012, <http://www.nepalitimes.com/blogs/thebrief/2012/08/14/trouble-in-trishuli/> (accessed 26 March 2017).

'Upper Trishuli Licence Restoration Row: Court Stays Project Development', 22 August 2012, *The Kathmandu Post*, <http://kathmandupost.ekantipur.com/printedition/news/2012-08-22/upper-trishuli-licence-restoration-row-court-stays-project-development.html>, (accessed 24 March 2017).

Varma, C.V.J., Naidu, B.S.K., and Rao, A.R.G., 'Siltng Problems in Hydro Power Plants', *Proceedings of the First International Conference*. Rotterdam, A.A Balkema Publishers, 1999.

Water and Energy Commission Secretariat, *Energy Sector Synopsis Report*, Kathmandu, Water and Energy Commission Secretariat, 2010.

Woodman, J., 'India's of Rejection of Vedanta's Bauxite Mine is a Victory for Tribal Rights', *The Guardian*, 14 January 2014, <https://www.theguardian.com/global-development/poverty-matters/2014/jan/14/india-rejection-vedanta-mine-victory-tribal-rights> (accessed 17 April 2017).

World Bank, 'Integrated Safeguard Data Sheet', Report no.: 95297, 10 March 2015, <http://documents.worldbank.org/curated/en/201561468279349162/pdf/952970ISDS0Con00Box385460B00PUBLIC0.pdf> (accessed 17 March 2017).

World Bank, 'Upper Trishuli 1 Hydro Project: Project Preparation Missions', Aide Memoire, no. 99241, 2015, <http://documents.worldbank.org/curated/en/649151468179351577/pdf/99241-AM-P154109-Box393191B-PUBLIC.pdf> (accessed 12 February 2017).

