

July 10, 2013

Peter Lallas
Executive Secretary, The Inspection Panel
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Submitted via electronic mail

Dear Mr. Lallas,

We, the citizens of Sindhuli District, Nepal, hereby submit this Request for Inspection to the Inspection Panel regarding violations of the World Bank's Social and Environmental Safeguard Policies resulting from the International Development Association supported Nepal Power Development Project (World Bank Project ID# P043311), specifically the Khimti-Dhalkebar 220 kV Transmission Line Project.

I. Introduction

The Khimti-Dhalkebar 220 kV Transmission Line Project (the "Project") has resulted in violations of World Bank policy, Nepali and international law. In particular, the Project was designed without informing or consulting with affected communities in Sindhuli District; its planned route over schools, homes, and historical sites is likely to result in involuntary displacement and damage to cultural property; and its 30-meter right of way ("RoW") threatens to make the already poverty-stricken communities more vulnerable by harming agricultural production and dividing communities. The Project has caused severe tumult in the region -- security forces have violently repressed peaceful protests against the Project, employing torture, detention, and violent attacks on unarmed women.

This Request is being filed by 103 indigenous and non-indigenous families in three villages of Sindhuli District ("Complainants"), whose homes, lands, and livelihoods have been affected by the Project.¹ They request that the World Bank immediately stop disbursement of the loan and Project construction until such time that all affected people have been fully informed and consulted about the Project plans, impacts, rehabilitation, and mitigation measures. Following suspension, Complainants request the release of all relevant Project-related documents from the World Bank and the Government of Nepal, including a Nepali translation of those documents.

Second, Complainants call for an independent analysis of alternative designs and routes through areas without human settlement, prioritizing the rights and needs of affected communities.

¹ The 103 households have provided LAHURNIP with power of attorney to represent them in the Inspection Panel process (Annex A).

Third, all Project baseline studies and future monitoring reports must be conducted with full transparency and participation of affected communities and civil society, and the results made public.

Finally, the Project must be carried out in full compliance with Nepali law, international law, and World Bank policy.

The 103 indigenous and non-indigenous families affected by the Project file this Request with the assistance of a coalition of civil society organizations and individuals. The Complainants have authorized Shankar Limbu, an advocate at Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples ("LAHURNIP"), to serve as their representative over the course of the Inspection Panel process, as well as in other legal proceedings.²

II. Project Description

The Project is a high-voltage transmission line that is being constructed as part of the Nepal Power Development Project ("NPDP"). The World Bank Board of Directors approved the NPDP on May 22, 2003, for US\$84.11 million.³ The Project is a double circuit transmission line that will run from Khimti Power Station to Dhalkebar substation.⁴ Starting in Kirnetar village in Dolakha District, the line will cross the Ramechhap, Sindhuli, and Mahottari Districts, and finally connect with 132 kV Dhalkebar substation in Dhanusha District.⁵ In total, the Project will span 75 kilometers across five districts in central Nepal: Dolakha, Ramechhap, Sindhuli, Mahottari, and Dhanusha.⁶ Sixty-meter high towers have been constructed at intervals of 700 meters. Two hundred and eighteen towers have already been built, and twelve remain to be built,

² The civil society coalition supporting the Complainants is comprised of: Shankar Limbu, LAHURNIP; Surya Tamang, NEFIN; Komala Ramachandra, Accountability Counsel; Amanda Cats-Baril, independent consultant ("Working Group"). We request that the Inspection Panel keep the Working Group updated on all steps of the Inspection Panel process through correspondence with Mr. Limbu and Ms. Ramachandra, whose contact information is below.

³ World Bank, "Restructuring Paper on a Proposed Project Restructuring of Nepal Power Development Project Loan and Grant," at 5 (December 21, 2012) (*hereinafter* "Restructuring Paper"); Legal Dept. of World Bank, "Nepal Power Development Project: Development Financing Agreement," at 6 (July 9, 2003), available at <http://documents.worldbank.org/curated/en/2003/07/5081833/conformed-copy-c3766-power-development-project-project-agreement> (*hereinafter* "Development Financing Agreement").

⁴ The World Bank, "Nepal Power Development Project: Updated Project Information Document," at 5 (April 10, 2003), available at <http://documents.worldbank.org/curated/en/2003/04/2219199/nepal-power-development-project> (*hereinafter* "Updated PID").

⁵ Environment and Social Studies Department of the Nepal Electricity Authority, "Environmental Impact Assessment Report for the Khimti-Dhalkebar 220 kV Transmission Line Project," Executive Summary, at 2 [date unknown] (*hereinafter* "EIA Executive Summary").

⁶ EIA Executive Summary, at 2. Interview by Komala Ramachandra with Surendraswor Moktan, Chairperson of the Protest Committee, Member of the *Tamang* indigenous community, resident of Majhitar, Kamalamai Municipality, Sindhuli District, Ward No. 7 (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon request.

including ten in Sindhuli District.⁷ Project documents indicate that a 15-meter right of way (“RoW”) will be required on either side of the transmission lines.⁸

The Project is one of three transmission lines that will be constructed as part of the Nepal Electricity Authority (“NEA”) component of the NPDP.⁹ The objective of the NEA component is to improve grid transmission and distribution¹⁰ and expand access to electricity services in rural areas of Nepal.¹¹ According to the Government of Nepal (“GoN”), the construction of transmission lines will help achieve this goal by enhancing grid reliability and stability, thus reducing system losses¹² and enabling the east-west and north-south delivery of power imported from India through the Nepal-India Electricity Transmission and Trade Project.¹³

Implementation of the NPDP has been delayed, in part due to ongoing resistance from affected communities to the Project and its potential impacts on the livelihoods and homelands. In addition to various changes made to the NPDP Loan in 2009,¹⁴ the GoN sought approval on December 21, 2012, to restructure the NPDP by (1) cancelling US\$42.47 million of project funds,¹⁵ (2) extending the closing date to December 31, 2013, and (3) revising the Monitoring and Evaluation framework in the context of the aforementioned changes.¹⁶

Despite local resistance to the current Project design and requests to the NEA for information and consultation, the Restructuring Paper claims that the Project is the only one of three remaining unfinished transmission line projects in the NPDP that “can be completed within the extended [December 31, 2013] project period.”¹⁷ The construction of ten towers in the Project has been prevented by community opposition in Sindhuli

⁷ Interview with Surendraswor Moktan.

⁸ EIA Executive Summary, at 2.

⁹ The other components of the NPDP are the (1) Power Development Fund (PDF), implemented by the Department of Electricity Development (DOED); (2) Micro Hydro Village Electrification Program (MHVEP), implemented by Alternative Energy Promotion Centre (AEPC). The Hetauda-Bharatpur and Bharatpur-Bardaghat transmission lines are the other two transmission lines planned for construction under the NEA component. *See* Restructuring Paper, at 5.

¹⁰ Updated PID, at 3.

¹¹ Updated PID, at 3.

¹² Updated PID, at 5.

¹³ Restructuring Paper, at 5.

¹⁴ On May 26, 2009, the World Bank provided additional financing of US\$91.66 million to further enhance the MHVEP and NEA components, bringing the total project amount to US\$175.77. The project closing date was further revised to December 31, 2012. Restructuring Paper, at 5; and “Nepal Power Development Project: Financing Agreement (Additional Financing for Power Development Project),” at 1 (August 21, 2009), available at <http://documents.worldbank.org/curated/en/2009/08/11162001/project-agreement-financing-agreement-c4637--np-grant-h506-np-conformed> (*hereinafter* “Agreement for Additional Financing”).

¹⁵ Of the US\$42.47 million of funds cancelled, US\$33.03 million came from a reduction of the scope of the NEA component, US\$7.93 million came from a reduction of the scope of the PDF component, and US\$1.51 million represent a cancellation of unallocated funds. Restructuring Paper, at 7.

¹⁶ Restructuring Paper, at 4.

¹⁷ Restructuring Paper, at 8.

District,¹⁸ but the Restructuring Paper claims that the “right-of-way difficulties ... have now been resolved,”¹⁹ though information from the affected people on the ground indicates otherwise.²⁰ Communities in Sindhuli District have had a sustained resistance to the current design of the Project. Community response to the Project, including ongoing resistance, is described in greater detail in the next section.

III. Local Experience with the Project

Several wards and municipalities within Sindhuli District will be affected by the Project, as its intended area of coverage encompasses several populated urban centers,²¹ schools, sacred sites, pastures, and agricultural lands.²² According to the Environmental Impact Assessment (“EIA”) Executive Summary prepared by the Environmental and Social Studies Department of NEA, the total population of the Project area is 114,516 people and 21,668 households.²³ Based on surveying and construction activity, community members report that the Project is also routed to pass over the roofs of four schools²⁴ where 1,575 students study.²⁵

¹⁸ Interview with Surendraswor Moktan. There are twelve towers remaining to be constructed, including two towers in Ramechhap District, two towers in the Khurkot village in Sindhuli District, and eight towers in Kamalamai Municipality, Sindhuli District.

¹⁹ Restructuring Paper, at 6.

²⁰ Interviews by Komala Ramachandra with Sindhuli residents Surendraswor Moktan, Surya Bahadur Khadka Panityanki, Laxmi Devi Budhathoki Magar, Menuka Kumari Kafle, Tulashi Prasad Kafle, Man Bahadur Magar and Krishna Bahadur Thapa Magar (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon request. See also “Armed Police To Be Deployed For Construction Of Transmission Lines,” *Nagarik National Daily* (August 25, 2012); “Works On Khimti-Dhalkebar Transmission Lines Obstructed, To Be Completed Through Use Of Force,” *Janaboli Sandesh National Daily* (November 12, 2012); “Survey Of Electricity Transmission Lines Resumes, Landowners Declare Vehicular Strike In Sindhuli,” *Sindhuli Saugat National Daily* (November 13, 2012).

²¹ Interview by Komala Ramachandra with Laxmi Devi Budhathoki Magar, member of the Magar indigenous group, resident of Bardeutar, Kamalamai Municipality, Sindhuli District, Ward No. 5 (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon request.

²² Of particular concern are Project impacts on the following urban areas in Sindhuli District: Kamalamai Municipality Ward No. 6 (Andheri Jasedmar, Panityanki, Baira Bhawan); Kamalamai Municipality Ward No.7 (Bardeutar, Danda Tole, Tallo Bardeutar, Mitra Chowk, Majhitar, Thulitar, Bukka Danda); Belganchi Ward No. 4 (Sano Karkare, Ranichuri); VDC Ward No. 1, (Fiting Bhutiya Danda, Maisthan Karkare under Falchuri); Kamalamai Municipality Ward No. 10 (Bhadrakali VDC Dhunge Bhanjyang, Pipal Bhanjyang) as well as historical Sindhuli Gadhi base in Ward No. 1 of Jalkanya VDC and cable car ferrying people to Sidhababa Temple under Kamalamai Municipality Ward No. 9. See Memorandum submitted by the Sindhuli Protest Committee to the Rt. Honorable Prime Minister, Prime Minister’s Office, Singh Durbar, Kathmandu (January 17, 2012) (Annex D).

²³ EIA Executive Summary, at 4.

²⁴ It is expected that the following four schools will be affected by the Project: Swiss Boarding, Panityanki Higher Secondary School, Ucha Madhyamik Vidhalaya (school for children with disabilities), and Kamalamai Science Higher Secondary School. See Amanda Cats-Baril and Shankar Limbu, “Notes on Meeting of Representatives of Indigenous and Local Communities with World Bank Nepal Officials on Khimti-Dhalkebar 220 KV Transmission Line construction in Sindhuli District” (March 15, 2013) (*hereinafter* “Notes on Community Meeting with the World Bank”) (Annex C). See also interview by Komala Ramachandra with Surya Bahadur Khadka Panityanki, resident of Bardewtar, Kamalamai Municipality in Sindhuli District, Ward No. 7 (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon request.

²⁵ Interview with Surya Bahadur Khadka Panityanki.

Impacts on community life and the local economy

The Project is planned to pass straight through villages and populated areas,²⁶ and the NEA Project Manager, Kanaiya Kumar Manandhar, has told several community members that no activity, or even entry, is permitted within the 15-meter RoW on either side of the transmission line.²⁷ The 30-meter division through the affected communities would have significant impact on their lifestyle. The large majority of affected communities are small, and such a clearance area for the Project will divide families, friends, and the community structure. The EIA Executive Summary acknowledges there will be devaluation of land in the 15-meter RoW on either side of the transmission line, loss of agricultural production, withdrawal of economic opportunity, and farming hindrance.²⁸ It does not, however, discuss the potential impacts on community structure and relations.

Complainants are concerned about the economic impacts of the Project, fearing that it will worsen already poor conditions in the region. The affected communities in Sindhuli District are largely *adivasi* (indigenous) communities from Tamang, Magar, Newar, Gurung, Bhujel, Thami, and Hayu groups, comprising approximately 95 percent of the affected population.²⁹ Some community members are *dalit*, considered to be low caste Hindus.³⁰

Both *adivasi* and *dalit* groups are highly marginalized communities, whose vulnerability is further exacerbated by the high rate of poverty in the region. Most households have seven to nine members, with children helping with farming activities.³¹ People in the region rely on subsistence agriculture for their livelihoods, including small-scale crops³² and animal husbandry.³³ Farming is often insufficient to feed entire families throughout the year. When they are not farming, some community members travel to Kathmandu and other cities to carry out daily wage labor.³⁴ Farming activities, on which

²⁶ Interview by Komala Ramachandra with Menuka Kumari Kafle, resident of Bardewtar, Kamalmai Municipality, Sindhuli District, Ward No. 5 (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon request.

²⁷ Interviews with Menuka Kumari Kafle and Krishna Bahadur Thapa Magar.

²⁸ EIA Executive Summary, at 5.

²⁹ Interview with Surendraswor Moktan. All these groups are recognized as indigenous nationalities under The National Foundation for Development of Indigenous Nationalities Act, 2002. See also Nepal Federation of Indigenous Nationalities, "Categorization of Indigenous People Based on Development," available at <http://www.nefin.org.np/list/Categorization-of-Indigenous-People-based-on-development-15/95/6>.

³⁰ Interview with Surendraswor Moktan.

³¹ Interview with Surya Bahadur Khadka Panityanki.

³² Interview by Komala Ramachandra with Krishna Bahadur Thapa Magar, member of the Magar indigenous community, resident of Mitrachok village, Sindhuli District (June 4, 2013) (noting that common crops include wheat, rice, corn, potatoes, onions). Notes of interviews are on file with Accountability Counsel and available upon the Inspection Panel's request.

³³ Interview with Laxmi Devi Budhathoki Magar.

³⁴ Interview with Surendraswor Moktan. Interview by Komala Ramachandra with Man Bahadur Magar, member of the Magar indigenous community, resident of Kamalamai village, Sindhuli District, Ward No. 7

communities rely for subsistence, will likely be disrupted by the placement of the Project and its RoW under its current design.³⁵ Those who have been told they cannot use their lands within 15 meters of the transmission line have already been affected.

A large number of indigenous and local people are at risk of displacement.³⁶ Sixteen households have already been displaced in Ratanchura, Bhimeswar, Jalkanya, and Bhadrakali villages, where construction of the lines is already completed.³⁷ Displacement resulting from land acquisition for the towers will cause a loss in agricultural productivity in the RoW, forcing people to seek livelihood opportunities outside of Sindhuli District.

There is also deep concern in the affected communities about potential health impacts, especially on children, of the Project's planned high voltage power lines which will run near and over human settlements and schools. Some scientific studies have shown higher rates of illnesses, such as cancer and leukemia, in people living near high voltage power lines.³⁸ Though these findings may not be conclusive, affected communities cannot be expected to take that risk with their lives without complete information about potential impacts, consultation, and ultimately their consent.³⁹

Additionally, Complainants are concerned by how the Project will impact various historical, cultural, religious and sacred sites. The planned route approaches various monasteries, temples, cremation sites, and other sites of cultural significance. One of the Project towers has had serious impacts on Sindhuli Gadhi, the site of the first defeat of the British Army in Asia in 1767, which has great historical value for the local communities and the nation as a whole.⁴⁰ The transmission line will also disturb community rituals. Towers have already been built near a Bhimsen shrine and close to the Kamalamai Temple, a major shrine in the region, over which the transmission line is projected to pass. Worshippers, fearing the effects of the tower and transmission line,

(June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon the Inspection Panel's request.

³⁵ Interview with Surendraswor Moktan.

³⁶ Interview with Surendraswor Moktan.

³⁷ Interview with Surendraswor Moktan.

³⁸ According to the National Institute of Environmental Health Sciences website, "current research continues to point to the same weak association" between electric and magnetic field exposure and childhood leukemia, but found no similar links in studies of adults. *Available at* www.niehs.gov/health/topics/agents/emf.

³⁹ The US Environmental Protection Agency states that, "Much of the research about power lines and potential health effects is inconclusive." In a 1998 study conducted by the US National Institute of Environmental Health Sciences on exposure to electric and magnetic fields, they found that "power line frequency magnetic fields are a possible cause of cancer." *Available at* www.epa.gov/radtown/docs/power-lines.pdf.

⁴⁰ Interview with Laxmi Devi Budhathoki Magar. *See also*, "Risk of destruction of historical Sindhuli Fort Impact of Khimti-Dhalkebar 220 KV Transmission lines," *Pravat Samachar National Daily* (December 8, 2011).

cannot practice their rituals in peace.⁴¹ Other shrines, including shrines of Bhadrakali, Siddhababa, Devasthan, and Durga, will also be affected.⁴²

Lack of consultation and failure to disclose information

No consultation about the Project was ever held in Sindhuli District.⁴³ Complainants have not received any information about the Project, nor have they given their permission for the transmission line to go over their land or for towers to be built on their land.⁴⁴ Some Complainants were told that they had to give up their lands by the NEA project manager, Kanaiya Kumar Manandhar, when surveying activities began.⁴⁵ Many community members learned about the 15-meter RoW when they questioned the project manager after work on the Project began in 2011.⁴⁶ Others learned that their land was being acquired through a notice published for an associated roads project in the newspaper *Gorkhapatra National Daily* on 24 March 2013.⁴⁷

The EIA Executive Summary reports that only two consultations or public hearings were held about the Project, in Dhalkebar village in Dhanusha District and in Manthali village in Rammehhap District, both in 2004.⁴⁸ Complainants in Sindhuli District, which are approximately 40-60 kilometers from the site of the public hearings, were not given prior notice of these consultations.⁴⁹ Even if they had been informed, many would not have been able to travel to the consultations, as the only way to reach the public hearing locations at the time was by foot, which would require over a day and a half to travel each way.⁵⁰ The Chief District Officer only informed Complainants about the hearings in 2012, long after the hearings had taken place, when villagers raised concerns about the Project.⁵¹

During early surveying activities in 2006-07, communities in Sindhuli District were not informed about the prospect of a high-voltage transmission line or the Project's objective. Instead, they were led to believe that the surveying was for a small, local electricity distribution project,⁵² a water supply network,⁵³ a radio transmission system,⁵⁴

⁴¹ Interview by Komala Ramachandra with Tulashi Prasad Kafle, Hindu priest, resident of Kamalamai Municipality, Sindhuli District (June 4, 2013). Notes of interviews are on file with Accountability Counsel and available upon the Inspection Panel's request.

⁴² Interview with Man Bahadur Magar.

⁴³ Interviews with Surya Bahadur Khadka Panityanki, Surendraswor Moktan, Laxmi Devi Budhathoki Magar, Menuka Kumari Kafle, and Krishna Bahadur Thapa Magar.

⁴⁴ Interview with Tulashi Prasad Kafle.

⁴⁵ Interviews with Menuka Kumari Kafle and Man Bahadur Magar.

⁴⁶ Interview with Menuka Kumari Kafle and Krishna Bahadur Thapa Magar.

⁴⁷ Interview with Menuka Kumari Kafle.

⁴⁸ EIA Executive Summary, at 2.

⁴⁹ Interviews with Laxmi Devi Budhathoki Magar, Surya Bahadur Khadka Panityanki, and Tulashi Prasad Kafle.

⁵⁰ Interviews with Tulashi Prasad Kafle and Surya Bahadur Khadka Panityanki.

⁵¹ Interview with Surya Bahadur Khadka Panityanki.

⁵² Interview with Laxmi Devi Budhathoki Magar.

⁵³ Interviews with Menuka Kumari Kafle and Surya Bahadur Khadka Panityanki.

⁵⁴ Interview with Surya Bahadur Khadka Panityanki.

or a road.⁵⁵ None of these were ever built.⁵⁶ Furthermore, early survey activity indicated that the Project was to be located to the east of its current route, along the banks of Tamile River passing through forests and barren lands, where there is no human settlement.⁵⁷ That design was later abandoned or changed, without the knowledge or consent of Complainants.⁵⁸ It was only when Project construction began that Complainants understood that it was for a high-voltage power transmission line and that its route is *through* their communities.⁵⁹

Even now, over five years after the Project approval date, Complainants lack information about the Project design and route, the actual and intended capacity of the high voltage power lines, the Project's potential health and environmental impacts, land requirements for towers and RoW restrictions, or relocation and compensation plans. Some owners of homes and lands within the 15-meter RoW have been informed that they must leave, or that they are prohibited from entering the RoW.⁶⁰ Others have not been informed about the RoW and whether they will have to be relocated.⁶¹ Of particular concern, Complainants have not been informed about the possibility of relocation for the four schools.⁶²

Towers have been built directly on community members' land without prior notice.⁶³ Community members were told that they should not complain because of the Project's national significance, as it would be providing electricity not just for the district, but for the rest of Nepal and neighboring countries.⁶⁴ They were told that even though they have title to the land, the GoN is the original owner of the land.⁶⁵

Most Complainants were not offered compensation⁶⁶ or informed about any mitigation measures, including those whose land is within 15 meters of the transmission line and close to towers.⁶⁷ However, in some cases where towers were built directly on community members' land, a small amount of compensation was offered.⁶⁸ Others found

⁵⁵ Interview with Menuka Kumari Kafle.

⁵⁶ Interview with Menuka Kumari Kafle.

⁵⁷ Interview with Laxmi Devi Budhathoki Magar.

⁵⁸ Interview with Surya Bahadur Khadka Panityanki.

⁵⁹ Interviews with Surya Bahadur Khadka Panityanki and Laxmi Devi Budhathoki Magar.

⁶⁰ Interviews with Krishna Bahadur Thapa Magar and Menuka Kumari Kafle.

⁶¹ Interview with Laxmi Devi Budhathoki Magar.

⁶² Interview with Krishna Bahadur Thapa Magar, whose grandchildren study at the Swiss Boarding School which is affected by the transmission line, and Surya Bahadur Khadka Panityanki, whose grandchildren attend several of the affected schools.

⁶³ Interview with Laxmi Devi Budhathoki Magar.

⁶⁴ Interview with Laxmi Devi Budhathoki Magar.

⁶⁵ Interview with Surya Bahadur Khadka Panityanki.

⁶⁶ Interviews with Krishna Bahadur Thapa Magar, Menuka Kumari Kafle, and Surya Bahadur Khadka Panityanki.

⁶⁷ Interview with Tulashi Prasad Kafle (Tulashi owns 15 dhoors of land (20 dhoor = 1 Katha = 338.57 square meters (3,644.3 sq ft)) within 15 meters of transmission line).

⁶⁸ Interview with Laxmi Devi Budhathoki Magar, noting that she received NRS 28, 216 in compensation, for a 60 meter high tower built on her land within 15 meters of her house, affecting her entire property.

out through the *National Daily* newspaper on March 24, 2013, that compensation would be offered, but have yet to receive compensation.⁶⁹

Community members complained orally to the NEA project manager, Kanhaiya Kumar Manandhar, demanding that they either be offered substitute land or that the transmission line be realigned to an alternative route where there is no human settlement, as they do not want to be relocated. These demands were rejected.⁷⁰ Others have submitted complaints to the Supreme Court.⁷¹

Except for the notice published in the daily newspapers, Complainants have not received any updates about the Project in the last few months.⁷²

Violent repression of peaceful protests

Affected communities have been protesting the Project since learning that high voltage power lines would be passing over or near their homes and schools, demanding that the transmission line be realigned along an alternative route.

When community members obtained more information about the Project and its planned route in 2010, they formed a Protest Committee.⁷³ Protest activities involved attempting to block construction work by lying down in front of building sites and covering pits that had been dug for the towers.⁷⁴ The Government responded by accusing the Protest Committee of extortion.⁷⁵ On March 31, 2011, one of the founding members was arrested for leading protests in the village and was released after a few hours.⁷⁶ Ten days later, another villager protesting against the project was arrested and tortured for two days while in custody, and sustained severe injuries.⁷⁷

Following the brutal police response to the protests, the Protest Committee tried to negotiate with the NEA project manager and the Chief District Officer on at least three occasions to change the Project.⁷⁸ They also held press conferences against the Project at the local level.⁷⁹

⁶⁹ Interview with Menuka Kumari Kafle.

⁷⁰ Interview with Laxmi Devi Budhathoki Magar.

⁷¹ Interview with Tulashi Prasad Kafle.

⁷² Interview with Krishna Bahadur Thapa Magar.

⁷³ Surendra and his relative Chandra Kumar Ghising, also affected by the project, founded the group.

Interview with Surendraswor Moktan.

⁷⁴ Interview with Surendraswor Moktan.

⁷⁵ Interview with Surendraswor Moktan.

⁷⁶ Interview with Surendraswor Moktan.

⁷⁷ Protester Bishal Tamang was arrested and tortured for several days by police. Interview with Surendraswor Moktan.

⁷⁸ Interview with Surendraswor Moktan.

⁷⁹ Interview with Surendraswor Moktan.

On January 17, 2012, the Protest Committee submitted a memorandum⁸⁰ to the Ministry of Energy and the Prime Minister's Office expressing their concerns about the impact of the transmission line on historical, religious, and cultural sites and demanding the realignment of the transmission line.⁸¹ A former parliamentarian representing the constituency, CP Gajurel, has been promoting the realignment of the Project along an alternative route.⁸² A delegation, which included CP Gajurel, presented their demands to the Ministry of Energy and the Prime Minister's Office.⁸³

In response to the Protest Committee's memorandum, the Prime Minister assured them that 95 percent of their demands would be met.⁸⁴ The GoN subsequently formed an expert commission in February 2012 to investigate alternative routes. The commission assured the Protest Committee that their requests would be fulfilled,⁸⁵ but the commission's report and the criteria for selection of the current location of towers and transmission lines were never made public.⁸⁶ The commission did report, however, that changing the route would lead to additional costs.⁸⁷ According to media reports, the expert commission reported that changing the route would not be appropriate for technical and economic reasons.⁸⁸

The Protest Committee announced a new round of protests, including sit-ins and restricting access to their land for Project personnel.⁸⁹ On March 12, 2012, the Ministry of the Interior sent a letter via the District Administration Office to the Protest Committee, promising to fulfill their demands and requesting that they cease protests.⁹⁰ However, in April 2012, the Ministry of Energy submitted recommendations to Prime Minister Baburam Bhattarai to acquire the lands for a road and to build the transmission line alongside the road. The Prime Minister accepted those recommendations.⁹¹

On October 7, 2012, a ministerial decision announced the acquisition of lands for the construction of roads – without mention of the transmission line – in Sindhuli District.⁹² Complainants believed the road project is a cover up for continuing the construction of the transmission line and continued to restrict access to the construction sites.⁹³

⁸⁰ Memorandum submitted by the Sindhuli Protest Committee to the Rt. Honorable Prime Minister, Prime Minister's Office, Singh Durbar, Kathmandu (January 17, 2012) (Annex D).

⁸¹ Interview with Surendraswor Moktan.

⁸² Interview with Surya Bahadur Khadka Panityanki.

⁸³ Interview with Surya Bahadur Khadka Panityanki.

⁸⁴ Interview with Surendraswor Moktan.

⁸⁵ Interview with Surendraswor Moktan.

⁸⁶ Interview with Surya Bahadur Khadka Panityanki.

⁸⁷ Interview with Surya Bahadur Khadka Panityanki.

⁸⁸ "Construction of Khimti-Dhalkebar Transmission Lines Underway," *Aarthik Abhiyan* (April 27, 2012).

⁸⁹ Interview with Surendraswor Moktan.

⁹⁰ Interview with Surendraswor Moktan.

⁹¹ "Construction of Khimti-Dhalkebar Transmission Lines Underway," *Aarthik Abhiyan* (April 27, 2012).

⁹² Interview with Surendraswor Moktan.

⁹³ Interview with Surendraswor Moktan.

On November 11, 2012, around 250 armed police officers and 5-6 Project personnel came to begin surveying the area in Kamalamai village in Sindhuli District.⁹⁴ Affected communities began to peacefully protest, preventing them from carrying out the survey and demanding that the transmission lines be relocated away from their homes and schools.⁹⁵ The next day, on November 12, 2012 at around 4:00 am, while people were still sleeping, the surveyors came back, accompanied this time by approximately 500 police officers armed with rifles and batons, circling Project personnel and the survey area to prevent the villagers from blocking their work.⁹⁶ No one was allowed to enter the area.⁹⁷

Around 100-200 unarmed protestors gathered near the restricted area.⁹⁸ Several women tried to enter the area, believing that they would not be harmed and knowing that under Nepali law, only female police officers can arrest women. Police officers violently beat and injured the women with their sticks, boots, and fists, making the women's faces and chests bleed. Ambulances were not allowed to transport the injured.⁹⁹ Journalists and media personnel were also prohibited from entering the area.¹⁰⁰ Ten women were severely injured and had to be taken to the hospital in Kathmandu.¹⁰¹ One was under treatment for two months.¹⁰² The following day, the protestors met with the Chief District Officer and the NEA project manager, who orally promised them that they would be compensated for medical treatment for those who were injured.¹⁰³ No compensation was ever paid.¹⁰⁴ Community members raised funds to cover medical expenses.¹⁰⁵

On April 11, 2013, police and Project personnel visited the communities again, this time with batons but no firearms. The communities chased them away.¹⁰⁶ The police have not come back since,¹⁰⁷ but Complainants live in fear of renewed violence. In order to avoid further violent responses from the police, Complainants filed a complaint with the Nepal Human Rights Commission and a writ petition at the Supreme Court.¹⁰⁸ The Supreme Court writ petition was denied, based on false information given

⁹⁴ Krishna was present and saw the events unfolding. Project personnel claimed to be surveying for the road project, but community members believe that it is to complete the remaining construction for the Project. Interview with Krishna Bahadur Thapa Magar.

⁹⁵ Interview with Krishna Bahadur Thapa Magar.

⁹⁶ Interviews with Man Bahadur Magar, Khadka Panityanki, and Krishna Bahadur Thapa Magar.

⁹⁷ Interview with Surya Bahadur Khadka Panityanki.

⁹⁸ Interview with Man Bahadur Magar.

⁹⁹ Interview with Surya Bahadur Khadka Panityanki.

¹⁰⁰ Interview with Surya Bahadur Khadka Panityanki.

¹⁰¹ Interview with Surya Bahadur Khadka Panityanki.

¹⁰² Interview with Krishna Bahadur Thapa Magar, noting that Krishna's niece, Ambika Magar, was badly beaten and is still suffering from menstrual problems and poor health, with medical bills of at least NRS 85,000. Interview with Surya Bahadur Khadka Panityanki, noting that one of the women, Nara Bahadur Kami suffered bone fractures and had to undergo serious treatment.

¹⁰³ Interview with Surya Bahadur Khadka Panityanki.

¹⁰⁴ Interview with Surya Bahadur Khadka Panityanki.

¹⁰⁵ Interview with Krishna Bahadur Thapa Magar.

¹⁰⁶ Interviews with Krishna Bahadur Thapa Magar and Surya Bahadur Khadka Panityanki.

¹⁰⁷ Interview with Krishna Bahadur Thapa Magar.

¹⁰⁸ The Supreme Court writ petition requested an interim order to halt the construction works of the project (Annex B). Interviews with Krishna Bahadur Thapa Magar and Surendraswor Moktan.

by the Nepal Electricity Authority that 95 percent of the land acquisition process had been completed, even though the acquisition of land for construction of local roads was only published after the Supreme Court decision.¹⁰⁹

IV. Violations of the World Bank Policies

A. Operational Policy 4.01 Environmental Assessment

According to Operational Policy (“OP”) 4.01, the NPDP is a Category A project, meaning that “it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented,” and therefore requires the highest level of environmental assessment.¹¹⁰ However, various Category A requirements have not been fulfilled, nor has the requisite information been made available to the Complainants.

i. Public consultation

As a Category A project, the Bank was required to ensure that the borrower “consult[] project-affected groups and local nongovernmental organizations (NGOs) about the project’s environmental aspects and take[] their views into account.”¹¹¹ Bank policy requires that the borrower initiate such consultations “as early as possible”¹¹² and conduct at least two consultations with the affected groups and NGOs prior to project implementation.¹¹³

As discussed above, the project-affected people in Sindhuli District were never consulted about the Project. Though the GoN held consultations in Dhanusa and Rammechhap Districts, the members of Sindhuli District were not made aware of these consultations in advance, and were thus prohibited from attending and participating in the consultations at those sites. Moreover, the affected people in Sindhuli District do not have the means to travel 40-60 kilometers to consultation sites in distant districts, which were only accessible by foot at the time the consultations were held.¹¹⁴ Because the GoN failed to hold consultations in Sindhuli District, community concerns and views about the Project design were not taken into account prior to Project implementation.

According to OP 4.01, the Bank is also responsible for ensuring that “the borrower consults with [project-affected groups and local NGOs] ... throughout project implementation as necessary to address EA-related issues that affect them.”¹¹⁵ The GoN has failed to consult Project-affected people of Sindhuli District throughout the implementation phase. In fact, far from consulting the Project-affected communities to

¹⁰⁹ Interview with Surendraswor Moktan.

¹¹⁰ OP 4.01 Environmental Assessment, para 8(a), *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contntMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>.

¹¹¹ OP 4.01 Environmental Assessment, para 14.

¹¹² OP 4.01 Environmental Assessment, para 14.

¹¹³ OP 4.01 Environmental Assessment, para 14.

¹¹⁴ Interviews with Tulashi Prasad Kafle and Surya Bahadur Khadka Panityanki.

¹¹⁵ OP 4.01 Environmental Assessment, para 14.

address the environmental issues that affect them, the GoN has actively and forcefully worked to silence their complaints. As described above, the GoN has twice deployed armed police forces to Sindhuli District to violently ensure that opposition to the Project did not obstruct surveying and construction activities. In November 2012, state-sanctioned security police used violent means to quell community opposition to environmental aspects of the Project, and the affected communities fear recurrence of violence.

ii. Disclosure

For meaningful consultation to take place between the GoN and Project-affected groups and local NGOs, as required under OP 4.01, the GoN was required to provide “relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.”¹¹⁶ For Category A projects, the Bank is also charged with ensuring that the borrower provides “a summary of the proposed project’s objectives, description, and potential impacts” for the initial consultation. Affected communities in Sindhuli District did not receive any of these materials.

Since the Project’s inception, the GoN has failed to provide affected people in Sindhuli District with the required Project-related materials. The nondisclosure of such materials constitutes a violation World Bank policy.

B. Operational Directive 4.20 Indigenous People

Operational Directive (“OD”) 4.20 aims to “ensure that indigenous people benefit from development projects” and “avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities.”¹¹⁷ Many people affected by the Project are from indigenous communities, and should be covered under OD 4.20. The NPDP Project Appraisal Document (April 25, 2003), Integrated Safeguards Data Sheet (May 16, 2003), and Policy Framework for EIA (November 1999) reference OD 4.20 as an applicable policy that is triggered by this Project.

i. Identification

The primary policy objective of OD 4.20 is that “indigenous people do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.”¹¹⁸ This is achieved through the identification of potentially affected indigenous peoples, and the gathering of baseline data, such as maps of areas inhabited by indigenous people, analysis of local social and economic structures, information on the resources used by indigenous people, and the relationship between indigenous groups and non-indigenous groups.¹¹⁹

¹¹⁶ OP 4.01 Environmental Assessment, para 15.

¹¹⁷ OD 4.20 Indigenous People, para 2 (September 1991).

¹¹⁸ OD 4.20 Indigenous People, para 6.

¹¹⁹ OD 4.20 Indigenous People, para 15(b).

The Bank breached the Indigenous Peoples policy by failing to ensure that Project-affected indigenous people were identified appropriately. Project documents state that though there are indigenous communities among the Project-affected people,¹²⁰ and the indigenous groups in the affected area are recognized as indigenous nationalities under Nepali law.¹²¹ However, only a single plan to address “vulnerable communities,” or those groups living below the poverty line, was developed without specialized research and analysis into the issues, concerns, or preferences of indigenous people.¹²² The Vulnerable Communities Development Plan (“VCDP”) then misidentifies groups, like the Tamang, Newar, and Magar, as “ethnic minorities” and in the same category as traditional ruling classes, like Brahmin and Chhettri, rather than as indigenous people.¹²³

Due to this misidentification, the Project was not able to take into consideration the specific needs, preferences, and rights of affected indigenous peoples, and is now expected to have significant adverse impacts on the livelihoods of local indigenous communities in Sindhuli District.

ii. Consultation and participation

The Bank failed to assess whether the GoN engaged in direct consultation with Project-affected indigenous people that resulted in the informed participation of such communities. This constitutes a breach of World Bank policy.

According to the Indigenous Peoples policy, “the strategy for addressing the issues pertaining to indigenous peoples must be based on the *informed participation* of

¹²⁰ World Bank, “Nepal Power Development Project Integrated Safeguards Data Sheet,” at 8 (May 16, 2003), available at <http://documents.worldbank.org/curated/en/2003/05/2352886/nepal-power-development-project> (hereinafter “Integrated Safeguards Data Sheet”).

¹²¹ The National Foundation for Development of Indigenous Nationalities Act, 2002. See also Nepal Federation of Indigenous Nationalities, “Categorization of Indigenous People Based on Development,” available at <http://www.nefin.org.np/list/Categorization-of-Indigenous-People-based-on-development-15/95/6>.

¹²² “The presence of ethnic minorities or tribal populations in the project affected area for any sub-project will require the preparation of a separate Vulnerable Communities Development Plan (VCDP) to ensure that ethnic minorities/tribals are provided with assistance in accordance with their own priorities. The VCDP will be prepared in accordance with the provisions of O.D. 4.20 and the EIA/SIA Policy Framework. The VCDP replaces the Indigenous Peoples Development Plan (IPDP) typically prepared to meet the requirements of O.D. 4.20 by extending assistance to vulnerable groups living below the poverty line in the project area.” Integrated Safeguards Data Sheet, at 8.

¹²³ Environmental and Social Studies Department, NEA, “Vulnerable Community Development Plan,” at 7 (February 2006), available at http://www.nea.org.np/images/supportive_docs/VCDPFinal.pdf (hereinafter “VCDP”). The Social Impact Assessment also incorrectly identifies several indigenous groups as ethnic minorities instead of indigenous groups. Environment and Social Studies Department of the Nepal Electricity Authority, “Social Impact Assessment: Final Report for the Khimti-Dhalkebar 220 kV Transmission Line Project,” at 8, 19 [date unknown], available at http://www.nea.org.np/images/supportive_docs/SIAKhimtiFinal.pdf (hereinafter “SIA”).

¹²³ The National Foundation for Development of Indigenous Nationalities Act, 2002. See also Nepal Federation of Indigenous Nationalities, “Categorization of Indigenous People Based on Development,” available at <http://www.nefin.org.np/list/Categorization-of-Indigenous-People-based-on-development-15/95/6>.

the indigenous people themselves.”¹²⁴ As such, OD 4.20 states that, “identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights.”¹²⁵

The GoN did not engage in direct consultation with the Project affected indigenous groups in Sindhuli District, as required by the Bank’s Indigenous Peoples policy. Though the EIA Executive Summary produced by NEA references three indigenous groups located in the project area,¹²⁶ the members of these groups that live in Sindhuli District were neither informed nor consulted about the Project at any stage of its development. While the GoN did hold consultations in Dhanusa and Rammehhap Districts, those consultations were inadequate to satisfy the requirements of the Bank’s Indigenous Peoples policy, as not all Project affected indigenous people had knowledge of the consultations or the ability to attend.

As a result of the GoN’s failure to inform and consult the Project affected indigenous communities in Sindhuli District, these groups were denied the opportunity to participate in the decision-making processes involving the Project’s preparation and implementation. Consequently, local preferences and indigenous knowledge were not identified or incorporated into the Project’s design.

iii. Indigenous Peoples Development Plan

According to OD 4.20,

“The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project. Studies should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm.”¹²⁷

In the Integrated Safeguards Data Sheet prepared in 2003, the GoN recognized the need to prepare an Indigenous Peoples Development Plan (“IPDP”) in connection with the Project;¹²⁸ however, this plan was never prepared.¹²⁹ The Project-affected indigenous

¹²⁴ OD 4.20 Indigenous Peoples, para 8 (emphasis in original).

¹²⁵ OD 4.20 Indigenous Peoples, para 8.

¹²⁶ EIA Executive Summary, at 4, referencing the Tamang, Newar, and Magar groups, all of which are listed by NEFIN as indigenous groups. See NEFIN, “Categorization of Indigenous People Based on Development,” available at <http://www.nefin.org.np/list/Categorization-of-Indigenous-People-based-on-development-/5/95/6>.

¹²⁷ OD 4.20 Indigenous Peoples, para 14(a).

¹²⁸ “The presence of ethnic minorities or tribal populations in the project affected area for any sub-project will require the preparation of a separate Vulnerable Communities Development Plan (VCDP) to ensure that ethnic minorities/tribals are provided with assistance in accordance with their own priorities. The VCDP will be prepared in accordance with the provisions of O.D. 4.20 and the EIA/SIA Policy Framework. The VCDP replaces the Indigenous Peoples Development Plan (IPDP) typically prepared to meet the requirements of O.D. 4.20 by extending assistance to vulnerable groups living below the poverty line in the project area.” World Bank, Nepal Power Development Project Integrated Safeguards Data Sheet, at 8 (May

people in Sindhuli District were never consulted to determine their preferred options for the Project. As such, the Project has been constructed along a route that is deeply harmful to and opposed by local indigenous communities.

The Bank also violated OD 4.20 by failing to require the assessment and mitigation of adverse impacts on indigenous people affected by the Project. There is no indication that the GoN conducted any studies to evaluate the Project's potential effects on indigenous groups in particular or developed the means to avoid or mitigate such effects. As designed, the Project is expected to adversely impact the productivity of land within the Project area.¹³⁰ Because the indigenous groups within Sindhuli District have traditionally relied on their land for subsistence and income, the likelihood that the Project will disrupt agricultural activities poses a significant threat to their livelihoods and presents an adverse trend that should have been anticipated by the GoN in its IPDP.

Importantly, the Bank's Indigenous Peoples policy recognizes that cases will occur where adverse impacts are unavoidable and adequate mitigation plans have not been developed.¹³¹ In such situations, "the Bank will not appraise projects until suitable plans are developed by the borrower and reviewed by the Bank."¹³² The Bank's appraisal and approval of the NPDP in the absence of a mitigation plan therefore violated OD 4.20.

Finally, the Social Impact Assessment ("SIA") shows particular insensitivity to and prejudice against indigenous communities, stating that "the interaction among different people and ethnic group may attract the rural people towards more advanced society"¹³³ and "experience with other project indicates that sudden cash flow in project area and cash earning of workers is spent unproductively."¹³⁴ The SIA also notes that "normally high cast[e] people are reluctant to low grade physical labor and lower caste people may take advantages of the situation."¹³⁵ These kinds of discriminatory generalizations about ethnic identity and caste reinforce the lack of understanding and attention to affected indigenous communities.

C. Operational Policy/Bank Procedure 4.12 Involuntary Resettlement¹³⁶

16, 2003), available at <http://documents.worldbank.org/curated/en/2003/05/2352886/nepal-power-development-project> (hereinafter "Integrated Safeguards Data Sheet").

¹²⁹ A Vulnerable Communities Development Plan was created for the Nepal Power Development project in lieu of an Indigenous Peoples Development Plan "to ensure that ethnic minorities/tribals are provided with assistance in accordance with their own priorities." This is insufficient as the Indigenous Peoples Development Plan under OD 4.20 requires consideration of several elements unique to indigenous peoples that go beyond mere assistance to participation and consultation, legal framework and land tenure analysis, and monitoring and evaluation of implementation of the plan. See Integrated Safeguards Data Sheet, at 8; and OD 4.20 Indigenous Peoples, para 15.

¹³⁰ EIA Executive Summary, at 5.

¹³¹ OD 4.20 Indigenous Peoples, para 9.

¹³² OD 4.20 Indigenous Peoples, para 9.

¹³³ SIA, § 5.1.1.8.

¹³⁴ SIA, § 5.1.1.8.

¹³⁵ SIA, § 5.2.1.1.

¹³⁶ OP and BP 4.12 together replace OD 4.30, *Involuntary Resettlement*. This OP and BP apply to all projects for which a Project Concept Review takes place on or after January 1, 2002. The version of OP/BP

Since its adoption in 1980, the World Bank's involuntary resettlement policy has been intrinsically linked to the Bank's mandate to reduce poverty.¹³⁷ Aiming "to ensure that Bank-supported projects do not contribute to impoverishment through land acquisition and resettlement," the policy focuses broadly on living standards, taking into consideration a wide array of factors, and expands the range and number of people recognized as adversely affected, rather than solely considering expropriated property.¹³⁸

OP 4.12 covers direct economic and social impacts of Bank-assisted investment projects "caused by the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) lost of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location."¹³⁹ A large number of indigenous and local people in Sindhuli District are at risk of displacement.¹⁴⁰ Sixteen households have already been displaced in areas where construction of towers is completed.¹⁴¹ Many Complainants' homes, schools, and farming lands are within the Project's RoW, and the EIA Executive Summary acknowledges there will be devaluation of land, loss of agricultural production, withdrawal of economic opportunity, and farming hindrance in the RoW.¹⁴² The NEA project manager, Kanaiya Kumar Manandhar, has informed Complainants that they are not allowed to enter or undertake any activity within the RoW.¹⁴³ OP 4.12 should therefore cover the adverse impacts suffered by Complainants.

4.12 cited here is the version that existed in 2003, available in *The World Bank, Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*, at 371-398 (2004), available at <http://www4.worldbank.org/afr/ssatp/Resources/HTML/Gender-RG/Source%20%20documents%5CTool%20Kits%20%20Guides%5CDesigning%20Projects/TLPRO10%20invol%20resettlementsourcebookWB.pdf> (hereinafter "Involuntary Resettlement Sourcebook"). OP 4.12 applies to all components of the project that result in involuntary resettlement, and to other activities resulting in involuntary resettlement, that are (a) directly and significantly related to the Bank assisted project, (b) necessary to achieve its objectives as set forth in the project documents; and (c) carried out, or planned to be carried out, contemporaneously with the project. OP 4.12 Involuntary Resettlement, para 4.¹³⁷ "The Bank adopted its first involuntary-resettlement policy in 1980, after it recognized the painful shortcomings in development practice that in some cases led to the impoverishment of thousands of people." (...) The broader focus on living standards brings a wide array of factors into resettlement discourse, including social and cultural relationships, public health, and community services. The resettlement process in Bank-assisted projects is no longer the mere mitigation of externalities but an integral part of the development project itself. (...) [T]he emphasis on incomes and living standards, in contrast to the conventional emphasis on expropriated property, expands the range and number of people recognized as adversely affected." Involuntary Resettlement Sourcebook, at xxiv.

¹³⁸ Involuntary Resettlement Sourcebook, at xxiv-xxv

¹³⁹ OP 4.12 Involuntary Resettlement, para 3(a). OP 4.12, note 7, defines "involuntary" as "without the displaced person's informed consent or power of choice." OP 4.12 Involuntary Resettlement, note 8, notes "Land' includes anything growing on or permanently affixed to land, such as buildings and crops."

¹⁴⁰ Interview with Surendraswor Moktan.

¹⁴¹ Interview with Surendraswor Moktan.

¹⁴² EIA Executive Summary, at 5.

¹⁴³ Interview with Menuka Kumari Kafle.

A major policy objective of OP 4.12 is to avoid involuntary resettlement “where feasible” by “exploring all viable alternative project designs.”¹⁴⁴ Where resettlement cannot feasibly be avoided, “displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs” and “should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels.”¹⁴⁵ The Project has breached all three policy objectives of OP 4.12.

i) Consideration of viable alternatives to involuntary resettlement

Under OP 4.12, the GoN was required to prepare a resettlement plan¹⁴⁶ or an abbreviated resettlement plan,¹⁴⁷ which included at minimum, “consultations with displaced people about acceptable alternatives,” among other requirements.¹⁴⁸ A satisfactory draft resettlement plan or an abbreviated resettlement plan is a condition of appraisal and Bank financing for all operations and subprojects that entail involuntary resettlement.¹⁴⁹ The GoN’s commitment to, and capacity for, undertaking successful resettlement should have been a key determinant of Bank involvement in the Project.¹⁵⁰

The GoN was required to inform all potentially displaced persons at an early stage about the resettlement aspects of the project and take their views into account in Project design.¹⁵¹ The Bank task team and GoN staff were required to “explore all viable

¹⁴⁴ OP 4.12 Involuntary Resettlement, para 2(a). This includes taking into account other Bank policies, such as those on safeguarding cultural property, natural habitats, and indigenous people. OP 4.12 Involuntary Resettlement, note 2.

¹⁴⁵ OP 4.12 Involuntary Resettlement, para 2(b) and (c). “Displaced” is defined as persons who are affected in any of the ways described in OP 4.12 Involuntary Resettlement, para 3 and note 3.

¹⁴⁶ “(a) The resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are (i) informed about their options and rights pertaining to resettlement; (ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and (iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. (b) If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are (i) provided assistance (such as moving allowances) during relocation; and (ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site. (c) Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also includes measures to ensure that displaced persons are (i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and (ii) provided with development assistance in addition to compensation measures described in paragraph 6(a) (iii), such as land preparation, credit facilities, training, or job opportunities.” OP 4.12 Involuntary Resettlement, para 6. *See also* OP 4.12 Involuntary Resettlement, para 17.

¹⁴⁷ Where impacts on the entire displaced population are minor, or fewer than 200 people are displaced, an abbreviated resettlement plan may be agreed with the borrower. Impacts are considered “minor” if the affected people are not physically displaced and less than 10% of their productive assets are lost. OP 4.12 Involuntary Resettlement, para 25 and note 25.

¹⁴⁸ OP 4.12 Involuntary Resettlement, Annex A, para 22.

¹⁴⁹ OP 4.12 Involuntary Resettlement, paras 17, 25, 29.

¹⁵⁰ OP 4.12 Involuntary Resettlement, para 18.

¹⁵¹ OP 4.12 Involuntary Resettlement, para 19.

alternative project designs,”¹⁵² such as realignment,¹⁵³ “to avoid, where feasible, or minimize displacement.”¹⁵⁴ According to the Bank’s Involuntary Resettlement Sourcebook,¹⁵⁵ “OP 4.12 requires the least possible displacement of people,” and early screening can make it possible to shift the location of the proposed transmission line to reduce negative impacts.¹⁵⁶ “The consultative screening process can provide valuable information on (...) whether to shift the corridor, from marginal adjustments to a choice of alternative routes.”¹⁵⁷

An abbreviated resettlement action plan (“ARAP”), dated 2006, and an SIA with no date, were uploaded to the NEA website in March 2013.¹⁵⁸ While the EIA Executive Summary includes a two-paragraph analysis of alternatives,¹⁵⁹ the SIA and the ARAP do not include this analysis, or any discussion at all of alternative project designs or routes.¹⁶⁰ Complainants have repeatedly requested that the transmission line go along an alternative route, and have offered potential alternative routes. They believe that the transmission line was originally routed to go to the east along the banks of Tamile River passing through forests and barren lands, where there is no human settlement,¹⁶¹ and that the design was later changed, without their knowledge or consent.¹⁶² Another alternative would be through Sola Bhanjyang and Panichuri VDC, adjoining Chure forests where there is no human settlement.¹⁶³

The GoN formed an expert commission in February 2012 to investigate alternatives, but their final report was never made public.¹⁶⁴ According to the media, the

¹⁵² BP 4.12 Involuntary Resettlement, para 2(b).

¹⁵³ BP 4.12 Involuntary Resettlement, para 2(b), note 4.

¹⁵⁴ BP 4.12 Involuntary Resettlement, para 2(b).

¹⁵⁵ The resettlement policy refers to the World Bank’s Involuntary Resettlement Sourcebook for guidance on good practice. OP 4.12 Involuntary Resettlement, note 10; BP 4.12 Involuntary Resettlement, para 7; Involuntary Resettlement Sourcebook, at xxiii. Intended to increase the likelihood that Bank-financed projects will achieve the objectives of OP 4.12, the Sourcebook provides guidance on the implementation of policy principles, the procedural requirements for projects, the technical aspects of resettlement planning, and the actual implementation of resettlement. Involuntary Resettlement Sourcebook, at xxiii.

¹⁵⁶ Involuntary Resettlement Sourcebook, at 306, 307.

¹⁵⁷ Involuntary Resettlement Sourcebook, at 306, 307. The sourcebook cites as an example the National Highways Authority of India (Ln 4559), which instituted local consultations on the proposed routing of the major roads to be rehabilitated. In one town, residents preferred to route the highway around their community, rather than widen the existing road through town. To support their argument, they walked the Authority officials along the proposed new alignment of the road around the town and pointed out that 80 percent of the new alignment was on unoccupied land already owned by the government. The Authority’s engineers recognized the cogency of the residents’ argument and rerouted the highway.

¹⁵⁸ See Annex E. The complete Project EIA, which may include a more in-depth analysis of alternatives, was not available at the time of writing either on the NEA website, or on the World Bank website.

¹⁵⁹ EIA Executive Summary, at 5.

¹⁶⁰ See SIA and Nepal Electricity Authority, “Abbreviated Resettlement Action Plan Of Khimti-Dhalkebar 220 kV Transmission Line Project,” at 24 (March 2006) (*hereinafter* “ARAP”).

¹⁶¹ Interview with Laxmi Devi Budhathoki Magar.

¹⁶² Interview with Surya Bahadur Khadka Panityanki.

¹⁶³ Interview with Surya Bahadur Khadka Panityanki.

¹⁶⁴ Interview with Surya Bahadur Khadka Panityanki.

expert commission reported that changing the route would not be appropriate for technical and economic reasons.¹⁶⁵

For projects that are “highly risky or contentious, or that involve significant and complex resettlement activities,” OP 4.12 suggests the engagement of “an advisory panel of independent, internationally recognized resettlement specialists to advise on all aspects of the project relevant to the resettlement activities.”¹⁶⁶

ii) Consultation

The GoN was required to provide displaced persons and their communities timely and relevant information, not only on project design and location, but also on resettlement options, and to offer them opportunities to participate in planning, implementing, and monitoring resettlement.¹⁶⁷ As a condition of appraisal of the Project, the GoN was required to make the resettlement plan “available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them.”¹⁶⁸ English versions of an ARAP, dated from 2006, and an SIA with no date, were only uploaded to the NEA website in March 2013.¹⁶⁹ These documents are not available on the World Bank website, and have not been provided to affected communities though they were requested by Complainants and their representative.¹⁷⁰ These documents have never been available in local languages.

The GoN was also required to establish “appropriate and accessible grievance mechanisms.”¹⁷¹ The ARAP notes that a Grievance Redress Committee, a grievance mechanism at the project level where anyone can file a complaint, will be created.¹⁷² The grievance committee, which includes a “representative of local affected persons nominated by themselves,” was required to adopt an “internal working procedure” and hold meetings “at regular intervals.”¹⁷³ The filing of complaints and proceedings of meetings were required to be “well recorded” and “transparent.”¹⁷⁴

However, none of the Complainants have ever heard of a grievance committee. Complainants have had to take their complaints to the NHRC and the Supreme Court. The ARAP also mentions a Khimti-Dalkebar Environmental Management Unit (“KDTL-EMU”), whose tasks include conducting meetings with displaced communities, maintaining records of all meetings and discussions, and preparing quarterly and annual reports during constructions.¹⁷⁵ The KDTL-EMU has never been active in Sindhuli, or

¹⁶⁵ “Construction of Khimti-Dhalkebar Transmission Lines Underway,” *Aarthik Abhiyan* (April 27, 2012).

¹⁶⁶ OP 4.12 Involuntary Resettlement, note 22.

¹⁶⁷ OP 4.12 Involuntary Resettlement, para 13.

¹⁶⁸ OP 4.12 Involuntary Resettlement, para 22.

¹⁶⁹ See Annex E.

¹⁷⁰ Interview with Laxmi Devi Budhathoki Magar and with Menuka Kumari Kafle.

¹⁷¹ OP 4.12 Involuntary Resettlement, para 13.

¹⁷² ARAP, at 24.

¹⁷³ ARAP, at 24.

¹⁷⁴ ARAP, at 24.

¹⁷⁵ ARAP, at 25, notes “Prior to project construction NEA shall establish Khimti-Dalkebar Environmental

communicated with Complainants in Sindhuli.

Particular attention should have been paid to vulnerable groups, especially indigenous peoples in the Project design and the ARAP.¹⁷⁶ Because “resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and cultural survival,” the GoN should have explored “all viable alternative project designs to avoid physical displacement of these groups.”¹⁷⁷ Although the vast majority of affected community members are indigenous,¹⁷⁸ the ARAP does not mention indigenous peoples at all. Its “vulnerable groups” section only refers to two *dalit* households and one female-headed household.¹⁷⁹

Because it may only be possible to identify impacts of high-voltage transmission lines through consultations, and because “the populations displaced along the line may be culturally heterogeneous,” the Bank’s Involuntary Resettlement Sourcebook stresses that “Task Team Leaders need to ensure that displaced persons along the entire length of the project are consulted”¹⁸⁰ and “case-by-case solutions may be required.”¹⁸¹ The figures cited in both the ARAP and SIA show that Sindhuli has a much higher number of “seriously project affected people”¹⁸² than Ramechhap and Dhanusha Districts,¹⁸³ yet neither mention a consultation ever being held in Sindhuli.¹⁸⁴ Testimonies of Complainants confirm that no consultation was ever held there. Holding two consultations in Ramechhap and Dhanusha, locations that take a day and a half to reach¹⁸⁵ from Sindhuli, without informing Sindhuli residents, was not sufficient to meet the requirements of OP 4.12. A separate consultation should have been held in Sindhuli District and the views of Sindhuli residents taken into account in the project design.

iii) Compensation

Before taking affected communities’ land and related assets, the GoN was and is required to compensate and provide resettlement sites and moving allowances, in order to “ensure that displacement or restriction of access does not occur before necessary

Management Unit (KDTL-EMU) and appoint required staff and provide logistics to efficiently conduct social and environmental monitoring and mitigation management of the project.”

¹⁷⁶ OP 4.12 Involuntary Resettlement, para 8.

¹⁷⁷ OP 4.12 Involuntary Resettlement, para 9.

¹⁷⁸ Interview with Surendraswor Moktan.

¹⁷⁹ ARAP, at 13.

¹⁸⁰ Involuntary Resettlement Sourcebook, at 308.

¹⁸¹ Involuntary Resettlement Sourcebook, at 320.

¹⁸² The ARAP defines “seriously project affected people” as those who must be relocated because their houses are in the RoW. ARAP, at 10.

¹⁸³ “[O]ut of the 100 seriously project affected people 17 are in Ramechhap, 59 are in Sindhuli and 24 are in Dhanusha District respectively.” ARAP, at 10.

¹⁸⁴ “Public hearing program were organized at Manthali of Ramechhap District and Dhalkebar of Dhanusha District in order to provide opportunity for the maximum participation of local people.” ARAP, at 6. “The team organized nine focus group meetings at Ramchandra Tole, Dhamsar, Majhitar, Panitanki, Dadakhark, Khimti, and other places.” ARAP, at 24.

¹⁸⁵ Interviews with Tulashi Prasad Kafle and Surya Bahadur Khadka Panityanki.

measures for resettlement are in place.”¹⁸⁶ Minimal compensation was only offered in a few cases, only after a 60-meter tower was built directly on Complainants’ land, without prior notice or compensation.¹⁸⁷

It is not clear what the effects of the RoW will be or what restrictions will be imposed. The local Project manager told Complainants that no activity is allowed in the RoW and that they are prohibited from entering the RoW.¹⁸⁸ According to the SIA, no houses can be built within the RoW for safety reasons.¹⁸⁹ The ARAP mentions that the houses and schools located in the RoW need to be relocated,¹⁹⁰ however the SIA notes that “resettlement is not applicable for this project because the number of houses to be affected by the project is low and scattered in 9 VDCs of 3 districts.”¹⁹¹ According to the SIA, “farming hindrance (...) is unavoidable”¹⁹² and “private land (68.44 ha) within the RoW will be compensated at current market price as per standard practice of HMG/N. Such amount will be paid 10% of the total amount of land value,” yet “the land within RoW will be utilized as usual by the respective landholders.”¹⁹³ Complainants request clear information about the restrictions imposed in the RoW.

Bank policy is directed at improving incomes and living standards, rather than merely compensating people for their expropriated assets.¹⁹⁴ Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based, ensuring that they are provided with land for which “a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken.”¹⁹⁵ However, the ARAP uses a different approach to compensation, noting that, “[h]ouses(...) are evaluated at replacement value considering construction materials used” rather than productive potential and locational advantages.¹⁹⁶ According to OP 4.12, payment of cash compensation for lost assets may be appropriate in certain limited circumstances.¹⁹⁷ The ARAP claims that, “76 percent of the relocates prefer cash compensation considering that such mode of payment will be easy in handling.”¹⁹⁸ However, Complainants have never mentioned cash compensation in their testimonies;

¹⁸⁶ OP 4.12 Involuntary Resettlement, para 10, further noting that “taking of land and related assets may take place only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons.”

¹⁸⁷ Interview with Laxmi Devi Budhathoki Magar.

¹⁸⁸ Interview with Menuka Kumari Kafle.

¹⁸⁹ SIA, § 5.1.2.3.

¹⁹⁰ ARAP, at 4.

¹⁹¹ SIA, § 6.1.2.

¹⁹² SIA, § 6.2.4.

¹⁹³ SIA, § 6.2.3.

¹⁹⁴ “Th[e] improvement of incomes and living standards broadens the objective of the policy to include the restoration of income streams and retraining of people unable to continue their old income-generating activities after displacement. The broader focus on living standards brings a wide array of factors into resettlement discourse, including social and cultural relationships, public health, and community services. The resettlement process in Bank-assisted projects is no longer the mere mitigation of externalities but an integral part of the development project itself.” Involuntary Resettlement Sourcebook, at xxiv-xxv.

¹⁹⁵ OP 4.12 Involuntary Resettlement, para 11.

¹⁹⁶ ARAP, at 21.

¹⁹⁷ OP 4.12 Involuntary Resettlement, para 12.

¹⁹⁸ ARAP, at 5.

they requested instead that the route be realigned or that they be offered substitute land. While the ARAP notes that, “the records of these meetings are given in Annex 4,” no annex is provided in the document.¹⁹⁹

The ARAP states that the average cost per family is estimated to be NRS 2,611,567, excluding benefits from community support program,²⁰⁰ and it also notes that on average “each household will receive [NRS]264,700 excluding benefits from [the] community support program.”²⁰¹ One Complainant received much less than the stated amount when a tower was built directly on her land.²⁰² Most Complainants have not been offered any compensation.²⁰³

D. Environmental, Health, and Safety Guidelines for Electric Power Transmission and Distribution

The Environmental, Health, and Safety Guidelines (“EHS Guidelines”) apply to projects where one or more members of the World Bank Group are involved, and are based on Good International Industry Practice. The EHS Guidelines for Electric Power Transmission and Distribution were published on April 30, 2007, after approval of the NPDP but before the initiation of the Project. Additionally, when there is a difference between the EHS Guidelines and host country regulations, the more stringent of the two are to be applied in Bank-supported projects.²⁰⁴

The EHS Guidelines acknowledge that though there is conflicting and limited evidence of the impacts of the electric and magnetic fields (“EMF”) created by power transmission lines, “it is still sufficient to warrant limited concern.”²⁰⁵ The EHS Guidelines go on to make various recommendations for the management of EMF exposure, including that the siting of new facilities should “avoid or minimize exposure to the public,” and that “installation of transmission lines or other high voltage equipment above or adjacent to residential properties or other locations intended for highly frequent human occupancy, (e.g. schools or offices), should be avoided.”²⁰⁶

Additionally, there are a number of recommended mitigation measures in cases where EMF levels are higher than the recommended exposure limits. In this case, there has to be a study of the levels of EMF exposure for those living near the Project route and an investigation of alternative routes away from areas of frequent human occupancy, and

¹⁹⁹ ARAP, at 24.

²⁰⁰ ARAP, at 26.

²⁰¹ ARAP, at 28.

²⁰² Interview with Laxmi Devi Budhathoki Magar, noting that she received NRS 28, 216 in compensation for a 60-meter high tower built on her land within 15 meters of her house, affecting her entire property.

²⁰³ Interviews with Sindhuli residents Surendraswor Moktan, Surya Bahadur Khadka Panityanki, Menuka Kumari Kafle, Tulashi Prasad Kafle, Man Bahadur Magar, and Krishna Bahadur Thapa Magar.

²⁰⁴ World Bank Group, “Environmental, Health, and Safety Guidelines for Electric Power Transmission and Distribution,” at 1 (April 30, 2007) (*hereinafter* “EHS Guidelines”).

²⁰⁵ EHS Guidelines, at 6.

²⁰⁶ EHS Guidelines, at 6.

only then should these mitigation measures be considered. No documentation of either of these studies has been provided to Complainants in Sindhuli District.

E. Operational Policy Note 11.03 Management of Cultural Property

The NPDP Project Appraisal Document²⁰⁷ and Integrated Safeguards Data Sheet²⁰⁸ reference Operational Policy Note (“OPN”) 11.03 as an applicable policy that is triggered by this Project.

According to OPN 11.03, “[t]he Bank normally declines to finance projects that will significantly damage nonreplicable cultural property, and will assist only those projects that are sited or designed so as to prevent such damage.”²⁰⁹

The NPDP was not designed to prevent significant damage to cultural property. To the contrary, the Project was sited near various monasteries, temples, cremation sites, and historical landmarks. As discussed above, one example of a historically significant site that is vulnerable to significant damage by the Project is Sindhuli Gadhi, the battleground of the historic 1767 defeat of the British Army by Nepalese forces. Currently, one of the Project towers is planned for construction inside the Sindhuli Gadhi site. Because the Project is likely to result in significant damage to cultural property, the Bank breached its Cultural Property policy by financing the Project.

In addition, OPN 11.03 requires the Bank to “assist in the protection and enhancement of cultural properties encountered in Bank-financed projects... In some cases, the project is best relocated in order that sites and structures can be preserved, studied and restored intact *in situ*.”²¹⁰

The Bank has failed to assist in the protection and enhancement of cultural property in the Sindhuli District, as required by OPN 11.03. First, the Project did not include the “training and strengthening of institutions entrusted with safeguarding [Nepal’s] cultural patrimony.”²¹¹ Additionally, realignment of the Project was not adequately considered, despite the fact that alternative routes for the project exist, many of which would avoid damage to cultural property in Sindhuli District. Though an expert commission was formed to investigate various alternative routes, its analysis was never made public, and the GoN has since refused to consider alternative designs for the Project. As such, the Project’s route has not changed, and Project towers have not been relocated to ensure the protection and preservation of cultural property.

V. Violations of Nepali Law

²⁰⁷ World Bank, “Nepal Power Development Project Appraisal Document,” at 36-37, (April 25, 2003), available at <http://documents.worldbank.org/curated/en/2003/04/2290452/nepal-power-development-project> (hereinafter “Project Appraisal Document”).

²⁰⁸ Integrated Safeguards Data Sheet, at 4.

²⁰⁹ OPN 11.03 Management of Cultural Property in Bank-Financed Projects, para 2(a).

²¹⁰ OPN 11.03 Management of Cultural Property in Bank-Financed Projects, para 2(b) (emphasis in original).

²¹¹ OPN 11.03 Management of Cultural Property in Bank-Financed Projects, para 2(b).

The Project ignores the existence of indigenous peoples even though it is located in traditional homelands of indigenous peoples. In Nepal, the rights of indigenous peoples are recognized constitutionally and under Nepali laws.²¹² Indigenous peoples were recognized under the Interim Constitution of Nepal, 2007. The 2007 Interim Constitution guarantees indigenous peoples and other excluded groups the fundamental right to participation.²¹³ In contrast, indigenous and other local peoples of Sindhuli District have not been included at any stage of the Project cycle.

The Local Self-Governance Act of 2055 (1998 A.D.), Sections 134, 135, 138, 197, 198, 200, and 201, stipulates that the process of development must include the participation of indigenous and local people in project identification, formulation, planning, and implementation through local councils. The Project has not been included in any development plan of the Sindhuli District municipalities or village development committees, showing that it is not a priority of the local people who have had no say in its planning and implementation.

The Interim Constitution also states that local people have priority in access to and benefit from natural resources.²¹⁴ Indigenous people are entitled to special measures for protection, empowerment, and advancement for development in accordance with the Article 13 of the Interim Constitution. The World Bank and GoN have not prioritized indigenous peoples in the design or implementation of the Project.

The Project violates the fundamental right of right to information, guaranteed under Article 27 of the Interim Constitution, Section 3 of the Right to Information Act of 2064 (2007 A.D.), and mandatory provisions under the Environmental Protection Act of 2053 (1997 A.D.), as no public hearing was conducted in Sindhuli District and Complainants were not provided with Project information upon their request.

The Constitution also guarantees the right to healthy environment,²¹⁵ right to culture,²¹⁶ and right to property.²¹⁷ The Project not only threatens the health of local communities, it also encroaches on cultural, historical, and religious sites.

Based on a notice from the District Administration Officer (“CDO”), the ownership of lands in Project areas is under lien, and local residents cannot sell or mortgage their lands. The decision of the CDO contradicts Section 5, Subsection 5 of Local Administration Act of 2028 (1971 A.D.), which says the mandate of the CDO is limited to maintaining peace and security. In accordance with the Collateral Directives of Commercial Bank of 2007, Section 7.1, the Bank will not accept as collateral any land or house in the 15 meter right of way on both sides of the Project transmission line. Given

²¹² National Foundation for Development of Indigenous Nationalities Act (2002).

²¹³ Interim Constitution of Nepal, Article 21 (2007) (*hereinafter* “Interim Constitution”).

²¹⁴ Interim Constitution, Article 35(4).

²¹⁵ Interim Constitution, Article 16.

²¹⁶ Interim Constitution, Article 17.

²¹⁷ Interim Constitution, Article 19.

the economic hardship that this has caused small landowners living under and near the proposed transmission lines, the Project cannot be qualified as an act of public interest, which is required to acquire private lands.²¹⁸ The Interim Constitution guarantees the right to property and the Project has violated these fundamental rights without due process.

Regulation No. 50 of the Electricity Regulation of 2052 (1993 A.D.) prohibits constructing houses and planting trees under high tension power lines, which has immense effect on peoples' ability to use their land. Furthermore, the Project violates Regulation No. 52 of the Electricity Regulation of 2052 (1993 A.D.), which prohibits the passage of all electricity lines above houses, is clearly violated by the Project.

VI. Violations of International Law

The Government of Nepal has signed a number of treaties creating international obligations to protect and promote human rights within its borders. Relevant here, Nepal is a signatory party to the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), ILO Convention 169 on the Rights of Indigenous and Tribal Peoples ("ILO 169"), as well as to the Universal Declaration on the Rights of Indigenous Peoples ("UNDRIP"). Collectively, these treaties ensure Nepalese peoples the rights to: their traditional livelihood and subsistence activities; their homelands and territories and the natural resources embedded within them; consultation; participation in decision-making; and, to determine their own development priorities.

Significantly, international law has a special status in Nepal insofar as it is enforceable in domestic courts and takes precedent over national law should a conflict arise between the provisions of domestic and international law. This status is protected in both Nepali legislation (1990 Treaty Act, Article 9) and under the Interim Constitution (Article 33(m)). Given this special status and added enforceability, the Government of Nepal is particularly obliged to respect international legal provisions and standards and any organization working in Nepal should be wary and respectful of these commitments. Indigenous peoples and other communities have the right to challenge the Government of Nepal's violation of international treaty rights in Nepali courts.

Implementation of the Project violates Nepal's international obligations. This is particularly true as the presence of indigenous peoples in Sindhuli District triggers several international legal requirements; namely, the requirement to consult with indigenous peoples. UNDRIP in Article 29 embodies the indigenous right to free, prior and informed consent ("FPIC") in relation to development projects undertaken on their lands; while not a veto right, FPIC does require that indigenous peoples who are affected by a development project are consulted in good faith, before the project is undertaken, and that they are provided with full information on the proposed project so that they can make a free choice to provide or withhold their consent. According to community

²¹⁸ "The State shall not, except in the public interest, acquire or create any encumbrance on the property of any person." Interim Constitution, Article 19(2).

members in Sindhuli District, no information was provided about the project until its implementation phase was underway and therefore the communities were deprived of the opportunity to consent or not to the project.

Article 6 of ILO 169 also requires that indigenous peoples be consulted in relation to any decision which will affect their rights; even more pertinently, if a project will require forced relocation of community members, a higher standard for consultation is triggered under Article 16(2). This higher standard mirrors the requirements of UNDRIP insofar as it requires that consultations with indigenous peoples be “free and informed.” Since certain members of the indigenous groups in Sindhuli District will have to relocate because their houses fall within the thirty meter right of way corridor of the Project, the higher standard for consultation applies in this case.

Under both UNDRIP and ILO 169, indigenous peoples have the explicit right to determine their own development priorities and to make unhindered and informed choices about the use of their lands. In the case of the Project under discussion, indigenous peoples have repeatedly stated that they do not want the Project to be continued on its current route. This statement should be respected as an expression of the will of the people and their desires and proposals for the Project’s course should be considered.

VII. Prior Attempts to Resolve the Problems with the World Bank

On at least two occasions, the Complainants have raised their Project-related issues and concerns with the World Bank.

On February 18, 2013, LAHURNIP and NEFIN submitted a letter to the World Bank staff on behalf of the Complainants, requesting that the World Bank consider alternatives for the NPDP in Sindhuli District. The letter emphasized the Project’s failure to inform and consult local communities, the inaccurate estimates of affected people within the SIA and EIA, and violations of the rights of indigenous peoples. The Complainants’ letter also referenced incidents of state-sanctioned violence against project opponents, citing personal safety as a major concern for local people.

On February 27, 2013, the World Bank responded to the Complainants’ February 18 letter. Jie Tang, the new Task Team Leader for the NPDP, assured the Complainants that he took the concerns and complaints raised in their letter very seriously, and proposed a meeting between World Bank staff and the affected communities, to help the World Bank better understand the details of the Complainants’ concerns and to assess the situation in the field.

The meeting between the Complainants and the World Bank took place on March 15, 2013, and was attended by three World Bank representatives, members of Sindhuli District, an independent indigenous rights expert and three representatives from LAHURNIP. Several concerns were raised by the Complainants at this meeting, namely: the lack of information disclosure by the World Bank and the local government with

respect to the Project's purpose and impacts; the failure to consult with the local community and indigenous peoples; the destruction of human settlements and sacred sites; the potential health impacts on households and schools located under the transmission line; and the use of excessive violence against local people by state-sanctioned security police. The Complainants also clearly requested that the Project be constructed along an alternative route. The Complainants identified possible alternatives and reiterated that they would not oppose the Project if it avoided human settlement.²¹⁹

In response to the Complainants' concerns and requests, the World Bank affirmed its interest in working with the Complainants to resolve their issues with the Project. The World Bank representatives agreed to share all information as required by the World Bank disclosure policy, and offered to discuss allegations of noncompliance with disclosure and consultation policies in the course of Project implementation with the NEA. In addition, the World Bank representatives said they would visit Project affected areas. The World Bank informed the Complainants that it would contact them after speaking with the NEA in order to discuss how to move forward.

Despite the Complainants' various efforts to raise their concerns with the World Bank, no change has been made to the Project plans and the requested information has not been disclosed. World Bank officials reportedly visited the community in March 2013, but community members reported not being able to communicate with them because of language barriers.²²⁰ On June 24 and 25, 2013, a World Bank team visited the Project site, but did not meet with Project-affected people.

VIII. Requested Next Steps

We, the undersigned Complainants, request that the Inspection Panel conduct an investigation that affirms the violations of Bank policy described above. The Complainants trust that the Panel process will result in the Bank taking steps to remedy the issues raised in this Request. The World Bank must immediately stop disbursement on the NPDP loan and all construction activity on the Khimti-Dhalkebar 220 kV Transmission Line Project, until such time that affected communities have been fully informed and consulted about the Project details, impacts, rehabilitation and mitigation measures, and an independent analysis of alternative designs, in which the rights and needs of people affected by the Project construction are made the priority. The first step in such a process would be the release of all relevant documents from the World Bank or the Government of Nepal, including the full EIA in English and Nepali, reports and minutes of meetings of the Grievance Committee and KDTL-EMU mentioned in the ARAP, and clear information about the restrictions imposed in the RoW. In addition, the Project must be carried out in full compliance with Nepali law, international law, and the social and environmental safeguard standards of the World Bank.

We request that the Project follow an alternative route in Sindhuli District that will not cause such detrimental impact to our lives, the lives of our children and future

²¹⁹ For full minutes of meeting, *see* Notes on Community Meeting with the World Bank (Annex C).

²²⁰ Interview with Krishna Bahadur Thapa Magar.

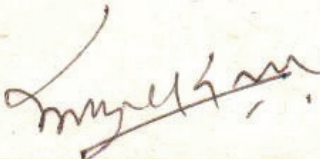
generations, our environment, and our livelihoods. This may be achieved through the appointment of an independent expert panel to assess viable alternatives that do not affect our homes and lands. We, as affected people, should be allowed to participate in the analysis and decision making process for possible alternatives.

Those who have already been affected by Project construction and loss of land use should be retroactively compensated for lost agricultural produce. For land that has already been acquired, comparable substitute land should be provided, or fair and adequate compensation should be paid.

Finally, if these steps are taken, we request that all baseline studies and future monitoring reports be done with full transparency and participation of affected communities, and the results made public.

Please do not hesitate to contact us with any questions you may have. Please send correspondence to Shankar Limbu (shankar193q@gmail.com) and Komala Ramachandra (komala@accountabilitycounsel.org). We look forward to hearing from you.

Sincerely,



.....
Surendraswor Moktan

Chairperson of Struggle
Committee of Sindhuli
High tension Affected
People



.....
Advocate Shankar Limbu

LAHURNIP



.....
Komala Ramachandra

Accountability Counsel
Organization