

Annex 4: Proposed Terms of Reference for the Facilitator provided by CBI

[Note: This document reveals that CBI has provided the Bank with a “recommendation to facilitate dialogue and assist negotiations” among the communities and NEA “in project sites where conflict is known to exist, including in Sindhuli”.]

Terms of Reference

Independent Facilitator for Khimti-Dhalkebar Transmission Line Dispute Resolution

Background

The World Bank is currently supporting Government of Nepal in Transmission Line (T/L) projects, Hydropower Generation, and Renewable Energy Projects. The majority of the projects are T/L projects. A number T/L projects have experienced conflict with local communities over issues like routing, land acquisition, community benefits, health impacts, and compensation for land located close to or within the right of way (RoW). Some of these conflicts have resulted in serious delays in and suspensions of T/L construction.

The Khimti Dhalkebar (KD) 220kV T/L project has been associated with an especially challenging set of conflict dynamics, in particular within the Sindhuli District. Although the KD T/L project began more than ten years ago, it is still not completed. A local “Struggle Committee” — made up of some individuals who own property within the RoW and members of the broader community — formed in opposition to the project in Sindhuli. KD T/L became the subject of a writ petition filed before Nepal’s Supreme Court and a World Bank Inspection Panel investigation and report. Construction in Sindhuli was suspended for more than three years while these disputes made their way through the relevant institutions. Although construction resumed in April 2016, some members of the local community remain opposed to it and/or have protested construction activities. A number of families within the RoW still have not accepted government compensation, others in the community remain opposed to the project, and some community members were arrested for protest activities in July 2016.

In August 2016, the Consensus Building Institute (CBI) issued a report to the World Bank analyzing options for conflict prevention and mitigation for energy projects in Nepal. The report included an analysis of the drivers and dynamics of conflicts around the development of energy infrastructure in Nepal, and proposed options for building national systems and capacities for conflict management in the power sector. Among the conclusions of the report was a recommendation to facilitate dialogue and assist negotiations among project-affected people, the Nepal Energy Authority (NEA) and concerned stakeholders in project sites where conflict is known to exist, including in Sindhuli as well as two additional sites in Phidim and Dumkibas.

In accordance with these Terms of Reference, the World Bank is seeking an expert, skilled facilitator to design and implement a dialogue process for stakeholders **in Sindhuli**.¹

¹ **The Bank will be issuing separate Terms of Reference for facilitation support in Phidim and Dumkibas.**

Scope of Work

The facilitator will be expected to complete the following tasks:

- ***Desk review of relevant documentation.*** The facilitator will review project documentation to obtain the necessary background on the project history and key dynamics of the dispute. Relevant documentation will be provided by the Bank.
- ***Design an effective process and structure for dialogue based on and assessment of the goals and interests of the primary stakeholder groups.*** Before initiating a dialogue process, the facilitator will meet separately with the key individuals and groups, including but not limited to representatives of the NEA, the Struggle Committee, and local government officials, to assess their interests in and commitment to a dialogue process. Key initial questions include:
 - What are the parties hoping to get out of a dialogue process?
 - What stakeholder groups should be included?
 - How many representatives from each of these groups should participate, and who should these representatives be?
 - What will be the ground rules for the dialogue around communication and other issues?
 - Will translation services be needed?
 - What will be the timing, location, and structure of the meetings?
 - What other parties might need to be engaged or consulted to help move the process forward or help implement a potential agreement?
 - How will the parties manage communication with individuals or groups not participating in the dialogue, to ensure any necessary consultations take place while maintaining the integrity of the process?
 - How will the parties come to agreement and what will be the legal force of this agreement?
 - What will happen if the parties cannot come to agreement?
- ***Draft, distribute, and revise a written process agreement.*** Following the initial consultations outlined above, the facilitator will draft, distribute, and revise as needed a written agreement for the parties to consider around the process for dialogue. The facilitator will obtain a consensus on the process agreement before moving forward with the dialogue.
- ***Convene and facilitate the dialogue process.*** The facilitator will support a set of conversations around the parties' interests and concerns, and potential options for moving forward. The duration, nature, attendance, and topics of the conversations are at the facilitator's discretion. The facilitator will manage communication among the parties both during and between meetings, handle scheduling and logistical issues, and draft and distribute ancillary meeting materials as needed. If the dialogue advances to a stage where the parties are ready to consider coming to agreement, the facilitator will draft and distribute proposed written deal terms. Potential issues to be explored during meetings include:

- What are the main issues to be resolved?
 - What are the parties' main concerns and goals with respect to these issues?
 - Where do the parties' goals overlap and where are they different?
 - What potential options could the parties decide to include in a deal?
 - What norms or other criteria could the parties use to help resolve their differences, and ensure they come to a deal that is fair to all sides?
 - What issues, if any, would benefit from additional fact-finding?
 - If they come to agreement, how will the parties manage their differences moving forward, and resolve any implementation challenges that may arise?
 - What, if anything, can the parties do to minimize the negative consequences of a non-agreement?
- ***Provide periodic progress updates to the World Bank.*** The facilitator will provide monthly updates to the Bank describing the main tasks performed and costs incurred, including any materials produced and meetings convened. The facilitator should not report on the substance of any confidential conversations or materials in these updates.
 - ***Follow-up support as needed.*** The facilitator will be available to provide follow-up support to the parties as needed, should they come to an agreement and request continued support.
 - ***Consultation with facilitators in Phidim and Dumkibas.*** The facilitator will stay in regular contact with the facilitators of the separate Phidim and Dumkibas dialogue processes, to ensure congruity and consistency across the processes.

Qualifications

Qualified applicants should meet the following criteria.

- Masters' level degree or equivalent in a relevant field (e.g. public policy, law, management, social studies)
- Minimum of 10 years relevant professional experience
- Nepali national
- Excellent oral and written communication skills in English and Nepali
- Highly-developed conflict resolution, mediation, communication, and negotiation skills
- Experience in the energy, environment and land use sector
- Availability to implement the full scope of work identified above, including working separately with the parties beforehand to design the process, and traveling to Sindhuli as needed to meet with stakeholders and/or facilitate meetings
- Strong track record of facilitating effective group conversations while adhering to principles of neutrality, including in situations where the parties do not have the same level of structural power or authority, or that involve disputes between local communities vis-à-vis corporations, institutions, and governments
- Ability to communicate effectively with a range of actors including children, women, young people, the elderly, government officials, and professionals from non-government agencies

- Knowledge and understanding of the relevant legislative context (*e.g.* National Human Rights Commission Act, Land Acquisition Act, ILO Convention Number 169, and others)
- Good knowledge of Nepalese culture and demonstrated sensitivity towards Indigenous Peoples and their rights
- No affiliation or association with any political party in Nepal (*e.g.* not a former or current member, advisor, or position-holder, or close relative of the foregoing)
- No actual or potential conflict of interest (*e.g.* through a financial interest in or potential personal gain from hydropower development in Nepal)
- No previous involvement in the case.

Key Written Deliverables

1. Draft and final process agreement
2. Monthly progress updates

Contract Duration

The contract duration will be from [] to [], with the potential for renewal.

Reporting

The consultant will report to Jie Tang, Program Leader, World Bank