

Nepal Tanahu Hydropower Project

Complaint SG/E/2020/02

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

16 April 2020¹

¹ Containing information until 31 March 2020.

Prepared by

The Complaints Mechanism

External Distribution

Complainants

Tanahu Hydropower Limited

Asian Development Bank, Office of the Special Project Facilitator

Internal Distribution

EIB Secretary General

Inspector General

EIB services concerned

The EIB Complaints Mechanism

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

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

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

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

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

The Initial Assessment Report

As outlined in the EIB-CM Procedures, the initial assessment is fact finding-oriented and generally aims to:

- clarify the concerns raised by the complainant, to better understand the complainant’s position as well as the views of other project stakeholders;
- understand the validity of the concerns raised;
- assess whether and how the project stakeholders could seek resolution of the issues under complaint;
- determine if further work by the EIB-CM is necessary and/or possible (compliance review or collaborative resolution process) to address the allegation or resolve the issues raised by the complaint.

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GLOSSARY

ADB	Asian Development Bank
CEMSOJ	Community Empowerment and Social Justice Network
CM	Complaints Mechanism
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EMP	Environmental Management Plan
EO	European Ombudsman
ESMSP	Environmental and Social Management Service Provider
EU	European Union
EUR	Euro
FPIC	Free, prior and informed consent
IEE	Initial Environmental Examination
INWOLAG	Indigenous Women's Legal Awareness Group
LCF	Local Consultative Forum
m	Million
MW	Megawatt
NEA	Nepal Electricity Authority
OSPF	Office of the Special Project Facilitator – ADB
PAP	Project-Affected Person
RIPP	Resettlement and Indigenous Peoples Plan
sEIA	Supplementary Environmental Impact Assessment
SESAH	socio-economic survey of affected households
THL	Tanahu Hydropower Limited
UpRIPP	Updated Resettlement and Indigenous Peoples Plan

INITIAL ASSESSMENT REPORT

Complainants: Directly Inundation Affected Peoples Collective Rights Protection Committee

Date received: 11 February 2020

Confidentiality requested: No

1 THE COMPLAINT²

1.1 On 11 February 2020, the Directly Inundation Affected Peoples Collective Rights Protection Committee (the Complainants) representing a group of project-affected households sent a letter to the EIB Complaints Mechanism (EIB-CM) requesting mediation to resolve concerns regarding the EIB-funded Nepal Tanahu Hydropower Project (the Project). The main allegations leading to the request for mediation of the Complainants are outlined in table 1 below. The Complainants also sent their complaint to the Office of the Special Project Facilitator (OSPF) of the Asian Development Bank (ADB). The Complainants authorised the Indigenous Women’s Legal Awareness Group (INWOLAG) and the Community Empowerment and Social Justice Network (CEMSOJ) to act as their advisors and representatives.

Table 1 – Allegations

The allegations raised by the Complainants relate to the following groups of issues:

- 1) Lack of adequate information sharing, meaningful consultation, and participation;
- 2) incomplete survey of land and inadequate and discriminatory form and amount of compensation;
- 3) Negative impact on their access to natural resources and livelihoods as well as on ancestral lands, cultural sites, and traditional practices (as Magar indigenous people) — all of which were not sufficiently taken into account.

2 BACKGROUND INFORMATION

2.1 The Project³ comprises the construction and operation of a 140 MW storage hydroelectric power scheme and its interconnection to the national grid. It is designed to help meet peak electricity demand in Nepal during the dry winter months and to operate as a baseload plant for the remainder of the year. The Project aims at providing an alternative to expensive fossil fuel-based power generation through cleaner energy and at helping to stabilise Nepal's power supply system and to reduce transmission losses. The generated electricity will be evacuated via a 37 km overhead transmission line to the Bharatpur substation. The respective lines and substations (except for the existing Bharatpur substation) are part of the Project. The Project further includes a programme of rural electrification to supply power to local villages. The Project therefore can be divided into three

² The public version of the complaint has been published on the EIB-CM’s website at: <https://www.eib.org/en/about/accountability/complaints/cases/nepal-tenahu-hydropower-project-sg-e-2020-02>.

³ Public information on the Project is available at: <https://www.eib.org/en/projects/pipelines/all/20120278>.

main components: the hydropower component including the dam and reservoir, the transmission line component, and the rural electrification component.

2.2 The borrower of the loan is the Federal Democratic Republic of Nepal represented by the Ministry of Finance while the final beneficiary is Tanahu Hydropower Limited (THL)⁴. THL was established in 2012 and is 100% owned by the Nepal Electricity Authority (NEA).

2.3 The European Investment Bank (EIB) is providing an investment loan for the Project of up to EUR 62.3m. The operation was approved by the EIB Board of Directors in March 2013.⁵ The operation is co-financed by the Asian Development Bank (ADB). Together with the ADB, the EIB finances construction lot 1 encompassing the water intake facilities, including dam and spillway construction works.

2.4 THL is supported during project implementation and the initial years of operation by a project support consultant (Lahmeyer International). Since May 2019, THL has been further assisted by an Environmental and Social Management Service Provider (ESMSP), namely ELC Electroconsult in association with GEOCE Consultant Limited⁶. A Panel of Experts was recruited in December 2018 to provide guidance to the Promoter on the treatment of environmental and social safeguards. Moreover, since November 2017, a local NGO has been helping the Government and THL with the management of the land acquisition and resettlement process. At the time of appraisal by the EIB, the Project was also envisaged to include a community development programme designed to enhance the community's livelihood and social development, in particular for vulnerable persons including women and indigenous people.

3 WORK PERFORMED BY EIB-CM

3.1 On 21 February 2020, the EIB-CM acknowledged receipt and confirmed the admissibility of the complaint. Following the admissibility of the complaint, the EIB-CM held a first meeting with the EIB services involved in the Project in order to obtain further information related to the Project, the allegations, and the situation of the local community.

3.2 The EIB-CM also liaised with the Office of the Special Project Facilitator (OSPF) of the ADB to discuss the complaint and its background and to consider potential ways of cooperation and coordination of the complaint handling process. As part of these coordination efforts, the OSPF informed the EIB-CM about the initial stakeholder consultations held in Nepal as part of its review and assessment mission, which took place between the end of February and the beginning of March 2020. Further, the EIB-CM started reviewing key project documentation and assessed the opportunities for collaborative problem-solving. Due to the ongoing global health crisis caused by COVID-19, the EIB-CM was not yet able to perform a site visit to Nepal.

⁴ <http://thl.com.np>.

⁵ The operation was originally approved for an amount of EUR 53.8m. In 2014, the loan amount was increased to EUR 62.3m.

⁶ In September 2019, the ESMSP issued its inception report.

4 REGULATORY FRAMEWORK

4.1 The EIB-CM policy⁷ and procedures⁸ apply to complaints of alleged maladministration lodged against the EIB Group (Article 1.1 of the EIB-CM Policy). According to Article 5.3.2 of the EIB-CM Policy, the EIB-CM in cooperation with relevant internal and external stakeholders attempts to resolve problems raised by complainants through a consensual process. The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with according to the highest standards of objectiveness whilst safeguarding the interests of all the internal and external stakeholders of the EIB Group according to Article 5.1.4 of the EIB-CM Policy.

4.2 Article 6.2.4 of the EIB-CM Policy stipulates that *“Whenever possible, and giving due consideration to the type of complaint, the EIB-CM establishes a collaborative resolution process with a view to resolving the dispute by (i) achieving a better and common understanding; (ii) improving the degree of trust between the parties and (iii) seeking to identify a common agreed solution.”* The mediation function of the EIB-CM is in charge of designing and carrying out such collaborative resolution process as an independent and impartial function within the EIB-CM.

4.3 The Project shall be implemented in accordance with the applicable EIB environmental and social standards. These applicable standards include the EIB Statement of Environmental and Social Principles (the statement)⁹ and the EIB’s Environmental and Social Practices Handbook in its version of 24 February 2010 (the handbook). The latter translates the environmental and social principles outlined in the statement into operational practices to be followed by the services of the EIB. The handbook contains five social assessment guidance notes including guidance note 1 on involuntary resettlement, guidance note 2 on the rights and interests of vulnerable groups, and guidance note 5 on public consultations and participation.

5 INITIAL ASSESSMENT

5.1 In their complaint, the Complainants explicitly state the following outcomes which they seek to achieve through a facilitation process:

- The Complainants request that the Free, Prior and Informed Consent (FPIC) of the indigenous populations be respected. Their representatives shall be included in the process of seeking FPIC and the existing indigenous people’s organisations shall be included in the consultations surrounding the Project.
- The Complainants further request that all notices of the Project shall be provided in the language understood by the affected community, i.e. Magar.
- The EIA should be revised to include the impact of the Project on the Complainants’ community. In particular, the Complainants cite that the EIA shall incorporate the impacts on grazing lands and the impacts on fodder, firewood, herbs, and forest vegetables. The Complainants request that such revised EIA be drafted with the participation of their community. Similarly, the Complainants request that the impacts on cultural and communal sites such as cremation sites, rest houses, temples, and water sources be studied with the

⁷ Available at: <https://www.eib.org/en/publications/complaints-mechanism-policy>.

⁸ Available at: <https://www.eib.org/en/publications/complaints-mechanism-procedures>.

⁹ Available at: https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

participation of the community. The survey shall be amended to include land previously left out.

- Besides the involvement in the revision of the EIA and the survey, the Complainants request that the community be represented in the local consultative forums (LCFs).
- The Complainants further request free electricity distribution and free THL shares for affected families as well as employment provided by the Project for project-affected people (PAPs).
- Lastly, the Complainants express the demand for compensation in the form of 'land for land' and 'house for house' for affected families.

5.2 As is customary for large-scale infrastructure projects and to ensure compliance with the environmental and social safeguards of the different lenders financing the Project, numerous extensive studies were prepared for the Project. The EIA for the hydropower project was completed in August 2009¹⁰ before the appraisal of the Project by the EIB services. An addendum to the EIA was prepared in 2012 and a supplementary EIA (sEIA) was prepared in 2017. Based on the EIA and its two revisions, THL prepared a consolidated Environmental Management Plan (EMP) for the hydropower component in July 2018.¹¹ In addition to the EIA for the hydropower project, two Initial Environmental Examinations (IEE) were performed on the transmission line component of the Project (June 2010)¹² and the rural electrification component of the Project (August 2012)¹³.

5.3 A combined Resettlement and Indigenous Peoples Plan (RIPP) was drafted by THL in December 2012. The document was updated for the hydropower component (Updated Resettlement and Indigenous Peoples Plan – UpRIPP) in November 2018¹⁴ and separate updates for the RIPPs of the transmission line component and the rural electrification programme are under preparation. The UpRIPP contains a revised socio-economic survey of affected households (SESAH). According to the survey, there are 547 affected households, of which 475 households were surveyed between May 2017 and January 2018. From the surveyed 475 affected households, 396 (83%) are considered vulnerable and 346 (73%) are households considered indigenous. To the understanding of the EIB-CM, the Complainants and their land would be affected by the hydropower component of the Project. During its initial assessment, the EIB-CM could not yet establish whether the Complainants' community¹⁵ was part of the 2017/2018 survey on which the UpRIPP is based.

5.4 The Complainants self-identify as indigenous Magar. The National Foundation for Development of Indigenous Nationalities has classified the Magar as a disadvantaged indigenous group. According to the UpRIPP, the Magar represent the biggest group of the affected indigenous households. The UpRIPP further states *"The SESAH confirmed that the cultivated lands that will be affected as a result of the Project do not comprise of traditional land or ancestral domains of any Janajati community. The SESAH¹⁶ also confirmed that in the Project's corridors of impacts, no shrines, temples or other religious structures or locations, regarded as traditionally sacred by the Janajatis¹⁷ will be affected as a result of the Project. In addition, no specific forestland or water body is linked with Magars' rituals, ancestries or their spiritual realms."* At the same time, the EMP mentions disruption

¹⁰ Document available on the EIB's project site, see link in footnote 3.

¹¹ Available at: [http://thl.com.np/images/supportive_docs/Consolidated-EMP--\(Draft\).pdf](http://thl.com.np/images/supportive_docs/Consolidated-EMP--(Draft).pdf).

¹² Document available on the EIB's project site, see link in footnote 3. The IEE 2010 for the transmission line was updated with the updated EIA 2012 for the hydropower component.

¹³ Document available on the EIB's project site, see link in footnote 3.

¹⁴ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp>.

¹⁵ According to the OSPF, the Complainants' community consists of 32 affected households.

¹⁶ Socio-economic survey of affected households.

¹⁷ In Nepal, indigenous populations are known as Adivasi Janajati.

of cremation sites and impact on religious historical and archaeological sites during the construction phase. During the initial stakeholder consultations held by the OSPF, the Complainants and their representatives raised issues related to lack of recognition of untitled customary land, ancestral properties, and impact on religious sites.

5.5 The mentioned studies are all prepared in English in line with the requirement of the EIB finance contract. The UpRIPP mentions that the entitlement matrix and the draft RIPP from 2012 are available in Nepali and that the UpRIPP itself will be made available in Nepali. From the first report of the Panel of Experts, the EIB-CM learned that a public information brochure that presents a summary of the Project, the land acquisition and involuntary resettlement impacts and the provisions of the UpRIPP is available in Nepali. During its initial assessment the EIB-CM could not identify which documents are or shall be published into Magar. The Complainants themselves, however, mention that they received on 2 April 2019 a copy of the RIPP¹⁸ in the Magar language, but not in the correct dialect.¹⁹

5.6 The EIB-CM understands that the LCFs (local consultative forums) referred to by the Complainants act as the project-level grievance redress mechanism. According to the UpRIPP, four LCFs have been established and each LCF includes two persons from affected households. In addition to the LCFs, the UpRIPP mentions two committees representing project-affected people, namely the “Hydropower Direct Affected Area Concerned Committee” and the “Direct Concerned Reservoir Area Conservation Committee”. The EIB-CM further learned from the UpRIPP that both committees had in the past expressed concerns about the compensation rates for the land. According to the UpRIPP, an agreement was reached with both committees. The EIB-CM could not establish whether the Complainants’ community is represented in either of the two committees and/or the LCFs.

5.7 With regard to compensation, the UpRIPP stipulates that the compensation rates are determined by the Compensation Determination Committee (CDC), which is chaired by the Chief District Officer. According to the Environmental Safeguards Monitoring Report July–December 2019 prepared by THL, around 90% of the affected households have received their compensation. During the initial stakeholder consultations held by the OSPF, the Complainants and their representatives iterated various concerns related to compensation: the process and methodology to determine the compensation rates was unfair; the compensation offered was not adequate to purchase new land; in some cases, affected land was either not included or was only partially included in the survey/compensation process.

5.8 During the initial assessment the EIB-CM learned that the Project was significantly delayed due to the earthquake in Nepal in 2015 and the termination of the contract of the first contractor for the civil works. The completion date of the Project – originally projected to be end-2020 – is currently expected to be December 2024. As a consequence of the significant delay which appears to have been beyond the control of the relevant stakeholders, studies had to be revised and updated sometimes multiple times, which led to a collection of documents covering data referring to different points in time.

¹⁸ The EIB-CM presumes this to have been the UpRIPP.

¹⁹ The EIB-CM understands that there are three main dialects of Magar. The EIB-CM and the OSPF will clarify this issue further during the process.

5.9 From the initial assessment, the EIB-CM notes potential discrepancies between the measures and studies described by THL and NEA for instance in the UpRIPP and the allegations of the Complainants, e.g. in regard to consultation and participation.

5.10 As mentioned under 1.1, the OSPF of the ADB received the same complaint on 12 February 2020. The complaint was acknowledged and registered on 18 February 2020 and found eligible on 20 February 2020.²⁰ The OSPF informed the EIB-CM that during the initial stakeholder consultations held by the OSPF, THL expressed openness to engage in a facilitation process.

6 PROPOSED WAY FORWARD

6.1 From the information available at the moment, it seems that the points raised are suited for a collaborative resolution process between the Complainants and the Promoter to be facilitated by the EIB-CM and OSPF. A collaborative resolution process is forward-looking in nature in seeking to come to mutually accepted and sustainable solutions in response to the issues raised.

6.2 Such collaborative resolution process can take various forms and the exact process and scope would be determined further by the mediation function of the EIB-CM. This would be done in close concertation with all stakeholders following the agreement in principle by both the Complainants and the Promoter to engage in a collaborative resolution process.

6.3 Whenever a complaint concerns an EIB project that involves other international financing institutions that have an independent accountability mechanism, the EIB-CM endeavours to collaborate with that mechanism as per Article 7.1 of the EIB-CM Policy. The OSPF is part of the accountability mechanism of the ADB. In the view of the EIB-CM, close cooperation between the two mechanisms is beneficial as it yields synergies and avoids duplicating requirements and processes for all stakeholders involved. Following the agreement in principle on a collaborative resolution process by the parties, the EIB-CM will therefore agree with the OSPF on the exact terms of cooperation and the way forward.

6.4 With the submission of this report, the Complainants and the Promoter are requested to confirm their willingness in principle to engage in a collaborative resolution process. After having heard from the Complainants and the Promoter, the EIB-CM will conclude whether there is agreement to initiate a collaborative resolution process or, in the absence of such agreement, whether to continue with a compliance review of the allegations in the complaint at issue.

²⁰ The same Committee had submitted a similar complaint to the OSPF in August 2018. The OSPF in 2018 declared the complaint ineligible after fact finding since the parties had not tried to resolve the issue together prior to submitting the complaint to the OSPF. In their complaint submitted in 2020, the Complainants elaborate on their past attempts to resolve the complaint.