

## Annex 1 – EIB’s observations to OHCHR

1. *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

Both the EIB Group Complaints Mechanism (EIB-CM) and the operational services of the EIB took immediate action after having been informed about the alleged incidents of intimidation.

Accountability Counsel informed the EIB-CM on 27 January 2022 about the incidents that allegedly took place on 7 December 2021. The EIB-CM informed the relevant operational services of the EIB on the same day and organised a meeting with them on 7 February 2022. As a result, the EIB took immediate contact with the Nepal Electricity Authority (promoter). A similar and timely action was taken after the EIB-CM had been informed about the incidents that allegedly took place in April-May 2022. On the interaction of EIB’s operational services with the promoter following the incidents, please see answer to Question 4.

As part of its response to the allegations, the EIB project team organised a site mission to Nepal in June 2022 to gather additional information, including through direct discussions also at the project site with local community members involved in the incidents, the promoter – including its senior management, and the FPIC & Rights Forum. The EIB also engaged with additional stakeholders including the Ministry of Energy, the Ministry of Finance, the Asian Development Bank (ADB, the co-lender), the Nepal Federation of Indigenous Nationalities (NEFIN), the elected Chief Wards of the area<sup>1</sup>, the Indigenous Peoples Expert hired by the promoter to support the Project, and the local monitoring consultant hired by the EIB. The team also reviewed information received, including a report prepared by the Project Supervision Consultant.

The information gathered gives diverging accounts of the circumstances surrounding the incidents.

The EIB’s understanding around the incidents in April-May 2022 is presented briefly as follows:

- Some community members affected by the project are dissatisfied with the compensation offered for the Right of Way (RoW), which is the land requiring an ‘easement’ for the transmission line to be strung between two towers to transport the electricity.
- In line with the promoter’s practice (also applied to projects financed by other lenders such as the World Bank and the ADB), compensation for the RoW (land with no house and/or structure falling in the RoW) is calculated as a percentage of the total land value (in essence, ranging between 10% and 20%). The landowners with land under the RoW retain title to their land. However, they will face restrictions on the use of their land (e.g. impacts on market value of the land or on the possibility to use the land as security for a mortgage). Given the dissatisfaction of some community members with the rate of compensation proposed for the RoW, community members believed that, by letting the works continue, they would lose ‘leverage’ over the discussion about the compensation rate.
- The EIB was informed of an episode of obstruction and harassment of the contractor by some community members who aimed at stopping the works. This incident took place when the contractor started stringing the line (connecting the wire between the tower pads). The Project Supervision Consultant reported that the clashes occurred on governmental land and that a protester was pulling on the safety ropes of a labourer who was working on top of a tower, an action that could have led to a fatal accident.
- It appears there have indeed been some clashes (including physical altercations) between community members and members of the police force. According to the promoter, the police came to restore order to allow the contractor to continue the works in a safe manner. The promoter also contends that a project vehicle was vandalized and its driver was beaten as well as that the promoter’s staff took a protester to the hospital.

2. *Please provide information on the environmental and social impact assessments carried out prior to the construction of the Marsyangdi Corridor transmission line, and whether these studies were prepared with a human rights-based approach. In particular, please indicate whether any steps were taken to avoid negative social, cultural and environmental impacts on the indigenous communities located in the area of the project, including by seeking their free, prior and informed consent for the project on their traditional lands.*

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<sup>1</sup> The Chief Ward is an individual elected to act as bridge between local communities and higher bodies with administrative and budget responsibilities, in line with the provisions of the Constitution of Nepal.

The Marsyangdi Corridor transmission line (hereinafter called “the project”) is part of the South Asia Subregional Economic Cooperation (SASEC) Power System Expansion project prepared in conjunction with the ADB. The appraisal of the project took place in 2013, but after the earthquake of 2015 the project faced some delays in implementation.

The potential impacts in terms of land acquisition, resettlement and indigenous people have been addressed at the initial stage in the draft combined Resettlement and Indigenous People Plan (RIPP), which applies to the overall SASEC project. A draft Initial Environmental Examination (IEE)<sup>2</sup> and a draft Environmental Impact Assessment (EIA)<sup>3</sup> were prepared at the initial stage (in 2014) for the overall project.

The completion of the EIA procedures for the project was made a condition for disbursement in the Finance Contract between the EIB and Nepal, the borrower. Therefore, at a later stage, an IEE for the transmission line Udipur-Bharatpur (in 2017)<sup>4</sup> and a further EIA for the transmission line Manang-Udipur (in 2018) were prepared. These documents identify potential environmental and social impacts of the Project and include mitigation measures. Moreover, resettlement action plans (RAPs) for the transmission lines Manang-Udipur and Udipur-Bharatpur were respectively prepared in 2018 and 2022.

The project needs to be compliant with the Bank’s Environmental and Social standards (applicable at the time of contract signature), which adopt a human-rights based approach.<sup>5</sup> The EIB Environmental and Social Standards (“EIB E&S Standards”) provide an operational translation of the policies and principles contained in the 2009 EIB Statement of Environmental and Social Principles and Standards.<sup>6</sup> They are grouped across 10 thematic areas covering the full scope of environmental, climate and social impacts and issues. The EIB safeguards via contractual means (a continuous undertaking of the borrower) the project’s duty to comply with the EIB E&S Standards.

The inquiry of the EIB-CM into the 2018 complaint identified certain areas of non-compliance of the project in relation to the following allegations: lack of assessment of cumulative impacts as part of the EIA procedures, lack of a Stakeholder Engagement Plan, lack of final RAPs, and the RIPP not meeting the requirements. Regarding the free, prior and informed consent (FPIC) for the project by indigenous people, the EIB-CM stated in its Conclusions Report that it had not been provided with evidence that an FPIC process was conducted for the project. These gaps have been or are in the process of being addressed (See Question 5a). In terms of FPIC, the EIB has meanwhile requested the promoter to provide an IP expert opinion, which is currently under EIB’s review.

*3.a) Please provide information about specific due diligence measures taken by your bank before deciding to finance the Marsyangdi Corridor transmission line project.*

The SASEC project comprises priority investments by the ADB and the EIB in the power transmission grid, including seven new high voltage transmission lines and associated substations, as well as the expansion and upgrading of several existing substations.

At the time of the EIB’s decision to support the Project in 2014, the detailed technical design of individual project components had not been completed, and the EIB’s assessment was based on overall project documentation, including an [Environmental Impact Assessment](#) specifically developed for the Lenders and an overarching [Resettlement and Indigenous Peoples Plan](#).

The EIB conducted the appraisal of the project against the EIB E&S Standards and the national legislation of Nepal, and conducted an appraisal mission to the project site. The results of the appraisal were published in an [Environmental and Social Data Sheet](#) on the EIB’s website.

As the detailed design of the components was developed, individual studies were drafted, which - in the case of the Marsyangdi Corridor transmission line project – have included the following documentation:

- [IEE - Marsyangdi Corridor \(Udipur-New Bharatpur\)](#).
- EIA - Marsyangdi Corridor (Manang-Udipur) 220 kV/TL in draft.
- RAP Udipur-New Bharatpur.

<sup>2</sup> [South Asia Subregional Economic Cooperation Power System Expansion Project \(eib.org\)](#)

<sup>3</sup> [South Asia Subregional Economic Cooperation \(SASEC\) Power System Expansion Project \(SPEP\) \(eib.org\)](#)

<sup>4</sup> [80938653.pdf \(eib.org\)](#)

<sup>5</sup> Available at: [https://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf); [Environmental and Social Standards \(2018\) \(eib.org\)](#)

<sup>6</sup> The E&S policy and standards of the EIB have meanwhile undergone a review. The new [Environmental and Social Sustainability Framework](#), adopted by the EIB Board of Directors and published in February 2022, applies to EIB operations initiated after its entry into force.

- RAP Manang-Udipur.
- Stakeholder Engagement Plan.
- Environmental and Social Management Plan.

The EIB has continued to appraise each of the components against the EIB E&S Standards and the national legislation, and where gaps have been identified, has required the promoter to close these gaps. All IEE and EIA documentation has been developed to be in line with the EIB E&S Standards and aligned with the EU EIA Directive and associated requirements.

Further studies have been requested to close out gaps identified as part of the work on the development of an Environmental and Social Action Plan. These include the preparation of a dedicated Stakeholder Engagement Plan and an addendum looking further into the project's cumulative impacts and a specific Biodiversity Impact Assessment. These studies are nearing completion and are under public consultation before their publication.

The EIB has continued throughout this process to conduct monitoring missions to the project site, on a regular annual basis – except for the period affected by COVID. The EIB continues to monitor and requires fulfilment of the loan conditions to meet its E&S Standards, a requirement for the continued support of the project.

Further information is provided in the EIB's answer to Question 2.

*3.b) Please explain how your bank conducted meaningful consultation with affected stakeholders.*

#### **EIB's policies, procedures and standards**

The EIB does not conduct or participate in public consultation meetings for specific projects it finances. This is a responsibility of the project promoters under the EIB E&S Standards. In line with the EIB's Standard on Stakeholder Engagement<sup>7</sup>, the project promoters are required to establish and maintain a constructive, respectful dialogue with stakeholders throughout the project life cycle to improve the project and facilitate their participation in decision-making. As part of its due diligence, the EIB reviews the results of the stakeholder identification and the Stakeholder Engagement Plan, assesses the adequacy of the project grievance mechanism and assesses the adequacy of the planned stakeholder engagement during project implementation. Continuous stakeholder engagement is expected throughout the lifecycle of the project, as laid out in the Stakeholder Engagement Plan.

#### **For this project**

The promoter engaged with stakeholders during the project implementation, by publishing notices in the press and announcements on radio channels as well as by locally posting information, interviewing affected households and conducting focus group discussions. The stakeholder engagement initiatives have not yet been concluded and will remain active during project implementation.

At project's level, the promoter organised a total of 57 consultation meetings in the year 2021 with an overall number of 1,714 participants. The proportion of participants in the meetings who self-identified as Indigenous Peoples amounted to 42% and in some areas over 50%. Further information on public consultation meetings at an earlier stage of the Project is also provided in Annex 3 of the EIB-CM Conclusions Report (available on the EIB-CM's website, [here](#), as well as in Annex 2 of the present reply).

A Stakeholder Engagement Plan was prepared following the EIB-CM Conclusions Report and has now entered the implementation stage.

The EIB local monitoring consultant, in collaboration with EIB experts, delivered a series of knowledge sharing events to the promoter's staff. Those events focused on E&S matters, stakeholders engagement and grievance redress mechanism to improve the E&S management capacity of the promoter.

*4. Please describe the measures that your bank has taken, or plans to take, to prevent the recurrence of such situations in the future.*

#### **EIB's policies, procedures and standards**

<sup>7</sup> [Environmental and Social Standards \(2018\) \(eib.org\)](#)

The EIB takes seriously all allegations of threat brought to its attention relating to its operations and addresses them accordingly, on a case-by-case basis. If the case is not considered a coercive practice<sup>8</sup> or is not being handled as an admissible complaint by the EIB-CM, EIB services would typically request additional information from the relevant sources, always in a safe manner. It is important for the EIB to understand the nature of the case, seek necessary explanations and hear the account of events from EIB clients, and to discuss with co-financiers, if relevant. Responses to reprisals should be based on the principle of 'do no harm', i.e. prioritising the safety and protection of the victims, or others associated.

The EIB has developed guidance on addressing risks of reprisals in EIB operations<sup>9</sup> and is continuously working on improving its approach to identification, prevention and mitigation of such risks. The EIB takes follow-up action, where appropriate, to improve the situation and attempt its resolution.

Similarly, in the context of its complaints-handling process, the EIB-CM handles risks and incidents of reprisals and intimidation on a case-by-case basis. The EIB-CM has developed a brochure that presents its approach to preventing and addressing reprisals, which is available in several languages<sup>10</sup> on its website.

### **For this project**

As soon as the EIB became aware of the reported incidents, the EIB project team raised the matter with the promoter and its management. The EIB requested clarification not only from the promoter but also from other stakeholders. Accordingly, it reminded all the parties of its zero tolerance policy for reprisals and intimidation.

On 11 February 2022, the EIB followed up with the promoter, recalling its obligations to comply with EIB E&S Standards and the Finance Contract signed with the EIB. Further dialogue continued, in compliance with legal requirements concerning data protection with a view to ensuring the safety of the community members.

On 6 May 2022, following reports of new incidents received on 28 April and 2 May 2022, the EIB had a phone conversation with the promoter's senior management. The EIB shared its position on the information received and requested a detailed report from the promoter and the Project Supervision Consultant. The promoter was also reminded to promptly inform the EIB in case similar events occur in the future. Furthermore, the EIB instructed its local monitoring consultant to closely monitor the situation on site.

Meanwhile, in May 2022, meetings took place in Kathmandu between the project-affected people, the promoter's management and the Ministry of Energy. The meetings focused mainly on compensation and resulted in an agreement to allow the promoter to fix the stringing for security reasons and move forward with the dialogue on compensation.

Shortly after, the EIB project team conducted a site visit to Nepal from 7 June to 15 June 2022. They held meetings with the promoter, the Project Supervision Consultant, several Ward Chiefs, the local chapter of the Nepalese Federation of Indigenous People (NEFIN) and the FPIC and Rights forum to collect their feedback.

The EIB clearly reiterated its zero tolerance policy and requested the promoter to de-escalate the situation as well as to halt the stringing activities in the project affected area concerned. The same message was also reiterated to other key stakeholders, including the relevant Ward Chiefs.

Shortly after the site visit, another meeting between the promoter and project-affected people took place in Dordi Municipality on 17 June 2022. During that meeting, an agreement on compensation was signed by the parties.

The Project Supervision Consultant suggests that all parties are satisfied with the agreement and that project's activities are expected to resume without further disruption.

The EIB will continue to closely follow-up on the situation, also with the help of the local monitoring consultant, as part of the EIB monitoring activities.

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<sup>8</sup> If the allegations concern a prohibited conduct under the EIB Group Anti-Fraud Policy (e.g. coercion), the Investigation Division of the EIB Inspectorate General is competent to receive, assess and, if appropriate investigate, such allegations.

<sup>9</sup> <https://www.eib.org/en/publications/guidance-note-for-eib-standard-on-stakeholder-engagement-in-the-eib-operations>

<sup>10</sup> [EIB Group complaints mechanism's approach to preventing and addressing reprisals](#). Translation in additional languages underway.

*5.a) Please kindly share with us a copy of your April 2018 report issued in response to the formal complaint raised by community representatives and provide us with updated information on developments since the report's release.*

The EIB-CM received the original complaint in October 2018 submitted by FPIC and Rights Forum from Lamjung district in Nepal. Two other NGOs have been supporting the complainant: Accountability Counsel (international NGO) and LAHURNIP (Nepal based CSO of indigenous lawyers). Following a mission in Nepal in March 2019, the EIB-CM initially suggested facilitating a collaborative resolution process. This is reflected in its [Initial Assessment Report of July 2019](#) (available publicly in both English and Nepali). The promoter did not consider that a collaborative resolution process was an appropriate avenue at that time and the complaint became subject to a compliance review.

In line with the EIB Group Complaints Mechanism [Policy](#) and [Procedures](#), the outcome of the EIB-CM's compliance review was communicated to the complainant in a Conclusions Report, which is publicly available on its website in both [English](#) and Nepali. For ease of reference, a copy of the report is attached as Annex 2 as well. The EIB-CM also provided a translation of the executive summary of its Conclusions Report in Gurung<sup>11</sup> to the complainant. Furthermore, the EIB-CM presented its major findings, conclusions and recommendations in separate meetings (held virtually) to the complainant and the two NGOs that support the complainant, as well as to the promoter respectively.

In its Conclusions Report, the EIB-CM issued six recommendations that are addressed to the EIB, given that the EIB-CM's mission is to investigate complaints about the possible maladministration of the EIB. The EIB publicly acknowledged the EIB-CM's conclusions and recommendations towards strengthening its environmental and social framework<sup>12</sup>.

The EIB-CM is monitoring the implementation of the recommendations made in this case. Since issuance of the Conclusions Report, the EIB operational services have completed their implementation on two out of six of the recommendations. As mentioned in previous answers, following the issuance of the EIB-CM Conclusions Report, a Stakeholder Engagement Plan and an assessment of cumulative impacts were prepared, while a biodiversity assessment study is under finalisation. The EIB operational services are making progress in the implementation of the other recommendations (for instance, the promoter hired an Indigenous Peoples expert to further assess the impacts of the project on Indigenous People; the assessment is soon to be finalised). The EIB has also hired a local monitoring consultant to strengthen monitoring of the project's compliance with EIB E&S Standards.

Even after the issuance of the Conclusions Report, both the EIB-CM and the EIB operational services had regular contacts with the complainant and the two NGOs that support the complainant. The EIB-CM had several calls and email exchanges with them in order to (i) keep them updated about the progress made by the EIB towards implementation of the recommendations, and (ii) receive updates from the ground (including about the alleged incidents of intimidation in the recent months). Similarly, the EIB operational services responded to a number of requests for information in relation to certain issues the complainant and/or NGOs continued to raise regarding the project implementation. Finally, the EIB had two conference calls with the complainant, the two NGOs supporting the complainant, and community representatives: first in October 2021, and second, more recently during the EIB project team's monitoring mission in Nepal, in June 2022.

*5.b) Please also send us information on the outcome of the online dialogue with indigenous community representatives on 28 October 2021 and discuss progress on the project. In particular, please share with us the position of the European Investment Bank on the fact that six of the community members who were subject to police intimidation on 7 December were also in attendance for the online dialogue with your bank on 28 October 2021.*

The EIB has always maintained an open dialogue, with a series of email exchanges and online meetings. The online dialogue in October 2021 as well as the one held more recently in June 2022 enabled representatives of affected communities to raise issues related to project implementation, and gave an opportunity to the EIB to clarify certain points whenever relevant.

One of the major outcomes of the online dialogue between the EIB, the complainant, the NGOs that support the complainant, and community representatives, was the identification of a need to organise a tripartite dialogue between the EIB, the promoter, and the complainant. This initiative did not have

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<sup>11</sup> The Gurung is one of the indigenous peoples groups that live in the project affected area.

<sup>12</sup> [The EIB Group welcomes conclusions and recommendations from the Complaints Mechanism Report towards strengthening its environmental and social standards in a project in Nepal.](#)

sufficient time to materialise, as it was soon superseded by the signature of an agreement on compensation matters in June 2022 (see also answers to Question 4).

It is unclear to the EIB whether (and if so, to what extent) the participation in the online dialogue with the EIB in October 2021 is related to six of the community members having been reportedly subject to police intimidation on 7 December 2021. Based on the information provided by Accountability Counsel to the EIB-CM:

- The alleged incidents of police intimidation on 7 December 2021 seem to have involved other members of the community as well (*'approximately 25-30 affected community members including women and indigenous peoples'*, thus not limited only to the six who attended the online dialogue).
- Not all community members who attended the online dialogue were subject to intimidation.

Despite the unclear circumstances of the 7<sup>th</sup> December events, the EIB reiterated its zero tolerance policy regarding intimidation and/or reprisals in its interaction with the relevant stakeholders (see also answers to Question 1 and 4).

It is noteworthy that, during the site visit of June 2022, the EIB project team had the opportunity to listen directly to the project affected people and clarify the role of the EIB as a lender. From the information gathered during the meeting and the reassurance from local authorities, the EIB understood that the situation has been de-escalated with the finalisation of an agreement on compensation.

6. a) *Please provide information on steps taken by your bank to establish and enforce operational-level grievance mechanisms to address any adverse human rights impact that your bank's operations, products and services may have contributed to and/or caused globally.*

#### **EIB's policies, procedures and standards**

The EIB E&S Standards require that promoters set up a project-level grievance mechanism. This mechanism should constitute a system introduced by the promoter that affords all stakeholders, in particular – but not exclusively – impacted individuals and communities, the ability to provide feedback, channel their concerns and, thereby, access information and, where relevant, seek recourse and remedy. In line with the effectiveness criteria of a grievance mechanism, outlined in Principle 31 of the United Nations Guiding Principles on Business and Human Rights<sup>13</sup>, the EIB expects such a mechanism to be effective, by way of being verifiably legitimate; accessible; predictable; equitable; transparent; compatible with human rights; based on engagement and dialogue; and, a source of learning for all stakeholders involved, including the promoter.

#### **For this project**

The EIB requested the establishment of Grievance Redress Committees (GRC) to solve grievances related to the project and enhance dialogue with the local population<sup>14</sup>.

In total, 19 GRCs are now established in the project area. In the area where the incident occurred (Dordi Municipality), a GRC was also established. GRCs comprise a project representative, local authorities and affected people. The presence of women or Indigenous People representatives depends on the location, but a female member is part of the Dordi Municipality GRC.

The records of the GRC cases are reported in the periodic progress report prepared by the Project Supervision Consultant and reviewed by the EIB project team.

6. b) *Please also provide information on whether such grievance mechanisms have been used to address any of the concerns or impacts identified by the stakeholders in this communication, and any outcomes as a result.*

The EIB is not aware of any use of such mechanism in relation to the reported incidents of intimidation.

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<sup>13</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>14</sup> In the interest of completeness, the EIB-CM Conclusions Report noted the relatively late establishment of project-level grievance mechanism.