



संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
PERMANENT MISSION OF NEPAL TO
THE UNITED NATIONS
GENEVA

Ref no. - GE/OHCHR/2022/ 114

The Permanent Mission of Nepal to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Special Procedures Branch, Office of the High Commissioner for Human Rights and with reference to the latter's Joint Communication dated 24 May 2022, Ref. AL NPL 2/2022, concerning the allegations of threats and intimidation by Government and police officials against indigenous community members of the FPIC and Rights Forum who have raised concerns regarding the environmental and human rights impacts of the Marsyangdi Corridor transmission line project that is being developed by Nepal Electricity Authority, with funding from the European Investment Bank (EIB), has the honour to enclose herewith the response of the Government of Nepal including annexes, on the issues raised in the Joint communication.

The Permanent Mission of Nepal to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch, Office of the High Commissioner for Human Rights, the assurances of its highest consideration.

Geneva, 11 August 2022



Special Procedures Branch
Office of the High Commissioner for Human Rights
Geneva, Switzerland

Response of the Government of Nepal (GoN)

On

The Special Rapporteur on the situation of Human rights defenders: the Working Group

On the issue of human rights and transnational corporations and other business

Enterprises: The Special Rapporteur on the right to development and the Special

Rapporteur on the rights of indigenous peoples

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

Regarding the allegations, we would like to clarify that Nepal Electricity Authority (NEA), a government-owned organization, is not involved in any kind of threats, or intimidations against any indigenous community/ FPIC and Right Forums during the implementation of any project. In addition, the GoN and NEA shall abide by the EIB Social and Environment Standard, which is driven by EU policy objectives and its underlying principles of sustainable development, human rights, public participation, and accountability. NEA cannot do any transgression of these principles in the execution of the Projects financed by EIB. However, we have noted your concern about whether the request of PAPs (Project Affected People) has been addressed or not. In this regard, we have received the clarification from the Project as follows;

The Project has received several requests for a change of route alignment, however in given technical constraints and adhering to the approach of “Optimization, Minimization, and Mitigation”, they could change the route alignment in Aapchaur, (AP1, AP18-AP19) in Khudi-Udipur section and Manang (AP1-AP5, AP 20) in Lamjung of Manang and Khudi section and similarly in Palungtar, Chyangli Yangkot in Gorkha district. In addition, the Project had meaningful consultations with Rauthok and adjoining area PAPs in connection with route change and compensation. Please refer to the photographs where the Project team was having a dialogue with PAPs in presence of Mayor [REDACTED] [REDACTED] to discuss the compensation-related matter and discuss the possible change in TL route alignment (*Please refer to Annex 5, page 63 for the photographs*). However, due to technical, social, and environmental constraints, the TL route could not be changed

as expected but agreed to provide adequate compensation to PAPs belonging to Rauthok, Simalchaur, Letephath, etc. The same has been recorded in CDC meeting minutes dated 16th March 2022 **Annex 1**.

Please find the brief description of the Project on compensation,

Multiple consultations and information sharing/disclosure were done with the PAPs and local people prior to project development and during the project implementation phase. The agreement was sought from the community for the proposed project and information about the project plan and the possible impacts that the project will impose on them were also detailed.

A proper compensation process was adopted by the project as per the rules and regulations of the Government of Nepal. The compensation amount is determined by the Compensation Determination Committee (CDC) which mainly comprises of Chief District Officer, Mayor and/or Ward Chief, Land revenue officer, Project Manager, and Representatives of PAPs (at least one). The compensation valuation is done based on the market value of the land published and recommended by the Municipality or Rural municipality in the current fiscal year, the District rate of the current fiscal year determined by the land revenue office, and bank valuation. PAPs were also consulted during the compensation determination process. Anyone who wants to attend the meeting or has any concerns or complaints are free to voice their concerns to the CDC. The valuation of structure loss, tree loss, crop loss, etc. are also done by the CDC in coordination with Agriculture Knowledge Center (for Crops, and fruits loss valuation) and Division Forest Office (for Trees Loss). Compensation is determined by the CDC as per the Land Acquisition Act, 2034 B.S., and Entitlement Matrix as approved in the Resettlement of Indigenous People Plan (RIPP).

The benefit-sharing scheme is being done through the project's Corporate Social Responsibility (CSR) program as per the demand of the affected community.

Census is carried out through household surveys where the details of all PAPs including their socio-economic details were collected. The details of the affected land plot are published in national newspapers following which the PAP can report if their details are missing or incorrect.

In the case of 26, 27 April – 1 May 2022, the PAP of Archalbot area of Dordi ward no 1 and 2 of Dordi Rural Village Municipality belongs to AP 33 to AP 33 E have already received the compensation of tower pads on around February 2020. Also, the RoW compensation of 20 % of land value has been decided around February 2022, which is being distributed, and to date, 207 plots belonging to 147 title holders (PAPs) out of 499 plots have received the compensations in the Lamjung district which amounts to NPR 108689132.96

Approximately, 6 km 220 KV line has to be charged at 132 KV to evacuate the power generated from already completed power plants viz. Himalayan Power Partner 27 MW, Dordi Khola 12 MW, and Dordi A – 25 MW as alternative options or fallback plans. Around April 2022, the country was facing power curtailment from India due to the coal shortage in India because of the Ukraine-Russia war. The National Grid of Nepal was then deprived of 64 MW of power due to 2.2 km of TL and at the same time, the IPPs had to bear huge losses due to the spill of energy as they were ready to dispatch their power to National Grid. To accomplish the given task, the Project is doing the stringing work on a war footing and everything was going well till the stringing of around 3.8 km. The stringing is about to complete in 6 km, the PAPs of the Achalbot area warned the Project that unless they get the 100 % RoW compensation, they will not allow to complete the stringing work.

Please refer to the independent report from the Project Supervision Consultant (PSC) - Third Party the Power Grid Corporation of India (PGCIL) attached as **Annex 2-1**. The conflict has been de-escalated immediately and resolved by now. Please refer to the independent report on the resolution of the issue **Annex 2-2**. Please refer to the minutes dated 23rd May 2022 and 4th Ashad 2022 in **Annex 2-2**. Letter of exchange between PAPs etc. attached as **Annex 2-3**. **Please note that the dispute with PAPs has been resolved by now and TL construction is going on smoothly.**

2. Please provide any information on independent investigations of the alleged threats and intimidation suffered by these communities, including the FPIC and Rights Forum in relation to the Marsyangdi Corridor transmission line project.

Gandaki State Police Office, Pokhara formed a three-member investigation committee led by Senior Superintendent of Police (SSP) [REDACTED] (Gandaki Pradesh Police Training Centre, Pokhara) after receiving a letter from the Office of the Prime Minister and Council of Ministers and Ministry of Home Affairs, to investigate the allegation on threats and intimidation suffered by these communities, including the FPIC and Rights Forum in relation to Marsyangdi Corridor transmission line project.

The investigation committee visited the concerned area, inquired with the locals, related stakeholders, and people's representatives of Besishahar Municipality, Ward No. 10, Bajhakheta and Dordi Rural Municipality, District Administration Office, Nepal Electricity Authority Marsyangdi Corridor 220 KV Transmission Line Project, District Police Office and the witnesses.

Following persons were inquired about the incident;

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] in presence of the Commander of the investigation committee SSP [REDACTED]:

a) Summary of individual statements taken during the investigation;

- All interviewed people were aware of the incidents, various activities, and actions regarding the expansion and relocation of the transmission line.
- They were aware of the submission of the request by local people, community forest conservation committee, youth club, mother's group, indigenous and tribal's of Dordi -1, Bharte and Dordi 2, Archalbot Lamjung, FPIC, and Rights Forum to relocate the transmission line.
- During the expansion and relocation of the transmission line the locals of Dordi -1, Bharte, Dordi 2, Archalbot, and Lamjung tried to obstruct the expansion of the transmission demanding relocation or 100% compensation. District Administration line office facilitated the resolution of the problem with the affected local people and the Marsyangdi Transmission line Project. The local police were deployed to prevent any possible clashes between local people, contractors, project officials, and workers & to coordinate and facilitate to solve the problem. If proper security measures were not taken on time by police and government officials there could have been undesirable incidents.
- The government officials and local police officials did not threaten, intimidate, or obstruct anyone including locals during the incidents. No human rights violations have been committed by government agencies and police personnel during various programs related to the transmission line extension on various dates. No arrest or prosecution has been made in this regard. No one was forced to accept the project and compensation during the expansion and relocation of the Marsyangdi Transmission line in different places of Lamjung including Bajhakhhet, Dordi, and Bharte on different dates.
- It was felt that the District Administration Office, Lamjung, and the local police made positive efforts for the facilitation and coordination.

- During the implementation of such important national projects, the demand of local affected people including indigenous and tribal people should be addressed to stop the disputes.
- The people unsatisfied with the project may have reported the case and the people have no idea of the complaint.

b) Brief statement of the concerned offices

District Administration Office, Lamjung

During the expansion and relocation of the Marsyangdi Corridor 220KV Transmission line, the local people of Dordi -1, Bharte, and Dordi - 2 Archalbot, Lamjung tried to obstruct the expansion project demanding relocation of the transmission line or 100 % compensation. The local police were deployed to prevent any possible clashes between local people, contractors /workers, and project officials. The police were deployed to secure the situation & to coordinate and facilitate to solve the problem. No one was threatened or intimidated or obstructed or forced including local indigenous people during the incident. No human rights violations have been committed by government agencies and police personnel in the various programs related to the transmission line extension on various dates. No arrest was done. Some people were monitored and surveilled to stop any unwanted disorderly activities. There were no such complaints regarding human rights violations.

NEA Marsyangdi Corridor 220 KV Transmission line project Lamjung

During the expansion and relocation of the transmission line, rounds of discussion were held to relocate the transmission route in Besishahar Municipality, ward No. 10 Bajhakheta, with the affected locals in presence of the Chief District Officer, representatives of consultants, and project officials. During the site inspection, it has been informed to the locals that it is not possible to relocate the route due to technical, financial, and social circumstances and necessary legal procedures have been started for land acquisition.

During the expansion and relocation of the Marsyangdi Corridor 220 KV Transmission line, the people of Dordi -1, Bharte, and Dordi Archalbot, Lamjung tried to obstruct the

expansion project. They demanded either relocation of the transmission line or 100 % compensation. The District Administration Office coordinated and facilitated with the affected locals and the project to solve the problem. As the local level election date was announced to be held on May 13, 2022, there was a lack of people representatives to coordinate with the locals. The local police were deployed to prevent any clashes and secure expensive construction equipment, vehicles, project officials, contractors, and workers. No one was threatened or intimidated or arrested including local indigenous people. No human rights violations have been committed by the local police personnel. There were no such complaints regarding human rights violations.

The affected people have accepted the compensation amount and the process of land acquisition has been completed. All affected land owners have received the compensation amount and there has been no incident of human rights violation including forcing locals to accept the compensation amount. Recently, the transmission line expansion started without any obstacles after fruitful discussion with the affected owners, District Administration Office, and the project.

District Police Office, Lamjung

During the expansion and relocation of the Marsyangdi Corridor 220 KV Transmission Line, the local people of Dordi -1, Bharte, and Dordi -2 Archalbot. Lamjung tried to obstruct the expansion of the project by demanding relocation of the transmission line or 100% compensation. The Local Police in coordination with the Chief District Officer and office head of the District Police Office Lamjung were deployed to prevent any possible clashes between affected locals, contractors /workers, and project officials. No one was threatened or intimidated or obstructed or forced to accept compensation by the deployed police during the incident. No one was arrested during the incident. The Police were deployed to prevent any possible clash and for security reasons. The possibility of unwanted disorderly activities by some riotous people was monitored /taken under surveillance. There was no such complaint regarding any human rights violations or any arrest.

- 3. Please provide information on the environmental and social impact studies carried out prior to the approval of and/or during the development of the Marsyangdi Corridor transmission line project of the State-owned National Electricity Authority and whether these studies were prepared with a human rights-based approach.**

The EIA of Manang-Khudi- Udipur 220KV Transmission Line Project and IEE of

Udipur-Bharatpur 220KV Transmission Line Project owned by the Nepal Electricity

Authority were done based on the Nepal Government Act and Rule i.e., Environment Protection Act, 2019 and Environmental Protection Rule, 2020 prior to the development of the Marsyangdi Corridor Transmission Line Project under the SASEC-PSEP. While preparing the EIA and IEE the Constitution of Nepal, as well as international laws, were also followed like Fundamental Rights of Constitution of Nepal, ILO Convention of Indigenous and Tribal Peoples (No.169), etc.

The formal complaint to the EIB was received on 2018 from FPIC and Right Forum and the allegations raised by the Complainants relate to the following:

- a) Lack of adequate consultation, an agreement seeking, and information sharing/disclosure about the project, its impacts, and how each impact can be avoided, mitigated, or compensated;***

The Project has done prior consultations, please refer to the Annex- done during the IEE, EIA scoping, and TOR phase and also during EIA. In addition, adequate consultations have been done during the implementation of the Project. Prepared Stakeholder Engagement Plan which is also approved by the EIB.

- b) Inadequate compensation and lack of proper compensation process, benefit sharing scheme, and appropriate census;***

The Status of compensation distribution presented below shows that adequate compensation has been distributed to PAPs which are presented in **Table 2-1 for substations and Table 2-2 for Transmission Line Towers**

	Subprojects	Total Area (ha)	Total Affected Persons in Substation	Compensation Target (NRs)	Compensation Payment (NRs)	Number of Compensation Received APs	Percentage of Compensation Payment Status	Remarks
A. 1	Manang-Khudi-Udiur TL (Dharapani And Khudi sub-stations)	9.64	61	134,600,006.30	134,600,6006.30	61	100	
A. 2	Udipur-BharatpurTL (Udipur and Bharatpur sub-stations)	7.68						NEA Land

Table 2-2- Transmission Lines

S N	Sub Projects	No. of Towers	Total Land Area (ha)	Area which compensation received	Total Plot	Plot received	Compensation Affected Persons in	Number of Compensation Received APs	Compensation Target (NRs)	Compensation Payment (NRs)	Percentage of Compensation Received APs	Remarks	
1	Manang-Khudi-Udipur TL	130	5.7	00	NA	NA	NA	NA	NA	NA	NA	Committee field visit and report	
2	Udipur-Bharatpur TL	193	8.5	61	156	156	126	134	105	112,234,008.3	103,530,507.00	80.79	Total Route(4 districts)

3	Lamjung	45	1.61	35	101	101	81	83	64	67,929,101.56	61,706,460.10	80.19	Lamjung
4	Tanahun	40	1.58	26	55	55	45	51	41	44,304,906.27	41,824,046.89	81.81	Tanahun

Note: Above table shows that in the case of sub-stations 100 % and case of the Transmission line more than 80% of PAPs have received the compensation, which also implies that adequate compensation has been decided and the same has been collected by the PAPs.

c) Lack of adequate FPIC process concerning the indigenous communities affected by the project

A separate Indigenous People (IP) study has been conducted to assess the project's impact on the indigenous people. The finding which is summarized below,

Impact on Indigenous People and FPIC

Consultations were held before project approval during the cadastral survey, check survey, and IEE/EIA inclusive of SIA. Free Prior Information was provided during those consultations and Consent of all the people that would be affected by the project was sought without any coercion. In UMBTLP there is a mixed community of Brahmin, Chettri, Gurung, Newar, Magar, and other castes. No separate indigenous community is found in this TL route. But consultations were done with the community prior to the project implementation. Therefore, consultations were held with all the people that were going to be affected by the proposed project inclusive of indigenous people. Separate consultation with only IPs was not held because the IPs that were going to be affected by the project were IPs who were assimilated with the mainstream community and their concerns were not very different from the concerns of the mainstream community. Nevertheless, their concerns that differed from the mainstream community were not overlooked and their concerns that were especially regarded with their cultural heritage and unique lifestyle were given priority prior to finalizing the project.

The following table describes the characteristics of indigenous people and how they are identified.

Table 3

<i>Characteristics of Indigenous Peoples</i>
<i>1. Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others.</i>
<i>2. A collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, and the natural resources of those areas, including a physical presence in and economic ties to these lands for generations.</i>
<i>3. Customary cultural, economic, social, or political institutions that are separate from those of mainstream society and culture.</i>
<i>4. A distinct language or dialect, often different from the official language(s) of the country or region.</i>

The concept of FPIC was considerably new during the initial phase of the project. Furthermore, the concept of FPIC was not common during the time the EIA/IEE report was approved by the Concerned Ministry (2017/2018). FPIC was also not a requirement laid upon the project during its study/ approval phase. However, in a certain section of the project where construction has not begun and where there are IPs who are distinct from mainstream society, the project is already carried out to get a free prior and informed consent through separate consultation with IPs by a specialized IP Experts (one belong to IP community and other belong to Dalit community) in the ESMU. The FPI consultation with IPs has been done as per the requirement of the EIB Environmental and Social Practice Handbook for EIA and SIA.

d) Insufficiencies in terms of the substance and timing of the environmental and social studies performed (alleged “salami-slicing” of the studies and lack of a cumulative impact assessment),

The Cumulative Impact Assessment (CIA) has been completed and a draft report submitted to EIB has been attached herewith for your reference. Also, please find the Present Environment and Social safeguard implementation status attached as **Annex-3**

Gap studies overview:

Due to the lockdown of the COVID-19 pandemic, the survey team was unable to finalize the Transmission Line (TL) route from Manang-Khudi Udipur-Markichowk-Bharatpur. Thus the gap studies like Cumulative Impact Assessment (CIA), and Biodiversity Impact Assessment (BIA) could not be carried out. The contract from Manag-Khudi-Udipur (Khudi, Simalchaur, Letephat, Rautthok, Apchaur, Pasachaur, and their adjoining area falls under this section of TL) was effective from 30 June 2019. Therefore, due to the lockdown and COVID situation, the Project could not accomplish the CIA and BIA studies. Now, all the reports are in place and sent to EIB and their status is presented in **table 2** below,

Table: 2 Status of Gap studies

SN	Report	Submission Date	Remarks
1	CIA		<i>Discussed and agreed but formal concurrence is awaited</i>
	Inception Report Submission	20 July 2022	
	Comments on Inception Report from EIB	12 August 2021	
	Inception Report Submission	17 August 2021	
	Inception Report Approval from EIB	4 October 2021	
	First Draft Report	21 February 2022	
	Final Draft Report	21 April 2022	
	Final Report	28 April 2022	
2	BIA		<i>Final discussion to be done and formal concurrence is awaited</i>
	Inception Report Submission	25 October 2021	
	Approval of Inception Report	26 October 2021	
	Draft Report Submission	26 April 2022	
	Final Report Submission	13 July 2022	

3	IP		<i>The final discussion is over and concurrence on the essence and final trajectory is received but the formal letter of concurrence is awaited</i>
	Inception Report Submission	20 July 2021	
	Comments on Inception Report	27 July 2021	
	Approval of Submission Report	6 October 2021	
	Field Visit Request	11 August 2021	
	Draft Report Submission	27 April 2022	
	Final Report Submission	26 May 2022	

Public Consultations overview:

IEE Public Consultations

In public consultations on IEE, a total of 306 people were consulted in 35 locations of the Udipur-New Bharatpur section of the project. Among the people consulted, 215 were males and 91 were females. Female participants constituted around 29.7 percent of the total participants. The public consultations were centered around community forestry and the project's impacts on them. Please find the consultation matrix and minutes of meetings attached as **Annex 4-1** and **4-2**.

IEE Public Disclosure

For the IEE, the public consultation process was carried out by conducting group discussions, interaction meetings, and a household survey among the local people/stakeholders, concerned Village Development Committees (VDCs), and related officials/agencies of the project areas. Likewise, a 15-day public notice as per Environment Protection Regulation, 1997 was published in the Arthik Abhiyan National Daily on 20/01/2017. A team was mobilized in the field with a copy of the public notice along with cover letters to the concerned VDCs/Municipalities, CFUGs, district level line agencies, and other local stakeholders. A copy of the notice displayed on the project sites and proof of deed was collected. Similarly, recommendation letters were collected from the affected VDCs. In addition, a consent letter was collected from the affected Community Forestry User Groups (CFUGs). A summary of the draft IEE report was distributed to the concerned VDCs and CFUGs and a copy of the IEE report was provided to District Development Committees (DDCs) and District Forest Offices.

Public Engagement during EIA Phase

The project proponent has prepared EIA and approved it by authorized government agencies. Even before the EIA preparation stage, the project needs to carry out scoping and prepare a Terms of Reference (ToR). During the preparation of these documents, public consultations were carried out with people from the project areas. During the EIA preparation stage, the project proponent adopted different approaches including public consultation/engagement. Please find **Table 1** below for detailed information.

Public Consultations

The EIA report of the project has documented a total of 22 meetings that were held during public consultations. The majority of the meetings were held in Nasong Rural Municipality in Manang. This area lies in the project transmission alignment and sub-station area. Of the 22 meetings held during this phase, nine meetings were held in Nasong Rural Municipality, eight in Marsyangdi Rural Municipality, and five were conducted in Beshisahar Municipality.

EIA Public Hearing

From the documentation in the EIA report, the project had undertaken two public hearing meetings in Lamjung and Manang. One public hearing was held at Amar High School in Khudi and another was held in a community building in Nasong village, Manang. As documented in the EIA reports a total of 214 participants attended the two public hearing meetings. Table 1 below provides the details of the public hearings. ***Please find the attached brochure published during the public hearing of EIA.***

Table 1: Percentage of Participants during the EIA Public Consultations *Source: EIA Report, 2017*

Public Engagement in RAP (Manang-Khudi-Udipur Section)

RAP requires a detailed study and as such various methods are used to elicit information. Additionally, information also needs to be disseminated to the project-affected people about the project and also obtain their perspective on the socio-economic impact of the project and any group-specific issues and impacts. As per the RAP document (Manang-Khudi-Udipur section) in these 20 group discussions 285 project-affected people participated. Among

them, the IP represented 39 percent of the total population. A census survey was carried out to undertake a detailed socio-economic profile of the affected people. A total of 120 households were enumerated. For this, the field enumerators visited each household and engaged with the key person to collect the required information. As per the RAP document, a total of 11 community consultation meetings were held in which 105 participants participated. Five separate consultations were carried out with indigenous communities in three different project locations. As per the RAP, a dedicated women-focused consultation meeting had been conducted at three locations in which 26 women participated and expressed their opinion. In the meeting, they expected special privileges in employment, skill training, and electricity awareness programs.

RAP Disclosure

The project carried out RAP disclosure in ten project locations. Before the disclosure of RAP, a notification was issued which included the date, venue, time, and a summary brochure of RAP translated into the Nepali language. The summary of RAP was distributed to the project affected, local communities, and other concerned authorities. A copy of RAP was shared with each District Administration Office (DAOs) housing the project.

Public Engagement in RAP (Udipur-Markhichowk-Bharatpur Section)

For this section, altogether, 28 consultations were conducted in the Rural Municipalities/municipalities affected by the project to collect socio-economic information, views, concerns, and expectations of local people from the project. Similarly, the participants were also informed about the project and its activities during consultations. The average number of participants in each consultation was 12.60. Out of 353 total participants, the male and female representatives during the consultations were 306 (87.54 %) and 47 (12.46 %) respectively. Household surveys were undertaken in all the affected communities within the Project Area, from April 04-10, 2020 for Lamjung District and January 15-22, 2021 for Tanahun District. A prioritization and ranking exercise was included in the survey to help understand households' preferences regarding compensation and resettlement assistance.

The project has prepared a stakeholder engagement plan (SEP) to carry out communication and consultation with the project stakeholder. The consultation meetings are being held to

disseminate project information and also receive public opinion. The project record shows that a total of 57 consultation meetings were held in the year 2021. A total of 1,714 people participated in the meetings of which about 42% were from the indigenous community.

Compensation Status in Lower Lamjung (Beshisahar, Dordi, Archalebot, Rainas, and Sundarbazar)

In the lower Lamjung area, 84 households have been identified as project-affected households in terms of the acquisition of land for the tower. Of the 84 households, 62 households have received and taken their compensation. Of the 84 project-affected households, 22 households belong to the IPs.

Due Diligence of Substation Land in Khudi in Lamjung

The land for the Khudi substation that has now been acquired by the project was a farming land of the Gurungs whose traditional homeland was up the hill. On February 23 of 2014 (**Annex 4-3**), an understanding was reached between the landowners and the project to negotiate the price of the land between themselves. This understanding has been documented between the landowners and the project. *All the above aforementioned public hearings, consultations, and disclosure were carried out by engaging all the stakeholders including Indigenous People by adopting a human right based approach.*

- 4. Please provide information of any consultation processes undertaken with the affected Indigenous Peoples prior to the approval of the Marsyangdi Corridor transmission line project and whether their free, prior, and informed consent was sought. Please indicate whether any measures are planned to include the meaningful and inclusive participation of the affected Indigenous Peoples in decision-making and to obtain their free, prior, and informed consent for projects that may affect their lands and livelihoods.**

EIA Public Hearing

As per the Environment Protection Act and Rules, there is a provision for a mandatory public hearing of the EIA. From the documentation in the EIA report, the project had

undertaken two public hearing meetings in Lamjung and Manang. The project completed two public hearing meetings in Lamjung and Manang. One public hearing was held at Amar High School in Khudi and another was held in a community building in Nasong village, Manang. To carry out a public hearing the project needs to publish a notice about the public hearing in a local newspaper (See **Annex 5** for a public hearing notice published in a local newspaper). Such public notice for a public hearing should also be posted in several public places and the formal invitation should be issued to key government and non-government organizations. As part of the public disclosure of EIA, a brochure was prepared in the Nepali language which had project information and potential environmental and social impacts, and its mitigation measures. This information needs to be provided to the participants before the public hearing is conducted. As documented in the EIA reports a total of 214 participants attended the two public hearing meetings. Table 4 below provides the details of the public hearings.

Table 4. Number of Public Hearing Participants*Acquisition of No Objection Letter*

During the EIA study, the project needs to acquire formal approval for project implementation from local government authorities and community forestry groups. To obtain No Objection letters the project needs to carry out meetings with local government authorities and community forestry user groups. During these meetings, the project proponent needs to provide project information along with potential negative and positive impacts of the project and mitigation measures. During the meeting potential corrective measures to mitigate adverse impacts are spelled out in the Environment Social Management Plans (ESMPs). All the project-affected rural municipalities and community forestry groups had provided no objection to implementing the project. (See EIA for details)

Public Engagement in RAP (Manang-Khudi-Udipur Section)

Group Discussion

To disseminate project information and obtain project-affected people's perspectives on socio-economic impact along with any group-specific issues and impacts, altogether 20 group discussions were carried out in various locations along the transmission line and substation locations. As per the RAP document (Manang-Khudi-Udipur section) in these

20 group discussions 285 project-affected people participated. Among them, the IP represented 39 percent of the total population providing information on these group discussions. Please refer to **Annex 5**

Free Prior Informed Consent (FPIC)

The transmission line and tower pads are to be constructed in indigenous settlements as well as in mixed settlements where both IP, as well as non-IP, reside. Currently, FPIC and Rights Forum based in Lamjung has also alleged that the project had failed to carry out FPIC with the indigenous population who will be affected by the project. However, during the IP study, it was found that the entailed land where IPs have collective rights or have been using it customarily as per EIB standards nor do they have any impact on their cultural heritage and identity. The land to be acquired for tower pads belongs to individual households with legal titles to it. In the places where the project will affect customary land and intangible and tangible heritage, free prior informed consultations have been carried out to acquire consent and that process has been carried out before acquiring such land. For instance, the acquisition of substation land in Ghelanchowk and a tower pad in Tunikharka will be erected on public land used as the burial ground of the Gurungs. In the case of Ghelanchowk, the project has avoided such land from land acquisition, and in the case of Tunikharka, AP1, the project did minutes with the indigenous community that the tower location will be shifted in consultations with them. This can be taken as a good practice carried out by the project.

- 5. Please indicate what steps your Excellency's Government has taken or is considering to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuses by business enterprises within its territory and /or jurisdiction to conduct effective human rights due diligence to identify, prevent, mitigate, and account for how they address their impacts on human rights and the natural environment throughout their operations, as set forth by the UN Guiding Principles on Business and Human Rights.**

To promote human rights-friendly development and businesses, the Government of Nepal has always prioritized and adopted various measures in its plan, programs, and policies for preventing and addressing business-related human rights abuses. Investors are not exempted from human rights obligations mandated by the Constitution and other relevant Legislation. The Principles are based on the 'Protect, Respect and Remedy framework. The framework outlines the duties to protect against human rights abuses by third parties, such as businesses through their policies, regulation, and adjudication. The companies have the responsibility to respect human rights, that is, to avoid infringement on the rights of others.

The Constitution of Nepal ensures the right to equality and equal protection before the law for every citizen. It has secured citizen's rights including the freedom to establish and operate any industry, trade, and business in any part of Nepal (Article 17 (2) (f)), the freedom to form unions and associations (Article 17 (2) (d)), right regarding labour (Article 34), right to appropriate remuneration, facilities and contribution-based social security (Article 34 (2)), right to clean environment (Article 30), right to employment (Article 33) and right to constitutional remedies (Article 46).

Article 25 of the Constitution ensures every citizen's right to acquire, own, sell, dispose of, acquire business profits from, and otherwise deal with, property. It further provides that the State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, the property of a person. If the State has requisitioned property of any person for public interest the State can use such property for any other public interest instead of such public interest. However, the State has to provide compensation as per the law for the requisition of property of any person for the public interest. The Constitution further provides for making necessary legal provisions for a proper balance between environment and development in the development works of the nation. Moreover, the Constitution under its directive principles and state policies envision that the government has the responsibility to fulfill its obligation under international human rights treaties. In addition to the above, in the case of violation of these rights, the victims have the right to get compensation.

The rights relating to employment and social security are incorporated as fundamental rights. This inclusion entails obligations for the State and business enterprises to ensure employees' welfare and provide decent work for all. The provisions under the Social Security Act further

elaborate on the amount that must be submitted to the Social Security Fund (SSF) as provident fund and gratuity under the Labour Act and Regulations.

The Acts such as Labour Act, Consumer Protection Act, and the Right to Employment Act, among others, are some of the critical developments in integrating human rights obligations in the business sector. The Labour Act, 2017 provides that the act's provisions are the minimum standard that must be adhered to in the matter concerning labour. It also has a provision for Labor audits which must be done by entities to ensure their compliance with this Act, its regulations, and prevailing laws.

The Environment Protection Act, 2019, and Regulation provides that before commencing a development project, the proponent must conduct a summary environmental study, an initial environmental assessment (IEA), or environmental impact assessment (EIA) and get it approved by the competent authority. The Act requires conducting public hearings while preparing such a study or assessment. The provision intends to get views and consent of the affected/indigenous people on the proposed project before it begins.

The Land Acquisition Act, of 1977 details the acquisition of land by the Government for public purposes, as well as the preliminary steps relating to acquiring land, compensation, notification of land acquisition, and the right of the landowner to file complaints, among others. A committee under the chairmanship of the Chief District Officer is responsible for determining the compensation amount.

Similarly, the GoN has been implementing the 5th National Human Right Action Plan (076/77-081/82) which includes the thematic areas such as labor and employment, Nepal's international obligations, environment, and sustainable development. The Action plan incorporates activities that mandate industries and business enterprises to adopt principles, norms, and values of the UN Business and Human Rights while operating any business or industry. Moreover, Nepal is in the process of framing an Action Plan based on the UN Guiding Principles on Business and Human Rights. The proposed action plan will have contents on the issues of indigenous communities, human rights defenders, civil societies, etc.

6. Please provide information on any steps taken by your Excellency's Government to ensure that the affected communities, including Indigenous Peoples in your territory and/or jurisdiction, have access to effective, adequate, and timely remedies and compensation for development and business-related human rights abuses.

The Constitution of Nepal guarantees every citizen the right to equality and equal protection before the law, right relating to property, the right to live in a clean and healthy environment, and the right to appropriate compensation as per the law for requisition of property by the State for the public interest, and damage caused by the environmental pollution or degradation.

There is an Indigenous Nationalities Commission as a constitutional body under Article 261 of the Constitution of Nepal. There is a special law called as National Indigenous Nationalities Commission Act, 2074 (2017) which is enacted to have arrangements relating to the National Indigenous Nationalities Commission for the identification of the glorious history and culture of Indigenous nationalities, protection, and promotion of their rights and interests and the empowerment of the communities. The Commission has the mandate to study the overall situation of the Indigenous Nationalities, to make policy, legal and institutional reforms, and to make recommendations to the government on various aspects including access to effective, adequate, and timely remedies and compensation for development and business-related human rights abuses.

Further, the Environment Protection Act, 2019, and its Regulation require conducting public hearings. The provision intends to get views and consent of the affected/indigenous people on the proposed project before it begins. The Act provides for a three-member committee for determining the amount of compensation payable, comprising of the Chief District Officer, Land Administrator or Chief of the Land Revenue Office, and a person designated by the GoN.

In addition, there is the National Human Rights Commission (NHRC) established for the protection and promotion of human rights including those of indigenous peoples. The National Human Right Commission has the authority to monitor, receive complaints, investigate and recommend actions against the responsible person or authority, including compensations to the victims.

Thus, the prevailing laws provide adequate safeguards to protect human rights including the rights of indigenous people while pursuing any development work. Free, prior, and informed consent is the guiding principle adopted before commencing any development project or acquiring land for that purpose. Therefore, no land is acquired without adequate compensation to the land's title holder, including indigenous people.

7. Please provide information on the measures in place to ensure that the human rights defenders, including those defending their land rights, can carry out their legitimate work without fear of criminalizing or retaliation of any sort, from State and non-State actors.

The Constitution of Nepal guarantees every citizen freedom of opinion and expression as well as the freedom to assemble peaceably and without arms. There are no restrictions on peaceful assembly unless the act undermines the sovereignty, territorial integrity, nationality, and independence of Nepal or the harmonious relations between the federal units or the people of various castes, tribes, religions, or communities or incites caste-based discrimination or untouchability or on any act of disrespect for labour, defamation, contempt of court, incitement to an offence or any other act that may be contrary to public decency or morality. Human rights defenders, including those engaged in peaceful demonstrations, operate freely and independently throughout the country.

The National Penal Code explicitly prohibits and criminalizes the use of criminal force against any person. Threats and assaults against peaceful demonstrators and indigenous rights defenders are investigated and prosecuted under the prevailing law.

In addition, the Ministry of Home Affairs has issued an order on the protection and security of human rights defenders which ensures adequate safeguard from any threat, mental and physical harm against human rights defenders.