

COMPLAINTS MECHANISM

SG/E/2021/10
SG/E/2021/11

Nepal Tanahu Hydropower Project (Nepal)

INITIAL ASSESSMENT REPORT

13 December 2021





Nepal Tanahu Hydropower Project Initial Assessment Report

13/12/2021

Complaint confidential

No

External distribution

Complainants and their advisors
Tanahu Hydropower Limited
Asian Development Bank

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Inspector General
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Disclaimer

This report is based on the information available to the EIB Group Complaints Mechanism up to 27 August 2021 and comments received during the consultation period.

In the event of discrepancies between language versions, the English version prevails.

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (EIB-CM) is a tool enabling resolution of disputes in case any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions. This may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <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 views 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 raised;
- 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.

This report does not yet contain a recommendation or decision on a possible way forward (compliance review or collaborative resolution process) to address the allegations, but aims to inform the complainants and other stakeholders in a transparent manner on the work carried out by the EIB-CM up to 27 August 2021. The purpose is to establish an information base after having consulted with the various stakeholders involved (complainants, NGO advisors, promoter, EIB and Asian Development Bank project teams) while awaiting further input from the promoter. The additional information needed to be able to come to a substantiated recommendation on the way forward is described under section 4 "Way forward" in the report. This report will therefore be complemented by the decision on the type of further work to be performed to address the allegation and/or resolve the issues raised by the complainants. This further work may include a compliance review or a collaborative resolution process.

CONTENTS

Executive summary.....	1
1 Background.....	2
1.1 The project.....	2
1.2 The complaint.....	3
2 Work performed.....	6
2.1 EIB-CM work performed.....	6
2.2 Regulatory framework.....	7
3 Initial assessment.....	7
3.1 Alleged lack of information and participation.....	8
3.2 Alleged insufficient environmental and social assessment.....	8
3.3 Alleged lack of compensation.....	10
3.4 Alleged inadequate grievance redress mechanism.....	11
3.5 Alleged lack of proper consideration of indigenous peoples' rights (including free, prior and informed consent) and the vulnerability of Dalits.....	12
3.6 Additional allegations on extraction activities.....	13
4 Way forward.....	14

GLOSSARY

CEMSOJ	Community Empowerment and Social Justice Network
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
INWOLAG	Indigenous Women Legal Awareness Group
LCF	Local Consultative Forum
MW	Megawatt
OSPF	Office of the Special Project Facilitator – Asian Development Bank
Project	Nepal Tanahu Hydropower Project
Promoter	Tanahu Hydropower Limited
SESAH	Socioeconomic survey of affected households
THL	Tanahu Hydropower Limited

EXECUTIVE SUMMARY

This report concerns two complaints received in June 2021 regarding the Tanahu Hydropower Project (Nepal) financed by the EIB. Both groups of complainants are considered to belong to vulnerable groups of the Nepalese population.

The Tanahu Hydropower Project (project) comprises the construction and operation of a hydropower scheme and its interconnection to the national grid. The project is located about 150 km west of Kathmandu on the Seti River near Damauli in the Tanahu district. The EIB financing amounts to up to EUR 62.3m and concerns the headworks civil works. The EIB is co-financing this part of the project with the Asian Development Bank.

The complaints presented mainly concern:

- 1) Lack of information and participation,
- 2) Insufficient environmental and social assessment,
- 3) Lack of compensation,
- 4) Inadequate grievance redress mechanism,
- 5) Lack of proper consideration of indigenous peoples' rights (including free, prior and informed consent) and the vulnerability of Dalits.

While the complainants are different, (some) similarities seem to exist with the complaint presented to the EIB in February 2020 (SG/E/2020/02) regarding the negative impact of the project on a group of Magar complainants' livelihoods and access to natural resources, as well as on ancestral lands, cultural sites and traditional practices – all of which were not sufficiently taken into account by the project according to the referenced complaint.

This report describes the work carried out by the EIB-CM up to 27 August 2021, which consisted of virtual consultations with the complainants, their advisors, the promoter and the EIB and Asian Development Bank project teams. In addition, the EIB-CM analysed project documentation and contracted a local facilitator and a Magar interpreter to help with communication and to provide translations as required. Because of the ongoing travel restrictions due to the COVID-19 health crisis, the EIB-CM was not able to perform a site visit to Nepal.

The main information gap which needs to be filled in order for the EIB-CM to be able to decide on the appropriate way forward in addressing the complainants' concerns is the conclusion of the final design for the reservoir's buffer zone. The size and shape of the buffer zone¹ is crucial to determine the project's impact on the complainants, their land and livelihood. Tanahu Hydropower Limited (THL) estimates that the final design of the buffer zone will be defined and confirmed by the end of November 2021. The EIB-CM considers that the study and decision on the final design of the buffer zone with the urgently required, more detailed information on the affected households meets at least in part a core request of the complainants for additional research on the project's negative impacts. The stakeholders agreed to engage on some of the issues in the meantime, such as quarrying activities (see section 3.6). These extraction activities do not seem to be directly linked to the project and, according to THL, are not carried out by or for the project.

The EIB-CM will continue to liaise closely with the stakeholders and will analyse the pending information and present an addendum and update to this report, including a recommendation on the way forward based on further discussions with the complainants.

¹ The buffer zone is a non-inundated zone above the water reservoir that is included for safety reasons and may limit usage of the land within such a zone.

1 BACKGROUND

1.1 The project

1.1.1 The Tanahu Hydropower Project (the project) comprises the construction and operation of:

- i. a 140 MW storage hydropower scheme,
- ii. a 37 km overhead transmission line that connects the plant to the national grid,
- iii. a rural electrification programme that aims to supply power to local villages.

The project aims to provide an alternative to fossil fuel-based power generation to help stabilise Nepal's power supply system and to reduce transmission losses.

The project is located about 150 km west of Kathmandu on the Seti River near Damauli in the Tanahu district. The reservoir area to supply the hydropower plant will extend about 25 km upstream, inundating the low-lying lands along the Seti River.² The hydropower generation project area covers two urban municipalities (Vyas and Bhimad) and two rural municipalities (Rishing and Myagde).

The three major construction packages include

Construction package	Type of construction	Progress as of March 2021	EIB financing approved
Lot 1	Headworks civil works ³	0% ⁴	Yes
Lot 2	Waterway, powerhouse, equipment	22%	No
Lot 3	Transmission line	26%	No

1.1.2 In March 2013, the EIB Board of Directors approved the financing of Nepal Tanahu Hydropower Project in the amount of up to EUR 62.3 m⁵. The borrower of the loan is the Federal Democratic Republic of Nepal represented by the Ministry of Finance, while the project is being implemented by Tanahu Hydropower Limited (THL), referred to as the promoter. THL was established in 2012 and is wholly owned by the Nepal Electricity Authority. The Nepal Electricity Authority is Nepal's national utility for electricity generation, transmission and distribution.

1.1.3 The finance contract with the EIB was signed in May 2013 and a first tranche in the amount of USD 10.26 m was disbursed in August 2021.

1.1.4 The EIB is co-financing the construction of lot 1 (headworks civil works package) with the Asian Development Bank. The start of the construction was delayed due to a delay in the procurement process. The contract for the construction of lot 1 was finally signed by THL and Song Da Corporation, Vietnam and Kalika Construction Limited, Nepal, on 22 March 2021. All pre-

² <http://thl.com.np/index.php?nav=projects>

³ Civil works needed to divert the water and guide it to the turbines (e.g. dam and spillway).

⁴ The Environmental Safeguard Monitoring Report April–June 2021 mentions that the start of works is expected by mid-August 2021. Pre-commencement activities (like investigative drilling and land development works) have already begun.

⁵ Public information on the project is available at <https://www.eib.org/en/projects/pipelines/all/20120278>. The operation was originally approved for an amount of EUR 53.8 m. In 2014, the loan amount was increased to EUR 62.3 m.

EIB Group Complaints Mechanism – Initial Assessment Report

construction activities of the project have been completed. The start of operation of the hydropower plant is scheduled for 2026, including some overlaps with the construction phase.

- 1.1.5 At the time of appraisal by the EIB, the social and environmental risk as well as the implementation risk were assessed to be the main project risks. To mitigate these risks, THL is supported by a project support consultant (Lahmeyer International) during project implementation and the initial years of operation. Since May 2019, THL has been further assisted by an environmental and social management service provider, namely ELC Electroconsult in association with GEOCE Consultant Limited. A panel of experts was recruited in December 2018 to provide guidance to the promoter on the treatment of environmental and social safeguards. The project includes a community development programme designed to enhance the community's livelihood and social development, in particular for vulnerable persons including women and indigenous people.

1.2 The complaint

- 1.2.1 On 3 June 2021, the EIB-CM received two complaints from a group of eight Dalit households and five Magar households who claim to be affected by the project. The complainants also sent their complaint to the Office of the Special Project Facilitator (OSPF) of the Asian Development Bank. A group of NGOs (Indigenous Women Legal Awareness Group (INWOLAG), Community Empowerment and Social Justice Network (CEMSOJ), International Accountability Project and NGO Forum on ADB) is acting as their advisors. The complainants confirmed that they wished the EIB-CM to treat the complaint, originally addressed to THL, as a complaint to the EIB.
- 1.2.2 On 22 August 2021, the EIB-CM received a letter signed by additional households (eight Magar, one Newar and two Dalit)⁶ requesting the EIB to allow these households to join the complaints presented by the Magar and Dalit households under SG/E/2021/10 and 11.⁷
- 1.2.3 During the consultation of the draft report, the NGO advisors informed the EIB-CM that additional Magar households requested to join the complaints presented by the Magar households under SG/E/2021/11. The number of complainants' households grouped under this initial assessment report increased to 26 households.
- 1.2.4 Both complaints are grouped in this report, as the allegation and demands of both groups are to a large extent similar. The main difference concerns the Magar and Newar indigenous peoples' specific rights. Dalits are not an indigenous group, but part of the Hindu caste system. Dalits have faced a history of discrimination due to the hierarchical Hindu caste system and lead socioeconomically restricted lives and are therefore considered a vulnerable group.
- 1.2.5 The Dalit households presented the following allegations and demands:
- i. Lack of information and participation:**
 - The environmental impact assessment was conducted without consulting with and providing information to the Dalit households, for example through public hearings.
 - The complainants were not included in studies or research about the project's economic, social, cultural and psychological effects.
 - The Dalits' settlement area has been marked as endangered by the reservoir, with no information provided to them.
 - ii. Lack of compensation:**
 - No compensation has been planned or calculated by the project.

⁶ Further information on Magar, Newar and Dalit populations can be found under section 3.5.

⁷ The additional complainants were consequently added to the complaints.

- The complainants expressed concerns that they will not be able to live in their current areas after inundation as they are already facing increased risks of landslides and restricted access to resources, including due to the construction of roads and riverbed mining. They consequently request land-for-land and house-for-house compensation/resettlement in an appropriate location.

iii. Inadequate grievance redress mechanism:

- The complainants were not involved in the formation of the Local Consultative Forum (LCF)⁸.
- The complainants did not receive a response to the complaint presented to the grievance redress mechanism.

iv. Lack of proper consideration of the Dalits' vulnerability:

- The complainants claim that Dalits are discriminated against in Nepal, being deprived of access to public facilities, having a poor economic status and being neglected by the state and society.

The complainants requested the following:

- Respect for their constitutional rights.
- A meaningful consultation that takes the high rate of illiteracy into consideration, and participation in the decision-making process.
- Further studies and research on the project's negative impacts, focusing on:
 - The calculation and provision of adequate and fair compensation for losses in physical and tangible assets and main sources of livelihood;
 - The calculation and provision of adequate and fair compensation for losses in intangible assets and respect for social and cultural rights;
 - Appropriate compensation for climate change caused by the project.
- The participation of Dalit representative organisations like Nepal National Dalit Social Welfare Organization, Center for Dalit Women Nepal, Dalit Alliance for Natural Resources or others to represent the complainants in the process.
- Free electricity, shares in the Nepal Electricity Authority, housing and employment, and education and professional training opportunities for the Dalit community.
- The implementation of a benefit-sharing scheme for the protection and promotion of economic, social, cultural and artistic knowledge and skills and for social welfare work.

1.2.6 The Magar and Newar households (the indigenous households) presented the following allegations and demands:

i. Lack of information and participation:

- The environmental impact assessment was conducted without independent prior and informed consent from the indigenous community.
- There was no involvement in the updated Resettlement and Indigenous Peoples Plan.
- The complainants were not included in studies or research on the project's economic, social, cultural and psychological effects.

⁸ LCFs are part of the local grievance redress mechanism.

EIB Group Complaints Mechanism – Initial Assessment Report

- Their settlement area has been marked as endangered by the reservoir, with no information provided to them.
- ii. Lack of compensation:**
- No compensation has been planned or calculated by the project.
 - The complainants expressed concerns that they will not be able to live in their current areas after inundation as they are already facing increased risks of landslides and restricted access to resources, including due to the construction of roads and riverbed mining. They consequently request land-for-land and house-for-house compensation/resettlement in an appropriate location.
- iii. Inadequate grievance redress mechanism:**
- The complainants were not involved in the formation of the Local Consultative Forum (LCF).
 - The complainants did not receive a response to the complaint presented to the grievance redress mechanism.
- iv. Lack of proper consideration of indigenous peoples' rights (including free, prior and informed consent) and vulnerability:**
- The project has occupied and used an area traditionally used as grazing land without prior permission from the indigenous households.
 - Magars and Newars have their own language, religion, culture, lifestyle and social traditions, which they have been practising on their ancestral land that has been occupied and used by the project without their prior consent.

The complainants requested the following:

- Respect for their constitutional rights as indigenous people.
- The rectification of a statement made in the updated Resettlement and Indigenous Peoples Plan, according to which there are no effects on the indigenous peoples' traditional, ancestral land or on the water, land, forest, etc., including traditional resources, temples, or religious and sacred places.
- The publication of any information and documents produced by the project in Magar to enable meaningful participation.
- Involvement in the decision-making process and free, prior and informed consent.
- Further studies and research on the project's negative impacts, focusing on:
 - The calculation and provision of adequate and fair compensation for losses in physical and tangible assets and main sources of livelihood;
 - The calculation and provision of adequate and fair compensation for losses in intangible assets and respect for social and cultural rights;
 - Appropriate compensation for climate change caused by the project.
- The participation, consultation and representation of representative organisations for indigenous peoples, such as Bheja, Mothers' Group, Magar Organization, Magar Women Organization Tanahu, Magar Students' Organization, Indigenous Peoples' Federation Tanahu and any other organisations that belong to the indigenous group.

- Free electricity, shares in the Nepal Electricity Authority, housing and employment, and education and professional training opportunities for the indigenous households.
- The implementation of a benefit-sharing scheme for the protection and promotion of economic, social, cultural, linguistic and indigenous knowledge and skills and for social welfare work.

1.2.7 Both groups of complainants raised further concerns at various instances about extraction activities on the Seti River that are having a negative impact on them⁹.

2 WORK PERFORMED

2.1 EIB-CM work performed

- 2.1.1 On 16 June 2021, the EIB-CM acknowledged receipt and confirmed the admissibility of the complaints. On 24 June 2021, the translations in Nepali and Magar of both acknowledgements were sent to the complainants. Having identified significant overlaps between the two complaints, the EIB-CM decided to carry out a joint initial assessment for both cases. The objective of the initial assessment is to clarify the concerns raised by the complainants, understand the complainants' views and the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainants. Further work may include a compliance review or a collaborative resolution process (e.g. mediation). This report contains the results of the EIB-CM's initial assessment.
- 2.1.2 During the initial assessment, the EIB-CM had an initial meeting with the EIB services on 5 July 2021 in order to obtain further information related to the project, the allegations and the situation of the local community. The EIB-CM received information notably about the advancement of the project. The main topics discussed were the information available on the location of the complainants' settlements and a possible overlap with another complaint presented to the EIB-CM in 2020¹⁰ regarding the project's impacts.
- 2.1.3 Following the consent of the complainants, the EIB-CM also liaised with the Office of the Special Project Facilitator (OSPF) of the Asian Development Bank, which had received the same complaints in parallel. The aim was to discuss the complaints and their background and to consider potential ways of cooperating on and coordinating the complaints handling process. The OSPF liaised with the Asian Development Bank's project team, which is currently dealing with the complaints on the Asian Development Bank's side.
- 2.1.4 Due to COVID-19 travel restrictions, the EIB-CM was not able to travel and meet the complainants, the promoter and other stakeholders in person and on site. However, an external facilitator and Magar translator (the facilitators) were contracted to facilitate communication during this initial assessment phase. The EIB-CM held a preparatory virtual meeting with one of the NGO advisors and the facilitators to explain the EIB-CM's complaint handling process and clarify the required logistics for the subsequent meeting with the complainants.
- 2.1.5 On 9 July 2021, a virtual meeting was held with both groups of complainants, the NGO advisors, the facilitators and the EIB-CM. The complainants clarified the role of the NGO advisors, who are representing the complainants while the decision-making power stays with the complainants themselves. The advisors will keep the complainants informed of the process, provide additional information and facilitate communication between all parties. Following the meeting, both

⁹ More information is provided in section 3.6.

¹⁰ SG/E/2020/02 Nepal Tanahu Hydropower Project

<https://www.eib.org/en/about/accountability/complaints/cases/nepal-tanahu-hydropower-project-sg-e-2020-02>

EIB Group Complaints Mechanism – Initial Assessment Report

groups confirmed their agreement for the EIB-CM and the Asian Development Bank to coordinate the complaint handling process as far as possible.

- 2.1.6 On 16 July 2021, the EIB-CM held a virtual meeting with the promoter and members of the EIB services to inform them about the complaints and to gather further information.
- 2.1.7 On 21 July 2021, the EIB-CM had a virtual meeting with representatives of the Asian Development Bank's project team and the EIB services to inform them about activities carried out so far and to ensure information sharing between both institutions.
- 2.1.8 On 27 August 2021, the EIB-CM and the EIB services participated in a virtual meeting with the communities and their advisors, representatives of the promoter and the environmental and social management service provider and representatives of the Asian Development Bank's project team. The exchange of information concerned (amongst others) additional clarification on the complaints presented, the timing and additional work to be carried out for the definition of the buffer zone, and the responsibilities for and purpose of different studies undertaken in the past.

2.2 Regulatory framework

- i. The EIB-CM Policy¹¹ and Procedures¹² apply to complaints of alleged maladministration lodged against the EIB Group (Article 1.1 of the EIB-CM Policy). In accordance with Article 5.3.2 of the EIB-CM Policy, the EIB-CM, in cooperation with relevant internal and external stakeholders, will attempt 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 while safeguarding the interests of all the internal and external stakeholders of the EIB Group in accordance with Article 5.1.4 of the EIB-CM Policy.
- ii. The project must comply with the EIB's applicable standards. The project's applicable standards include, but are not limited to:
 - Relevant national law, including on land acquisition and valuation and resettlement;
 - The EIB Statement of Environmental and Social Principles and Standards (the statement)¹³ and the EIB's Environmental and Social Practices Handbook in the version dated 24 February 2010 (the handbook). The statement translates the environmental and social principles outlined therein into operational practices to be followed by the EIB services. 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 participation¹⁴.

3 INITIAL ASSESSMENT

The EIB-CM considers that the allegations made by the complainants fall under the following five main groups of issues, which will be addressed in turn below:

Lack of information and participation,

- i. Insufficient environmental and social assessment,
- ii. Lack of compensation,

¹¹ Available at: <https://www.eib.org/en/publications/complaints-mechanism-policy>

¹² Available at: <https://www.eib.org/en/publications/complaints-mechanism-procedures>

¹³ Available at: https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

¹⁴ The finance contract was signed in May 2013, the 2009 EIB Statement of Environmental and Social Principles and Standards were originally adopted in September 2010 as part of the EIB Environmental and Social Handbook.

- iii. Inadequate grievance redress mechanism,
- iv. Lack of proper consideration of indigenous peoples' rights (including free, prior and informed consent) and the vulnerability of Dalits.

3.1 Alleged lack of information and participation

- 3.1.1 The EIB Statement of Environmental and Social Principles and Standards (2009) mentioned in section 2.2 states: "Stakeholder concerns should be considered as early as possible in the project assessment process in order to reduce risks and provide for timely resolution of conflicts. For all projects for which the EIB requires a formal EIA, the promoter should conduct a meaningful, transparent, and culturally appropriate public consultation of affected communities and provide for a timely disclosure of appropriate information in a suitable form; there should be evidence that the views expressed have been considered."¹⁵
- 3.1.2 Both groups of complainants confirmed that they had been aware of the project for many years. In the past they had been informed by project representatives that they would not be affected. However, the Dalit complainants living closer to the river in Wantangi Taar were concerned by stones that had been placed as physical markers for what they believe to be the inundation line. These stones are reported to be directly located in the vicinity of the land and gardens surrounding their houses.¹⁶
- 3.1.3 The settlement of the group of indigenous households, Jalbire Khet, is not located as close to the river, but is also in the proximity of some of these markers¹⁷. Both communities shared their fear of increased landslide risk due to erosion and following the construction of roads to extraction sites at the riverbed. These activities do not appear to be directly related to the project, i.e. undertaken for the project¹⁸. In addition, the grazing land used by the complainants is situated directly by the river and is expected to be inundated by the reservoir.¹⁹ Both groups alleged that they had not been (sufficiently) informed by the project about possible impacts and that they were never given the opportunity to participate in any consultation meeting or survey.
- 3.1.4 Based on the information received, the EIB-CM considers it highly likely that both groups of complainants have not received recent and clear information from the project on possible impacts, or more specifically whether their current location is in or close to the inundation area or buffer zone or outside of the project's area of impact. This appears to be the consequence of the lack of determination of the buffer zone as outlined in the following section.

3.2 Alleged insufficient environmental and social assessment

- 3.2.1 The EIB-CM is aware that the project was significantly delayed due to the earthquake in Nepal in 2015 and the termination of the contract with the first contractor for the civil works, which resulted in the signature of a new contract only in March 2021. 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.
- 3.2.2 As is customary for large-scale infrastructure projects numerous extensive studies were prepared for the project inter alia to ensure compliance with the environmental and social

¹⁵ Statement 63.

¹⁶ This group of complainants does not possess land registration titles.

¹⁷ According to the complainants, it is located closer to Phedi Khola, which is mentioned in the environmental impact assessment report (August 2009) as a risk zone in an erosion prone area and which was allegedly affected by significant landslides in 2021.

¹⁸ Further information on extraction activities can be found in section 3.6.

¹⁹ The grazing land is jointly used by the complainants of the present complaint and the Magar community presenting a complaint registered under SG/E/2020/02.

EIB Group Complaints Mechanism – Initial Assessment Report

safeguards of the different lenders financing the project,. The environmental impact assessment (EIA) for the hydropower project was completed in August 2009²⁰ before the appraisal of the project by the EIB services. An addendum to the EIA was prepared in 2012²¹ and a supplementary EIA was prepared in 2017. Based on the EIA and its two revisions, THL prepared a consolidated Environmental Management Plan for the hydropower component in July 2018²², which was updated in February 2021. In addition to the EIA for the hydropower project, two initial environmental examinations were performed on the transmission line component of the project (June 2010)²³ and the rural electrification component of the project (August 2012)²⁴.

- 3.2.3 Following a Resettlement Framework in August 2012, a Resettlement and Indigenous Peoples Plan was drafted by THL in December 2012 for the hydropower component. The document combined the involuntary resettlement plan with the indigenous peoples plan and was updated in November 2018 (updated Resettlement and Indigenous Peoples Plan)²⁵. A separate Resettlement and Indigenous Peoples Plan was prepared in November 2020 for the transmission line component of the project.²⁶
- 3.2.4 The updated Resettlement and Indigenous Peoples Plan makes reference to a revised socioeconomic survey of affected households (SESAH) and a detailed measurement study²⁷. The survey was carried out with the objective of confirming the identity of the affected households and persons and describing their sociodemographic and socioeconomic features, amongst others. According to the survey, there are 547 affected households²⁸, of which 475 households were surveyed between May 2017 and January 2018. Of the surveyed 475 affected households²⁹, 396 (83%) are considered vulnerable, 346 (73%) are considered indigenous and 14 (3%) are considered Dalit. The EIB-CM understands that the socioeconomic survey of affected households was based on the land requirements outlined in the detailed measurement study carried out for the reservoir and dam area between September and December 2016, which did not include the buffer zone. Given that the buffer zone has not yet been determined, information on affected land, structures, trees and community properties and facilities in the updated Resettlement and Indigenous Peoples Plan all appear to be incomplete. For the people (potentially) affected by the buffer zone, the informative value of the study is therefore limited.
- 3.2.5 This also led to consequences in the handling of grievances of persons likely to be affected by the buffer zone (see section 3.4) and in the consultation process (see section 3.1). The consultation activities described in the updated Resettlement and Indigenous Peoples Plan were directed at “residents and property owners of project components such as campsites, the access road, the powerhouse site, the reservoir area, other temporary facilities and related facilities,”³⁰ amongst others. It seems likely to the EIB-CM that the households potentially affected by the buffer zone were not included in any of the consultation activities.
- 3.2.6 Due to the lack of a detailed measurement study or socioeconomic household survey conducted for the buffer zone, the EIB-CM understands that no cut-off date for eligibility (as defined in the updated Resettlement and Indigenous Peoples Plan) yet applies to this area. The EIB-CM

²⁰ <https://www.eib.org/en/registers/all/53221934>

²¹ Available at: http://thl.com.np/images/supportive_docs/EIA-addendum.pdf

²² Available at: [http://www.thl.com.np/images/supportive_docs/Consolidated-EMP--\(Draft\).pdf](http://www.thl.com.np/images/supportive_docs/Consolidated-EMP--(Draft).pdf)

²³ Available at: <https://www.eib.org/attachments/registers/53220688.pdf>

²⁴ Available at : <https://www.eib.org/attachments/registers/53219894.pdf>

²⁵ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp>

²⁶ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp-0>

²⁷ As outlined in section 3.1.3, the complainants were allegedly not involved in the SESAH.

²⁸ The EIB-CM notes that the Resettlement and Indigenous Peoples Plan (December 2012) mentions 758 affected households and the Environmental Impact Assessment Report (August 2009) mentions 838 affected households.

²⁹ The remaining 72 affected households consist of absentee households or families difficult to find or contact. According to the updated Resettlement and Indigenous Peoples Plan, THL would use further opportunities to conduct surveys of those absentee affected households.

³⁰ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp>

gathered from conversations with the promoter that the delay in the definition of the buffer zone was caused by the delay in the procurement process for lot 1.

- 3.2.7 According to information provided by THL, additional drone footage is needed, including information on elevation levels for a digital elevation model to enable the definition of the buffer zone. The decision on the final design is expected by the end of November 2021. THL further stated that if the final design of the buffer zone results in a revised definition of the area of land to be acquired, a government-led detailed measurement study will be carried out, followed by a project-led socioeconomic survey and – if applicable – a complementary resettlement process will be started.
- 3.2.8 From the initial assessment, the EIB-CM notes potential discrepancies between the measures and studies described by THL, for instance in the updated Resettlement and Indigenous Peoples Plan and the allegations of the complainants regarding impact on traditional land and consultation and participation. For instance, the updated Resettlement and Indigenous Peoples Plan states: “The Project will have no impacts on the Janajati cultural identity, survival and cultural resources, livelihood systems; nor on their cultural territories or ancestral domains.” This statement is, however, contested by the Magar and Newar complainants (as outlined in section 1.2.6). Similarly, the updated Resettlement and Indigenous Peoples Plan states 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 SESAH 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 Janajatis, 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.”³¹ At the same time, the Environmental Management Plan mentions disruption of cremation sites and impact on religious historical and archaeological sites during the construction phase.

3.3 Alleged lack of compensation

- 3.3.1 The EIB-CM understood from the conversation with the promoter that the complainants have not been listed as affected persons and deduces from the conversation with the complainants that they were not considered in the socioeconomic survey of affected households on which the updated Resettlement and Indigenous Peoples Plan is based. Therefore, the project did not make provisions for any compensation for them.
- 3.3.2 The EIB-CM learnt that if an additional detailed measurement study and socioeconomic survey regarding the buffer zone are carried out, the survey will collect data on additional affected assets and persons, forming the basis for compensation payments and definition of entitlements. According to the Land Acquisition Act 2034 (1977), the Compensation Determination Committee (CDC), a district level committee, is the responsible entity to determine the compensation of land.³² The additional socioeconomic survey will collect baseline data on affected persons to assess resettlement impacts and to verify that the proposed entitlements are appropriate. This survey would be carried out by the environmental and social management service provider, which is supporting the project in the correct implementation of social and environmental safeguard measures.
- 3.3.3 The EIB-CM understood that the issues raised by the complainants regarding the compensation process (appropriateness of compensation, land-for-land compensation or cash compensation) can only be fully addressed following the clarification of the project’s impact on the complainants. The EIB-CM notes that, even independently of the definition of the buffer zone,

³¹ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp>

³² Available at: <https://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/land-acquisition-act-2034-1977>

EIB Group Complaints Mechanism – Initial Assessment Report

the complainants could be affected in terms of their traditional grazing lands, forest and water use, and traditional ceremonial sites, etc.

- 3.3.4 The environmental and social management service provider explained that communities in the project area can benefit from a community development programme as a complementary measure that is not limited to people directly affected by the project. The programme targets education, health, gender development, social inclusion, economic development and livelihood activities for people living in the area. The service provider and the project teams have expressed the possibility of opening the community development programme and related survey (which is in the process of being carried out) to additional communities and of checking whether to include the complainants' settlements if there is interest. The complainants pointed out, that they had not been consulted at the time of the design of the community development programme.

3.4 Alleged inadequate grievance redress mechanism

- 3.4.1 The EIB-CM learnt from the updated Resettlement and Indigenous Peoples Plan that THL was supposed to establish the grievance redress mechanism in the following way:

- Two Project Information Centres serve as the first level of intervention to address grievances by providing full and correct information³³. The Information Centre (staffed by two people) must record the name of the person, the date when the complaint was received, the nature of the complaint, the location and how the complaint was resolved. The data are used for THL's monitoring activities. If the issue has not been solved by providing adequate information through the Project Information Centre, THL becomes involved to solve the issue within seven days. If a solution cannot be found, the complaint has to be presented to the Local Consultative Forum (LCF).
- Four LCFs address the issues raised by local people from the project-affected urban/rural municipalities. Members of the LCF are representatives of affected families (one male and one female head from the ward), the Village Development Committee (VDC) and Ward Chair, representatives of local offices, social workers and knowledgeable persons. They act as a grievance redress committee to reach an amicable agreement at local level.
- If no agreement is reached or no response is received from the project office, the affected persons can appeal to the Compensation Determination Committee (CDC), particularly if the issue is related with loss of private assets and compensation. The CDC will provide an acceptable solution within 15 days, otherwise the affected persons can appeal to the Ministry of Home Affairs.

- 3.4.2 According to the Social Safeguard Monitoring Report January–March 2021, a record of grievances has been kept since 2016. The project received a total of 117 grievances, of which 67 have been completed, 39 (33.33%) are in the process of being addressed and 11 (9.4%) were considered to be out of scope of the project. The report provided by THL states further that “[...] during the reporting period, THL collected three grievances from project affected individuals but all of them were out of the scope of the project.”

- 3.4.3 The complainants presented the complaints to the THL Tanahu office in December 2020 and the District Administrative Office in Damauli (which provided a registration number for each of the complaints). Moreover, they state that they informed a member of the LCF in an oral conversation about the complaint. In January, they presented the complaint to the local Project Information Centre in Rising Patan and the Ward Office, which both registered the complaints and provided a registration number. No further information or response to the complaints was provided by the project.

³³ According to information provided in the Social Safeguard Monitoring Report January–March 2021, only one Project Information Centre has been established in Bhimad.

EIB Group Complaints Mechanism – Initial Assessment Report

and social justice. Dalit are also known as lower caste under the stratified Hindu caste system originated some 3 000 years ago. [The] Dalit community occupies 13% of total population (although Dalit activist claim to be over 20%) and comprises 21 caste [...]”³⁷.

- 3.5.4 In May 2011, Nepal’s parliament passed the Caste-based Discrimination and Untouchability (Crime and Punishment) Act, which prohibits discrimination based on custom, tradition, religion, culture, rituals, origin, caste, race, descent, community, occupation or business. It imposes punishment for caste-based discrimination, as do provisions of the country’s Civil and Criminal Codes of 2017. The Constitution of 2015 also guarantees fundamental rights for Dalits. According to the quoted articles, caste-based discrimination and violence persist nonetheless.³⁸
- 3.5.5 Both groups of complainants are thus considered to belong to vulnerable communities. The Resettlement and Indigenous Peoples Plan for the Tanahu Hydropower Project – 220 KV Transmission Line Component states that “In the context of Nepal, vulnerable community means communities who are commonly landless and marginal farmers living below the subsistence level. Moreover, these people have no or limited access to public resources and they almost never participate in national planning or policy, and do not have access to decision-making processes or development initiatives. As a result, their risk of falling below the poverty line is high. Formal and informal studies conducted in Nepal reveal that most indigenous people (Adivasi Janajati) and Dalit fall under the category of vulnerable groups in Nepal”.³⁹
- 3.5.6 The applicable EIB Statement of Environmental and Social Principles and Standards (2009) require the following: “[...] Promoters that seek EIB finance outside the EU are required to adopt the social standards regarding involuntary resettlement, indigenous people and other vulnerable groups, the core labour standards of the International Labour Organization (ILO) and occupational and community health and safety.⁴⁰ [...] All policies, practices, programmes and activities developed and implemented by the promoter should pay special attention to the rights of vulnerable groups [...]. The livelihoods of vulnerable groups are especially sensitive to changes in the socioeconomic context and are dependent on access to essential services and participation in decision-making. Where the customary rights to land and resources of indigenous peoples are affected by a project, the Bank requires the promoter to prepare an acceptable Indigenous Peoples Development Plan. The plan must reflect the principles of the UN Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent to any relocation.”⁴¹
- 3.5.7 The EIB-CM notes that due to the issues outlined in section 3.1 (alleged lack of information and participation), it seems that neither indigenous peoples’ specific rights nor the vulnerability of both groups of complainants were appropriately reflected in the process of the project preparation and implementation.

3.6 Additional allegations on extraction activities

- 3.6.1 As an additional concern, extraction activities (quarrying) at the riverbed and on the complainants’ customary lands were mentioned by the complainants and their advisors. The complainants had not been consulted or compensated before the start of these activities. The excavations are allegedly impacting and deteriorating the quality of the land in that area, which the complainants use for grazing and agricultural activities.
- 3.6.2 These extraction activities do not seem to be directly linked to the project and, according to THL, are not carried out by or for the project.

³⁷ <https://v1.dwo.org.np/dalit.php>

³⁸ <https://www.dandc.eu/en/article/despite-legal-protections-nepals-dalits-suffer-serious-discrimination> and <https://www.hrw.org/world-report/2021/country-chapters/nepal>

³⁹ Available at: <https://www.adb.org/projects/documents/nep-43281-013-remdp-0>

⁴⁰ Statement 50.

⁴¹ Statement 52 and 53.

- 3.6.3 In addition to the possibility of some of these activities being carried out illegally, local authorities issued extraction rights to private businesses for sites within the project area. THL has asked a monitoring committee to assess the situation and to recommend corrective measures. It has also been requesting the District Administration Office to cease such activities in the area and proposed in a joint call with the communities to have a high-level meeting with the local administration to address the issue of extraction activities and their impact on the complainants.
- 3.6.4 THL has committed to investigate the additional sites identified where there is evidence of extractive activities and to continue to work with the government and local authorities to determine how best to proceed.
- 3.6.5 The EIB-CM learnt that the extraction activities apparently happen on land that is partially government owned, partially THL owned and also owned by one individual that has not accepted compensation. If these activities are carried out on land acquired by THL, for which the updated Resettlement and Indigenous Peoples Plan states that the affected households may continue to cultivate the land until impoundment, tolerating extraction activities at the same time at least seems contrary to such commitment. The EIB-CM therefore welcomes the engagement and commitment of THL to address the issue of (illegal) extraction activities and their proposal for a high-level meeting as well as effective dissemination of information on these activities to impacted groups through ongoing and meaningful stakeholder engagement.
- 3.6.6 The EIB-CM requested additional information (the report on findings during the monitoring committee's field visit) to substantiate its understanding of the situation.

4 WAY FORWARD

- 4.1.1 Pending the project's decision on the definition of the buffer zone, the EIB-CM does not consider to have sufficient information to meaningfully engage with the parties to discuss the way forward and to conclude this report with a decision on how to proceed with the complaint. A decision on whether there will be a buffer zone at all, the information on its final design and its implications for the complainants and the broader project is needed for an informed and transparent discussion of a way forward with the stakeholders. If additional land needs to be acquired to create the buffer zone, the surveys outlined in section 3.2.7 (including the socioeconomic household survey) would have to be carried out. The EIB-CM considers that the study and decision on the final design of the buffer zone with the urgently required, more detailed information on the affected households meets at least in part a core request of the complainants for additional research on the project's negative impacts.
- 4.1.2 As mentioned above, the EIB-CM was unfortunately not yet able to travel and meet the complainants, the promoter and other stakeholders in person and on site due to COVID-19 travel restrictions. With the help of the local facilitator and the translator, the EIB-CM will stay in close contact with the stakeholders and will discuss an appropriate way forward with them (either in the form of a compliance review or a collaborative resolution process) following the receipt of the information and studies described in the previous paragraph. The EIB-CM will carry out a field visit as soon as the COVID-19 induced internal and external travel restrictions allow for it.
- 4.1.3 On the basis of these discussions, the EIB-CM endeavours to issue its decision on the type of further work to be performed until February 2022.