

NEPAL:
POWER DEVELOPMENT PROJECT
(P043311)



INVESTIGATION REPORT

FEBRUARY 12, 2015

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Abbreviations, Acronyms, and Terms

ACRP	Acquisition Compensation Rehabilitation Plan
ARAP	Abbreviated Resettlement Action Plan
CDC	Compensation Determination Committee
DDC	District Development Committee
EHS	Environmental Health and Safety
EHSGs	Health and Safety Guidelines
EIA	Environmental Impact Assessment
EIA/SIA	Environmental and Social Impact Assessment
EMF	Electric and Magnetic Fields
EMP	Environmental Management Plan
ESSD	Environmental and Social Studies Department
GoN	Government of Nepal
GRC	Grievance Redress Committee
ICNIRP	International Commission on Non-Ionizing Radiation Protection
IDA	International Development Association
IP	Indigenous Peoples
IPDP	Indigenous Peoples Development Plan
IR	Income Restoration
KDTL	Khimti-Dhalkebar Transmission Line
KDTL-EMU	Khimti-Dhalkebar Environmental Management Unit
LAHURNIP	Lawyers Association for Human Rights of Nepalese Indigenous Peoples
MHVEP	Micro Hydro Village Electrification Program
MOEST	Ministry of Environment, Science and Technology
NEA	Nepal Electricity Authority
NEFEN	Nepal Federation of Nationalities
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	National Foundation for Development of Indigenous Nationalities
NHRC	National Human Rights Commission
OD	Operational Directive
PAD	Project Appraisal Document
PAF	Project Affected Families
PDF	Power Development Fund
PDP	Nepal Power Development Project
PID	Project Information Document
PRA	Participatory Rapid Assessment
R&R	Resettlement and Rehabilitation
RAP	Resettlement Action Plan
ROW	Right of Way

RRA	Resettlement and Rehabilitation Assistance
RRPF	Resettlement and Rehabilitation Policy Framework
SDR	Special Drawing Rights
SIA	Social Impact Assessment
SPAF	Severely Project Affected Families
VCDP	Vulnerable Communities Development Plan
VDCs	Village Development Committees

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Executive Summary

1. This Report presents the results of the Investigation of the Nepal Power Development Project (hereinafter referred as “the PDP” or “the Project”), specifically its 220 kV Khimti-Dhalkebar Transmission Line (KDTL). The Request for Inspection was sent on July 10, 2013 by 103 indigenous and non-indigenous families from three villages of the Sindhuli district in Nepal stating that their “*homes, lands and livelihoods have been affected by the Project.*”
2. The Panel registered the Request on July 24, 2013, and Bank Management presented its response on September 18, 2013, proposing several actions that were to be completed by April 2014. A Panel team visited Nepal between September 30 and October 4, 2013 and submitted its Report and Recommendation to the Board of Directors of the World Bank on October 24, 2013. The Panel recommended an investigation, but in order to take into account the implementation of the proposed Management actions, it recommended delaying the start of its investigation until after April 30, 2014. The World Bank’s Executive Board approved this recommendation on November 5, 2013. An update of the Management Action Plan, dated June 22, 2014, was received by the Inspection Panel prior to its investigation field visit and was made publicly available. A second update was provided in January 2015.

The Project

3. The Project’s Development Objectives are to “*(a) develop Nepal’s Hydropower potential in an environmentally friendly and socially sustainable manner so as to help meet electricity demand; (b) improve access of rural areas to electricity services; and (c) promote private participation in the power sector as a way to improve sector efficiency and to mobilize financing for the sector’s investment requirements.*”
4. The PDP included three components: (A) Establishment of a Power Development Fund (PDF); (B) A Micro Hydro Village Electrification Program (MHVEP); and (C) A Nepal Electricity Authority (NEA) component to support grid transmission and distribution improvements. The subject of the Request is an activity within Component C: the 220 kV KDTL, a double-circuit transmission line from Khimti Power Station to the existing 132 kV Dhalkebar substation.
5. The Project was approved on May 22, 2003 and closed on December 31, 2013. During this period, it was restructured three times (2008, 2009, and 2012). During the third restructuring, the closing date was extended to December 31, 2013 to allow for the completion of three transmission lines (Khimti-Dhalkebar, Hetauda-Bharatpur and Bharatpur-Bardaghat). It was financed through an International Development Association (IDA) Credit (Special Drawing Rights (SDR) 35.8 million equivalent to US\$50.4 million) and an IDA Grant (SDR 18.4 million equivalent to US\$25.2 million). The borrower is the Government of Nepal (GON), and the responsible agencies include the Ministry of Water Resources, the Nepal Electricity Authority (NEA) and the Alternative Energy Promotion Center. The NEA is responsible for implementing the KDTL, the subject of the Request.
6. The PDP is a category A project and according to the Project Appraisal Document (PAD), it triggered safeguard policies on Environmental Assessment (OP/BP 4.01), Involuntary

Resettlement (OD 4.30 and OP 4.12), Indigenous Peoples (OD 4.20), Operational Policy Note (OPN 11.03) on the Management of Cultural Property, Natural Habitats (OP/BP 4.04), Forestry (OP/BP 4.36), and Safety of Dams (OP/BP 4.37).

7. The PAD also states that all transmission line sub-projects under the PDP will require an environmental assessment. It notes that the responsibility of preparing the Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) under the NEA component will be the responsibility of the NEA. With reference to social impacts, the PAD states that Resettlement Action Plans for sub-projects will be prepared in accordance with the provisions of OD 4.30 (the Resettlement Policy applicable at the time), and the Policy Framework for Environmental and Social Impact Assessment (EIA/SIA Framework), and Vulnerable Community Development Plans (VCDP) will be prepared in accordance with the provisions of OD 4.20 and the EIA/SIA Framework.

The Request

8. The Requesters make several claims of harm. First, the Requesters characterize the Study of Alternatives as inadequate, and demand that the transmission line be “*realigned to an alternative route where there is no human settlement,*” thus avoiding re-location and minimizing damage to cultural properties to the extent possible.

9. Second, the Requesters oppose the selected alignment of the transmission line based on what they perceive to be its impacts on community life and their livelihoods. They believe that the line will cause a devaluation of land and a loss in agricultural production, and propose a different alignment for the line.

10. Third, they claim that a “*large number of indigenous and local people are at risk of displacement*” as a direct result of land acquisition for the construction of towers and the Right of Way (ROW). They observe that the provision of compensation falls short in terms of assessing the actual value of the land, as well as compensation amounts offered.

11. Fourth, they observe that the affected groups in Sindhuli district are largely indigenous *Adivasi* or *Dalit*¹ people, and claim that the Project did not appropriately identify Project-affected indigenous people and that only a single plan, namely the “Vulnerable Community Development Plan” (VCDP) was prepared to address “Vulnerable Communities” without analyzing the specific conditions and concerns of indigenous people.

12. Fifth, the Requesters allege a lack of adequate consultation and disclosure, and the provision of misleading information concerning the nature of the project and its objectives, raising concerns about health impacts.

13. Sixth, the Requesters claim that the planned route of the transmission line “*approaches various monasteries, temples, cremation sites and other sites of cultural significance,*” adversely affecting what they consider an appropriate environment for such locations.

¹ The Request defines *Dalit* as a group “considered to be low caste Hindu”

14. Finally, the Request states that even though a Grievance Redress Committee (GRC), a mechanism where anyone can file a complaint, was to be created at the project level, none of the Requesters have heard of a GRC, and they have had to take their complaints to the National Human Rights Commission (NHRC) and the Supreme Court of Nepal.

Management Response

15. In its response, Management emphasizes that the PDP was implemented during a particularly difficult period of Nepal's history which caused "*huge challenges both for the NEA to implement the PDP and the Bank to supervise the project, including limitations in visiting Project sites at different junctures of Project implementation.*" Management states that "*Sindhuli District, the focus of the Request, was one of the five districts where the Maoist armed insurgency originated in 1996*" and that after the 2008 elections, "*an uprising of the Madhesi, Indigenous People from the Terai in the south of the country, led to internal migration to the Sindhuli area, raising land prices.*" Management also states that the Project was "*stalled on different occasions due to insecurity on Project sites and has been restructured three times (2008, 2009 and 2012) to expand Project scope and provide additional financing.*"

16. Regarding alternative routes, Management maintains that contrary to the Requesters claims, an adequate analysis of alternatives was carried out, first during the design phase and preparation of the EIA, and later during a Government review of the alignment of the disputed transmission line.

17. Regarding consultations, Management maintains that the NEA carried out a series of consultations in the Project areas, including Sindhuli district. Management states that these consultations were announced in advance, and the input provided by participants was well received by the Project staff.

18. Management states that the main dispute relates to compensation of land holders in the ROW whose land is not being acquired, but would be impacted by the passing of the power lines over their land. These landowners are demanding compensation at 100 % for land not acquired but impacted by the ROW. Management notes that the Government announced a compensation package which approved "*compensation at 100 percent of land value, provision of a local road, and uninterrupted power supply.*" This proposed road will be built in the disputed section of the transmission line allowing the Government to fully acquire land in the ROW.

19. Regarding Indigenous People, Management justifies the use of alternative terminology to "*account for country context and the varied and changing contexts in which Indigenous Peoples live.*" Management states that such a situation was characteristic of Nepal and the Sindhuli district more specifically, and this underlies why the Project opted for preparing a VCDP rather than an IPDP.

20. Management claims that no cultural or sacred site has been negatively impacted by the Project, noting that NEA offered to carry out a "*joint verification of the alleged proximity of*

such sites to the ROW.” Management, however, has been informed by NEA that this offer has not been accepted by the community.

21. Regarding health impacts, Management is of the view that “*no known health impacts can be linked to the electromagnetic exposure that is expected to stem from the Project.*” Furthermore, Management asserts that the transmission line has been laid so as to maintain the minimum distance from any building and ground in accordance with industry standards and practice.

22. With respect to grievance redress, Management acknowledges that the project Grievance Redress Mechanism was not as robust as it could have been. There was no separate GRC with representatives from the local community as laid out in the Abbreviated Resettlement Action Plan (ARAP). Management further states that the NEA is in the process of reconstituting and strengthening the Project-level grievance redress mechanism.

The Management/NEA Action Plan

23. The Management Response contained an Action Plan, agreed with the NEA, aimed at addressing the shortcomings identified by Management and NEA in response to the Request. Management submitted an Update of this Action Plan prior to the Inspection Panel’s investigation visit to the project site.² Management reported in this Update that most of the activities in the Action Plan had been completed, except for the ROW compensation and implementation of the updated Vulnerable Communities Development Plan (VCDP) and Resettlement Action Plan (RAP). A second update of this Action Plan was submitted in January 2015, showing almost no additional progress since the first one.

Panel’s Findings

24. The Panel’s investigation findings relate to four main groups of issues, notably those surrounding the application of policies related to (i) Analysis of Alternatives, Environmental Assessment and Health Impacts, (ii) Resettlement and Compensation, (iii) Indigenous Peoples and Cultural Properties, and (iv) Consultation, Disclosure and Supervision. The latter issues cut across all of the others, and as explained in detail in the Report, seem to have been at the root of the problems.

25. Regarding the Analysis of Alternatives, the Panel reviewed the Environmental Assessment and the Report of the Technical Committee appointed to assess an alternative route for the disputed 3.85 kilometer stretch of transmission line in the Kamalamai municipality of the Sindhuli district. The Panel found that such limited and restrictive assessment of alternatives is not what is envisaged in OP/BP 4.01, concluding that the study of alternative transmission line alignments in this 3.85 km stretch does not comply with the requirements of OP/BP 4.01.

26. The Panel notes that the PDP Policy Framework highlighted in adequate detail the studies that were needed to assess environmental and social impacts of PDP sub-projects, but it did not,

² Update on the Management Action Plan for the Nepal: Power Development Project (P043311), June 22, 2014

however, discuss whether capacity existed to undertake such studies or to implement their recommendations. The Panel found that the KDTL EIA did not include an institutional analysis nor identify the capacities of the NEA, in non-compliance with key provisions of OMS 2.20, OD 4.01, and OP/BP 4.01.

27. Regarding health impacts, the Panel noted the consensus of the scientific community as represented by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), that there is no risk to public health from exposure to low frequency electromagnetic fields at or below established ICNIRP reference levels. Consequently, the Panel found Management to be in compliance with Bank Policy OP 4.01 which requires that an EA has to take into account human health and safety. In addition, the Panel notes that the Bank followed the guidance provided in the World Bank's Group Environmental Health and Safety (EHS) regarding the health impacts from electromagnetic fields.

28. On Resettlement and Compensation, the Panel makes five related findings: (i) that since the number of displaced households, as identified in both the 2006 and 2014 ARAPs, was below 200 and the impacts of the transmission line are minor given its linear nature, Management's decision to proceed with an ARAP was in compliance with OP/BP 4.12 on Involuntary Resettlement, (ii) regarding the adequacy of resettlement-related documents, the Panel has noted that OP 4.12 requires a census survey and updated socio-economic information on the displaced people's livelihoods, but because the 2006 ARAP was not updated at the required juncture (i.e., after the end of the insurgency and before the start of transmission line construction), Management is not in compliance with OP/BP 4.12 on Involuntary Resettlement, (iii) the Panel noted the significant delays between compensation payments and the confusion about when instalment payments were to be released, finding this to be in non-compliance with OP 4.12 which requires prompt and effective compensation payment to be made to eligible individuals, and (iv) the Panel also found significant delays and inconsistencies in the provision of Resettlement and Rehabilitation (R&R) assistance to displaced households in the ROW, in non-compliance with OP/BP 4.12 on Involuntary Resettlement. Finally, (v) the Panel also found the lack of an appropriate and accessible grievance mechanism for KDTL to be in non-compliance with OP/BP 4.12.

29. Regarding Indigenous Peoples, the Panel finds that given the prevalence of indigenous, *Dalit* and other vulnerable communities in the disputed ROW, Management's decision to apply a "mixed communities" approach was in compliance with OP 4.10 on Indigenous People. The Panel notes, however, that a clear justification by Management of its decision to adopt this approach would have been helpful.

30. Regarding Physical Cultural Resources, the Panel concurs with Management's decision not to trigger OP/BP 4.11 for the KDTL as the transmission line does not directly impact physical cultural resources, and Management analyzed this criterion adequately in project documents. The Panel notes, however, that the plan for mitigation measures could have been stronger, and information regarding potential impacts could have been better communicated to all.

31. On Disclosure and Consultation, the Panel note Management's acknowledgement that the safeguard provisions for the disclosure of project documentation have not been fully observed

and are being rectified. The Panel also acknowledges the precarious security situation prevalent in Sindhuli at the time of project preparation and implementation, and the travel restrictions this placed on Management. Nevertheless, the Panel finds that Management did not ensure adequate, timely and meaningful consultations during project preparation and implementation as required by Bank Policy, in non-compliance with OP/BP 4.01 on Environmental Assessment, OP/BP 4.10 on Indigenous People, and OP/BP 4.12 on Involuntary Resettlement.

Conclusions

32. It is clear to the Panel that the Bank was confronted with many issues arising from the security situation in Nepal, in addition to the specific characteristics of the project and the project area. The instances of policy non-compliance identified by the Panel seem to result primarily as a consequence of reduced engagement of the Bank, together with the weak capacity of the NEA.

33. The Panel is, however, encouraged by the evolving nature of this situation, notably the renewed commitment of the Bank to provide support and to seek to resolve the issues raised by the project-affected people, even beyond project closure, in addition to a clearly observed and more proactive attitude by the current leadership of the NEA.

34. The Panel notes that the Bank's engagement is extremely important given its declared intention to continue its support for the energy sector in Nepal. Ensuring the sustainability of new engagements, in addition to avoiding the pitfalls of the previous one therefore becomes crucial. In this context, the Panel is of the view that several issues and lessons will need to be taken into account to enhance the sustainability of this engagement, including an improvement and streamlining of the regulatory environment for the sector as necessary, ensuring capacity strengthening of NEA especially in environmental and social aspects, fostering close engagement, consultation and "buy-in" of impacted communities, particularly where IPs and other vulnerable communities are present, and ensuring careful preparation of resettlement, compensation and grievance redress measures.

35. The World Bank is well positioned to learn lessons emerging from this investigation, so that it can support Nepal to develop its immense clean energy resources with the aims of ensuring growth and reducing poverty.

Chapter 1: Introduction

A. Background

1. This Report presents the results of the Inspection Panel’s investigation of the Nepal Power Development Project (hereinafter referred as “the PDP” or “the Project”), specifically its 220 kV Khimti-Dhalkebar Transmission Line (KDTL). The Request for Inspection, received on July 20, 2013, was sent by 103 indigenous and non-indigenous families from three villages of the Sindhuli district in Nepal stating that their “*homes, lands and livelihoods have been affected by the Project.*” The Request was signed by Mr. Surendraswor Moktan (Chairperson of the Struggle Committee of Sindhuli High Tension Affected People), Mr. Shankar Limbu (Advocate, Lawyers Association for Human Rights of Nepalese Indigenous Peoples-LAHURNIP) and Ms. Komala Ramachandran (Staff member at the US-based NGO Accountability Counsel).³ The Requesters provided a Power of Attorney to Mr. Shankar Limbu to represent them and act on their behalf.

2. The Panel registered the Request on July 24, 2013, and Bank Management presented its response on September 18, 2013, proposing several actions that were to be completed by April 2014.⁴ A Panel team visited Nepal during September 30-October 4, 2013 and submitted its Report and Recommendation to the Board of Directors of the World Bank on October 24, 2013.⁵ The Panel recommended an investigation, but in order to take into account the implementation of the proposed Management actions, it recommended delaying the start of the investigation until after April 30, 2014. The World Bank’s Executive Board approved this recommendation. An update of the Management Action Plan, dated June 22, 2014, was received by the Inspection Panel prior to its investigation field visit and was made publicly available. A second update of this Action Plan was received by the Panel in January 2015, before the completion of this investigation report.

3. In line with its mandate, the Panel investigation has focused solely on the allegations of harm arising from instances of non-compliance by the World Bank with its operational policies and procedures.

B. The Project

4. The PDP aims to support the development of Nepal’s hydropower potential, increase access to electricity services in rural areas, and improve the supply of electricity. The Project’s Development Objectives are to “*(a) develop Nepal’s Hydropower potential in an environmentally friendly and socially sustainable manner so as to help meet electricity demand;*

³ The Request states that a civil society coalition comprising Shankar Limbu (LAHURNIP), Surya Tamang (NEFIN), Komala Ramachandra (Accountability Counsel) and Amanda Cats-Brill (independent consultant) is supporting the Complainants. The Request asks that the Inspection Panel keep these individuals updated through correspondence with Mr. Limbu and Ms. Ramachandra.

⁴ Management Response – Request for Inspection of the Nepal: Power Development Project (P043311), September 18, 2013.

⁵ The Inspection Panel Report and Recommendation on Request for Inspection Nepal: Power Development Project (P043311), October 24, 2013.

*(b) improve access of rural areas to electricity services; and (c) promote private participation in the power sector as a way to improve sector efficiency and to mobilize financing for the sector's investment requirements.”*⁶

5. The Project included three components: (A) Establishment of a Power Development Fund (PDF); (B) A Micro Hydro Village Electrification Program (MHVEP); and (C) A Nepal Electricity Authority (NEA) component to support grid transmission and distribution improvements. The subject of the Request is the 220 kV KDTL part of component C. KDTL is a double-circuit transmission line from Khimti Power Station to the existing 132 kV Dhalkebar substation.

6. The Project was approved on May 22, 2003 and closed on December 31, 2013. During this period, it was restructured three times (in 2008, 2009, and 2012). During the third restructuring, the closing date was extended to December 31, 2013 to allow for the completion of three transmission lines (Khimti-Dhalkebar, Hetauda-Bharatpur and Bharatpur-Bardaghat).

7. The Project was financed through an International Development Association (IDA) Credit (Special Drawing Rights (SDR) 35.8 million equivalent to US\$50.4 million) and an IDA Grant (SDR 18.4 million equivalent to US\$25.2 million). The borrower is the Government of Nepal (GoN), and the responsible agencies include the Ministry of Water Resources, the NEA, and the Alternative Energy Promotion Center.

8. **Applicable Safeguard Policies.** The PDP is a category A project. The Project Appraisal Document (PAD) states that the applicable safeguard policies are Environmental Assessment (OP/BP 4.01), Involuntary Resettlement (OD 4.30 and OP 4.12), Indigenous Peoples (OD 4.20), Operational Policy Note (OPN 11.03) on the Management of Cultural Property, Natural Habitats (OP/BP 4.04), Forestry (OP/BP 4.36), and Safety of Dams (OP/BP 4.37).⁷

9. The PAD also states that all transmission line sub-projects prepared under the PDP will require an Environmental Assessment.⁸ It notes that the responsibility of preparing the Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) under the NEA component will be the responsibility of the NEA.⁹ With reference to social impacts, the PAD states that Resettlement Action Plans for sub-projects will be prepared in accordance with the provisions of OD 4.30 and the Policy Framework for Environmental and Social Impact Assessment (EIA/SIA Policy Framework), and Vulnerable Community Development Plans (VCDP) will be prepared in accordance with the provisions of OD 4.20 and the EIA/SIA Policy Framework.¹⁰

10. **Khimti-Dhalkebar Transmission Line (KDTL).** This dual circuit 220 kV transmission line, the first of its kind built by NEA, traverses 75 km of rugged hilly and mountainous

⁶ Project Appraisal Document (PAD), Nepal Power Development Project, April 24, 2003, p. 1.

⁷ PAD, Section 7, p. 36.

⁸ PAD, Annex 11: p. 101.

⁹ PAD, Annex 11: p. 105.

¹⁰ PAD, Annex 11:p. 106.

landscapes (maximum elevation 1,450 meters above sea level) of which 48% is forest, 31% is agricultural land, 10% is rivers, 8% is barren land, and 3% is within villages or urban areas. In Sindhuli district, the geographic focus of the Request, a total of 30 ha of cultivated land and 59 ha of forest is traversed by a 30 meters Right of Way (ROW).¹¹ The KDTL includes 188 steel lattice towers set on concrete foundations, with tower heights ranging between 42 and 49 meters.¹² The average span between towers is 350 meters. At the time of the Panel's investigation visit, 180 towers had already been erected, and the foundations for three additional towers had been completed, but no work had yet commenced on the remaining five towers. Stringing of the electrical conductors was complete, apart from a disputed section of the transmission line in Kamalamai municipality (formerly known as Sindhulimadi), where some of the Requesters originate.

C. Summary of the Request for Inspection and Management Response

C1. Requesters Claims

11. A summary of the allegations stated in the Request is provided below. The complete Request is available on the Panel website.¹³

12. Inadequate Study of Alternatives. The Requesters demand that the transmission line be “*realigned to an alternative route where there is no human settlement,*” thus avoiding re-location and minimizing damage to cultural properties to the extent possible. They note that while the Government formed an Expert Committee to explore potential alternative routes, the findings of this Committee were never made public. They also observe that the EIA contains only a two-paragraph summary of alternatives, and the Abbreviated Resettlement Action Plan (ARAP) and the Social Impact Assessment (SIA) contain no such analysis. The Requesters state that they have brought the possible existence of alternative routes to the attention of Project staff.

13. Livelihood Concerns. The Requesters oppose the selected alignment of the transmission line based on what they perceive to be its impacts on community life and their livelihoods. They believe that the line will cause a devaluation of land and a loss in agricultural production.

14. Relocation and Compensation. According to the Request, a “*large number of indigenous and local people are at risk of displacement*” as a direct result of land acquisition for the construction of towers and ROW. The Request observes that the provision of compensation falls short in terms of assessing the actual value of the land, as well as compensation amounts offered. Furthermore, the Requesters ask for retroactive compensation for lost agricultural production for persons already affected by project related activities.

¹¹ Nepal Power Development Project, Social Impact Assessment of Khimti-Dhalkebar 220 kV Transmission Line, Report E 176, Table 4.2.13

¹² Vulnerable Community Development Plan for Khimti–Dhalkebar 220 kv transmission line project updated March 2014, Report Number RP 1477

¹³ Request for Inspection, Nepal Power Development Project, July 10, 2013. Available at [Nepal PDP Request for Inspection](#)

15. Indigenous People. The Request observes that the affected groups in Sindhuli district are largely indigenous *Adivasi* or *Dalit*¹⁴ people. The Request states that the Project did not appropriately identify Project-affected indigenous people, and that only a single plan, i.e., the Vulnerable Community Development Plan (VCDP) was prepared to address “*Vulnerable Communities*,” without analyzing the specific conditions and concerns of indigenous people. The Requesters believe that an Indigenous Peoples Development Plan (IPDP) should have been prepared as per the requirements of the Bank’s Indigenous Peoples policy. Moreover, according to the Requesters, the VCDP “*misidentifies*” some indigenous groups, thereby not taking into account their precise needs and preferences as required by Bank policy.

16. Inadequate Consultations and Disclosure. The Requesters allege the lack of detailed information regarding project activities, in particular the provision of relocation and compensation packages. They also emphasize the lack of adequate consultation, and the provision of misleading information concerning the nature of the project and its objectives. They also maintain that project affected individuals and notably indigenous people in Sindhuli “*were never consulted*” on the design, location, or alignment of the transmission line, nor were they invited to participate in the preparation of the various safeguard documents.

17. Health Impacts. The Requesters express concern about the potential adverse effects of electric and magnetic fields created by high voltage power lines. This is especially worrisome to them because according to the Request, the transmission line will run over, or will be close to schools and other human settlements. The Requesters stress that no evidence or documentation has been presented to them to alleviate these health-related concerns.

18. Impact on Cultural and Sacred Sites. The Requesters claim that the planned route of the transmission line “*approaches various monasteries, temples, cremation sites and other sites of cultural significance*,” adversely affecting what they consider to be an appropriate environment for such locations.

19. Grievance Redress. The Request states that the ARAP notes that a Grievance Redress Committee (GRC), a mechanism where anyone can file a complaint, will be created at the project level. The GRC would include a representative of local affected persons nominated by them, hold meetings at regular intervals, develop working procedures, and operate transparently. The Request asserts, however, that none of the Requesters have heard of such a GRC, and that they have had to take their complaints to the National Human Rights Commission (NHRC) and the Supreme Court. Moreover, the Request states that contrary to the ARAP, which also mentions the existence of a Khimti-Dhalkebar 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 construction, the KDTL-EMU has never been active in Sindhuli nor has it communicated with complainants there.

C2. Management Response

¹⁴ The Request defines *Dalit* as a group “*considered to be low caste Hindu*”

20. In its response, Management emphasizes that the PDP was implemented during a particularly difficult period of Nepal's history which caused "*huge challenges both for the NEA to implement the PDP and the Bank to supervise the project, including limitations in visiting Project sites at different junctures of Project implementation.*"¹⁵ Management states that "*all relevant Project-related impacts referred to in the Request have been taken into account in the course of Project preparation and are being addressed through the appropriate mitigation measures.*"¹⁶ Management also states that "*Sindhuli District, the focus of the Request, was one of the five districts where the Maoist armed insurgency originated in 1996.*"¹⁷ Management also states that after the 2008 elections, "*an uprising of the Madhesi, Indigenous People from the Terai in the south of the country, led to internal migration to the Sindhuli area, raising land prices,*" and that there is "*still a Maoist presence in the Sindhuli area and the writ of the state remains weak.*"¹⁸ Management also states that the Project was "*stalled on different occasions due to insecurity on Project sites and has been restructured three times (2008, 2009 and 2012) to expand Project scope and provide additional financing.*"¹⁹

21. Management states that Nepal is facing an energy deficit, a main constraint to development, and that weak institutional capacity is one of the reasons why the energy sector is performing poorly. According to Management, "*public sector capacity, especially in agencies such as NEA has weakened over the years, a situation worsened by the absence of top leadership for many years and frequency of staff changes in middle management.*"²⁰ Management notes that large infrastructure projects are usually troubled by land acquisition and ROW problems which are often exacerbated by the period of political instability. Management mentions, as an example, that "*there has been virtually no commissioning of new hydropower and transmission lines since 2003. An Asian Development Bank project that supported transmission lines was ultimately closed with significant stranded assets as final stringing of the transmission towers could not be undertaken due to lack of resolution on right of way issues.*"²¹

22. Management states that the KDTL represents 11 % of the total Project cost and as such is a relatively small component of the Project, crossing four districts: Ramechhap, Sindhuli, Dhanusa and Mahottari. Though the Project was approved in 2003, "*construction on KDTL began in 2007 and to date, 177 out of 188 towers have been erected, the foundation works for 3 additional towers have been completed, and stringing of conductors is ongoing in the undisputed sections of the KD Transmission Line.*"²²

23. Analysis of Alternatives. Management maintains that contrary to the Requesters claims, an adequate analysis of alternatives was carried out, first during the design phase and preparation of the EIA, and later during a Government review of the alignment of the disputed transmission line. Management states that the Requesters' proposed alternative alignments have been analyzed

¹⁵ Management Response, para 10, p. 4.

¹⁶ Ibid, para 20, p. 6.

¹⁷ Ibid, para 9, p. 4.

¹⁸ Ibid.

¹⁹ Ibid, para 17, p. 5.

²⁰ Ibid, para 12, p. 4.

²¹ Ibid, para 13, p. 4.

²² Ibid, para 16, p. 5.

under the EIA and would have had greater adverse impacts than the current alignment.²³ Management also states that contrary to the allegation made in the Request, the original alignment was not changed.²⁴

24. Livelihoods. Management asserts that during preparation of the EIA, the analysis of alternatives took into consideration all relevant impacts, including loss of livelihood. Management states that the SIA covered impacts on individuals who would lose livelihood due to loss of land and source of income from tenants. Furthermore, Management clarifies that there is no restriction on entering the ROW, and land owners will retain their ownership and have continued access to the affected land parcels.²⁵

25. Relocation and Compensation. On the issue of relocation and compensation, Management states that the main dispute relates to compensation of land holders in the ROW whose land is not being acquired but would be impacted by the passing of the power lines over their land. These landowners are demanding compensation at 100% for land not acquired but impacted by the ROW. Management notes that the Government announced a compensation package which approved “*compensation at 100 percent of land value, provision of a local road, and uninterrupted power supply.*”²⁶ This proposed road will be built in the disputed section of the transmission line allowing the Government to fully acquire land in the ROW, thereby enabling compensation at 100%.

26. Indigenous People. Regarding Indigenous People, Management justifies the use of alternative terminology to “*account for country context and the varied and changing contexts in which Indigenous Peoples live.*”²⁷ Management notes that OP 4.10 – Indigenous Peoples states “*when indigenous peoples live in the same area with non-indigenous peoples, the IPDP should attempt to avoid creating unnecessary inequities for other poor and marginalized social groups.*”²⁸ Management states that such a situation was characteristic of Nepal and the Sindhuli district more specifically, and this underlies why the Project opted for preparing a VCDP rather than an IPDP.

27. Consultations and Disclosure. Regarding consultations, Management maintains that the NEA carried out a series of consultations in the Project areas, including Sindhuli district. Management states that these consultations were announced in advance, and the input provided by participants was well received by the Project staff. Management also documents two public hearings that took place for the preparation of the EIA where advance notice was provided in national daily newspapers. In line with assertions made in the Request, Management concurs that “*the disclosure of safeguard documents for the PDP has been uneven and requires significant strengthening.*”²⁹ Management adds that remedial measures have been put in place.

²³ Ibid, para 22, p. 7.

²⁴ Ibid, No. 16, p. 24.

²⁵ Management Response, section 13, p. 22.

²⁶ Ibid, para 30, p. 9.

²⁷ Ibid, para 36, p. 10.

²⁸ Ibid.

²⁹ Ibid, para 24, p. 7.

28. Health Impacts. Regarding health impacts, Management is of the view that “*no known health impacts can be linked to the electromagnetic exposure that is expected to stem from the Project.*”³⁰ Furthermore, Management asserts that the transmission line has been laid so as to maintain the minimum distance from any building and ground in accordance with industry standards and practice.

29. Cultural and Sacred Sites. Management claims that no cultural or sacred site has been negatively impacted by the Project, noting that NEA offered to carry out a “*joint verification of the alleged proximity of such sites to the RoW.*”³¹ Management has been informed by NEA that this offer has not been accepted by the community.

30. Grievance Redress. Management acknowledges that the project grievance redress mechanism was not as robust as it could have been. Management states that KDTL-EMU was established before construction of the transmission line started, and in addition to other responsibilities, it also functioned as the project’s grievance redress unit. It did not, however, include a separate GRC with representatives from the local community as laid out in the ARAP. Management further states that the NEA is in the process of reconstituting and strengthening the project-level grievance redress mechanism.³²

C3. Action Plan

31. The Management Response contained an Action Plan, agreed upon with the Implementing Agency, the NEA, aimed at addressing the shortcomings identified by both Management and the NEA. Management also noted that measures contained in the Action Plan will enhance NEA’s capacity in social and environmental safeguards supervision and community outreach, and that Management will continue its supervision to ensure that environmental and social mitigation measures are adequately implemented in compliance with Bank policy and consistent with global good practices. The key elements of this Action Plan included completion of disbursement of compensation for land and ROW for eight unfinished tower pads in Sindhuli, as well as the rest of the length of the ROW, including the “feeder road;” hiring of a Communication/Social Specialist (October 2013); appointment of community liaison officers for key communities (mid-November 2013); updating of the ARAP and VCDP (end December 2013); implementation of updated VCDP and ARAP (April 2014); strengthening the current project Grievance Redress Mechanism (GRM) (December 2013); continuing consultations and interaction with affected communities to reach conclusion on the ROW of the disputed stretch; developing and disseminating new communications materials at 3 sites (November 2013); completing physical works (March-April 2014); creating a roster of mediators (end November 2013); disclosing safeguard documents at World Bank Info Shop (end December 2013); and preparing a case study on the KDTL as a tool for applying a conflict sensitive approach throughout the power sector in Nepal.

³⁰ Ibid, para 43, p. 12.

³¹ Ibid, para 42, p. 12.

³² Management Response, para 45.

32. Management submitted an update of this Action Plan prior to the Inspection Panel's investigation visit to the project site.³³ In the update, Management reported that most of the activities in the Action Plan had been completed, except for the ROW compensation and implementation of the updated VCDP and RAP. Management also stated that actions that still needed to be implemented include: (i) projects in the updated VCDP and RAP, such as irrigation schemes, enhancement of religious and historic places, and drinking water supply; (ii) payment of compensation to remaining land owners affected by road construction in Sindhuli; (iii) disbursement of Resettlement and Rehabilitation (R&R) assistance to severely project affected persons (SPAFs); and (iv) disbursement of compensation for ROW. Management noted that NEA had indicated that payment of compensation and disbursement of R&R assistance to SPAFs can be completed over the coming two months, whereas works that involve physical project construction will take about 6 months, and disbursement of the compensation in Sindhuli will take longer. Management stated that the Action Plan can be considered achieved upon completion of the small project schemes, payment of compensation, and provision of R&R assistance, and funds in the amount required for the remaining ROW compensations plus ten percent (10%) which will be deposited in an ESCROW account for disbursement of compensation for the ROW. Management stated that it would continue to monitor the government's implementation of the Action Plan and the Project's safeguards instruments.³⁴

33. The Panel received a second update of this Action Plan prior to the submission of this investigation report.³⁵ It reported that most of the activities supported under the Action Plan had been completed except for compensation for the ROW in the disputed section, and implementation of the VCDP and RAP. With respect to the VCDP and RAP, the second update states that implementation has not started in Sindhuli as "*local people are waiting for the WB's Inspection Panel Report.*"³⁶ It also states that the GON has acquired land parcels for the feeder road along the ROW in the disputed areas of the Kamalamai municipality.³⁷

D. Project Context

34. The Energy Sector. The World Bank's initial involvement with Nepal's electrical power generation and transmission in 1989 led to the Power Sector Efficiency Project.³⁸ It was followed by the Nepal Power Development Project (PDP), which was initiated in 1997 and approved in 2003.³⁹ The first safeguard study prompted by Bank involvement was a Sectoral Environmental Assessment (SEA), undertaken during 1997⁴⁰ and updated in 2001.⁴¹

35. Because the PDP included various components, with their specific locations undecided at the time of Project approval, a policy framework approach was adopted for the EIAs required for

³³ Update on the Management Action Plan for the Nepal: Power Development Project (P043311), June 22, 2014.

³⁴ Update on the Management Action Plan, para 5, p. 4.

³⁵ Update on the Implementation Status of the Action Plan: Nepal Power Development Project, January 27, 2015.

³⁶ Ibid, section E, p. 3.

³⁷ Ibid, Annex I, p. 5.

³⁸ Nepal Power Sector Efficiency Project, Implementation Completion and Results Report, Report Number 20634.

³⁹ Nepal Power Development Project, Project Information Document, Report Number AB 30.

⁴⁰ Nepal Power Development Project, Sectoral Environmental Assessment, Report E 176, 1997.

⁴¹ See Timeline in Annex 1.

each component. Consequently, a Policy Framework for the EIA⁴² and a Resettlement and Rehabilitation Policy Framework were developed in 1999.⁴³ The EIA for the KDTL was prepared in May 2005.⁴⁴



Picture 1 - View of Sindhuli Town in 2013

36. Between 1997 (when the SEA was prepared), and 2005 (when the KDTL EIA was submitted), Nepal was a monarchy, and was experiencing a Maoist insurrection centered in the Terai region, through which the KDTL was to be routed. The Project was restructured on February 15, 2008 due to slow progress in implementation of the PDF component, the Project closing date was extended to December 31, 2010, and funds were reallocated to the micro hydro (MHVEP) and transmission and distribution components under the NEA.

37. In March 2008, an Environmental Management Plan (EMP) for the KDTL was submitted and construction of the line commenced two months later.⁴⁵ Additional financing of SDR 60.1 million (equivalent to US\$ 91.66 million) was provided on May 26, 2009 to further enhance the MHVEP and NEA components, increasing the total Project amount to SDR 115.3 million (equivalent to US\$ 175.77 million). The Project closing date was revised again, to December 31, 2012.

38. The PDP was restructured for the third time in 2012 to provide more time to address the ongoing dispute pertaining to the KDTL. The closing date was extended to December 2013 and US\$ 42.5m of IDA funding was cancelled. The Project was closed on December 31, 2013, when 99 percent of IDA funds had already been disbursed.⁴⁶

⁴² Nepal Power Development Program, Policy Framework for Environmental Impact Assessment, Report E 176, 1999.

⁴³ Resettlement and Rehabilitation Policy Framework: Entitlement Policy, Annex 2, 1999.

⁴⁴ Nepal Power Development Program, Environmental impact assessment of Khimti-Dhalkebar 220kV transmission line project, Report E 176, 2005

⁴⁵ Environmental Management Action Plan for Khimti-Dhalkebar 220kV Transmission Line Project, Report E 176, 2008

⁴⁶ Implementation Status & Results Report, Nepal Power Development Project (P043311) Seq No: 21, archived on 19-Jan-2014, ISR13378.

39. Indigenous People. “*Adivasi Janajati*” is a widely accepted categorization of those culturally distinct groups whose ancestors inhabited parts of present day Nepal before the arrival of the Hindus, and who have been excluded from the religious hierarchy and political processes. These groups are identified by the Government of Nepal and by themselves as “indigenous peoples” or indigenous “nationalities,” as distinct from the rest of Nepal’s population.⁴⁷

40. The National Foundation for Development of Indigenous Nationalities Act (2002) defines *Adivasi Janajati* as those: “*tribes or communities as mentioned in the schedule who have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own.*”⁴⁸

41. According to the 2011 census, the total population of Nepal is 26,494,504 million, of which indigenous people number approximately 9 million and thereby comprise ca. 35% of the population.⁴⁹ Officially, 59 cultural groups have been identified as indigenous nationalities or *Adivasi Janajatis* by the GON. Researchers state that Nepali indigenous peoples possess distinct identities, cultures, languages, religions, histories and institutional structures and have a spiritual relationship to their land. Although indigenous peoples of Nepal range from small hunter-gatherer communities to those with an advanced urban culture, they are predominately concentrated in remote rural areas and rely primarily on subsistence farming for their livelihoods. With unique customary laws, knowledge systems, values, and world views, indigenous peoples in Nepal are stated to form distinct societies, different from the rigid hierarchy of the Hindu caste system.⁵⁰

42. Social exclusion of indigenous peoples in Nepal, along with other marginalized groups, has been identified as a major cause of conflict and instability. Indigenous peoples in Nepal are particularly vulnerable to poverty, with most experiencing political, economic, social and cultural marginalization. Many are affected by inequalities in income, education, health, jobs and political representation. Along with *Dalits*, indigenous groups are at the bottom of almost every social indicator in Nepal.⁵¹

43. The KDTL. To better understand the context of the Request, it is important to state that the KDTL has taken a relatively long time to be constructed. A “*Detailed Survey*” was carried out as early as 2001/02, and the EIA was completed in 2005.⁵² The initial ARAP and VCDP were prepared in 2006, and construction began after the EMP was submitted in 2008. At the time the Request was received in 2013, however, a detailed cadastral survey to determine precisely

⁴⁷ Raja Devasish Roy and John B. Henriksen, Inclusion of Indigenous Peoples’ Rights in The New Constitution of Nepal, ILO, 11 February 2010 (Rev), p. 4.

⁴⁸ National Foundation for Development of Indigenous Nationalities Act, 2058 (2002), para 2 (a).

⁴⁹ National Population and Housing Census 2011, National Report, Volume 01, NPHC 2011, Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, Kathmandu, Nepal, November, 2012.

⁵⁰ Lama, M. S. Indigenous People of Nepal and Human Rights, Human Rights Yearbook, 2004.

⁵¹ Krishna B. Bhattachan and Sarah Webster. “*Indigenous Peoples, Poverty Reduction and Conflict in Nepal*”, International Labour Office, Geneva, 2005, p. 13.

⁵² Government of Nepal’s Technical Committee Report on Analysis of Alternative Routes Khimti-Dhalkebar 220 kV Transmission Line Project, Report of Technical Team, appended as Annex 1.5 to Management Response to Request for Inspection, p. 69.

the areas of lands that will be affected by the final ROW in the disputed stretch in Kamalamai municipality had not yet started.⁵³ Therefore, at least 12 years have elapsed between the first studies of the KDTL and the request.

44. The implementation of the KDPL itself also went through several phases, including periods where it was practically impossible to visit the project area due to security concerns. This led to limited engagement with communities, which may have curtailed the ability to solve some of the implementation problems that appeared later. The KDTL is the first 220 kV line ever to be built in Nepal, and thus previous experience with these types of lines was lacking. Moreover, and as noted by Management, internal migration into the KDTL project area due to the *Madhesi* uprising after the 2008 elections caused changes in the population composition in Sindhuli, resulting in a raising of land prices.⁵⁴ This migration contributed to Sindhuli's urbanization, with important consequences for the value of land in the area.

45. In February 2010, the “Struggle Committee of the Affected People of the 220 kV Khimti-Dhalkebar Transmission Line” (“*Khimti-Dhalkebar 220 kV Bi Bidhyut Prasaran Line Pidit Sangharsa Samittee*”) was formed. This Committee represents the affected people of the Ratanchura VDC, Bhadrakali VDC, Ranichuri VDC and the Kamalamai municipality, and its Chairperson, as stated earlier, is a signatory to the Request for Inspection. The Committee has also in the past submitted memorandums and appeals against the adverse impact of the transmission line with concerned authorities,⁵⁵ and filed cases with the Supreme Court of Nepal, National Human Rights Commission, and the UN Special Rapporteur on the Rights of Indigenous Peoples.⁵⁶

E. Investigation Methodology

46. As mentioned earlier, the Panel recommended an investigation to start after April 30th 2014, to provide time for the implementation of Management's Action Plan. The Panel developed and posted an Investigation Plan on the Panel's website in June 2014. The Panel conducted a two-part investigation led by Panel Members Zeinab Elbakri and Gonzalo Castro de la Mata, and including Mishka Zaman, Senior Operations Officer. The Panel also retained three independent experts, Richard Fuggle (Environmental Assessment), Christopher McDowell (Resettlement), and Mukta Singh Lama (Indigenous People).

47. The first stage of the investigation involved detailed research into Bank records and project documents. The second stage entailed a fact-finding mission to the KDTL area during the period 19-27 July, 2014, and interviews with Bank staff in the Country Office involved with the project. The Panel team also held extensive discussions with the NEA and other relevant Nepal

⁵³ Management Response, Annex 1.6, NEA and World Bank Action Plan.

⁵⁴ The *Madhesi* movement, in the Terai region, was centered around economic and political grievances, the main argument being that despite their numbers, the *Madhesi* were under-represented in Nepal's governing system.

⁵⁵ These include the Chief District Officer, NEA, Ministry of Energy, the Prime Minister's Office and the World Bank.

⁵⁶ This information is based on communication received from the Requesters' Representative.

government agencies. Additional staff interviews were held with Bank staff upon return to Washington DC.

48. The investigation analyzes Bank compliance with the following policies:

- Environmental Impact Assessment,
- Involuntary Resettlement,
- Indigenous Peoples,
- Project Appraisal, and
- Project Supervision.

49. The report is organized as follows: Chapter 1 (this Chapter), summarizes the Request, Management's Response, the Project, and its Context; Chapter 2 focuses on the study of alternatives and health and safety issues; Chapter 3 analyzes issues related to resettlement, indigenous people, and cultural property; Chapter 4 analyzes the claims regarding disclosure, consultations and supervision; and Chapter 5 presents the conclusions.

Chapter 2: Environmental Assessment and Health Impacts

A. Introduction

50. This chapter examines two of the Requester's claims: (i) the study of alternatives of transmission line alignment, and (ii) the health impacts of the KDTL. Both issues are related to the way the Bank handled the development of the EIA and associated documents, and how these issues were supervised.

B. Study of Alternatives

B1. Requesters Claim

51. The Requesters claim that they have requested the transmission line to be "*realigned to an alternative route where there is no human settlement*" in order to avoid relocation as much as possible. They note that while the Government formed a Technical Committee to explore potential alternative routes, the findings of the Committee were never made public. The Requesters cite that Operational Policy 4.12 on Involuntary Resettlement requires the consideration of "*all viable alternative project designs.*" In this context, they observe that the EIA contains only a two-paragraph summary of alternatives, and the ARAP and SIA contain no such analysis. Finally, they argue that "*alternative routes for the project exist, many of which would avoid damage to cultural property in Sindhuli District,*" and that they have brought these alternatives to the attention of Project staff.

B2. Management Response

52. Management claims that contrary to the assertions made by the Requesters, an adequate analysis of alternatives was carried out, first during the design phase and preparation of the EIA, and second during a Government review of the alignment of the transmission line in the disputed segment. Management asserts that the Project EIA prepared during the design phase "*analyzed three alternative routes and concluded that the current alignment was the best option*" and that this decision was based on "*technical and economic feasibility as well as environmental and social impacts.*" Management also states that the "*Requesters proposed alternative alignments have been analyzed under the Environment Impact Assessment*" and that they were considered to potentially have "*greater adverse impacts than the current alignment.*"

53. With reference to the Government review, Management states that after receiving complaints from the community in January 2012, the Government conducted its own review of the alignment by constituting a 5-member "Technical Committee" on March 15, 2012. After consulting with local populations and examining various issues connected with a possible realignment (social impacts, timeframes, and cost), the Committee issued a report on March 25, 2012 in which it recommended continuing with the existing alignment.



Picture 2 - Houses near Transmission Line in Sindhuli district

B3. Analysis of Issues in Bank Documents

54. *Sectoral Environmental Assessment (1997)*. The preparation of the PDP included the important step of preparing an SEA for the power sector.⁵⁷ An SEA is described as “*a much needed complement to project-specific EAs in development planning*” in that it offers an opportunity for sector-wide environmental analysis before investment priorities are determined.⁵⁸ The SEA also builds on traditional economic least-cost analysis by incorporating environmental and social criteria in the selection of projects.⁵⁹ A SEA is most commonly used to examine cumulative impacts in the context of sector investment programs involving multiple sub-projects.

55. The PDP SEA was to serve as the basis for identification of development options in the power sector of Nepal. Accordingly, the SEA identified a small and medium scale hydropower development strategy as the preferred option. The SEA anticipated that the exercise would help reduce risks and make investments more attractive to private developers by undertaking project selection costs. It also recognized the value of broad stakeholder participation and a consensus building approach.

56. The SEA outlined Nepal's hydropower potential, the Government's hydropower policy, the existing power system, past and future load growth, and energy export potential. It explored alternative generation options, renewable energy sources, and demand side management. It reduced the number of potential sites for hydropower generation from 138 to 7 for further detailed feasibility studies.

57. The SEA recognized the considerable scope for increasing cross-border power trade between Nepal and India, including the need to plan and develop stronger interconnection ties

⁵⁷ Nepal Power Development Project, Sectoral Environmental Assessment, Report E 176, April 25, 1997.

⁵⁸ Environmental Assessment Sourcebook Update, Sectoral Environmental Assessment, October 1993, Number 4.

⁵⁹ Ministry of Water Resources, 1997: Power Development Project, Sectoral Environmental Assessment, pg.2.

with the Indian Network. It outlined the policy to be applied to reduce the environmental and social impacts of transmission lines: (i) to avoid displacement of people, (ii) to minimize land intake, (iii) to prevent dwellings in or too near the ROW, (iv) to completely avoid any conservation units (such as National Parks), and (v) to avoid siting towers where they may cause aesthetic (visual) impacts.



Picture 3 - Agriculture near Transmission Lines in Sindhuli district

58. Although appropriate and comprehensive, the PDP SEA is more aspirational than analytical, and apart from tables that provide the relative weights given to technical, economic, social and environmental factors in the screening and ranking, there is insufficient data and detail for the SEA to be critically analyzed. It nevertheless provided useful context and guidance for the Policy Framework for Environmental Impact Assessment that was undertaken two years later under the PDP.

59. *Policy Framework for Environmental Impact Assessment (1999)*.⁶⁰ The Policy Framework for the PDP, developed following the requirements of OD 4.01 on Environmental Assessment, provided guidance regarding the environmental and social assessments that all the PDP sub-projects must undertake. It required EIAs in compliance with Nepal's Environment Protection Act, 2053 (1997) and Environmental Protections Rules, 2054 (1997). It also required that projects funded by IDA must meet World Bank safeguard requirements, which at the time the Framework was issued, were covered by OD 4.01 (Environmental Assessment), OD 4.20 (Indigenous Peoples) and OD 4.30 (Involuntary Resettlement).⁶¹

⁶⁰ Nepal Power Development Project, Policy Framework for Environmental Impact Assessment For Projects under the Power Development Fund, Ministry Of Water Resources Report E 176, 1999.

⁶¹ Operational Directive OD 4.01 was replaced by Operational Policy 4.01 on January 1, 1999. The Policy Framework was submitted during November 1999. A footnote to OP 4.01 states that it applies to all projects whose PID was first submitted after March 1, 1999. The PDP PID was prepared during 2003.

60. The Framework required all sub-projects to prepare an Environmental Management Plan (EMP), an Acquisition Compensation Rehabilitation Plan (ACRP), a Resettlement Action Plan (RAP), and a Vulnerable Community Development Plan (VCDP). The compatibility of Nepalese and World Bank impact assessment requirements was also explored, and because of some shortcomings in Nepalese requirements, the necessity of ensuring that terms of reference for environmental and social assessments would be in compliance with IDA safeguards was recognized.

61. The Framework also provided comprehensive guidance on the environmental and social parameters that needed to be incorporated in project environmental and social impact assessments. The need for draft project specific EIA terms of reference to be translated into Nepali or other local language and be disseminated and discussed with community representatives, NGOs, and members of civil society, was innovative. The Framework also required that these views be taken into account in formulating the final terms of reference for assessments. Guidance on conducting public consultations was given; this covered identification of stakeholders, assistance to local groups, dissemination of information in non-technical and local languages, appropriate conduits for meaningful consultation, and the need for records of meetings, issues raised, and responses provided.

62. Two generic EIA outlines were provided as annexes to the Framework. The first pertained to EIA in general, was thorough, and closely followed Annex B to the World Bank's OP 4.01 "*Content of an Environmental Assessment Report for a Category A Project.*" The generic transmission line EIA required maps and graphic presentations that display power line routing and that these be of a quality to enable easy identification of potential impact areas. It also required that Bank policy be applied for any land acquisition that may be required or that is under dispute. A comprehensive list of environmental impacts that may occur due to transmission line conceptualization, planning, construction and operation was provided. Emphasis was placed on the need for careful consideration of alternative routes to reduce negative impacts and examples of other technical alternatives are also given. The Framework provided sound guidance and a good basis for the sub-project environmental and social studies that were expected to follow.

63. The second was specific to transmission lines, recognizing that decisions regarding final routing can only be taken during the detailed engineering design. Attention was drawn specifically to the World Bank directives on power transmission lines as contained in the "*Environmental Sourcebook, Technical Paper 194.*" The transmission line ToR outline specifically states that the EIA should discuss needs for institutional strengthening, such as additional staff and/or training in environmental issues.⁶²

64. In a second annex, studies required for the socio-economic and cultural components of an EIA were covered in detail. These are systematic baseline studies, land use surveys, community studies describing social structure and social relations in the project affected area, institutional analysis, beneficiary consultations and focus group meetings, and rapid assessment of project impacts. After these baseline studies were carried out, detailed social impact assessments to

⁶² Policy Framework, p. 17-18.

quantify the type and extent of project impacts were required in order to prepare realistic socio-economic operational plans. Grievance redress mechanisms were also required to pre-empt disagreements being referred to courts of law.

65. If involuntary resettlement was necessary, the Framework required an “Acquisition Compensation and Resettlement Plan” (ACRP). This plan was to document implementation arrangements for resettlement including asset acquisition, compensation, relocation and rehabilitation of persons affected by loss of dwelling, land and other assets or livelihoods. The Framework also required, if applicable, a Vulnerable Community Development Plan (VCDP) to ensure that vulnerable communities residing in the project affected area and affected directly or indirectly by the project, are protected and provided development assistance in accordance with their own priorities.



Picture 4 - Transmission Lines and ROW in Sindhuli district

66. *EIA for the KDTL (2005)*.⁶³ The EIA for the KDTL was submitted in 2005 and was appropriately structured following OP 4.01. The outline of study methods and project description

⁶³ Nepal Power Development Project, Environmental Impact Assessment of Khimti-Dhalkebar 220kV transmission line project, Report E 176, 2005

provided the necessary background, and the composition of the study team was appropriate. The existing environmental and social conditions of the project area were well described, with the biological aspects being particularly well covered. Studies involved literature review, extensive field work and biological data collection. Data on socio-economic characteristics was collected by means of questionnaire surveys, interviews, and focus group discussions. The sampling techniques and sample size used were appropriate as was the use of cadastral maps to determine land ownership along the ROW.

67. The impacts of project actions on environmental receptors was done using a simplified matrix that recorded the study team's assessment of whether an interaction would be high, medium or low; whether the impact would be site specific, local (affecting more than one ward or village development committee), or regional (affecting an entire district); and whether the effect would be short (portion of construction period), medium (entire construction period) or long term (longer than the construction phase). The assessment of impacts was reasonable and bio-physical assessments were made, where necessary, specific to individual tower locations. For houses affected, details were provided by VDC and ward but not by tower number. The cumulative effects of corridor development projects (transmission lines and roads) in the same districts as the KDTL are briefly addressed and the minor contribution of the transmission line when compared to road construction is shown.

68. The EIA, in several chapters, identified agencies that would play a role in project implementation and in a post-project environmental audit. It stated that the NEA would have prime responsibility for overall implementation, and the KDTL-EMU and Contractor would be responsible for the implementation of mitigation measures.⁶⁴ It further stated that the ESSD would be responsible for pre-construction monitoring and the KDTL-EMU would be responsible for implementation stage, day-to-day monitoring. It identified the Ministry of Environment, Science and Technology (MoEST) as the entity that will conduct a post-project environmental impact audit two years after project completion.⁶⁵ The EIA does not, however, provide details on the institutional capacities of these entities.⁶⁶

69. Chapter 6 of the EIA is devoted to "Alternative Analysis." This is a short (3 page) overview of the alternatives that were considered. Table 6.1 in the EIA provides a summary comparing three route alignments across 13 considerations: total line length; total cost; time to construct; difficulty of construction; distance of route from roads; transportation costs; number of rivers crossed; number of roads crossed; number of 33 kV lines crossed; distance from airport; hectares of forest to be cleared; number of houses to be relocated; and hectares of cultivated land under right of way. The chapter also touches briefly on four design alternatives: tower structures; length of spans between towers; types of insulators; and foundation types. cursory attention is given to the "No Project Alternative" as well as to technology alternatives, alternative operating procedures, and construction schedules.

⁶⁴ EIA, section 7.6, p. 91.

⁶⁵ EIA, section 11.8, p. 119.

⁶⁶ EIA, section 10.5, p. 115.

70. *PAD (2003)*. The PAD discusses institutional strengthening of NEA from the perspective of financial management and proposes a budget for activities that will enable NEA to meet international accounting standards. However, there is no institutional analysis of NEA's environmental and social capacity, or that of its Environment and Social Studies Department (ESSD), the unit that prepared the EIA/SIA, VCDP, ARAP, and EMP and was responsible, along with NEA and the Contractor, with implementing the EMP. The PAD also does not contain any discussion of the KDTL analysis of alternatives.

71. *Environmental Management Action Plan (EMP) (2008)*.⁶⁷ A preliminary EMP was prepared as required by the Policy Framework for EIA/SIA. The EMP forms part of the EIA and deals with the implementation of mitigation measures, monitoring, issues of public concern and the coordination of different stakeholders.⁶⁸ Since the KDTL was under construction, a comprehensive EMP was required that spells out the responsibility of each stakeholder.⁶⁹ The 2008 EMP was prepared by the ESSD as a guiding document and was submitted in March 2008. It specifies which parties would be responsible for mitigation and how to coordinate with the various line agencies, non-project participants, and provides a construction schedule. The Plan, for example, states that an EM Unit Office be established in Sindhuli Bazaar, mentions that Environmental Monitors be deployed in Sindhuli Bazaar, refers to a Social Awareness Program and describes the procedure for grievance redress.

B4. Bank Policy Requirements

72. Operational Directive (OD) 4.01 on Environmental Assessment applied to the Policy Framework on EIA/SIA, as it was submitted in November 1999. OD 4.01, paragraph 12, on "*Strengthening Environmental Capabilities*" requires that as part of the EA process, it is necessary to identify relevant environmental agencies and their capability for carrying out required EA activities. It further states that projects with potential major impacts normally require the strengthening of several environmental functions (e.g., environmental monitoring, inspection, management of mitigatory measures, EA scientific and technical review, and cross-sectoral coordination).

73. OD 4.01 was replaced by OP 4.01 on January 1, 1999. A footnote to OP 4.01 states that it applies to all projects whose Project Information Document (PID) was submitted after March 1, 1999. Since the PID for the PDP was issued on April 10, 2003, OP 4.01 on Environmental Assessment applied to the PDP and its sub-projects.

74. OP 4.01 states that an EA has to take into account institutional capabilities related to the environment and social aspects,⁷⁰ and that when a borrower has inadequate legal or technical capacity to carry out key EA-related functions (such as review of EA, environmental monitoring, inspections, or management of mitigatory measures) for a proposed project, the project includes components to strengthen that capacity.⁷¹

⁶⁷ Environmental Management Action Plan of Khimti-Dhalkebar 220 kV T/L Project, March 2008.

⁶⁸ EIA: 93.

⁶⁹ 2008 EMP: 1.

⁷⁰ OP 4.01, para 3.

⁷¹ OP 4.01, para 13.

75. Assessment of institutional capacity is also covered by Operational Manual Statement (OMS) 2.20. A key provision of OMS 2.20 states that “[d]uring project preparation and appraisal Bank staff should judge the competence, experience and commitment of those handling the project.”⁷² OMS 2.20 further explains that “[a]ppraisal covers both the project and the entity or entities which will implement and operate it”⁷³ and outlines that “Institutional Aspects” includes “project management and organizational arrangements, indicating (a) the responsibilities, authority and accountability of the implementing agency; (b) the role of other entities involved and the provisions for adequate cooperation; and (c) the workload, staffing levels and other resources required and the adequacy of incentives to assure their efficient utilization.”⁷⁴

76. OP 4.01 also calls for the consideration of project alternatives as a fundamental means to support development objectives and address potential negative impacts that might arise from a project. It evaluates a project's potential environmental risks and impacts in its area of influence, and examines project alternatives, including the “without project” scenarios. It also requires the identification of ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts.⁷⁵

B5. Panel’s Findings

77. The Policy Framework for Environmental Assessment sets out in appropriate detail the studies to be undertaken to assess the environmental and social impacts of sub-projects that fall under the PDP. At the time the Framework was being developed, relevant Bank requirements for environmental assessments were contained in OD 4.01. However, no attention appears to have been given to whether the capacity existed to carry out such detailed and comprehensive assessments, nor whether the country had systems to appropriately review them, and ultimately to monitor the implementation of identified remedial and mitigatory measures.

78. As mentioned earlier, OMS 2.20 states that an important aspect of Project preparation is the appraisal of the implementing agency. This requirement allows for an assessment of whether the implementing agencies are mandated to, and capable of, conducting the activities set out in the project, including the institutional capacity and experience required to properly do so. Similarly, OP 4.01 discusses the need for a project EA to examine institutional capacity related to environmental and social issues, and if such capacity is found to be inadequate, it requires that project components include measures to strengthen capacity gaps.

79. Also, as mentioned earlier, the PAD and the EA do not contain an institutional analysis of the NEA, the main implementing agency, and its units such as ESSD and the KDTL-EMU that were responsible for environmental and social implementation and monitoring. Therefore, **the**

⁷² OMS 2.20, para 25.

⁷³ OMS 2.20: 7

⁷⁴ OMS 2.20: 33

⁷⁵ OP 4.01, para 2.

Panel finds Management to be in non-compliance with key provisions of OMS 2.20, OD 4.01, and OP/BP 4.01 regarding institutional analysis and capacity building of the project implementing agency, the NEA.

80. With respect to the analysis of alternatives contained in the KDTL EA, a systematic comparison of the possible alternative corridors that were identified is not provided, and the map provided shows only what is deemed to be the “*appropriate alternative*.” A footnote to table 6.1 identifies the criteria that led to the selected route being chosen. These are, in the order listed (though no detail is given of the weighting applied, if any): project cost, length of line, construction period, difficulty of construction,⁷⁶ hectares of forest lost, number of houses to be relocated and hectares of cultivated land affected. Although this analysis of alternatives uses the sectional headings of OP 4.01 Annex B, 2 (f), neither the level of detail provided, nor the rigor of analysis is adequate to allow independent critical evaluation of the costs and benefits of the selected alternative. It is nevertheless noted that for 70 of the 73 kilometres of transmission line the appropriateness of the route has not been questioned, and although there is some cross-correlation between the seven factors used in route selection, those used are appropriate.

81. In an attempt to resolve the dispute related to the transmission line route in the Sindhuli district, a six-member Technical Committee⁷⁷ was constituted and given seven days⁷⁸ by the Government to assess an alternative route for the 3.85 kilometre disputed stretch of the line between towers 28/2 and 31/1. This alternative would pass through forested areas and largely avoid paddy and cultivated lands and the peri-urban area in the Kamalamai municipality.⁷⁹ The Technical Committee held a consultation on 16 March 2012,⁸⁰ conducted a site survey and completed the assessment of the alternative route between 15 and 18 March 2012. It submitted its eight page report (with five annexes) on March 25, 2012. This study and report concluded that the original planned route should be retained. This decision was based on considerations of increased cost, the time needed to conduct further environmental assessments, and the increased extent of forest clearing and tree felling required.

82. Although those attending the Technical Committee’s consultation meeting are named, no record of the meeting or of the issues discussed are presented. Section 4.1 of the Report indicates that there was interaction with local persons and that the minutes of this interaction are attached. However, no such minutes are attached as an annex. Section 4.1 records: “*The team while encouraging the local people to air their grievances and complaints and suggest the ways to redress thereof during the discussion, most of the people stressed on the need to change the route*

⁷⁶ This is actually listed as “landscape” in the original.

⁷⁷ The six committee members were: Joint-Secretary of the Ministry of Energy; A Director of NEA; Head of Department of Electrical Engineering at the Institute of Engineering, Pulchowk; Secretary General of Nepal Engineers’ Association; General Manager of NEA Grid Development; and An Associate professor of the Institute of Engineering, Pulchowk.

⁷⁸ See “decision”, Annex 1 of Technical Committee Report.

⁷⁹ A map of the alternative and original route is appended in Annex 3 of the Technical Committee report.

⁸⁰ The report states: the Committee “*held direct consultation with the stakeholders of the affected areas*”. And in Annex 2 states: “*Necessary consultation was held in District Administration Office, Sindhuli, today, on March 16, 2012 in the presence of the following persons regarding the contentious issues of Khimti-Dhalkebar 220 kV Transmission Line.*”

of the transmission line stating that the move to pass the transmission line through the cultivated land was found to be causing adverse effects to human health by that line and taking the line from above the house and land was likely to render them homeless.”

83. From the Report of the Technical Committee appointed to assess an alternative route for the disputed 3.85 kilometer stretch of transmission line between towers 28/2 and 31/1, it is apparent that the Committee only considered one given alternative to the preferred alignment and did not attempt to find an optimal route. It is also clear that the Committee: (i) restricted the parameters used to compare the two alignments; (ii) did not consider socio-economic factors; and (iii) stakeholder input was not considered. **Such limited and restrictive assessment of alternatives is not what is envisaged in OP/BP 4.01. The Panel therefore finds that the study of alternative transmission line alignments in the 3.85 km stretch in Kamalamai municipality of the Sindhuli district does not comply with the requirements of OP/BP 4.01.**

C. Health Impacts

C1. Requesters Claims

84. The Requesters express concern over the potential health impacts that may arise as a result of the transmission lines. These concerns stem mainly from the potential adverse effects of electric and magnetic fields created by high voltage power lines. The potential adverse health impact of the transmission line on children is emphasized particularly as, it is alleged, the line will run near or over schools and human settlements. The Requesters note that no documentation or evidence has been presented to them to alleviate these health-related concerns.



Picture 5 - Panel Team at Swiss Sindhuli School

C2. Management Response

85. Management states that it has carefully reviewed the concerns about electromagnetic radiation, including the studies cited by the Requesters, and concluded that the “*scientific consensus is that no known health impacts can be linked to the electromagnetic exposure that is expected to stem from the project.*” Management refers to very broad scientific research to support its view, and also cites The World Bank Group Environmental Health and Safety (EHS) Guidelines (Electric Power Transmission and Distribution). The EHS state that “*Although there is public and scientific concern over the potential health effects associated with exposure to [electric and magnetic field] EMF (not only high voltage power lines and substations, but also from everyday household uses of electricity), there is no empirical data demonstrating adverse health effects from exposure to typical EMF levels from power transmission.*”⁸¹

86. In keeping with the EHS Guidelines, Management further states that although the evidence of adverse health risks is weak, it is still sufficient to warrant limited concern, consequently the transmission lines have been designed and routed so as to keep the minimum distance from any building and ground as per industry standards and practice.

C3. Analysis of Project Documents

87. The KDTL environmental assessment report discusses electro-magnetic fields associated with high voltage lines and health risks in two sections. It accepts that the population living under, or close to transmission lines, may face hazards such as risks of fire, electrocution, etc., but concludes that scientific evidence about health risks from EMF exposure are limited, though there may be risks from long term exposure.⁸²

88. An earlier version of the KDTL VCDP (2006) mentions EMF in its “Occupational Safety and Health” section and states that though the overall magnitude of impact of EMF is considered to be moderate, “*people residing in the immediate vicinity of transmission lien (sic) alignment and sub-station will be vulnerable to electrical hazards (EMF)*” and proposes awareness raising and notification to local people and safety training.⁸³ The final 2006 VCDP does not contain any reference to EMF.

C4. Bank Policy Requirements

89. OP 4.01 on Environmental Assessment requires that an EA has to take into account human health and safety. The policy states that additional information is provided in the Environmental Assessment Sourcebook and in the World Bank Group Environment, Health and Safety Guidelines (EHSGs). The Panel notes that the World Bank Group EHS Guidelines are technical reference documents with general and industry-specific examples of good practice. As these are guidance documents, these are not subject to compliance review by the Panel, although

⁸¹ World Bank Group Environmental Health and Safety (EHS) Guidelines (Electric Power Transmission and Distribution), p. 6.

⁸² KDTL EA, Volume 5, Sections 5.3.2.6 and 5.3.2.7.

⁸³ KDTL VCDP, 2006, p. 18.

they help determine the standards that Management is suggested to follow with reference to particular impacts.

90. The World Bank Group EHS Guidelines for Electric Power Transmission and Distribution include information relevant to power transmission: *“although there is public and scientific concern over the potential health effects associated with exposure to EMF (not only high voltage power lines and substations, but also from everyday household uses of electricity), there is no empirical data demonstrating adverse health effects from exposure to typical EMF levels from power transmissions lines and equipment. However, while the evidence of adverse health risks is weak, it is still sufficient to warrant limited concern.”*⁸⁴

91. The Guidelines recommend several measures for the management of EMF exposure, including evaluating potential exposure to the public against reference levels developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), ensuring that average and peak exposure levels should remain below the ICNIRP recommendation, considering the siting of new facilities to avoid or minimize exposure to the public, and suggesting that the *“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.”*⁸⁵

C5. Panel’s Findings

92. During the Panel team’s site visits, and during conversations with the Requesters and other inhabitants of Sindhuli district, it was clear that fear of potential negative health impacts was a widespread concern. The Panel also notes the efforts taken by Management after the submission of the Request for Inspection, although belated and not always effective, to disseminate user-friendly communication material explaining the lack of health risks from transmission lines to the Project-affected persons.

93. In the modern world, electric and magnetic fields (EMF) can be detected and measured almost everywhere: near internal household wiring, electrical appliances, water pipes, and wherever electrical voltages and currents are present. Electric fields are produced by the voltage in a conductor and rapidly decrease with the distance from the source. Electric fields are measured in units of kilo Volts per meter (kV/m). Magnetic fields are produced by the current (amperes) in a conductor, and also decrease rapidly with distance from the source. Magnetic fields are expressed in terms of the magnetic flux density.⁸⁶ For most people, the principal sources of exposure to magnetic fields are electrical appliances and wiring in their homes.

⁸⁴ World Bank Group Environmental Health and Safety (EHS) Guidelines (Electric Power Transmission and Distribution), APRIL 30, 2007, p. 6. Available at: [WBG Environmental, Health, and Safety Guidelines for Electric Power Transmission and Distribution](#)

⁸⁵ Ibid.

⁸⁶ The international (SI) unit of measurement is the tesla (T) or microtesla (μ T). 1 tesla = 1,000,000 microtesla. Some literature uses an older unit, the milligauss (mG). There is a factor of 10 difference between the microtesla and milligauss units: 1 μ T = 10 mG, 0.1 μ T = 1 mG.

Table 1: Magnetic Fields to which People are Commonly Exposed⁸⁷

Appliances Magnetic Fields (μT)				
	15 cm	30 cm	60 cm	120 cm
Hair Dryers	70	7	1	0.1
Electric Shavers	60	10	1	0.1
Microwave Ovens	30	20	3	2
Refrigerators	4	2	1	1
Washing Machines	10	3	0.6	-
Vacuum Cleaners	70	20	5	1
Magnetic Field below 33 kV line (μT)				
	Maximum	Typical	10m Max	10m Typical
On 5.5m poles	14.7	1.3	2.9	0.5
Measured Range of Magnetic Field below 220 kV line (μT)				
	Directly below	10m away	20m away	30m away
Upper value	4.1	1.3	0.34	0.2
Lower value	0.04	0.045	0.032	0.023

94. The majority of countries set their own national standards for exposure to electromagnetic fields based on the guidelines set by the ICNIRP. For the general public, the ICNIRP Reference Level⁸⁸ for exposure to magnetic fields is 200 μ T and for exposure to electric fields is 5 kV/m.⁸⁹ The World Bank Group EHS for Electrical Power Transmission and Distribution recommend that EMF exposures be managed to remain below the ICNIRP reference levels for general public exposure.

95. Exposure limits are based on effects related to short-term acute exposure, rather than long-term exposure, because the available scientific information on the long-term low level effects of exposure to EMF fields is considered to be insufficient to establish quantitative limits. Using short-term acute effects, international guidelines use the approximate exposure level, or threshold level, that could potentially lead to adverse biological effects. To allow for uncertainties in science, this lowest threshold level is reduced further to derive limit values for human exposure. For example, ICNIRP uses a reduction factor of 10 to derive occupational

⁸⁷ Source for appliances: Questions and Answers About EMF: Electric and Magnetic Fields Associated with the Use of Electric Power, National Institute of Environmental Health Sciences and U.S. Dept. Of Energy: Pages 33-35. June 2002. Source for 33 kV lines:

<http://www.emfs.info/Sources+of+EMFs/Overhead+power+lines/specific/33+kV+overhead+magnetic.htm>

Source for 220 kV lines:

Transpower New Zealand Ltd., Fact Sheet 3, Electric and magnetic Field Strengths, 2009.

<https://www.transpower.co.nz/sites/default/files/publications/resources/EMF-fact-sheet-3-2009.pdf>

⁸⁸ For practical exposure assessment purposes the ICNIRP provides reference levels of exposure. Protection against possible adverse health effects requires that these reference levels are not exceeded. Limitations of exposure that are based on the physical quantity or quantities directly related to the established health effects are termed basic restrictions. Compliance with the reference level will ensure compliance with the relevant basic restriction.

⁸⁹ ICNIRP guidelines for limiting exposure to time-varying electric and magnetic fields (1 hz – 100 khz). Published in: *Health Physi* 99(6):818-836; 2010

limits for workers and a reduction factor of about 50 to arrive at exposure limits for the general public.⁹⁰

96. Recommendations of ICNIRP guidelines follow rigorous scientific reviews of relevant published scientific papers including those in the fields of medicine, epidemiology, biology and dosimetry. The explicit recognition that a risk may not exist is a key element of precautionary approaches. If the scientific community concludes that there is no risk from EMF exposure or that the possibility of a risk is too speculative, then the appropriate response to public concern should be an effective education programme.

97. High voltage transmission lines are designed and constructed to ensure that ICNIRP reference levels are not exceeded beneath or in close proximity to the lines. This is achieved through various technical means,⁹¹ as well as by reducing field strength through increasing the distance between the conductors and the point of exposure by ensuring that the conductors are high above the ground and kept away from buildings and vegetation, or both. Tower heights and spacing are selected so that in adverse conditions,⁹² conductor cables at their lowest points are at least seven metres above ground and will not generate electric fields above 3 kV/m and magnetic fields above 5 μ T. In flat terrain, extra distance from conductors is achieved by the width of the right of way (a horizontal measure) while in hilly or mountainous terrain distance to conductors is more a function of vertical distance between the conductor and the ground.

98. The width of a ROW for overhead power lines is determined by swing and sag characteristics of the line and minimum permissible clearances to ground, buildings or trees. Widths vary to accommodate specific local conditions. Although the ROW width is an extra safeguard to ensure that EMFs from transmission lines fall below the ICNIRP reference levels, it is not a recognized standard. The width of the ROW simply provides an additional safety margin between the high-voltage lines and surrounding structures and vegetation.

99. The ROW also provides access for ground-based inspections and access to transmission towers and other line components. The Panel finds it reasonable that persons seeing 220 kV transmission towers for the first time will be apprehensive, even though the dangers to human health and safety from the new 220 kV lines will be no greater, and possibly less than the risks currently faced through exposure to existing 33 kV lines in Nepal.⁹³

⁹⁰ The general public consists of individuals of all ages and of varying health status who, in many cases, are unaware of their exposure to EMF. In addition, workers are typically exposed only during the working day (usually 8 hours per day) while the general public can be exposed for up to 24 hours per day. These are the underlying considerations that lead to more stringent exposure restrictions for the general public than for the occupationally exposed population.

⁹¹ Reducing conductor (phase) spacing; Optimizing phasing in a multi-circuit corridor; Using split-phase circuits.

⁹² High ambient temperatures and high current flow.

⁹³ See Table 2 for indicative values. During the field visit, the Panel team met with a resident living some 50 m from a newly erected steel lattice tower over 40 m high who was said to have been stuck by lightning due to the tower. A visit of the location and an interview with the woman concerned, provided no physical evidence to support the contention. That the woman was unconscious at the time or as a result of the tower being struck by lightning, is not disputed. An earthed 40 m tall steel tower will however afford protection from lightning strikes to nearby structures and their occupants rather than subjecting them to greater danger from lightning.

100. The Panel team's field observations⁹⁴ suggest, and the technical specifications for conductor to ground and structure clearances are such as to ensure that the KDTL, if built to specification, conforms to ICNIRP reference levels for general public exposure.⁹⁵ The Panel notes that the electrical and magnetic fields that will occur are much lower than fields at which health-related effects are known to occur.

101. Furthermore, the Panel notes the consensus of the scientific community, as represented by the ICNIRP, that there is no risk to public health from exposure to low frequency electromagnetic fields at or below established ICNIRP reference levels, or that the possibility of a risk is too speculative for a scientifically justified reference level to be established. The Panel also notes that Management has followed the guidance provided in the World Bank Group EHS regarding health impacts from electromagnetic fields. **The Panel therefore finds Management to be in compliance with Bank policy OP/BP 4.01 which requires that an EA has to take into account human health and safety.**

102. The Panel notes with concern, however, that Management did not provide information to affected communities, many of whom are indigenous people, in a timely and culturally appropriate manner to explain that the transmission line is being constructed with due regard to EMF related safety aspects. This is discussed in Chapter 5 in the consultation and disclosure section.

103. The Panel also notes that once electric current is flowing in the transmission line, it will be possible to measure the electrical and magnetic fields below the line to ascertain whether or not the ICNIRP reference levels have been met. Undertaking such measurements under worst case conditions (transmission of maximum unbalanced load during periods of high temperature and high humidity) will establish whether the international safety standards have been met, and in the unlikely case of this not being found, measures to ensure that ICNIRP reference levels are achieved must be implemented.

⁹⁴ Field observations of sections of the completed transmission line were made during July 2014. Where possible tower locations and line alignment were checked by GPS and cross checked against both tabulated data of the northings and eastings of transmission line angle points. The route between towers 28/2 and 31/1 was followed on Google Earth to observe proximity to build structures and so determine if minor changes in tower placement would result in greater distances to structures as well as fewer structures being affected.

⁹⁵ The technical specifications for the KDTL do not make specific mention of the ICNIRP reference levels or specify the maximum electric and magnetic fields allowable under the transmission lines. They do however require the following clearances between live conductors and other objects under maximum conductor sag conditions: 1. To normal ground for pedestrians only 7.5m; 2. In Residential areas 8m; 3. Above roads and streets 8m; 4. Over highways 8m; 5. To metal clad or roofed buildings or building or structures upon which a man may stand 5.49m; 6. To other power lines (above or below) 4.58m; 7. To telecommunication lines 3.05m. In addition the specifications require that approximately 0.5 m be added to the clearance values to allow for survey and drawing errors.

Chapter 3: Involuntary Resettlement, Indigenous Peoples and Cultural Property

A. Introduction

104. This chapter addresses three of the Requesters claims: (i) Resettlement and Livelihood Impacts of the KDTL on a number of villages and settlements in Sindhuli district, where the Panel has examined these issues within the framework of the Bank's Policy on Involuntary Resettlement as it relates to land acquisition, compensation, and restoration of livelihoods, (ii) Indigenous Peoples, and (iii) Cultural Property.

B. Involuntary Resettlement

105. The Request raises concerns about disrupted livelihoods in relation to *Adivasi* (indigenous) and *Dalit* (former untouchable) farming communities, land devaluation, and the denial of economic opportunities. The Requesters assert that the affected households belong to highly marginalized communities that already experience high levels of poverty, and claim that the negative impacts of the Project will further increase their marginalization and poverty, principally through the loss of productivity in subsistence and small-scale farming and animal husbandry. The Request also makes reference to the impact of the proposed feeder road in the disputes section of the ROW.

106. The Request states in particular that the Project has breached the three main policy objectives of the World Bank's Policy on Involuntary Resettlement (Operational Directive OD 4.30 on Involuntary Resettlement, later replaced by Operational Policy/Bank Procedure OP/BP 4.12 on Involuntary Resettlement). The Request lists these objectives as: (i) avoiding resettlement when feasible by exploring all viable alternative project designs,⁹⁶ (ii) meaningfully consulting displaced persons when resettlement is unavoidable so that they can participate in the planning and implementation of resettlement programs, and (iii) providing assistance to displaced persons to help improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels.

107. The Request raises two main concerns with respect to involuntary resettlement: (i) land acquisition and compensation, and (ii) restoration of livelihoods.

B1. Requesters Claims

108. *Land Acquisition and Compensation.* The Request raises four issues in relation to land acquisition and compensation. First, it alleges that a large number of indigenous and local people in Sindhuli are at risk of displacement, and that sixteen households have already been displaced in areas where construction of towers have been completed. The Request also raises the issue of displacement of families who do not have adequate land upon which to build a replacement home, and who are unable to purchase additional land close to their original residence and thus are obliged to relocate away from their relatives and community.⁹⁷ It further states that the

⁹⁶ The analysis of alternatives is discussed in chapter 2.

⁹⁷ Request for Inspection, pp 5-6.

majority of affected households want a realignment of the transmission line, and failing that, they demand replacement land rather than cash compensation.

109. Second, the Request alleges that compensation for land falling inside the ROW at a rate of 10% of the market value (as per the national norm), is insufficient relative to the losses incurred by the affected persons. The Request also states that compensation for land acquired for the construction of the tower pads, and for the demolition, relocation of dwellings and other structures within the ROW was either not offered at all or was only partially offered. Moreover, the Request alleges that contradictory or false information was given to landholders about access to and usage of land that fell within the ROW, thus negatively impacting the valuation of assets affected by it and resulting in an underestimation of subsequent livelihood disruption.

110. Third, the Request states that although the project is required to have an appropriate and accessible project-level Grievance Redress Committee (GRC), and the ARAP (2006) notes that one with local representation will be created, this does not exist. The ARAP also mentions that a Khimti-Dhalkebar Environmental Management Unit (KDTL-EMU) will conduct meetings with affected people and maintain records, but the Request alleges that this unit has not been active in Sindhuli and thus they have had to take their grievances to the Supreme Court and the National Human Rights Commission (NHRC).



Picture 6 - Panel Team in discussion with Project Affected People in Sindhuli district

111. Finally, the Request raises consultation and disclosure inadequacies. These claims are addressed in Chapter 4.

112. The Request also mentions a recommendation by the Ministry of Energy in 2012 to acquire lands for a road and to build the transmission line alongside the road. It states that this recommendation was accepted by the Prime Minister and that on October 7, 2012, a ministerial decision announced the acquisition of lands for the construction of the road. The Requesters believe that the road project is a “cover up” to enable construction of the transmission line, and state that they have restricted the access of surveyors and project authorities to the construction sites.

113. *Restoration of Livelihoods.* The Request refers to impacts from project activities on agriculture and animal husbandry, access to land, and community cohesion among farming communities which pose a “*significant threat to livelihoods.*” It claims that threats to livelihoods were either not anticipated, or were insufficiently considered in mitigation planning and in the provision of assistance for the enhancement and restoration of livelihoods, in violation of OP/BP 4.12 and OD 4.30. According to the Request, Bank Policy on Involuntary Resettlement is directed at improving incomes and living standards, rather than merely compensating people for their expropriated assets. This is addition to requiring preference to land-based resettlement strategies that provide people whose livelihoods are land-based “*a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken.*”

114. The Requesters argue that the project failed to understand the “*significant impacts*” of the transmission line on affected families in Sindhuli as the ROW will result in land devaluation, withdrawal of economic opportunities, and farming hindrance, and this will “*worsen already poor conditions in the region*” particularly among poor and marginalized indigenous and *Dalit* families.

B2. Management Response

115. *Land Acquisition and Compensation.* Management states that given its linear nature, the KDTL is not displacing a large number of people, and there is no physical displacement of groups or communities of Indigenous Peoples.⁹⁸ It also states that the key dispute relates to compensation of land holders in the ROW in Sindhuli whose land is not being acquired but would be impacted by the power lines passing over their land. It asserts that affected communities have demanded 100% rather than 10% compensation for land which would be subject to restrictions as it falls in the ROW. Management claims that as per the Electricity Act of 1992 and the Electricity Regulation of 1993, NEA provides 100% of the land value as compensation for land that is permanently acquired for tower pads, but only 10% of the land value for land not acquired but which will be within the ROW (i.e. with power lines passing over it).

116. Management asserts that compensation was carried out according to Bank policy, and all compensation payments were agreed with the affected households prior to construction; payments were delivered before taking possession of the land parcels for the tower pads. It asserts that no tower pads were constructed under the Project without first paying compensation to the land owners.

117. Management also refers to a revised compensation package proposed by the Government of Nepal in 2013 in order to accommodate the communities’ request for 100 % compensation, based on the proposal to build a feeder road along the disputed portion of the ROW, which would allow it to acquire this land and thus pay 100% of its value. According to Management, this “*creative solution*” would have additional benefits of better road access and connectivity for

⁹⁸ Management Response, section 20, p. 25.

the local community. This package also involves provision of uninterrupted power supply to Kamalamai municipality (covering all the 6 disputed towers).⁹⁹

118. Management asserts that the Project complied with OP 4.12 in terms of estimation and payment of compensation at replacement cost without depreciation. It states that the compensation rate was determined by the Compensation Fixation Committee, which has community representation, as set down in the Resettlement and Rehabilitation Policy Framework (RRPF, November 1999). On the issue of the Requesters' land-based resettlement preference, Management agreed that while land for land is a preferred option, it was not feasible in this case because alternative replacement land was not available and the loss of parcels at the individual household was too small to accommodate "land for land" solutions.¹⁰⁰

119. Management states that discussions were held with relocating households regarding their options and preferences for relocation. Almost all households expressed a willingness to re-build houses on their remaining land a few meters away from their original dwelling and doing so by using the same construction materials. It also asserts that compensation was not the only form of assistance offered as the project paid relocation and rental allowances aimed at assisting the owners in constructing new houses, and more than 75% of those affected requested cash compensation and self-relocation.¹⁰¹

120. Management states that the amount mentioned in the ARAP was simply average compensation, and that individual owners did receive (or are set to receive) differential amounts calculated on their specific losses.¹⁰² Management asserts that the revised compensation package based on the Government's decision to provide compensation at 100% of the land value addressed most of the issues raised, and this was reflected in the large number of owners of affected parcels who had accepted and received compensation at the time the Management Response was submitted in September 2013. Management also states that in addition to compensation, affected persons are entitled to a range of additional livelihoods support activities (discussed below) depending on the category of affected person.

121. Management acknowledged that the Grievance Redress Mechanism required strengthening, while noting that the Government has been proactive and innovative in responding to the community's concerns. Management states that the Khimti-Dhalkebar Environment Management Unit (KDTL-EMU) was established before construction of the KDTL started, and besides other responsibilities, it also assumed responsibility for grievance redress, though not as originally designed under the Project. Management clarifies that the KDTL-EMU did not include a grievance redress committee with representation from the local community as laid out in the ARAP, and it was not replaced by a GRM when its contract expired in 2011. Post-2011, the NEA Project office took over the role of receiving complaints from local communities,

⁹⁹ Management Response, para 29, p. 10 and Annex 1.3, p. 62.

¹⁰⁰ A tower pad footprint measures 15 by 15 meters to 21 by 21 meters.

¹⁰¹ Management Response, section 24, p. 27.

¹⁰² Ibid, section 25, p. 28.

and the NEA was reconstituting and strengthening the project-level GRM, which will complement the Government's system for grievance redress.¹⁰³

122. Management concludes that the process of delivering compensation is ongoing, and all individual eligible households will receive compensation.¹⁰⁴

123. *Restoration of Livelihoods.* Management states that the project includes ongoing activity to assist the affected households in livelihood improvements, described as advanced farming and marketing training (which has been completed), and occupational training in five trades which have been identified, with the NEA in the process of hiring a master trainer. Moreover, Livestock management training and cash crop training (vegetables) has also been provided to beneficiaries.¹⁰⁵

124. Management states that loss of income from agricultural practices was not anticipated as a result of the project because ownership of land within the ROW would remain unaffected. Access and cultivation on the land in the ROW could continue as usual, with the exception of standard restrictions on building structures or the planting of tall trees. Management states that this information was communicated to local communities.¹⁰⁶

B3. Assessment of Issues in Project Documents

125. *Policy Framework for EIA/SIA (1999).* As mentioned earlier, at the time of Project approval in 2003, the precise alignment of the transmission line was not known and thus a Policy Framework for Environmental and Social Impact Assessment was prepared.¹⁰⁷ The Framework describes the process and methods for assessing environmental and social impacts on local communities and applied to all sub-projects of the PDP. In order for the Policy Framework to be operationalized, an Operation Manual for the EIAs of subprojects financed under the PDP was prepared for disclosure, outlining procedural and technical steps to be followed.

126. SIAs and EIAs conducted for the subprojects in accordance with the Policy Framework were required to include an assessment of social impacts and to contain an Environmental Management Plan (EMP), an Acquisition Compensation Rehabilitation Plan (ACRP), a Resettlement Action Plan (RAP) and a Vulnerable Community Development Plan (VCDP). In relation to compensation, safeguards instruments were required to undertake stakeholder consultations, analyses of alternative project designs, and plans for adequate mitigation and fair compensation. The PAD anticipated that the necessary SIAs, EIAs and their related components would be ready for the KDTL by July 2004 with implementation beginning in 2005.¹⁰⁸ The SIA and EIA were finalized in 2004 and published in 2006, though implementation was delayed.

¹⁰³ Ibid, para 45, p. 13

¹⁰⁴ Ibid, section 25, p. 28.

¹⁰⁵ Ibid, section 24, p. 27.

¹⁰⁶ Management Response, section 13, p. 22.

¹⁰⁷ Nepal Power Development Project, Policy Framework For Environmental Impact Assessment For Projects Under The Power Development Fund (Including Process Guidance), Prepared By His Majesty's Government Of Nepal, Ministry Of Water Resources, November 1999.

¹⁰⁸ PAD, p.28

127. *Resettlement and Rehabilitation Policy Framework (RRPF, 1999)*. The RRPF, prepared in conjunction with the Policy Framework on EIA/SIA, set out a broad Entitlement Policy outlining differential resettlement and rehabilitation entitlements within an entitlement matrix for Project Affected Families (PAF) and Severely Project Affected Families (SPAF).¹⁰⁹ It stated that the entitlement policy was designed to enable PAFs to replace lost assets, and to recover and improve upon pre-project living standards within the shortest possible time.¹¹⁰ In general, the Resettlement and Rehabilitation (R&R) package would consist of (i) provision for replacement assets or its cash equivalent, where replacement is not feasible, (ii) rehabilitation grants to compensate for temporary disruption in life and economic activities, (iii) either employment or training, capital and enterprise support for income restoration in case of loss of livelihoods, and (iv) provision for replacement of community facilities and services for affected communities. The RRPF stated that specific entitlements would be identified for each sub-project once their details were known.

128. The RRPF also provided an outline of a RAP required for all subprojects. The outline proposed that a RAP include Income Restoration (IR) Programs, institutional arrangements to manage IR programs, Institutional Capacity and Responsibility, Budget for Resettlement Operations, and Action Plan for Implementation.¹¹¹

129. *Project Appraisal Document (2003)*. The PAD underlined that assessments would be required for all subprojects to identify and recommend mitigation measures, and to develop and implement Environmental Management Plans, Resettlement Action Plans and Vulnerable Communities Plans as applicable, in accordance with GON's Environmental Protection Act 2053 (1996) and Environmental Protection Rules 2054 (1997) as well the World Bank's safeguard policies.¹¹² Principles and modalities for mitigating social impacts noted that subprojects that impact 25 or more families, with the loss of over 25 percent of their total land holdings, or whose land holding is reduced to an uneconomic holding of less than 5.0 *katha*¹¹³ or who face relocation, will require the preparation of a RAP. The RAP would detail implementation arrangements for resettlement including asset acquisition, compensation, relocation and rehabilitation of persons affected by loss of dwelling, land and other assets or livelihood. It would also define institutional arrangements and responsibilities for the implementation of resettlement activities, contain a budget for resettlement expenditures and detailed monitoring and evaluation arrangements.

130. Management accepted an Abbreviated RAP on the basis that “... *given its linear nature, the Project (would) not displace a large number of people and there (would be no) physical displacement of groups or communities of Indigenous Peoples.*”

¹⁰⁹ The RRPF and Policy Framework for EIA/SIA do not define what constitutes a “SPAF”. However, the 2006 ARAP explains that Seriously Project Affected Families (SPAFs) are those families who lose their principal residence, their houses are located under the ROW, and they are treated as “relocates” (2006 ARAP: 10). And the 2014 ARAP defines SPAFs more broadly by also including those losing more than 25% of land (2014 ARAP: 2).

¹¹⁰ Resettlement and Rehabilitation Policy Framework (RRPF), 1999, p. 25

¹¹¹ RRPF, Annex 3, p. 28.

¹¹² PAD, 2003, p.103

¹¹³ Equivalent to ca. 1,700 m²

131. *Social Impact Assessment (2004)*. The SIA, prepared by the NEA's Environmental and Social Studies Department (ESSD), formed the basis of KDTL's ARAP (March 2006). The SIA describes the affected area as being less developed and multi-ethnic, with a caste system. According to the SIA, the ethnic composition of the affected population varies in different parts of the alignment, and of the sixty-three castes found in the project area, the major groups are Chhettri (25%), Tamang (15%), Newar (11%), Magar (9%) and Brahmin (9%). Other groups include Kami, Sarki, Damai, Majhi and Yadav. It further states that population distribution by mother tongue for affected Village Development Committees (VDCs) indicates that the dominant language is Nepali followed by Tamang and Maithili. It also notes that some dialects are spoken in the area, but Nepali is spoken and understood by all residents.

132. The SIA states that the vast majority of affected people interviewed did not want to resettle outside the area and were "*able to manage in nearby areas or land.*" It further states 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.*"

133. Mitigation and livelihood restoration measures, described as "*Enhancement Measures,*" beyond monetary compensation for loss of land, agricultural disruption (including crop losses) and the relocation of houses were proposed in the SIA.¹¹⁴ These included an "*emphasis on the hiring of local people,*" with "*due priority given to project-affected families,*" to work on the project during both the construction and operational phase, and a Community Support Program for disadvantaged and "*lower caste*" families comprising training in cash crops, livestock and poultry farming. It was further recommended that the PDP should promote rural electrification.

134. *Abbreviated Resettlement Action Plan (2006)*. The ARAP (March, 2006) restated the intentions set out in the SIA but did not provide additional detail on the content of either project employment or the Community Support Program training elements.¹¹⁵ It left the design of such a Program to a later, undefined stage of project development. Moreover, it proposed that the KDTL-EMU should analyze the possibilities of adopting more specific income restoration measures which should be implemented by the Project during construction. The ARAP estimated that NRs 2.5 million¹¹⁶ would be set aside for the Community Support Program.¹¹⁷

135. *Updated Abbreviated Resettlement Action Plan (2014)*. In December 2012, and following a decision from the Prime Minister's Office to provide compensation at 100 % of land value for land acquired in the disputed stretch of the ROW in Sindhuli, the PDP was restructured for a third time. Following the receipt of the Request for Inspection, an updated ARAP was published by the ESSD in March 2014.

136. According to the 2014 ARAP, the project can have four types of adverse impacts on project-affected families: (i) permanent land loss by tower pads; (ii) loss of structures due to

¹¹⁴ Social Impact Assessment, 2003, Chapter 6, ESSD.

¹¹⁵ Abbreviated Resettlement Action Plan, March 2006, ESSD, p.25

¹¹⁶ Ca. US\$25,000

¹¹⁷ *ibid* p.26

tower pads and the transmission line in the ROW; (iii) restriction of land use in the ROW; and (iv) land loss for the proposed feeder road in Sindhuli. The updated ARAP states that 131 land plots are affected by the tower pads, 565 by the ROW, and 159 by the road.¹¹⁸ The 2014 ARAP further states that a total of 1080 families in three districts were identified as project affected families, including 440 in Sindhuli, 584 in Ramechhap and 56 in Dhanusa.¹¹⁹

Table 2: No. of Owners Affected by Loss of Land and Structures¹²⁰

S. No.	Districts	Tower Pads		ROW		Road		Structures	
		Owners (No.)	Plots (No.)	Owners (No.)	Plots (No.)	Owners (No.)	Plots (No.)	No. of Owners	No. of Structures
1	Sindhuli	42	42	246 ¹²¹	318 ¹²²	123	159	29	34
2	Ramechhap	68	68	500	535	0	0	16	21
3	Dhanusha	21	21	27	30	0	0	8	10
	Total	131	131	773	565	123	159	53	65

¹²³Original source states “Estimated figure as land survey is yet to be completed”.² Ibid

137. The Updated ARAP identified 123 titleholders in Sindhuli district (owning 159 plots) who would lose land and structures due to the proposed construction of the 1.5 km feeder road.¹²⁴ Moreover in Sindhuli, 10 titleholders (owning 10 plots) will lose more than 25% of their land thereby placing them in the category of Severely Project Affected Families (SPAFs),¹²⁵ and 37 households will be physically displaced either because their dwellings are located within the ROW (29 families), or within the proposed feeder road (8 families).¹²⁶ Thus in all, the SPAFs located in Sindhuli are listed in the updated ARAP as 47, i.e. 10 HHs losing more than 25% of land, and 37 HHs losing shelter.

Table 3: Number of Displaced Households in the entire Project Area

Document	# of Displaced Households (HH)	# of Severely Project Affected Families (SPAFs)
2006 ARAP	17 HH (100 persons) - 3 (17 persons) in Ramechhap - 9 (59 persons) in Sindhuli - 5 (24 persons) in Dhanusha	17 HHs (100 persons) - # of HHs losing more than 25% land not provided
2014 ARAP	61 HH: 53 plus 8 displaced by feeder road - 29 + 8 (for road) in Sindhuli - 16 in Ramechhap - 8 in Dhanusha	94 HHs: 33 HHs losing 25% or more of land, 61 HHs displaced - 47 in Sindhuli (>25%: 10, displaced: 37) - 36 in Ramechhap (>25%: 20, displaced: 16) - 11 in Dhanusha (>25%: 3, displaced: 8)

Source: 2006 ARAP and 2014 ARAP

138. The updated ARAP proposed a revised mitigation plan including specific measures for SPAFs (identified as 47 HHs in Sindhuli district) that were in addition to “the normal livelihood

¹¹⁸ 2014 ARAP: 8.

¹¹⁹ 2014: ARAP: ii.

¹²⁰ Updated ARAP, 2014, Table 4.1.

¹²¹ Estimated figure as land survey is yet to be completed.

¹²² Estimated figure as land survey is yet to be completed.

¹²³ Updated ARAP (2014), Table 4.1: No. of Owners Affected by Loss of Land and Structures, p. 8.

¹²⁴ Updated ARAP (2014), Table 4.2: No. of Owners Losing more than 25% Land by Tower Pads.

¹²⁵ Updated ARAP (2014), Table 4.3: No. of Households Displaced by Loss of Structures

¹²⁶ Updated ARAP (2014), Table 4.4: Severely Project Affected Families (SPAFs).

improvement support” provided for all affected families. The enhanced Resettlement and Rehabilitation Assistance (RRA) available only to SPAFs comprised: (i) cash assistance equivalent to 6 months at the national minimum wage rate; (ii) transportation allowance; (iii) rental allowance; and (iv) house construction allowance. SPAFs were also entitled to a further Livelihood Restoration Package, for which all PAFs were eligible comprising the agriculture and livestock training as set out in the 2006 SIA. As of March 2014, the updated ARAP estimated that “*less than one third of SPAFs had received*” RRA.

B4. Relevant Provisions in Bank Policy

139. *OP/BP 4.12 on Involuntary Resettlement.* OP/BP 4.12 replaced OD 4.30 on Involuntary Resettlement, and applies to the PDP.¹²⁷ OP 4.12 sets out Bank policy provisions on issues involving land acquisition and resettlement. The Policy covers direct economic and social impacts that result from Bank-assisted investment projects, and are caused by “... *the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) loss 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.*”¹²⁸

140. The policy provides that involuntary resettlement “*should be avoided where feasible, or minimized, exploring all viable alternative project designs.*” Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed “... *as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.*” Displaced persons should be assisted in their efforts “*to improve their livelihoods and standards of living or at least restore them, in real terms*” to pre-displacement levels or levels prevailing prior to the beginning of project implementation, whichever is higher.¹²⁹ The resettlement plan developed under the Policy, among other things, provides prompt and effective compensation “*at full replacement cost for losses of assets attributable directly to the project.*”¹³⁰

141. OP 4.12 requires that “[p]reference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based,” and that whenever replacement land is offered, it should be “*at least equivalent to the advantages of the land taken.*”¹³¹ The policy recognizes that the 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; it states that when it is not feasible to avoid such displacement, preference should be given to land-based resettlement strategies for these, i.e. indigenous groups that are compatible with their cultural preferences and are prepared in consultation with them.¹³² OP 4.12

¹²⁷ OP/BP 4.12 applies to projects for which a Project Concept Review takes place on or after January 1, 2002, as is the case with the PDP.

¹²⁸ OP 4.12 - Involuntary Resettlement, para 3 (a).

¹²⁹ OP 4.12 - Involuntary Resettlement, para 2 (a), (b), and (c).

¹³⁰ OP 4.12 - Involuntary Resettlement, para 6 (a) (iii).

¹³¹ OP 4.12 - Involuntary Resettlement, para 11.

¹³² OP 4.12 - Involuntary Resettlement, para 9.

also states that an Abbreviated RAP could be accepted where the “*impacts on entire displaced population are minor*” or “*fewer than 200 people are displaced*” in total.¹³³

142. OP 4.12 has provisions to update socioeconomic information on displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement.¹³⁴ The policy requires the resettlement plan (or policy framework) to include “... *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 (...); (iii) such as land preparation, credit facilities, training, or job opportunities.*”¹³⁵

143. OP 4.12 requires that the findings of socioeconomic studies conducted in the early stages of project preparation, including a census survey, should provide, *inter alia*, information on vulnerable groups or persons as provided in OP 4.12 paragraph 8 for whom special provisions may have to be made. Paragraph 8 states that to achieve the objectives of this policy, particular attention should be paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation.

144. The policy also requires that displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.¹³⁶ Moreover, it requires that appropriate and accessible grievance mechanisms be established for these groups.¹³⁷

B5. Panel Findings

145. The Requesters are drawn mainly from rural hilly VDCs and the per-urban Kamalamai municipality of Sindhuli district in the Terai region, with a majority of affected families from the *Adivasi Janajati* groups (e.g. Kamalamai municipality has 48% *Adivasi-janajati* groups) and *Dalit* communities including those belonging to groups who are defined by the Nepal Federation of Nationalities (NEFEN) as marginalized.¹³⁸ Affected households are described as mainly “*marginal farmers*” and include a “*few landless families.*”¹³⁹

146. *Choice of Instrument.* Given that the precise alignment of the transmission line was not known at the time of Project preparation and appraisal, the paucity of information available at this time meant that Management correctly took the policy framework approach. **The Panel**

¹³³ OP 4.12 - Involuntary Resettlement, para 25.

¹³⁴ OP 4.12 - Annex A, para 6 (v).

¹³⁵ OP 4.12 - Involuntary Resettlement, para 6, (c) (i), (ii), (iii).

¹³⁶ OP 4.12 - Involuntary Resettlement, para 13 (a).

¹³⁷ OP 4.12 - Involuntary Resettlement, para 13 (a) and Annex A, Paragraph 17.

¹³⁸ Updated VCDP, March, 2014, p.22-23

¹³⁹ Updated VCDP, it should stay March, 2014, p.29, 7.3

finds that since the number of displaced households, as identified in both the 2006 and 2014 ARAPs was below 200 and the impacts of the transmission line are minor given its linear nature, Management’s decision to proceed with an ARAP was in compliance with OP/BP 4.12 on Involuntary Resettlement.

147. *Adequacy of Resettlement-related Documents.* The SIA (prepared in 2004 and disclosed in 2006) is the main document containing baseline demographic and socioeconomic information about the affected people. Annex 2 of the SIA provides a list of persons interviewed during the field survey in Sindhuli, and the distribution of interviewed persons by social groups. The annex also provides a list of Project Affected Families (PAF) and Severely Project Affected Families (SPAFs). This information indicates that a number of Indigenous People and *Dalits* were involved in field survey interviews. Annex 6 provides a breakdown by caste and ethnicity of the overall population in the project affected area. Despite this information, the SIA does not offer a disaggregated classification of indigenous people by their particular ethnic group. Since the ARAP and updated ARAP are based on the baseline data provided by the SIA, this lack of disaggregation is also reflected in these documents, with the result that it is not possible to ascertain the exact number of households of indigenous or *Dalit* origin which require relocation or whose land is impacted by other ROW restrictions. Moreover, large parts of the updated 2014 ARAP are copied from the 2006 ARAP, and the new material is limited to an updated list of affected families.

148. Following the end of the Maoist insurgency in 2007, but with continuing localized violence and civil unrest, population dynamics shifted with formerly displaced people returning to their areas of origin, and a continuing drift of people towards towns and cities. The post 2008-election *Madhesi* uprising also spurred migration into Sindhuli. These processes affected Sindhuli, and the Panel considers that it would have been prudent to have updated the SIA and ARAP with the knowledge that settlement patterns had changed in the project area between 2007 and 2012, and to accurately survey the affected locations.

149. The Panel notes that OP 4.12 requires a census survey and updated socioeconomic information, including on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement. **The Panel finds that since the 2006 ARAP was not updated at the required juncture, namely after the end of the insurgency and before the start of transmission line construction, Management is not in compliance with OP/BP 4.12 on Involuntary Resettlement.**

150. *Land Acquisition and Compensation.* The Panel team visited Sindhuli in July 2014 by which time, according to the NEA, 128 out of 159 households had accepted a revised compensation package arising out of the Ministerial decision to acquire the land in the transmission line’s ROW to construct the feeder road. Thirty-five land plots had not been acquired at the time of the Panel’s visit. During the Panel’s visit, a number of affected landowners who had accepted the updated compensation package raised objections to the compensation settlement process claiming that they were not clear about the legal documents they were signing, and those unable to read or write in Nepali or English were not provided a translation of the documents in their own language (they claim that no translator was on hand to explain their significance), and no copies were made available once they had given their consent.

151. The Panel team was also informed that prior to the decision to proceed with the feeder road in March 2013, the vulnerability of affected households in the ROW had increased. This was due to the failure to reach agreement on the value of assets lost, the precise route of the ROW, and eligibility for compensation and assistance support. It was argued by the Requesters that this increased their risk of impoverishment and damaged their livelihoods.

152. Affected households informed the Panel team that as a result of uncertainty about which parcels of land and which structures fell within the ROW, land owners had reduced investment in their land over a period of 4-6 years thereby negatively affecting household income. A number of land owners claimed that they had been unable to raise loans from commercial banks¹⁴⁰ against the value of their land as lenders sought guarantees, which could not be given as they were not sure if their land would be acquired through the project. Some families turned to borrowing money from money lenders and “*wealthy families in the town*” to whom they were paying very high interest rates, sometimes 20 times higher than the rates charged by the banks to bridge shortfalls in household income and to smooth out expenditure.

153. During its field visit, the Panel team heard several testimonies from affected households that the phasing of compensation payments had created additional economic strains on household incomes. In one instance, an affected person described how he received NRs125,000¹⁴¹ compensation for his family house in the ROW in 2009 and was informed by the project authorities that further compensation payments would be received once the house had been relocated and additionally for disruption to farm land once the stringing of the cables had taken place. This landowner claimed, however, that the initial payment did not enable him to relocate, he did not have existing land upon which to build a replacement home, and the amount given was insufficient to purchase replacement land elsewhere because land prices had risen “sharply” in the intervening five years leaving him and his family in a state of uncertainty.

154. The Requesters whom the Panel met during its visit did not raise concerns about out-of-area relocation but rather were concerned about the negative effects on livelihoods as a result of land-loss and restrictions on agro-forestry. Additional concerns included apprehensions that compensation for land acquired for the tower pads was insufficient to buy replacement land of equal quality or productivity in other locations; frustration that in the future affected HHs could not build additional houses or extend existing homes because construction would encroach on the ROW where building was not allowed and thus they could not guarantee holding together growing families; that the presence of the overhead transmission line had reduced the value of their land not only because of planting restrictions but because investors who may have purchased the land from them were no longer interested, and commercial banks would not lend them money against a devalued asset thus affecting future investment plans.

155. The most significant source of discontent was NEA’s policy of paying 10% compensation at market value for land not permanently acquired but affected by the ROW. Many

¹⁴⁰ For example, it was claimed that the Matribhumi Development Bank has refused a loan for a poultry farm in 2011.

¹⁴¹ Equivalent to ca. US\$1,265.

affected HHs felt that a blanket policy of 10% appeared insufficiently flexible to take account of divergences in land values between different types of land (e.g. irrigated or non-irrigated) and between rural and peri-urban land particularly during periods of demographic change and a newly dynamic land market.

156. Closer engagement by the Bank with NEA may also have addressed claims by the Requesters that payment of compensation was frequently delayed. As previously described, the compensation amount for land acquired was fixed by the respective Compensation Fixation Committee. During field visits, the Panel was informed by a number of households that they had not collected their compensation because they lacked proper documentation. The slow rate of payment added to frustrations and mistrust.

157. As stated earlier, the Panel could not find evidence to support the Requesters' allegation regarding out-of-area relocation, and the Panel's field visit confirmed project information about the preference of households to be resettled on their own land close to their original dwellings. **The Panel notes the significant delays between compensation payments and the confusion about when installment payments would be released. The Panel finds that this is not in compliance with OP/BP 4.12 on Involuntary Resettlement, which requires that prompt and effective compensation payment be made to eligible individuals.**

158. *R&R Assistance and Livelihoods.* The Panel team was informed during its field visit that affected families had minimal knowledge and awareness of resettlement and rehabilitation assistance that was available to them, due in part to the non-disclosure of the ARAP in local languages. Affected families welcomed the principle of resettlement and rehabilitation assistance, specifically, training and the provision of inputs in agriculture and animal husbandry, but concerns were expressed about the failure to identify eligible households, the lack of resources and the non-availability of assistance to families in particular need. Moreover, the Panel team heard complaints that no officials had visited affected families to assess their needs. The Panel team was unable to identify any households whose members were offered employment in the project, however, it was also not informed of requests for employment that were declined.

159. The Panel notes that while the broad definition of assistance was appropriate, the 2006 ARAP lacked sufficient detail on the content of assistance and the mode of delivery. The Panel further notes that the 2006 ARAP did not meet the requirements of the RAP outline provided in the Resettlement and Policy Framework.

160. Project documents state that the KDTL-EMU was to be responsible for facilitating the relocation process laid out in the ARAP's Community Support Program, and monitor the allocation of compensation and rehabilitation grants in a timely and effective manner. The KDTL-EMU, however, was discontinued in 2011 when its contract expired, and its responsibilities transferred to the NEA Project office in Kathmandu. **The Panel finds that there were significant delays and inconsistencies in the provision of R&R assistance to displaced households in the ROW in non-compliance with OP/BP 4.12 on Involuntary Resettlement.**

161. As noted previously, the Panel understands that following the Request for Inspection, Management has been working to ensure that assistance is received by all remaining eligible families. An Action Plan agreed between the Bank and the NEA in September 2013 to address outstanding issues had, by February 2014, accelerated: (i) the acquisition of land for the purpose of road construction in the ROW, (ii) led to the appointment of a communication specialist and community liaison; and (iii) finalized compensation disbursements to owners of 109 land plots out of the 159 plots that were to be acquired for the purpose of the road construction.¹⁴² During the Panel's visit in July 2014, disputes over compensation in the ROW remained and resettlement and safeguards instruments (updated ARAP and VCDP) had not yet been fully implemented. In a request for an extension of the deadline of the Implementation Completion Report (ICR), Management estimated that implementation would be completed by December 2014.¹⁴³ In a second update of the Action Plan received by the Panel on January 23, 2015, Management reported that most of the activities supported under the Action Plan had been completed except for compensation for the ROW and implementation of the VCDP and RAP in the disputed section. With respect to the latter, the Update states that implementation has not started in Sindhuli as "*local people are waiting for the WB's Inspection Panel Report.*"¹⁴⁴

162. *Grievance Redress.* OP 4.12 requires that displaced persons and their communities are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. It also requires that "*appropriate and accessible grievance mechanisms are established for these groups*". The 2006 ARAP states that a Grievance Redress Committee (GRC) at the project level would be created where anyone could file a complaint. This GRC was to include a "*representative of local affected persons nominated by themselves*" and to hold meetings "*at regular intervals.*" During the field visit, the Panel team was informed by a number of affected households that they were unaware of the GRC, that they had not appointed representatives to such a Committee, and that they were not informed about the KDTL-EMU, the "*local mobilisers from PAFs*", the "*two assistant level environmentalists*" or the "*community forestry groups*" who the NEA had confirmed would be active in the KDTL area.¹⁴⁵ The Panel team was also unable to ascertain where grievances could be filed.

163. Management's Response states that the KDTL-EMU was established before KDTL construction started and besides having other responsibilities, it also functioned as the Project's grievance redress unit. The Panel notes that once KDTL-EMU's contract expired in 2011, the grievance redress function was assumed by the Project office in Kathmandu, thereby not providing a site-based grievance redress option. **The Panel finds the lack of an appropriate and accessible grievance mechanism for KDTL to be in non-compliance with OP/BP 4.12 on Involuntary Resettlement.**

¹⁴² Email from World Bank to Requesters representatives, 21 February, 2014.

¹⁴³ Nepal Power Development Project (P043311) - Implementation Completion and Results Report - Request for Extension of the deadline, 13 June, 2014.

¹⁴⁴ Ibid, section E, p. 3.

¹⁴⁵ Power Development Project: Meeting with NEA Officials February 3, 2008

C. Indigenous Peoples

164. Since Involuntary Resettlement issues have been discussed earlier in this chapter, the following sections focus solely on the issues covered under the Indigenous Peoples Policy.

C1. Context

165. The National Foundation for Development of Indigenous Nationalities (NFDIN) Act of 2002 is the first legal statute in Nepal that recognizes the distinct identity of IPs. It lists 59 groups as Indigenous Nationalities or *Adivasi Janajati*.¹⁴⁶ In 2007, Nepal ratified the ILO Convention 169 and adopted the UN Declaration on the Rights of Indigenous Peoples.

166. Nepal's population can broadly be categorized into the following social groups: *Adivasi/Janajati* or Indigenous Nationalities; Hindu caste groups¹⁴⁷ including *Dalits* or former Untouchables; Muslims; and Others. According to the 2011 census, the number of *Adivasi/Janajati* (Indigenous Peoples) is 9,487,642, amounting to 35% of the country's total population.¹⁴⁸ IPs in Nepal are not part of the Hindu *Varna/Caste* system and do not overlap or intersect with the *Dalit* occupational castes.¹⁴⁹ IPs in Nepal are often referred to as *ethnic groups* or *tribals* by anthropologists.

167. *Dalits*, on the other hand, are part of the Hindu caste hierarchy and form 13% of the total population.¹⁵⁰ *Dalits* speak languages such as Nepali, Maithili or Bhojpuri, which belong to the Indo-Aryan language family, whereas indigenous groups speak their own languages, mostly belonging to the Tibeto-Burman language family. Out of a total of 123 languages spoken in the country, IPs speak 78.

168. Poverty greatly varies among IPs, and some 44% of IPs live below the official poverty line.¹⁵¹ Due to Gorkhali rule and migration of members of the Hindu caste into indigenous

¹⁴⁶ <http://nfdin.gov.np>

<http://nfdin.gov.np/secured/news/indigenous-nationalities-tribes-definition-identification-and-list/>

¹⁴⁷ The four main Hindu caste groups are *Brahmins* (traditionally priests), *Kshatriyas* (Chhettri, traditionally those with governing functions), *Vaishyas* (traditionally agriculturalists, cattle rearers and traders) and *Shudras* (traditionally in service to the other 3 castes). Beneath everyone were occupational groups, considered "impure" and "untouchable" or *acchut*. In traditional Hindu society, *Dalit* status was associated with occupations regarded as ritually impure, such as leatherwork, butchering or removal of rubbish, animal carcasses and human waste.

¹⁴⁸ Social Inclusion Atlas of Nepal: Ethnic and Caste Groups 2011, Central Department of Sociology/Anthropology (CDSA), Tribhuvan University, 2014, www.siaep.org

¹⁴⁹ Sources indicate there are at least 20 *Dalit* castes in Nepal. *Dalits* are discriminated against on the basis of caste and "untouchability", and are relegated to do caste-based work as black/goldsmith, tailors, shoemakers and street cleaners, all of which are considered of low social status.

<http://www.hurights.or.jp/archives/focus/section2/2002/12/dalits-in-nepal-story-of-discrimination.html#note2>

¹⁵⁰ For more information, see: <http://ndc.gov.np/>

¹⁵¹ Poverty Trends in Nepal between 1995-96 and 2003-04, Central Bureau of Statistics, Thapathali, Kathmandu, 2005. See also Subba, Chaitanya et.al. 2002. *Adivasi/Janajatis* in national development: Major issues, constraints and opportunities. For more information, also see: Nepal Multidimensional Social Inclusion Index, 2014, Department of Sociology/Anthropology, Tribhuvan University, www.siaep.org. The Gender and Social Exclusion Assessment (GSEA), carried out by the World Bank and the Department for International Development (DFID) in

territories, many settlement areas have become mixed. Following homogenizing policies by the government promoting “one language, one religion, one dress” after the 1950s, a process of assimilation ensued whereby many IPs gave up their culture and language and adopted the Nepali language, the Hindu religion, and ethos of the high caste hill Brahman and Chhetri which were regarded as the standard for Nepali culture. Despite these developments, indigenous groups have largely maintained their distinct identities, cultures, languages, religions and institutional structures, and their attachment to land, where their spirituality is rooted, remained strong.



Picture 7 - Project Affected People in Sindhuli district

169. In the project area, the 2014 Vulnerable Community Development Plan (VCDP) shows that the indigenous population in the 17 Village Development Committees (VDCs) and Municipalities in the five districts comprise 47% of the population.¹⁵² A breakdown by district shows that Sindhuli has a higher proportion of IPs: 54% in the project-affected VDCs and Kamalamai municipality are indigenous.¹⁵³ According to the 2011 census, there are 35 indigenous groups in the area, of which many are small in number and some have migrated to the region. The seven major indigenous groups in the area are the Tamang, Magar, Newar, Gharti/Bhujel, Majhi, Sunuwar and Hayu.¹⁵⁴

C2. Requesters Claims

170. The Requesters state that the affected communities in Sindhuli are largely *Adivasi* (indigenous) from the Tamang, Magar, Newar, Gurung, Bhujel, Thami, and Hayu groups, which comprise approximately 95 percent of affected people. They state they are highly marginalized and their vulnerability is exacerbated by the high poverty rate in the region. According to the Requesters, subsistence farming, which these communities rely on, will likely be disrupted by

2005, shows the existing state of indigenous marginalization and the historical roots of discrimination against the group. Gender and Social Exclusion Assessment (GSEA), 2005, The World Bank and DFID.

¹⁵² VCDP, 2014. This figure is based on data from the 2001 census. The VCDP 2014 does not provide caste/ethnic level data obtained from Census 2011.

¹⁵³ VCDP, 2014.

¹⁵⁴ VCDP, 2014, p. 6.

the transmission line, and a large number of IPs are at risk of displacement.¹⁵⁵ The Requesters state that 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.

171. According to the Request, the Bank failed to ensure that indigenous peoples were identified properly, despite the fact that IP groups in the affected area are recognized as indigenous nationalities under Nepali law, and project documents state that there are IP communities among the PAPs, “*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.*”¹⁵⁶ The Requesters argue that the VCDP misidentifies IP groups, such as the Tamang, Newar, and Magar, and puts them together in the same category with the traditional ruling classes, like the Brahmin and Chhettri.¹⁵⁷ The Requesters argue that due to this misidentification of IPs, the project was not able to take into consideration the specific needs, preferences, and rights of affected IPs. The Requesters expect the project to have significant adverse impacts on the livelihoods of local indigenous communities in Sindhuli.

172. The Requesters state that in the 2003 Integrated Safeguards Data Sheet (ISDS), the GON recognized the need to prepare an IPDP, but this never happened and a VCDP was developed instead. According to the Requesters, this is insufficient, as the IPDP under OD 4.20 requires consideration of several elements that are unique to IPs and go beyond mere assistance for participation, consultation, land tenure analysis, monitoring and evaluation of the implementation of the plan, and others.¹⁵⁸

173. The Requesters argue that the Bank also violated OD 4.20 by failing to require that adverse impacts be assessed and mitigated. According to the Requesters, there is no indication that the GON conducted studies to evaluate the project’s potential effects on IPs or developed means to avoid or mitigate such effects. They further state that as IPs in Sindhuli have traditionally relied on their land for subsistence and income, the likelihood that the transmission line will disrupt agricultural activities is a significant threat to IP livelihoods, and this should have been anticipated in an IPDP.¹⁵⁹

174. The Requesters also claim that the SIA shows a particular insensitivity and prejudice against indigenous communities, quoting passages from the SIA which are, in the Requesters’ view, discriminatory generalizations about ethnic identity and caste and reinforce a lack of understanding and attention to affected IPs.

175. With regard to resettlement, the Requesters argue that particular attention should have been paid to vulnerable groups, especially IPs, because “*resettlement of indigenous peoples with*

¹⁵⁵ Request for Inspection: 6.

¹⁵⁶ Request for Inspection: 14.

¹⁵⁷ Request for Inspection: 14.

¹⁵⁸ Request for Inspection: 16. Also see Integrated Safeguards Data Sheet: 8, and OD 4.20, para 15.

¹⁵⁹ Request for Inspection: 16.

*traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and cultural survival.”*¹⁶⁰ The Request states that the GON should have explored “*all viable alternative project designs to avoid physical displacement of these groups.*”¹⁶¹ The Requesters also argue that, although the vast majority of affected community members are indigenous, the ARAP does not mention IPs at all; its *vulnerable groups*-section only refers to two *Dalit* households and one female-headed household.¹⁶²

C3. Management Response

176. Management states that indigenous communities were identified in the social assessment, in line with Bank policies and the classification by the Nepal Federation of Indigenous Nationalities (NEFIN).¹⁶³ Socio-economic details of all vulnerable communities, including IPs, form part of the assessment. According to Management, the SIA indicates that, as a result of decades of migration, local communities in Sindhuli include a mix of ethnic and caste groups, and there is no homogenous indigenous community in the project area. The SIA identified IPs of the Tamang, Magar, Newar, Rai, Gurung, Tharu, Majhi, and Limbu origins among the project affected peoples, and states that 70 directly affected households belong to the IP community. Management further states that Bank policy allows for the use of alternative terminology to account for the country context and varied and changing contexts in which IPs live.¹⁶⁴

177. Regarding the alleged discriminatory generalizations, the Response states that “*Management shares the view that some of the statements and wording used in the SIA may appear insensitive to some. These statements do not reflect the Bank’s position.*”¹⁶⁵

178. Management explains that the SIA provided an analysis of project impacts on local communities for construction and operational phases, and concluded that the impacts of land loss on the economic livelihoods of the affected population are modest. Management explains that, at the time the Project was appraised and approved, details about its subprojects (such as the KDTL) were not known; therefore a Policy Framework for Environmental and Social Impact Assessment (Policy Framework for EIA/SIA) was prepared in line with OD 4.20, which stipulated the safeguard standards which the subprojects had to abide by. According to Management, this Framework included guidelines for the preparation of a VCDP.

179. Management states that “*a longstanding concern with the application of OD 4.20 was to avoid creating inequity with other vulnerable groups. This was finally reflected in the revised OP 4.10 which states that ‘When Indigenous Peoples live in the same area with non-indigenous peoples, the IPDP should attempt to avoid creating unnecessary inequities for other poor and marginal social groups.’ This was the case for Nepal in general and the Sindhuli District in*

¹⁶⁰ OP 4.12, para 9.

¹⁶¹ OP 4.12, para 9.

¹⁶² Request for Inspection 21. See ARAP: 24.

¹⁶³ NEFIN is the umbrella organization of indigenous peoples voicing for political, economic, social and cultural rights of indigenous peoples in Nepal in the context of state transformation. <http://www.nefin.org.np/>

¹⁶⁴ Management Response, para 36, p. 10.

¹⁶⁵ Management Response: 22.

*particular; hence the rationale for the Project using a VCDP to replace the IPDP.”*¹⁶⁶ Management refers to the ISDS and PAD, which state that the VCDP replaces the IPDP typically prepared to meet the OD 4.20 requirements by extending assistance to vulnerable groups who live below the poverty line.

180. Management argues that the VCDP presents a two-tiered support to affected communities, including IPs. It describes mitigation measures for direct adverse impacts on all affected vulnerable households, including IPs, and provides community benefits, based on consultations and analysis conducted for the SIA. Types of community enhancements include infrastructure, economic support and socio-cultural support. Management “*acknowledges that the VCDP, which was the first one prepared by NEA in a context, moreover, of conflict and social unrest, nevertheless could have been stronger*”¹⁶⁷ and that “*the VCDP could have been more rigorous in its analysis and provided more detailed action plans and benefits for different groups.*”¹⁶⁸ Management explains that the number of vulnerable IP households may have increased since 2004/2005, when the SIA and VCDP were prepared, due to continuous migration into the project area, and the NEA was revising the VCDP.

C4. Assessment of Issues in Project Documents

181. The documents analyzed in this section were prepared by the Environmental and Social Studies Department (ESSD) of the NEA. The SIA and EIA are based on a 40 day fieldwork by a multidisciplinary team of experts, carried out in 2004.¹⁶⁹ The 2006 VCDP states that its principal objectives are to ensure the participation of members of affected Vulnerable Communities in the planning, implementation and monitoring of the VCDP, to identify and analyze impacts on vulnerable communities in the project area, to ensure that vulnerable people benefit from the project and that potential adverse impacts are avoided or mitigated, and to assist vulnerable communities in the planned development of their communities as an enhancement measure. Due to a delay in project completion and a changed demographic context, the VCDP was updated in 2014.

182. *Social Impact Assessment, 2004.* The SIA describes Nepal as a multiethnic society with a caste system and states that “*altogether sixty-three castes are found in the project area. Chhettri (25%), Tamang (15%), Newar (11%), Magar (9%) and Brahmin (9%) are major ethnic group found in the project area (...). Others includes Kami, Sarki, Damai, Majhi and Yadav.*”¹⁷⁰ The terms “*caste*” and “*ethnic group*” are used interchangeably in the SIA. In an Annex, the SIA lists 64 categories of “*ethnic groups*” present in the project area, and provides numbers showing the distribution of these groups in the Kamalamai municipality, which is the area of the disputed stretch of the ROW.

183. Though the SIA does not provide an analysis of the impact of the transmission line on individual households belonging to these ethnic groups, especially those that could be

¹⁶⁶ Management Response: 10.

¹⁶⁷ Management Response: 11.

¹⁶⁸ Management Response: 11.

¹⁶⁹ SIA: 2, EIA: 3.

¹⁷⁰ SIA: 19.

categorized as SPAFs, its data was used in the 2006 VCDP to identify affected families belonging to vulnerable groups. The SIA provides information on the existing socioeconomic situation of the area; data is taken from a sample survey of 210 households (29% of the total households) and shows the situation of project-affected districts, project-affected VDCs and project-affected families. It covers, among others, demography, education, literacy, agricultural production, food balance, income and land holding size but does not provide disaggregated data for IP groups. The SIA report also deals with gender issues, but does not include specific information on the situation of indigenous women. The institutional analysis similarly provides information on NGOs, but not on Indigenous People's Organizations (IPOs) and other traditional organizations or structures.

184. *Project Appraisal Document (PAD, 2003)*. The PAD elaborates that “each sub-project will undergo a systematic socioeconomic baseline study”¹⁷¹, consisting of, among others, “community studies describing social structures and social relations in the project area, including inherent power relationships, caste and class structures, and access of groups such as the poor, women and other vulnerable groups to resources and social services”¹⁷². The PAD also states that “the presence of ethnic minorities or indigenous groups in the project affected area will require the preparation of a Vulnerable Communities Development Plan (VCDP).”¹⁷³ According to the PAD and the ISDS, the VCDP will be prepared in accordance with OD 4.20 and the EIA/SIA Policy Framework. These documents state that “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.”¹⁷⁴

185. *VCDP, 2006*. Drawing largely from the SIA, the 2006 VCDP lists several potential impacts of the project, including land acquisition, relocation of houses, loss of standing crops, occupational safety hazards and others. It states that “out of total 68 household, about 39 households from the Vulnerable Community will be affected by the land take for the project in eight VDCs of three districts.”¹⁷⁵ According to the 2006 VCDP, 17 houses in nine VDCs in three districts are likely to be affected by relocation and “out of these 17 houses, only two houses belong to the members of Vulnerable Communities at Bengadabar VDC of Dhanusha district.”¹⁷⁶

186. The 2006 VCDP lists several mitigation and enhancement measures. Mitigation measures include compensation for land acquisition and replacement cost, training on institutional development, income generation and technology, an awareness program for social malpractice, caste-based discrimination, health and sanitation and others, as well as a strategy to encourage active participation of vulnerable groups during project implementation, including women. It also includes setting up grievance redress mechanism, priority of employment in the project and consultation on relocation. Enhancement measures include support to infrastructure such as drinking water, school renovation, rural road and electricity supply, economic support consisting

¹⁷¹ PAD: 106.

¹⁷² PAD: 106.

¹⁷³ PAD: 38.

¹⁷⁴ ISDS: 8. PAD: 38.

¹⁷⁵ 2006 VCDP: 15.

¹⁷⁶ 2006 VCDP: 15.

of training for various income generation activities and socio-cultural support. The total budget for the 2006 VCDP was estimated to be approximately the equivalent of about US\$20,258.

187. *VCDP, 2014*. The updated VCDP of 2014 states that it is based on the findings of a participatory rapid assessment (PRA) with IP and vulnerable communities, a socioeconomic household survey of affected families of IPs and vulnerable groups, key informant interviews, a consultation with local stakeholders, a field visit conducted from March 1 to 15, 2014, as well as a review of relevant literature and best practice. Contrary to the 2006 VCDP, which refrained from using the term indigenous peoples, the updated 2014 VCDP acknowledges that there are 59 groups which the government in 2002 recognized as *Adivasi/Janajati* with distinct cultures, languages and belief systems. The 2014 VCDP also refers to the NEFIN classification of IP groups into five broad categories (endangered, highly marginalized, marginalized, disadvantaged, and advanced). Based on the 2001 census, the 2014 VCDP determines that the indigenous population in the project-affected 16 VDCs and one municipality is 47%.¹⁷⁷

188. The 2014 VCDP states that, in the context of Nepal, the term vulnerable community refers to “*communities, which are commonly landless and marginal farmers living below subsistence level. Moreover, these people have no or limited access to public resources and they almost never participate in national planning*”¹⁷⁸ and have no access to decision making processes or development initiatives. The 2014 VCDP further explains that studies show that most IP and *Dalits* are considered vulnerable in Nepal, and asserts that, for the purpose of this study, the following groups were initially considered as potentially vulnerable: (i) female-headed households; (ii) households headed by the physically disabled; (iii) IP (*Adivasi/Janajati*), and (iv) *Dalit*.¹⁷⁹ The 2014 VCDP states that IPs “*have no distinct characteristics*”, almost all follow a “*similar social and cultural tradition, use common Nepali language*” and are “*socially mixed up with other caste/ethnic groups.*”¹⁸⁰

189. The 2014 VCDP lists enhancement measures that encompass an awareness raising program, a community infrastructure support program focusing on drinking water, river control, irrigation, the protection of archeological/historical and religious sites, a school support program and plantation and water sources conservation. The enhancement measures also include a section on livelihood improvement and income generation with a focus on agriculture and livestock support and skills training. The total budget estimated for the plan is equivalent to about US\$ 207,991, which is 10 times higher than the one proposed in the 2006 VCDP.

C5. Relevant Provisions in Bank Policy

190. The Bank’s Indigenous Peoples policy was triggered for this Project. At the time of project appraisal, Operational Directive (OD) 4.20 on Indigenous Peoples (dated September 1991) was applicable. Management explains in its Response that when the Project was

¹⁷⁷ This figure is based on data from the 2001 census. 2014 VCDP: 23.

¹⁷⁸ 2014 VCDP: iv.

¹⁷⁹ 2014 VCDP: 7.

¹⁸⁰ 2014 VCDP: 7.

restructured in 2009 and Additional Financing was approved, OP 4.10 on Indigenous People was triggered for the newly added Project activities.¹⁸¹

191. OD 4.20 provides policy guidance to ensure that indigenous people benefit from development projects, and avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities. It also requires that “*special action is required where Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.*”¹⁸² [Emphasis added]

192. OD 4.20 states that the Bank should inform the Borrower of the IP Policy during project identification, and that “*the approximate number of potentially affected people and their location should be determined and shown on maps of the project area.*”¹⁸³ IPs can be identified by the presence, in varying degrees, of the following characteristics: a close attachment to ancestral territories and natural resources in these areas, self-identification and identification by others as members of a distinct cultural group, an indigenous language, the presence of customary social and political institutions and production that is primarily subsistence-oriented.¹⁸⁴

193. OD 4.20 aims to ensure that “*indigenous people do not suffer adverse impacts during the development process [...] and that they receive culturally compatible social and economic benefits.*”¹⁸⁵ For an investment project that affects IPs, the policy requires that the Borrower should prepare an IPDP using baseline data, as needed, and include: accurate and up-to-date maps and aerial photographs of the area of project influence and areas where IPs live; an analysis of the population’s social structure and income sources; the resources used by IPs and technical data for production systems; the relationship of IP to other groups. The policy further states that “*it is particularly important that baseline studies capture the full range of production and marketing activities in which indigenous people are engaged.*”¹⁸⁶

194. OP 4.10 lists IP characteristics as a “*distinct, vulnerable, social and cultural group*” and additional four criteria “*self-identification and identification by others, collective attachment to land and resources, separate customary institutions and indigenous language,*” which IPs may possess to varying degrees. OP 4.10 states that “*Bank-financed projects are also designed to ensure that Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.*”¹⁸⁷ With regards to mixed communities, OP 4.10 in its footnote 12 states that “*when non-Indigenous Peoples live in the same area with Indigenous Peoples, the IPP [Indigenous Peoples Plan] should attempt to avoid creating unnecessary inequities for other poor and marginal social groups.*” OP 4.10 also

¹⁸¹ Management Response: 9f.

¹⁸² OD 4.20, para 2.

¹⁸³ OD 4.20, para 16.

¹⁸⁴ OD 4.20, para. 5.

¹⁸⁵ OD 4.20, para. 6.

¹⁸⁶ OD 4.20, para. 15(b).

¹⁸⁸ OP 4.10, Annex A, Social Assessment, para 2 (d).

requires that Bank-financed projects include measures to avoid potentially adverse effects, and when avoidance is not feasible, minimizes, mitigates, or compensates for the effects.

195. With respect to project impacts on indigenous people, OP 4.10 calls for a social assessment, based on free, prior, and informed consultation, with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. The policy also requires an analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their distinct circumstances and close ties to land and natural resources.¹⁸⁸

C6. Panel Findings

196. The PAD and ISDS recognize that IPs are present in the project-affected area. Although the population size of IPs is less than that claimed by the Requesters, the 2011 census confirms a substantial presence of IPs in the project area, numbering 44% of the total population. The SIA and 2006 VCDP do not include disaggregated baseline data covering socio-economic and cultural aspects of IPs and do not analyze potential impacts on them. The Panel notes that the 2006 VCDP would have been a stronger document had it included an analysis of the impacts of the transmission line on the particular impacted endangered and highly marginalized indigenous households.

197. The 2014 VCDP provides quantitative data on specific IP, *Dalit* and other vulnerable groups (women headed households mainly) literacy and educational attainment, occupational composition, food sufficiency, debt status, annual income and others. Data regarding food sufficiency of IP households shows that 36 out of 39 households reported that they do not have enough food. Such data can help understand the socio-economic situation of IPs. The 2014 VCDP states that these IPs have no distinct characteristics, almost all follow a similar social and cultural tradition, use Nepali language and are mixed with other groups.¹⁸⁹ According to the Panel's expert, however, the majority of communities in the project-affected areas in the Sindhuli follow their own culture, rituals, and religion. The 2014 VCDP appears to view indigenous communities as effectively assimilated into the dominant social and cultural tradition.

198. The Panel notes that the 2014 VCDP could have been a stronger document if it included a description of the specific impacts of the towers in the disputed stretch of the ROW on indigenous, *Dalit* and other vulnerable households that would potentially be impacted by it.

199. With regards to the decision to prepare a VCDP instead of an IPDP, the Panel recognizes that where communities are mixed or different social and ethnic groups live in close proximity to each other, from a development perspective, it would not be desirable to give benefits only to IPs thereby creating inequities, as is the case here. The Panel notes, however, that OD 4.20 does not refer to a VCDP and though it refers to "*special action*" being needed for "*other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources,*" it does not contain a clear provision regarding mixed communities.

¹⁸⁸ OP 4.10, Annex A, Social Assessment, para 2 (d).

¹⁸⁹ VCDP 2014: 7.

In accordance with OP 4.10,¹⁹⁰ the Panel notes that the decision to prepare a VCDP instead of an IPDP served to avoid creating unnecessary inequities for other poor and marginal social groups.

200. The Panel notes that the 2006 and 2014 VCDPs would have been stronger documents had they included an analysis of the impacts of the transmission line on the endangered, highly marginalized indigenous groups whose members may be among the Severely Project Affected Families (SPAFs) facing relocation as a consequence of the transmission line. The Panel also notes that a justification by Management of its decision to adopt a “mixed communities” approach in this case would have been helpful. **The Panel finds that, given the prevalence of indigenous, Dalit and other vulnerable communities in the disputed ROW, Management’s decision to apply a “mixed communities” approach was in compliance with OP/BP 4.10 Indigenous People.**

D. Cultural Property

D1. Requesters Claims

201. The Requesters argue that the project design does not prevent damage to cultural property and that the project site is located near various monasteries, temples, cremation sites and historical landmarks. One example of a historically significant site, which according to the Requesters is vulnerable to significant damage by the project is the Sindhuli Gadhi, the battleground of the historic 1767 defeat of the British Army by Nepalese forces. According to the Requesters, one of the project’s towers is planned for construction inside the Sindhuli Gadhi site.

202. The Requesters also claim that the Bank has failed to assist in the protection and enhancement of cultural property in Sindhuli as required by Operational Policy Note (OPN) 11.03 on the Management of Cultural Property. They state that the project did not include the “*training and strengthening of institutions entrusted with safeguarding cultural patrimony.*”¹⁹¹ The Requesters also argue that the alignment of the project was not adequately planned and that alternative routes for the project existed, many of which would avoid damage to cultural property.

203. They claim that the EIA does not discuss the potential impacts on community structure and relations, and that the transmission line will disturb community rituals, giving examples of towers built near a Bhimsen shrine and close to the Kamalamai Temple, a major shrine in the region over which the transmission line is allegedly projected to pass. The Requesters state that worshippers, fearing the effects of the tower and transmission line, cannot practice their rituals in peace. According to the Request, other shrines, including shrines of Bhadrakali, Siddhababa, Devasthan, and Durga, will also be affected.

¹⁹⁰ OP 4.10 in its footnote 12 states that “[w]hen non-Indigenous Peoples live in the same area with Indigenous Peoples, the IPP should attempt to avoid creating unnecessary inequities for other poor and marginal social groups.”

¹⁹¹ Request for Inspection: 24. Reference to OPN 11.03 Management of Cultural Property in Bank-Financed Projects, para 2(b).

D2. Management Response

204. Management states that it has reviewed the alignment and confirms that the KDTL does not adversely impact cultural or sacred sites in the disputed area. Management contends that the EIA and the monitoring reports of the ESSD state that no religious sites, burial sites or historical heritage are affected by the construction and operation of the transmission line. Management also states that tower pads or power lines will not affect the Sindhuli Gadhi, which according to Management is located on another hillock approximately 500 meters outside the ROW, nor the Bhimsen shrine, or the Kamalamai temple.¹⁹² Management notes that the potential social impacts of the project and the resulting mitigation measures are described in the SIA. Furthermore, Management notes that additional discussion of social impacts and related mitigation are addressed in the ARAP and the VCDP. Management states that OP 4.11 on Physical Cultural Resources was not triggered for this project as the EIA noted that the impact of the ROW on cultural sites is insignificant. Management explains that, after receipt of the Request, the NEA offered to conduct a joint field verification with the community to confirm the location of cultural sites in relation to the alignment, but the Requesters have not availed themselves of this offer.¹⁹³

D3. Assessment of Issues in Project Documents

205. The PAD states that it is not anticipated that any sub-projects will impact archeological, paleontological, historical, religious or unique natural sites, and that the Bank would like to follow a precautionary approach to ensure due attention is paid to ensure that sub-projects do not result in damage to cultural property. The PAD also states that sub-project EIAs will identify any potential damage to cultural property, which may then result in that sub-project being ineligible for funding under IDA.¹⁹⁴

206. The SIA provides information regarding various temples, monastery and other religious places in the project-affected area,¹⁹⁵ among them the Krishna Mandir, Ganesh temple, Bhimsen Mandir, and Vijayachhap temple. The SIA explains that the Devithan in Gelu VDC falls between towers Angle Point (AP)-1 and (AP)-2, and the Mahadevthan in Bhaluwajor VDC, is located close to tower (AP)-16. It states that the clearance height between the electrical conductors and the Devithan is more than 50 meters, whereas the Mahadeo than is located about 12 meters from the Tower. The SIA concludes that, since movement of people is not restricted in the ROW, the likely impact on cultural sites is considered to be low, the extent local and the duration long term.¹⁹⁶

¹⁹² Regarding the issue of cultural and sacred sites, see also Items 27 and 28. See Item 26 regarding the issues of electro-magnetic radiation.

¹⁹³ See also Item 17 regarding the Technical Commission Report on alternative routes. (Also attached in Annex 1.5). (29)

¹⁹⁴ PAD, p. 37.

¹⁹⁵ SIA, Sub-section 4.2.4 of Chapter 4

¹⁹⁶ SIA sub-section 5.1.1.5 on historical and cultural sites

207. Regarding visual and aesthetic values, the SIA states that “*approximately 73-Km transmission line along Tamakoshi valley, Middle Hills and Terai creates some sort of visual barrier. More over 230 towers erected along the corridor affect the visual aesthetic value. Sometimes the route passes near the settlement and may create visual barrier but ridge to ridge alignment does not reduce the aesthetic value. The Gadhi palace is located approximately 700-meter distance from the proposed line hence no direct impact is expected. The overall magnitude of impact is considered to be low, extent is local and duration is long term.*”¹⁹⁷

208. In response to the demand by local people, the 2014 VCDP included enhancement measures for the protection of archeological, historical and religious sites.¹⁹⁸ The conservation of the Sindhuli Gadhi heritage plan includes the construction of about 300 meters of drainage to protect the access road from run-off, maintenance of *Aadh* (front-gun point), repair and maintenance of the foot trail from *Aadh* to the main fort, repairing and conservation of the fort and other facilities (historical well, drinking water, gardening, planning of picnic spots, etc.).

D4. Relevant Provisions in Bank Policy

209. The Management Response cites OP 4.11 Physical Cultural Resources and does not discuss OPN 11.03.¹⁹⁹ OP 4.11 states that the Bank assists the Borrower to avoid or mitigate adverse impacts of projects on physical cultural resources.²⁰⁰ The policy explains that in cases where the project is likely to adversely impact physical cultural resources, the Borrower identifies appropriate measures to avoid or mitigate them as part of the environmental assessment process. Also, “*as an integral part of the EA process, the borrower develops a physical cultural resources management plan that includes measures for avoiding or mitigating any adverse impacts on physical cultural resources [...].*”²⁰¹

D5. Panel Findings

210. The SIA mentions that Sindhuli Gadhi is at a considerable distance from the transmission line, and the Panel’s field visit confirmed that there will not be any impact on Sindhuli Gadhi. The same is true for the Bhadrakali temple, which does not fall within the ROW; the boundary of the temple is about 60 meters from the nearest tower. The distance of towers from the cultural and historical sites also does not appear to disturb the routes taken by pilgrims.

211. Regarding the Bhadrakali temple, which receives more than a thousand pilgrims during its peak worship days in the winter, the community fears that the transmission line will create a sense of insecurity and psychological disturbance during pilgrimage and worship. During its visit, the Panel found that the cremation site of the Tamang community in the Ranichuri VDC is located in the ROW.

¹⁹⁷ SIA sub-section 5.1.2.7 on Visual Aesthetic Value

¹⁹⁸ VCDP 2014 sub-section 4

¹⁹⁹ The Panel notes that the PAD states that OPN 11.03 Management of Cultural property in Bank-financed Projects is triggered. The Panel understands that “*OP and BP 4.11 apply to all investment projects for which a Project Concept Review takes place on or after April 15, 2006*”.

²⁰⁰ OP 4.11, Para 3.

²⁰¹ OP 4.11, Para 9.

212. Although the transmission line would not directly disrupt the movement of people and the cremation ritual itself, the local community felt that it will cause a sense of disruption in the spiritual world, where the territorial and other deities perform the role of protectors of people, crops and animals. Although the investigation visit showed that the plan for mitigation measures and information regarding potential impacts could have been stronger, nevertheless **the Panel concurs with Management's decision not to trigger OP/BP 4.11 for the KDTL as the transmission line does not directly impact physical cultural resources, and Management analyzed this criterion adequately in project documents.**

Chapter 4: Disclosure, Consultation and Project Supervision

A. Introduction

213. This Chapter looks at two issues. It first discusses consultations with project affected persons, focusing on the consultation process as it relates in particular to the safeguard documents and their disclosure. The second issue discussed is Project supervision, and especially supervision of the KDTL and its safeguards related measures.

B. Consultation and Disclosure

B1. Requesters Claims

214. The Requesters state that Project affected individuals, notably indigenous people in Sindhuli, “*were never consulted*” on the design, location or alignment of the transmission line, nor were they invited to participate in the preparation of the various safeguard documents. They claim that they “*have not received any information about the Project*” nor have they granted permission for “*the transmission line to go over their land or for the towers to be built on their land.*”

215. The Requesters note that “*only two consultations or public hearings were held about the project,*” however none in Sindhuli or at a location easily accessible from Sindhuli.²⁰² They claim that they were only informed about the consultations by the Chief District Officer in 2012 “*long after the hearings had taken place*” and only after they had raised their concerns regarding the Project. Additionally, they note that while the ARAP and SIA were uploaded to the NEA website in March 2013, the ARAP was dated 2006 and the SIA did not have a date. The Requesters claim that a full version of the EIA had yet to be made available to them.

216. Referencing OP 4.12 Involuntary Resettlement, the Requesters note that information on project design and location, and resettlement options has not been provided to families that face displacement, and neither have they been offered opportunities to participate in planning, implementing, and monitoring resettlement. They state that making 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*” is a requirement that has to be fulfilled prior to Project appraisal. They note that these documents were not available on the World Bank website, had not been provided to affected communities though they were requested, and have never been available in local languages.

217. With respect to indigenous people, the Requesters claim that the Bank failed to assess whether the GON engaged in direct consultation with project-affected IP that resulted in an informed participation of the communities. The Requesters quote OD 4.20 which requires that “*the strategy for addressing the issues pertaining to indigenous peoples must be based on the*

²⁰² The Request claims that the consultations were held in Dhanusha district and Manthali Village in Ramechhap district, both 40-60 Kilometers away from Sindhuli district. According to the Requesters, travel between Sindhuli district and the consultation destinations would have required “*over a day and a half*” to reach.

*informed participation of the indigenous people themselves.”*²⁰³ They also note 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.”*²⁰⁴



Picture 8 - Panel Team Meeting Project Affected People, Sindhuli district

218. The Requesters contend that, although the EIA references three indigenous groups located in the project area, the members of these groups in Sindhuli were neither informed nor consulted about the project at any stage of its development. Moreover, they state that while the GON held consultations in the Dhanusa and Ramechhap districts, these consultations were inadequate to satisfy the requirements of the Bank’s IP policy, as not all project-affected IP knew of the consultations or were able to attend. IP groups were therefore 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; the project has been constructed along a route that is deeply harmful to and opposed by local IP communities.

219. The Requesters also claim they were misled about the nature of the project during its initial stages. They state they were *“led to believe”* during planning stages that the project would involve *“a small, local electricity distribution project, a water supply network, a radio transmission system, or a road.”* In general the Requesters allege a lack of specific information regarding project activities and in particular the provision of relocation and compensation packages.

B2. Management Response

220. Management asserts that meaningful consultations took place during the preparation stage of the project, with more than 900 total attendees. Consultations were carried out for preparation of the EIA, SIA, VCDP and ARAP. Management recognizes that the *“disclosure of safeguard documents for the PDP has been uneven and requires significant strengthening,”*

²⁰³ OD 4.20, para 8.

²⁰⁴ OD 4.20, para 8.

which has been initiated. In this regard, Management states that hard copies of the EIA, SIA, ARAP and VCDP were disclosed in 2005 and 2006 at local project offices, including an executive summary of the EIA in local language. These documents were later disclosed on NEA's website in March 2013. Moreover, Management states that some missing safeguard documents have been added to the disclosed project documents on the Bank's InfoShop website in September 2013. Management states that NEA is currently in the process of updating the ARAP and VCDP and will disclose the updated documents including in local languages.²⁰⁵

221. Management states that during Project appraisal and approval, the Policy Framework for Environmental and Social Impact Assessment was disclosed in Nepali in all 75 districts of the country, including Sindhuli district. Management asserts that NEA disclosed Project information throughout the project planning and implementation phase using a number of means and activities, such as notices in newspapers which were posted in each Project VDC/municipality. Management also states that the Executive Summary of the EIA was translated into Nepali and a copy of the translated version was given to the respective VDC Secretaries.

222. With respect to consultations, Management states that seven consultations were held in Sindhuli district during the preparation of the EIA. According to Management, all those who participated in the public hearing were given a brochure that included salient features of the Project, probable impacts and corresponding mitigation measures. Comments and suggestions received from the local participants during the public hearing and from affected VDCs were incorporated in the EIA, and the revised EIA report was disclosed for public review and comment for one month through notice of the then Ministry of Population and Environment on March 25, 2005. The report was kept at District Development Committee (DDC) offices of each project affected district. In April 2006, English hard copies of the ARAP and VCDP were disclosed in three local project offices. However, the ARAP and VCDP were not translated and disclosed in Nepali. NEA is updating the ARAP and VCDP and will disclose the translated version locally.²⁰⁶

223. With respect to indigenous people, Management states that members of local indigenous communities participated in the above mentioned consultations; indigenous households who lost land, structures or other assets to the project were consulted individually regarding their compensation package and relocation options. Management argues that, given that communities were ethnically mixed and IPs were well-represented in the consultations, the NEA did not carry out specific or exclusive consultation sessions with IPs. However, the NEA has agreed to identify appropriate approaches for consultations with the IP communities while updating the VCDP. Management states that the ARAP and VCDP were prepared with inputs, feedback, and discussions with affected households, particularly regarding the consultation package and relocation options; the compensation and assistance package for affected households in Sindhuli was developed in consultation with local affected communities.²⁰⁷ Management notes that

²⁰⁵ Management Response, para 41.

²⁰⁶ Management Response, No. 5, p. 18.

²⁰⁷ Management Response, No. 8, p. 20.

English hard copies of the VCDP were disclosed in three local project offices in April 2006, but these were not translated and disclosed in Nepali.²⁰⁸

B3. Assessment of Issues in Project Documents

224. *Environmental Assessment.* The EIA states that two public hearings were conducted in the project affected area to enable “*maximum participation*” of local people in a discussion of the findings of the EIA. For affected people from Dolkha and Ramechhap, a hearing was held at Manthali Bazar of Ramechhap district on September 13, 2004. For stakeholders from Sindhuli, Mahottari and Dhanusa districts, a hearing was held at Dhalkebar of Dhanusha district on September 24, 2004.²⁰⁹ The Panel notes that the estimated distance by road between Sindhuli and Dhalkebar is 43 kilometers, and public hearings took place after 3 days of the notice in Manthali and after 14 days of the notice in Dhalkebar.²¹⁰

225. According to the EIA, 99 people participated in the Dhalkebar public hearing of which 39 participants were from Sindhuli district. Participants included project affected families, Secretaries of VDCs, former Chairmen of affected VDCs, representatives of community forest user groups, and local people. The EIA states that a Nepali language booklet with information about the transmission line and a summary of the EIA findings was prepared in advance of the public hearings. The EIA also notes that “*diverse ethnic group*” attended the hearings and lists some of them. Relevant government departments, members of the district administration, and NEA presented information at the public hearings and recorded feedback. Views raised at the public hearing included fair compensation, devaluation of land in the ROW, jobs and benefits for locals in the project, and minimal environmental impacts. Feedback regarding increasing land prices due to urbanization was also provided, and recorded; the NEA was requested to change the alignment of the KDTL in Khimti-Besi and Manthali area.²¹¹

226. The Management Response also highlights that during the preparation of the EIA, a total of 22 community consultations were carried out. Out of those 22 consultation sessions, seven were held in the Sindhuli district. During the preparation of the SIA, ARAP and VCDP, eight community consultations were carried out. Of those, four were carried out in the Sindhuli district: (i) two in the Kamalamai municipality, attended by 14 participants; (ii) one in the Ranichuri Village Development Committee (VDC), attended by 10 participants; and (iii) one in the Bhadrakali VDC, attended by six participants.

227. *Involuntary Resettlement.* With respect to disclosure of resettlement related documents, the Management Response notes that hard copies of the ARAP (and VCDP) in English were disclosed in three local project offices in April 2006. As noted by Management, however, the ARAP (and VCDP) were not translated and disclosed in Nepali. These documents were updated in 2014 subsequent to the receipt of the Request, and NEA was going to disclose translated versions locally. Management recognized that the disclosure of safeguard documents for the

²⁰⁸ Management Response, No. 5, p. 18.

²⁰⁹ EIA, Annex 22, Section 4, p. 2.

²¹⁰ Nepal Distance Calculator, [Distance between Sindhuli and Dhalkebar](#)

²¹¹ Ibid, p. 5.

KDTL subproject was uneven and required significant strengthening. Management proposed to do this subsequent to the receipt of the Request when core project documents were disclosed.

228. The Management Response asserts that meaningful consultations did take place during the preparation stage of the transmission line, for preparation of the EIA, SIA, VCDP and ARAP. The 2006 ARAP states that baseline information was collected during the field survey for the ARAP by using questionnaire interviews and focus group discussions. The 2006 ARAP also states that “relocates” were first consulted during the survey of the alignment. Each household that was going to be displaced (the 2006 ARAP identified 17 households) was contacted and information was sought to fill a ten page questionnaire regarding their socio-economic status. During these sessions, the ARAP states that the legal and policy implications of their entitlement, procedures of acquisition and compensation, complaint redress procedures and possibilities of rehabilitation grants were also explained.²¹²

229. The 2006 ARAP states that nine focus group meetings were held at Ramchandra Tole, Dhamsar, Majhitar, Panitanki, Dadakhark, Khimti, and in other places where relocation was expected due to the transmission line alignment. Details of these meetings are stated to be provided in the ARAP in Annex 4, but the Panel has been unable to find this annex. The ARAP also states that further consultations, to be organized by the Khimti-Dhalkebar Environment Management unit (KDTL-EMU) and properly recorded, were planned during project construction and operation. The ARAP suggests that the possibility of participation by NGOs and VDCs office bearers from the impacted areas during the project’s operational phase should be explored.

230. *Indigenous People.* The 2006 VCDP states that its preparation draws on qualitative and quantitative data from primary as well as secondary sources, collected during various meetings and interviews held with local people including teachers, NGOs, members of Vulnerable Community, etc.²¹³ It provides a list of eight focus group meetings in its Annex 3, of which 4 meetings were held in Sindhuli district and of these, 2 were held in Kamalamai municipality.²¹⁴ The VCDP does not provide details of material provided during these group discussions, or the language used, nor does it document the discussions. In its section titled “*Strategy for Community Participation*”, the VCDP states that a committee will be formed during project implementation comprising representatives of affected families from Vulnerable Community, VDC and NGOs to support the implementation of VCDP and to resolve any disputes arising out of the implementation process of VCDP.²¹⁵

231. Also, as stated earlier, the Management Response notes that hard copies of the VCDP (and ARAP) in English were disclosed in three local project offices in April 2006, but these were not translated and disclosed in Nepali.

²¹² ARAP (2006), Section 7.1, p. 23.

²¹³ VCDP (2006), p. 22.

²¹⁴ The Panel notes that this annex is not attached to the version of the 2006 VCDP posted on the World Bank website (website accessed on January 22, 2015).

²¹⁵ VCDP (2006), Section 6.1, p. 22.

232. With regards to consultations held after the Request for Inspection was submitted, the 2014 VCDP lists extensive consultations with IP and vulnerable groups during its updating process. Participatory Rapid Appraisal (PRA) with IP and vulnerable groups was used as the main tool for community consultation and information dissemination for the preparation of the updated VCDP. Similarly, key informant interviews, household survey of directly project-affected IP and vulnerable families, and informal meetings and consultations with key stakeholders were also conducted. Altogether, 51 PRAs, including 28 with *Dalits* and 23 with IP groups (three PRA in each VDC/municipality), were conducted. 775 participants, including 46% women representing IP and vulnerable groups participated. The average number of participants was 15; they were selected with the help of local leaders, social workers and teachers.²¹⁶

233. In addition to the consultation with families, two informal meetings, including one with the Struggle Committee of the Khimti-Dhalkebar 220 kV TL PAPs (with more than 25 people) and one with government officials and district-level key political party leaders, were conducted in the Kamalamai Municipality on March 9, 2014.²¹⁷

234. The 2014 VCDP also documents the consultations held, and notes that the key issues and concerns raised by the local people can be broadly categorized as: (i) compensation, (ii) livelihood, (iii) alignment of transmission line, (iv) community support and (v) project information and community participation. It further lists these concerns in Table 7²¹⁸ and states that these issues and concerns “*will be addressed through different mechanism and support system*” but does not elaborate what these will be.²¹⁹

B4. Relevant Provisions in Bank Policy

235. *Environmental Assessment*. OP 4.01 requires borrowers of all Category A projects to consult with project-affected groups and local NGOs about the project’s environmental aspects and take their views into account. The Policy further requires that the borrower must consult these groups at least twice; once shortly after environmental screening and before the terms of reference for the EA are finalized; and again after a draft EA report is prepared.²²⁰

236. In accordance with OP 4.01, the borrower also needs to consult with such groups throughout project implementation as necessary to address EA-related issues that affect them.²²¹ For these purposes, the borrower must provide relevant material, such as a draft EA, in a timely manner before consultation “*in a form and language that are understandable and accessible to the groups being consulted.*”²²² Further, OP 4.01 is explicit that the borrower must consult affected groups and local NGOs “*as early as possible*”.²²³

²¹⁶ VCDP 2014 sub-section 5.1 and 5.1.1

²¹⁷ Ibid, 5.2.3

²¹⁸ Ibid, Section 5.3.

²¹⁹ Ibid, Section 5.4.

²²⁰ OP 4.01, para 14.

²²¹ Ibid.

²²² Ibid, para 15.

²²³ Ibid, para 14.

237. *Involuntary Resettlement.* OP 4.12 recognizes that displacement resulting from development projects, if unmitigated, leads to impoverishment and a wide range of severe impacts on affected people. It provides that Involuntary Resettlement should either be avoided or conceived and executed, in consultation with displaced people, as an adequately funded sustainable development program that improves or restores the standards of living of displaced people.

238. In order to ensure this, the Bank requires both the integral participation of displaced persons and public disclosure of resettlement instruments. OP 4.12 requires that displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.²²⁴ The policy requires the borrower to inform potentially displaced persons at an early stage about the resettlement aspects of the project and take their views into account in project design.²²⁵ Furthermore, “*as a condition of appraisal*” the borrower makes available at a place accessible to displaced persons and local NGOs the relevant draft resettlement instrument, in a form, manner, and language that are understandable to them. The final resettlement instrument is made available to the public through the Bank’s InfoShop, and both the Bank and the borrower disclose it again “*in the same manner*”.²²⁶ Bank Procedure (BP) 4.12 reiterates these requirements.



Picture 9 - Panel Team enroute to project site in Sindhuli district

239. *OD 4.20 on Indigenous People.* OD 4.20 states that the strategy for addressing IP issues must be based on the informed participation of IPs themselves; “*thus, 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 to natural and economic resources.*”²²⁷

²²⁴ OP 4.12, para. 2[b].

²²⁵ OP 4.12, para. 19.

²²⁶ OP 4.12, para 22.

²²⁷ OD 4.10, para 8.

Also, the IPDP should include, as needed, a Strategy for Local Participation with mechanisms for the participation of IP in decision-making throughout the project cycle.

240. *OP 4.10 on Indigenous People.* OP 4.10 requires free, prior, and informed consultation resulting in broad community support as a condition for the Bank to provide project financing.²²⁸ The policy states that free, prior and informed consultation with the affected Indigenous Peoples' communities "*refers to a culturally appropriate and collective decision making process subsequent to meaningful and good faith consultation and informed participation regarding the preparation and implementation of the project. It does not constitute a veto right for individuals or groups.*"²²⁹

241. Based on these consultations, the Borrower needs to establish an appropriate gender and inter-generationally inclusive framework, which provides opportunities for consultations at each project preparation and implementation stage. The policy requires that the consultation methods used must be appropriate to the social and cultural values of affected IPs. Annex A of OP 4.10 on Social Assessment states that the assessment should include, taking the baseline information into account, the identification of key stakeholders and the elaboration of a culturally appropriate process for consulting with the IPs at each stage of the project.²³⁰

242. BP 4.10 requires the consultation process to start early "*since decision making among Indigenous Peoples may be an iterative process, and there is a need for adequate lead time to fully understand and incorporate concerns and recommendations of Indigenous Peoples into the project design*"²³¹.

B5. Panel Findings

243. Bank Management acknowledges shortcomings in the disclosure of safeguard documents for the PDP. The Panel notes that English versions of the relevant safeguard documents were disclosed in hard copy at local level KDTL offices in 2005/2006, and were later made available on the NEA website in 2013, including some missing documents. Moreover, the Panel notes that the updated VCDP and ARAP in Nepali were to be made available by NEA after these were developed. **The Panel notes Management's acknowledgement that the safeguard provisions for disclosure of project documentation have not been fully observed and are being rectified.**

244. With respect to consultations on the EIA, which the Panel notes were conducted at the height of the Maoist insurgency thereby making outreach efforts and participation in them difficult, project documents show that consultations and public hearings were carried out in various locations and with multiple stakeholders. The Panel notes that two public hearings were held in the project area (Manthali and Dhalkebar) to discuss the draft EIA and to revise it in light of views solicited. Although details are given of the notices placed in public places and local

²²⁸ OP 4.10, para 1.

²²⁹ OP 4.10, para 1.

²³⁰ OP 4.10, Annex A, para. 2 (c).

²³¹ BP 4.10, para. 2 (c).

newspapers to alert interested parties to meetings and consultations being conducted, no indication is given of the relationship of the selected locations to the route of the transmission line.

245. Also, though the transmission line traverses 5 districts, the public hearings were held in 2 districts only. The Panel is of the opinion that this approach may have made the participation of people from the remaining 3 districts, including Sindhuli, difficult given the travel distances. Consultations in each district would have facilitated greater participation of potentially affected persons, and ease of access in reaching consultation venues, especially given the insurgency situation.

246. Annexes to the EA provide details of persons contacted (although over 39 are listed for Sindhuli, a few of them are from the private sector and are not PAPs), focus group meetings conducted (seven in Sindhuli), NGOs contacted (three social groups for Sindhuli), and the two public hearings held (neither in Sindhuli district). Annexes also provide details of participants, village district committee recommendations, and questionnaires used.

247. The Panel notes that there is no record of consulting with affected people on the Terms of Reference of the EA report. An information booklet in Nepali language is stated to have been prepared in advance of the two public hearings, but there is no information about whether the draft EA that was displayed at the two public hearings was made available in Nepali and other relevant local languages, thereby falling short of OP 4.01's requirement that relevant information, such as a draft EA, is made available in a timely manner before consultation "*in a form and language that are understandable and accessible to the groups being consulted.*". By requiring the borrower to timely disclose such project-related information, the Bank aims to enable project-affected populations and local NGOs to express their views about the risks, concerns, and benefits from the project. That said, the Panel notes that the EA provides a record of 7 focus group discussions, thereby suggesting that steps were taken to consult with forest user groups, project affected families, and local people.

248. The Panel notes that OP 4.01 requires the borrower to consult with affected persons and local groups throughout project implementation as necessary to address EA-related issues that affect them. However, there is limited information available for consultations held during project implementation, when the KDTL was facing delays and local opposition in the Kamalamai area and adjoining VDCs was growing. Bank staff were curtailed in their movement due to the security situation and relied on the NEA to consult with local groups. Subsequent to 2011, after the protest action delaying the construction of the transmission line started in Sindhuli, and especially after the submission of the Request, consultation with affected parties in the Kamalamai municipality and adjoining VDCs has been intense, with both NEA and Bank staff participating.

249. With respect to consultation and disclosure of information related to Involuntary Resettlement, the Panel's visit revealed a series of difficulties in reaching an acceptable solution for land acquisition and compensation for KDTL. The Panel notes a lack of engagement between affected families and the Government on land acquisition and compensation issues from the very outset of the transmission line project, and a failure to establish trust. Mistrust and suspicion,

reinforced by a lack of accurate information flowing from project authorities to the affected families, was evident from the initial project preparation in 2003. The many phases of transmission line planning, from initial survey to tender, involved survey staff drawn mainly from non-local contractors with a focus on specific technical issues to do with alignments and physical engineering challenges. The villagers met by the Panel team allege that survey staff provided incorrect information about the reasons for the survey, sometimes saying it was to install mobile phone towers, and at times saying it was for radio transmitters.

250. The Panel notes that accurate identification and demarcation of affected properties (lands, buildings, community structures and resources) in the disputed section of the ROW was not known for a period of seven years, i.e., from the time the ARAP was prepared in 2006 to 2013 when a new cadastral survey was undertaken. This meant that property owners did not have accurate identification and demarcation of affected properties. During this time, relations between affected households and project staff deteriorated with little constructive dialogue and few opportunities to address the root causes of the various disputes, allowing misinformation to flow freely within the community. Moreover, the absence of genuinely representative liaison staff providing a bridge between Project Management and affected households hampered such consultations, particularly in a post-insurgency political environment where there was an absence of local democratic representation.

251. The Panel also notes that the Bank's IP policy applicable to the Project until 2009, OD 4.20, requires the informed participation of IPs so that they can identify their preferences and incorporate indigenous knowledge into project approaches. In order to do this, the policy requires appropriate and early use of experienced specialists. The Panel notes the 2006 VCDP was prepared by a team from ESSD comprising an economist and a sociologist, with Nepali as the medium of communication. The VCDP notes that this was the first VCDP prepared by ESSD/NEA.

252. Furthermore, the policy requires that the IPDP (OD 4.20 does not contain references to a VCDP) should include, as needed, a Strategy for Local Participation with mechanisms for the participation of IPs in decision-making throughout the project cycle, and such a Strategy is not available in the VCDP. Moreover, it is not clear from project documents what material was prepared to explain the project to IPs and other vulnerable groups, most of whom had low literacy levels and some whose mother tongue was not Nepali, to seek their feedback and also where and how this feedback was documented. Also, as noted earlier, Management has acknowledged that only the English version of the VCDP was disclosed in 2006 at 3 project locations.

253. As noted earlier, the Project was subject to OP 4.10 on Indigenous People after its 2009 restructuring. OP 4.10 requires free, prior, and informed consultation resulting in broad community support as a condition for the Bank to provide project financing. The policy describes free, prior and informed consultation as a culturally appropriate and collective decision making process subsequent to meaningful and good faith consultation and informed participation regarding the preparation and implementation of the project. It does not constitute a veto right for individuals or groups.

254. The Panel notes that for the 2014 VCDP, the Bank ensured specific consultations with IP groups. Some members of indigenous communities, together with representatives of the Struggle Committee in Sindhuli, however, informed the Panel team during the investigation visit that they were not consulted with proper information in a timely manner and in good faith. Furthermore, the Panel's field trip confirmed that IPs in the area can understand the Nepali language but are unable to communicate adequately, and need to use their native language for clarity. This distinction was not acknowledged in project documents and did not lead to modifications in project implementation, particularly with regards to disclosure, consultation and participation.

255. The Panel notes that although the consultation requirements of Bank policies on Environmental Assessment, Involuntary Resettlement, and Indigenous Peoples may vary (as noted earlier), what they have in common are the principal requirements for early, meaningful, and continuous consultations with project affected persons during project preparation and implementation. The objective of these requirements is to improve project design, minimize adverse impacts, and enhance project benefits. The Panel notes that in the case of the KDTL, a lack of sustained communication and consultation during project preparation and implementation led to the spread of misinformation about the transmission line, especially as stated earlier, about its perceived health impacts, and this contributed to the opposition to the ROW. **In light of the foregoing, and while noting the precarious security situation prevalent in Sindhuli at the time of Project preparation and implementation and the travel restrictions this placed on Management, the Panel finds that Management did not ensure adequate, timely and meaningful consultations during Project preparation and implementation, in non-compliance with OP/BP 4.01 Environmental Assessment, OP/BP 4.10 Indigenous Peoples and OP/BP 4.12 Involuntary Resettlement.**

C. Project Supervision

C1. Context and Challenges

256. The Panel notes that although the Requesters do not have a specific claim in their Request about project supervision by Bank Management, they do raise concerns related to supervision in the context of the development of safeguards documents and implementation of mitigation and compensation measures. As noted in previous chapters of this report, the Requesters raise particular concern about the analysis of alternatives, the possible impacts of electro-magnetic fields on the health of residents living under or near the 220 kV line, implementation of resettlement and livelihood restoration plans, payment of compensation, impacts on livelihoods of indigenous communities, consultation during Project preparation and implementation, and the disclosure and translation of key documents. The Requesters note that they brought their concerns to Management's attention on at least two occasions prior to filing the Request, and had received assurances from Management that it would try to resolve their concerns. They conclude by stating that *"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."*

257. Management notes that the PDP was implemented during a particularly turbulent period of Nepal's history which caused *"huge challenges both for NEA to implement the PDP and the Bank to supervise the Project, including limitations in visiting Project sites at different junctures*

of Project implementation.”²³² Management believes that it followed the policies and procedures applicable to the matters raised in the Request and “weaknesses” in disclosure and consultations are being addressed. Management does not agree that the harm alleged in the Request stems from the weaknesses in the implementation of the Project, and believes that the Requesters’ rights or interests have not been, nor will they be, directly or adversely affected by a failure of the Bank to implement its policy and procedures.

258. Management states it will continue to supervise the Project to ensure adequate implementation of the environmental and social mitigation measures consistent with Bank Policy and global good practices. Management hopes that the measures outlined in its Action Plan (Annex 1.6 of the Management Response) will improve the Project, address outstanding issues related to the Transmission Line, and enhance NEA’s capacity in social and environmental safeguards supervision and community outreach.²³³

259. The Panel recognizes the precarious security situation prevalent in the Sindhuli area during the time when the main safeguards documents like the EIA/SIA (2005), VCDP (2006) and ARAP (2006) were developed, when transmission line construction started (2008), and when the Peace Accord was signed (November 2006) and the civil war was officially declared over. The Panel notes that despite a formal end to the ten year insurgency, sporadic incidents of violence in both Kathmandu and the country side continued and a sense of insecurity prevailed. The Panel is also aware that Bank staff were unable to travel to Project sites during the time of the insurgency, and also at times during the post-insurgency period when sporadic violence occurred. The Panel was also informed that Management hired a local social development consultant to assist with sub-project implementation as this individual could more easily travel to Sindhuli and other sub-project areas.

C2. Supervision during the Project Cycle

260. *1995-2006 Project Preparation and Insurgency Years.* Preparation for the PDP started in 1995 when the Project Concept Note was issued. The Maoist insurgency began just months later, in February 1996. Project preparation continued with several key documents (as discussed earlier, such as the EIA/SIA, ARAP, and VCDP) completed, and the PDP was approved in 2003, at the height of the insurgency. Management was cognizant a few years into Project implementation that the uncertain political situation and poor security environment could have severe adverse effects on the Bank’s portfolio. Besides concern for the safety of staff, consultants and contractors, the Bank faced difficulty in mobilizing staff and delays due to problems in the movement of goods and essential construction material to various districts due to strikes and “bandhs” (political protests).²³⁴ Management notes several times in its mission documents and restructuring papers that progress on the PDP was slow due to political instability, delays in implementing decisions, and the “*weak implementation capacity of the NEA*” which “*contributed to protracted delays in implementing the transmission and distribution component*

²³² Management Response, para 10, p. 4.

²³³ Ibid, para 47, p. 13.

²³⁴ Background Note for the June 16th Portfolio Review Meeting, RVP Portfolio Review Meeting June 16, 2005, Nepal.

of the project.”²³⁵ For the reasons noted above, the PDP’s progress was deemed unsatisfactory by Management from very early on.

261. Management also noted that the KDTL’s safeguards documents (ARAP and VCDP) were “generally well prepared, and reflected the detailed technical discussions held with NEA in the past to strengthen the quality of its social studies.” Management felt that the Environmental and Social Studies Department (ESSD) of NEA, headed by a Director, had been strengthened and that this would “enhance the quality of reports being submitted to IDA but also build capacity within NEA on environmental and social issues.”²³⁶ The Maoist signed the Peace Accords in November 2006, although incidents of sporadic violence continued both in Kathmandu and the country side.

262. *2007-2012 Post Insurgency Period.* A mid-term review of the Project was carried out in June 2007, which concluded that there did not appear to be major environmental or social safeguard issues at the time, although institutional strengthening and environmental and social M&E would have benefitted from further strengthening.²³⁷ KDTL implementation began in earnest in 2008 after the completion of the EMP. Management remained aware, however, of the problems with the implementation of the NEA transmission line component, which in Management’s view, emanated from: “(i) poor planning (e.g. inadequate surveying for transmission lines); (ii) weak senior management decision-making capacity that leads to delays in procurement and contract management; (iii) inadequate staffing including inadequate field presence. Broadly, these weak points are exacerbated by the protracted nature of the political instability in Nepal and the sector’s sensitivity to the political process. At the same time that the overall environment for project implementation has deteriorated, the project management burden on NEA has grown considerably, in part due to the intensified preparation of the Cross-Border Transmission Line Project and the Kabela Transmission Line Project for which GON has requested Bank assistance.”²³⁸ In another report, Management reported that the safeguards for the NEA component have been complied with satisfactorily prior to construction of the transmission and distribution lines.²³⁹ By June 2011, Management had noted that overall safeguard compliance was “Moderately Unsatisfactory”, mainly due to “gaps in timely preparation of safeguards assessment reports and progress reports, as well as delays in payment of compensation to Project Affected Families.”²⁴⁰

263. To address the situation regarding the implementation problems of the NEA component and to agree on measures to improve the implementation of the component, Management proposed raising issues with the senior management of the Ministry of Finance, Ministry of Energy and NEA. Options to respond to the situation included possible cancellation of funds for which procurement has not been commenced, preparation of action plans to address, and hiring

²³⁵ Proposal To Restructure Power Development Project (CREDIT NO. 3766-NEP & IDA GRANT NO. H0390-NEP).

²³⁶ Aide Memoire, Power Development Project, IDA Supervision Mission, September 21 - October 3, 2005.

²³⁷ PDP Mid-Term Review Aide Memoire, June 2007, para. 29.

²³⁸ Implementation Status and Results Report, Section “Issues for Management Attention”, Sequence 15, November 2010.

²³⁹ Back to Office Report, February 2007.

²⁴⁰ Implementation Status and Results Report, Sequence 16, June 2011.

of a local consultant to assist with implementing the action plan and especially its safeguards related items.²⁴¹

264. Management notes in its December 2011 Implementation Status and Results Report (ISR) that work on the Khimti-Dhalkebar transmission line, which according to Management was in an advanced stage, was “*stalled due to compensation issues spanning across a short length of the transmission line.*”²⁴² To address this problem, the ISR recommended that payment of pending compensation payments and R&R assistance packages need to be expedited in all transmission line projects.²⁴³ From then onwards, Management was aware of the problems in implementation of the KDTL, and especially the 8 towers that still needed to be constructed and strung, and noted that addressing this issue required land acquisition, right-of-way compensation and rehabilitation & resettlement payments.²⁴⁴ The Panel is aware that following complaints from the community in January 2012, the Government of Nepal constituted a Technical Committee in March 2012 to re-assess the alignment for the disputed stretch of the ROW in Sindhuli district. The Committee recommended continuing with the existing alignment based on its findings.²⁴⁵

265. On April 19, 2012 the GON announced a new compensation package consisting of: (i) construction of a road to benefit the local community along the affected stretch of the ROW, and (ii) electricity supply without any load shedding to Kamalamai municipality (covering all the 6 disputed towers). This package was intended to accommodate the compensation of the affected people in the disputed section of the ROW at 100% land value.

266. *2013-Present.* As noted earlier, the Requesters approached Bank Management in February 2013 asking for a review of the transmission line alignment, their concerns about inadequate disclosure of Project documents, and a clash between police and local people who were protesting the survey of the feeder road section. Management engaged with NEA to speedily announce compensation for the disputed section, which was done in March 24, 2013. Following the submission of the Request for Inspection in July 2013 and the preparation of the Action Plan, Management supervision has been robust and much more responsive to issues raised by the community.

C3. Relevant Provisions in Bank Policy

267. Supervision requirements applicable to the Project are set in the now archived OP/BP 13.05 on Project Supervision. OP 13.05 required that Management ensures that the borrower is carrying out the project with due diligence; that Management identifies problems promptly as they arise during implementation, and recommend to the borrower ways to resolve problems; that Management propose measures to adapt project design as the project evolves or circumstances change; and finally that Management identifies the key risks to project sustainability and recommend appropriate risk management strategies and actions. These

²⁴¹ Ibid.

²⁴² ISR, Sequence 17, December 2011.

²⁴³ Ibid.

²⁴⁴ ISR, Sequence 18, November 2012.

²⁴⁵ Management response, para v, p. v.

requirements are complemented by the “Guidelines to Staff on Project Supervision” which are internal staff documents intended to provide a better understanding of good supervision practice.

Box 1: World Bank “Guidelines to Staff on Project Supervision”

Supervision is not limited to official missions and formal reports, rather it is a continuing and flexible process, specific to the needs of the particular operation and intended to foster a close partnership among the Bank, the borrower, and implementing agencies. Although the borrower and its implementing agencies are responsible for project implementation, resolving implementation problems is the shared concern of all stakeholders including the borrower, the Bank, and project beneficiaries. To develop a collaborative relationship and an environment in which problems and their causes can be identified and addressed promptly, Bank supervision task teams (TTs) should strive to establish and maintain close, frank, and ongoing relationships with staff of the borrower, implementing agencies, and a range of other stakeholders.

268. BP 13.05 requires the Bank’s Task Team to regularly monitor progress in all substantive aspects of the project against the targets, ascertain the extent of compliance with loan covenants, including those related to environmental and social safeguards, assesses risks to successful implementation, operation, and sustainability of the project, and as appropriate, visit the project sites and facilities to review progress, provide advice, meet with project beneficiaries and stakeholders, review Project Monitoring Reports, carry out ex post reviews of procurement, and obtain additional information.

269. BP 4.12 Involuntary Resettlement also states in Paragraph 17 that “*a project is not considered complete--and Bank supervision continues--until the resettlement measures set out in the relevant resettlement instrument have been implemented.*” The implication of this requirement is that a project Implementation Completion and Results Report (ICR) cannot be submitted until resettlement measures have been implemented and evaluated, and lessons for future operations summarized. Also, if the evaluation suggests that the objectives of the resettlement instrument may not be realized, the ICR assesses the appropriateness of the resettlement measures and may propose a future course of action, including, as appropriate, continued supervision by the Bank.

C4. Panel’s Observations

270. The Panel notes that the Project was approved in 2003, a few years before the Maoist insurgency ended. Field work for the safeguards related documents, such as the EIA/SIA, was done in 2004, almost a year before the Peace Accord was formally signed. The main safeguard documents like the EIA, ARAP and VCDP were developed between 2005 and 2006, very soon after the armed insurgency ended but while its after effects were still being felt in the country, including Sindhuli district which had suffered from significant Maoist violence.²⁴⁶ Transmission line implementation did not begin until May 2008, some months after the first project restructuring, and Management became aware of ROW problems in Sindhuli in late 2011.

²⁴⁶ In 2002, the Bhimad police station in Sindhuli was attacked by Maoists and 49 policemen were killed as noted in “The Maoist Insurgency in Nepal: Revolution in the twenty-first century”, edited by Mahindra Lawoti and Arup K. Pahari, Routledge, 2010.

271. The Panel notes that Management restructured the non-KDTL related Project components three times to address implementation delays, and reported on problems related to the PDP and the KDTL in its supervision reports openly and made suggestions for improvements. Once Management became aware of the problems voiced by project-affected people unhappy with aspects of the transmission line installation, Management recorded these diligently and offered recommendations to resolve them. These recommendations included not carrying out further works in the disputed sites without permission of owners or committee members whose lands or properties were not acquired or compensated. There is also evidence in the Back to Office reports that Bank staff recommended that changes to the power line route be considered by NEA and that this did lead to the formation of the Technical Committee that explored the possibility of an alternative route between towers 28/2 and 31/1. Similarly, the Management-NEA Action Plan developed after the submission of the Request for Inspection, and the March 2014 back to Office report lists many actions to resolve issues that had been raised by PAPs.

272. However, while the PAD did recognize that “*the Project faces high implementation and economic risks due to the security situation in Nepal*” there is no recorded recognition of the risk to transmission line construction or operation as a consequence of its route across a district in which the Maoist armed insurrection had originated. The potential risk that the migration of indigenous people from the Terai in the south of the country to the Sindhuli area would lead to raising land prices was also not anticipated. As these risks were not recognized in the early stages of the KDTL, there was no attempt by Bank staff to manage them before opposition to the transmission line’s route in the Sindhuli area became apparent. Once the risks inherent in the opposition to transmission line routing were recognized, Bank staff proposed appropriate risk management interventions.²⁴⁷

273. The Panel notes that the gaps in quality of the ARAP and VCDP and the delay in the provision of R&R assistance and implementation of the community development plan are discussed in the earlier chapters, and will not be repeated here. The Panel is also aware, as stated earlier, of the security situation in Nepal during the early years of the Project and the restrictions this placed on staff travel and its implications for supervision. A lack of field visits and direct interactions with project affected persons post-Insurgency, however, resulted in a “*supervision vacuum*” which Management tried to fill by hiring a local consultant, but this approach does not seem to have been entirely successful. The Panel also notes, as discussed earlier, the absence of an effective project level grievance redress mechanism which could have facilitated early knowledge of ROW problems and also assisted in early resolution. Problems related to implementation of the NEA component were documented by Management as early as November 2010²⁴⁸ (two years after KDTL construction started), and difficulties in ROW compensation were brought to Management’s attention by NEA as early as July 2011. It was only after the submission of the first written complaint to Bank Management and the submission of the Request for Inspection a few months thereafter, however, that Management proactively engaged with the ROW problems in Sindhuli.

²⁴⁷ Section 5, back to Office Report 4-6 April 2013.

²⁴⁸ ISR, Section “Issues for Management Attention”, November 2010.

274. Despite Project closure on December 31, 2013, the Panel notes Management's commitment to monitor resettlement measures set out in the ARAP until these are implemented, in accordance with BP 4.12, and not issuing the Implementation Completion Report (ICR) until such time.²⁴⁹ The Panel also notes there are lessons for project supervision in a conflict setting to be learned from this experience, which Management has committed to document in a case study as noted in the Action Plan.

²⁴⁹ Internal Memo, June 2014.

Chapter 5: Conclusions

275. This Chapter presents the main conclusions of the Inspection Panel investigation of the Nepal Power Development Project, and specifically its Khimti-Dhalkebar Transmission Line subproject. As stated repeatedly throughout the Report, the Panel recognizes the difficult political circumstances resulting from an armed insurgency that plagued the implementation of the Project. It is not surprising, therefore, that the Project had to be re-structured three times due to security challenges and also in part due to capacity constraints of the implementing agency, the NEA. The impact that these circumstances had on KDTL construction is clear.

276. The central message of this report is that Panel compliance findings need to be seen in light of both the country and the Project contexts. The Panel recognizes and appreciates that Management has accepted some of the shortfalls of its past engagement with the impacted communities, and is now taking a more proactive stance, even though the Project is closed. This is especially important as there are pertinent lessons that need to be taken forward given that the energy sector constitutes an important part of the Bank's current Nepal Country Partnership Strategy and therefore the Bank's continued engagement in this vital sector.²⁵⁰ The Panel acknowledges Nepal's hydroelectric potential and the role this sector can play in fostering economic growth and reducing poverty while providing clean energy.

277. Nepal is one of the poorest countries in the region, and it has undergone significant political unrest in the past, with consequences whose impacts persist today. It continues to face a crisis of availability and delivery of modern energy services. Thus, and despite low per-capita electricity consumption, there continues to be 18 hour load shedding, and the challenge of low electricity availability is expected to expand as demand increases. Its significant hydropower resources could assist the country in overcoming some of these problems. There are, however, barriers to their full exploitation, including weaknesses in the regulatory environment, and a general lack of public sector capacity.

278. Regarding the KDTL, the Panel has determined that its implementation traversed several well-defined "phases," including some in which it was practically impossible for Bank staff to visit the field because of security concerns, resulting in limited engagement with the affected community and curtailing actions to solve some of the implementation problems that appeared later. In addition, the Panel notes the weak institutional capacity of NEA as the implementing agency. Despite some attempts at rectifying these weaknesses, very little was undertaken in the direction of a more comprehensive support for capacity building at NEA by the Bank during project implementation. The protracted implementation of the KDTL further aggravated relations with the communities where the Requesters are located. The Panel also notes that many aspects of the complaint are a clear result of misinformation and lack of adequate communication and consultation. This intermittent and often non-existent engagement further solidified the community's fears and mistrust.

²⁵⁰ Country Partnership Strategy for Nepal FY 2014-2018, International Development Association, International Finance Corporation, and Multilateral Investment Guarantee Agency, May 1, 2014, Report No. 83148-NP

279. The Panel's assessment is that whereas for objective reasons related to security, it become difficult to regularly visit and supervise the KDTL closely, no alternative means of effective and enduring engagement with the community were developed. Unfortunately this continued to be the case even after the security situation improved. The same "hands off" approach essentially continued, and relations with the impacted community became further strained. The situation deteriorated even further and physical opposition to any further works started in Kamalamai municipality, including sit-downs with resulting clashes with authorities. This situation changed after the receipt of the Request for Inspection, when Management began a much more proactive involvement in project implementation.



Picture 10 - Transmission Line and Right of Way - Sindhuli district

280. Regarding KDTL implementation, the Report points out that Kamalamai municipality and VDCs around it are part of a fast urbanizing landscape with people returning after having fled due to the Maoist insurrection, and the in-migration that happened after the *Madhesi* uprising. This is changing the district's rural character and the nature of livelihoods in it, accompanied by changes in the value of land. Land values have gone up significantly with the expectation that in the near future the area in and around Kamalamai municipality will become largely urbanized. In this context, a better understanding of these changes and more flexible approaches could have helped prevent the problems that arose. Moreover, the requisite implementation of resettlement and compensation within this regulatory environment was slow and negatively affected by a lack of due diligence and low capacity of NEA, further amplified by the reduced Bank engagement. As stated earlier, this lack of engagement encouraged spread of misinformation about compensation, thus further negatively impacting relations with the community. A "perfect storm" was in the making.

281. The Panel's investigation findings relate to four main groups of issues. These encompass the application of policies related to (i) Analysis of Alternatives, Environmental Assessment and Health Impacts, (ii) Resettlement and Compensation, (iii) Indigenous Peoples and Cultural Properties, and (iv) Consultation, Disclosure and Supervision. The latter issues cut across all of the others and seem to have been among the root cause of the problems.

282. Regarding the Analysis of Alternatives, the Panel reviewed the EA and the Report of the Technical Committee appointed to assess an alternative route for the disputed 3.85 kilometer stretch of transmission line in the Kamalamai Municipality of the Sindhuli district. The Panel

found that such limited and restrictive assessment of alternatives is not what is envisaged in OP 4.01, concluding that the study of alternative transmission line alignments in this 3.85 km stretch was inadequate and does not comply with the requirements of OP 4.01.

283. The Panel also found that while the PDP Policy Framework set out in appropriate detail the studies to be undertaken to assess the environmental and social impacts of sub-projects that fall under the PDP, it did not discuss whether the capacity existed to carry out such detailed and comprehensive assessments, nor whether the country had systems to appropriately review and monitor the implementation of identified remedial and mitigatory measures. The Panel also found that the relevant project documents, such as the EA, did not carry out an institutional analysis nor identify the capacities of the NEA in non-compliance with key provisions of OMS 2.20, OD 4.01, and OP/BP 4.01. Regarding health impacts, the Panel noted the consensus of the scientific community, as represented by the ICNIRP, that there is no risk to public health from exposure to low frequency electromagnetic fields at or below established ICNIRP reference levels. In addition, the Panel notes that the Bank followed the guidance provided in the World Bank Group EHS regarding the health impacts from electromagnetic fields. Consequently, the Panel found Management in compliance with OP/BP 4.01 Environmental Assessment.

284. On Resettlement and Compensation, the Panel makes five related findings: (i) that since the number of displaced households, as identified in both the 2006 and 2014 ARAPs, was below 200 and the impacts of the transmission line are minor given its linear nature, Management's decision to proceed with an ARAP was in compliance with OP/BP 4.12 on Involuntary Resettlement, (ii) regarding the adequacy of resettlement-related documents, the Panel has noted that OP 4.12 requires a census survey and updated socio-economic information on the displaced people's livelihoods, but because the 2006 ARAP was not updated at the required juncture (i.e., after the end of the insurgency and before resumption of the transmission line construction), Management is not in compliance with OP/BP 4.12 on Involuntary Resettlement, (iii) the Panel noted the significant delays between compensation payments and the confusion about when instalment payments were to be released, finding this to be in non-compliance with OP4.12 which requires prompt and effective compensation payment to be made to eligible individuals, and (iv) the Panel also found significant delays and inconsistencies in the provision of Resettlement and Rehabilitation (R&R) assistance to displaced households in the ROW, in non-compliance with OP/BP 4.12 on Involuntary Resettlement. Finally, (v) the Panel also found the lack of an appropriate and accessible grievance mechanism for KDTL to be in non-compliance with OP 4.12.

285. The Panel finds that given the prevalence of indigenous, *Dalit* and other vulnerable communities in the disputed ROW, Management's decision to apply a "mixed communities" approach was in compliance with OP 4.10 on Indigenous People. However, the Panel notes that a clear justification by Management of its decision to adopt such an approach would have been helpful.

286. The Panel concurs with Management's decision not to trigger OP/BP 4.11 for the KDTL as the transmission line does not directly impact physical cultural resources, and Management analyzed this criterion adequately in project documents. However, the Panel's field visit showed

that the plan for mitigation measures could have been stronger, and information regarding potential impacts could have been better communicated.

287. On the issue of disclosure and consultation, the Panel noted Management's acknowledgement that the safeguard provisions for the disclosure of project documentation have not been fully observed and are being rectified. In addition, while noting the precarious security situation prevalent in Sindhuli at the time of Project preparation and implementation, and the travel restrictions this placed on Management, the Panel finds that Management did not ensure adequate, timely and meaningful consultations during Project preparation and implementation in non-compliance with OP/BP 4.01 Environmental Assessment, OP/BP 4.10 Indigenous People and OP/BP 4.12 Involuntary Resettlement.

288. From the observations presented above, it is clear that the Bank was confronted with many issues arising from the security situation in Nepal, in addition to the specific characteristics of the KDTL and project area. While the Panel has noted several instances of Policy non-compliance, these are very much a consequence of reduced engagement of the Bank, coupled with weak capacity of NEA. The Panel is encouraged by the renewed commitment of the Bank to provide support to and seek to resolve the issues raised by the project-affected people beyond project closure, in addition to a clearly observed more proactive NEA leadership.

289. This change is extremely important, given the Bank's declared intention to continue its support for the energy sector in Nepal. Ensuring the sustainability of new engagements, in addition to avoiding the pitfalls of the previous one, becomes crucial. The Panel is of the view that several issues and lessons will need to be taken into account to enhance the sustainability of this engagement, including improvement and streamlining of the regulatory environment for the sector as necessary, ensuring capacity strengthening of NEA especially in environmental and social aspects, fostering close contact, consultation and "buy-in" of impacted communities, particularly where IPs and other vulnerable communities are present, and ensuring careful preparation of resettlement, compensation and grievance redress measures.

290. The Panel notes that the Bank is well positioned to learn these lessons and take additional ones into account, so that it can support Nepal to develop its immense clean energy resources with the aim of ensuring growth and reducing poverty.

Annex 1: Table of Findings

Issue	Panel Findings & Key Observations
1: Environmental Assessment – Appraisal and Analysis of Alternatives	<p><u>Analysis of Alternatives:</u> From the Report of the Technical Committee appointed to assess an alternative route for the disputed 3.85 kilometer stretch of transmission line between towers 28/2 and 31/1, it is apparent that the Committee only considered one given alternative to the preferred alignment and did not attempt to find an optimal route. It is also clear that the Committee: (a) restricted the parameters used to compare the two alignments; (b) did not consider socio-economic factors; and (c) stakeholder input was not considered. Such limited and restrictive assessment of alternatives is not what is envisaged in OP/BP 4.01. The Panel therefore finds that the study of alternative transmission line alignments in the 3.85 km stretch in Kamalamai municipality of the Sindhuli district does not comply with the requirements of OP/BP 4.01.</p> <p><u>Capacity.</u> The Panel finds Management to be in non-compliance with key provisions of OMS 2.20, OD 4.01, and OP/BP 4.01 regarding institutional analysis and capacity building of the project implementing agency, the NEA.</p>
2: Environmental Assessment - Health Impacts	<p>The Panel notes the consensus of the scientific community, as represented by the ICNIRP, that there is no risk to public health from exposure to low frequency electromagnetic fields at or below established ICNIRP reference levels, or that the possibility of a risk is too speculative for a scientifically justified reference level to be established. The Panel also notes that Management has followed the guidance provided in the World Bank Group EHS regarding health impacts from electromagnetic fields. The Panel therefore finds Management to be in compliance with Bank policy OP/BP 4.01 which requires that an EA has to take into account human health and safety.</p>
3. Involuntary Resettlement	<p><u>Choice of instrument:</u> Given that the precise alignment of the transmission line was not known at the time of Project preparation and appraisal, the paucity of information available at this time meant that Management correctly took the policy framework approach. The Panel finds that since the number of displaced households, as identified in both the 2006 and 2014 ARAPs was below 200 and the impacts of the transmission line are minor given its linear nature, Management’s decision to proceed with an ARAP was in compliance with OP/BP 4.12 on Involuntary Resettlement.</p> <p><u>Adequacy of resettlement-related documents:</u> The Panel notes that OP 4.12 requires a census survey and updated socioeconomic information,</p>

	<p>including on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement. The Panel finds that since the 2006 ARAP was not updated at the required juncture, namely after the end of the insurgency and before the start of transmission line construction, Management is not in compliance with OP/BP 4.12 – Involuntary Resettlement.</p> <p><u>Land Acquisition and Compensation:</u> The Panel notes the significant delays between compensation payments and the confusion about when instalment payments would be released. The Panel finds that this is not in compliance with OP/BP 4.12 – Involuntary Resettlement which requires that prompt and effective compensation payment be made to eligible individuals.</p> <p><u>Implementation of R&R assistance:</u> Project documents state that the Khimti-Dhalkebar Environmental Management Unit (KDTL-EMU) was to be responsible for facilitating the relocation process laid out in the ARAP’s Community Support Program, and monitor the allocation of compensation and rehabilitation grants in a timely and effective manner. However, the KDTL-EMU was discontinued in 2011 when its contract expired, and its responsibilities transferred to the NEA Project office in Kathmandu. The Panel finds that there were significant delays and inconsistencies in the provision of R&R assistance to displaced households in the ROW in non-compliance with OP/BP 4.12 – Involuntary Resettlement.</p> <p><u>Grievance Redress:</u> Management’s Response states that the KDTL-EMU was established before KDTL construction started and besides having other responsibilities, it also functioned as the Project’s grievance redress unit. The Panel notes that once KDTL-EMU’s contract expired in 2011, the grievance redress function was assumed by the Project office in Kathmandu thereby not providing a site-based grievance redress option. The Panel finds the lack of an appropriate and accessible grievance mechanism for KDTL to be in non-compliance with OP/BP 4.12 - Involuntary Resettlement.</p>
8. Indigenous People	<p><u>Identification of IPs in Disputed ROW:</u> The Panel notes that the 2006 and 2014 VCDPs would have been stronger documents had they included an analysis of the impacts of the transmission line on the endangered, highly marginalized indigenous groups whose members may be among the Severely Project Affected Families (SPAFA) facing relocation as a consequence of the transmission line. The Panel also notes that a justification by Management of its decision to adopt a “mixed communities” approach in this case would have been helpful. The Panel finds that given the prevalence of indigenous, Dalit and other</p>

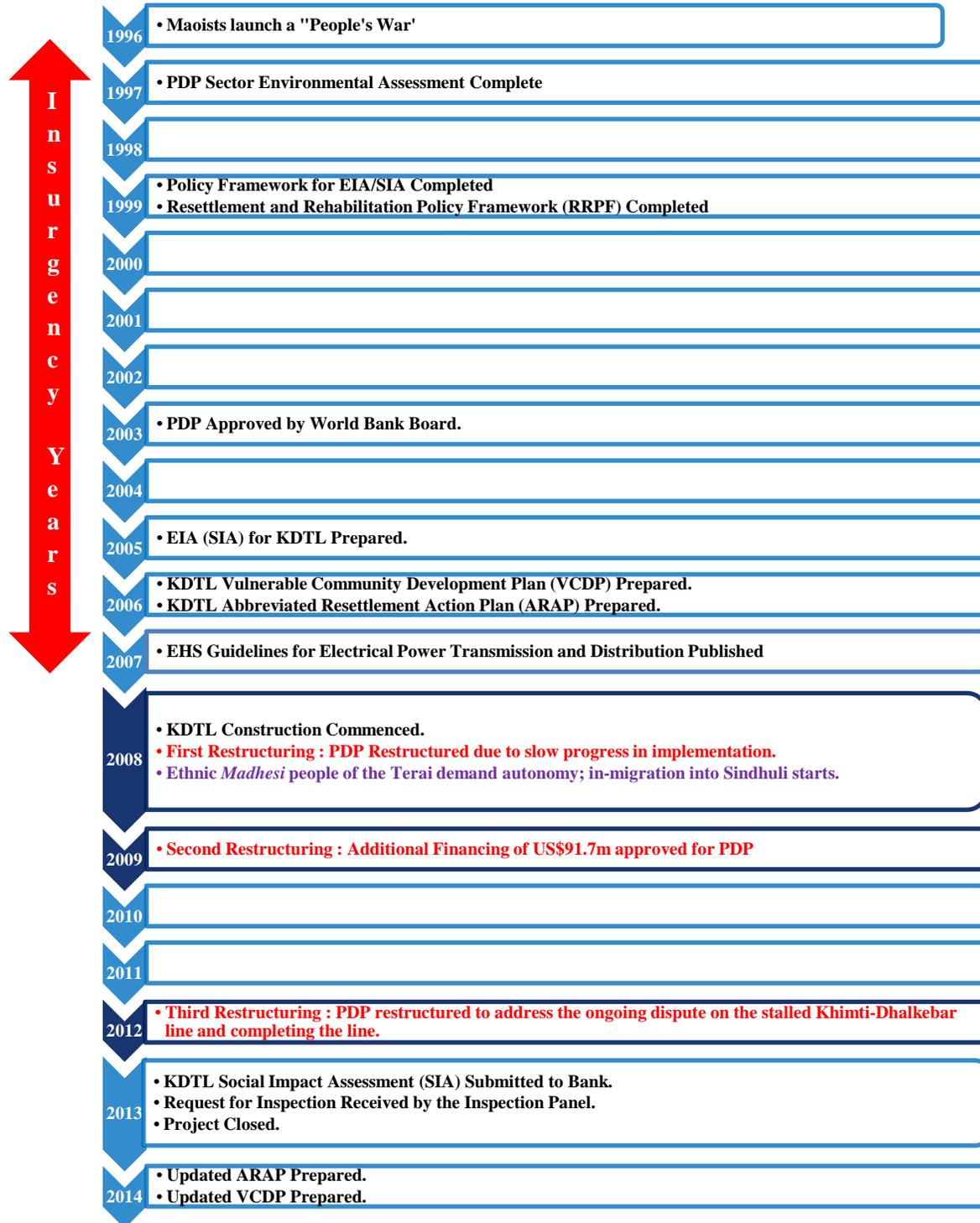
	<p>vulnerable communities in the disputed ROW, Management’s decision to apply a “mixed communities” approach was consistent with OP/BP 4.10 Indigenous Peoples in this specific instance.</p>
<p>11. Protection of Cultural Property</p>	<p>Although the investigation visit showed that the plan for mitigation measures could have been stronger and information regarding potential impacts could have been better communicated, the Panel concurs with Management’s decision not to trigger OP/BP 4.11 for the KDTL as the transmission line does not directly impact physical cultural resources, and Management analyzed this criterion adequately in project documents.</p>
<p>12. Disclosure and Consultation</p>	<p>Bank Management acknowledges shortcomings in the disclosure of safeguard documents for the PDP. The Panel notes Management’s acknowledgement that the safeguard provisions for disclosure of project documentation have not been fully observed and are being rectified.</p> <p>The Panel notes that though the consultation requirements of Bank policies on Environmental Assessment, Involuntary Resettlement, and Indigenous Peoples may vary, what they have in common are the principle requirements for early, meaningful, and continuous consultations with project affected persons during project preparation and implementation. The objective of these requirements is to improve project design, minimize adverse impacts, and enhance project benefits. The Panel notes that in the case of the KDTL, a lack of sustained communication and consultation during project preparation and implementation led to the spread of misinformation about the transmission line, especially as stated earlier, about its perceived health impacts, and this contributed to the opposition to the ROW. In light of the foregoing, and while noting the precarious security situation prevalent in Sindhuli district at the time of KDTL preparation and implementation and the travel restrictions this placed on Management, the Panel finds that Management did not ensure adequate, timely and meaningful consultations during Project preparation and implementation, in non-compliance with OP/BP 4.01 Environmental Assessment, OP/BP 4.10 Indigenous Peoples and OP/BP 4.12 Involuntary Resettlement.</p>

Annex 2: Events Timeline
Construction of 220 kV Khimti-Dhalkebar Transmission Line

Date	Event
February 1994	The Communist Party of Nepal (Maoist) is founded
28 December, 1995	Power Development Project (PDP) Concept Review Meeting held
February 1996	Maoists launch a "people's war"
13 February, 1997	PDP Decision Meeting held
14 February 1997	Nepal Power Development Project (PDP) Negotiations Start
April 25, 1997	Sectoral Environmental Assessment completed
May 1999	About 20 people killed in violence associated with parliamentary elections
July 8, 1997	Project appraisal completed
November 1999	Policy Framework for EIA/SIA completed
November 1999	Resettlement and Rehabilitation Policy Framework (RRPF) completed
February 2000	Fifty people killed in clashes between Maoists and Police.
March & April 2000	Violent strikes in Kathmandu
September 2000	Government announces that over 1400 people have been killed since the start of the insurrection. Twelve police officers killed by crude bombs.
March 19, 2001	Nepal Proposed Power Sector Development Strategy, Report No. 21912-NP
April 26, 2001	PDP re-appraisal completed
June 2001	King Birendra assassinated by Crown Prince who also killed himself. Prince Gyanendra named king.
August 2001	Government outlaws discrimination against Dalits
November 2001	Maoists escalate conflict; State of Emergency declared following 76 deaths from Maoist rebel attacks.
September 2002	Fierce fighting between police and Maoist rebels. Government announces that over 5000 people have been killed since the start of the insurgency in 1996.
April 10, 2003	PDP Project Information Document (PID) Prepared
April 25, 2003	PDP Project Appraisal Document (PAD) Prepared
May 22, 2003	PDP Approved by World Bank Board
August 2004	Maoist rebels cut all road links to Kathmandu, isolating the capital from the rest of the country
2004	Two public hearings on draft EIA of Khimti-Dhalkebar Transmission Line held in project area (but none in Sindhuli district)
February 2005	King Gyanendra dismisses parliament and declares state of emergency
May 2005	EIA for KDTL prepared
September 2005	Maoist rebels announce a unilateral ceasefire
January 2006	Maoist rebels terminate ceasefire
April 2006	King Gyanendra gives up absolute power
June 2006	Parliament dissolved and interim administration that includes rebels formed
November 2006	Peace accord signed. End of civil war
January 2007	Old constitution abolished: new interim constitution accepted
April 30 th , 2007	EHS Guidelines for Electrical Power Transmission and Distribution published
December 2007	Agreement to abolish the monarchy. Maoists join government, three appointed as cabinet ministers
February 2008	Ethnic Madhesi people of the Terai demand autonomy; in-migration into Sindhuli starts
February 15, 2008	First Restructuring: PDP restructured due to slow progress in implementation
March 2008	Environment Management Plan (EMP) for KDTL prepared
May 2008	Nepal abolishes 240 year old Hindu monarchy and declares a secular republic

May 2008	KDTL construction commenced
May 2009	Second Restructuring: Additional Financing of US\$91.7m approved for PDP
February 2010	Struggle Committee of the Affected People of the 220 kV Khimti- Dhalkebar Transmission Line formed
June 2010	Prime Minister resigns due to pressure from Maoists
February, 2012	Expert Commission formed to investigate alternative routes in Sindhuli. Final report not made public.
October 7 th , 2012	Ministerial decision announces acquisition of lands for construction of feeder road in 3.85 km disputed stretch in Kamalamai municipality, Sindhuli district
December 2012	Third Restructuring: PDP restructured to addressing the ongoing dispute on the stalled Khimti-Dhalkebar line and completing the Project.
January 1, 2013	KDTL Social Impact Assessment (SIA) submitted to Bank
February 18, 2013	Bank Management receives complaint from affected families in Sindhuli district and their representatives
March 2013	Chief Justice named head of interim government to overcome political parties blocking elections
March, 2013	English version of Abbreviated Resettlement Action Plan (ARAP) and the SIA uploaded on NEA website. Unavailable on WB website.
July 10, 2013	Request for Inspection received by the Inspection Panel
September 5, 2013	SIA Disclosed on Bank Infoshop
September 18, 2013	Management Response to the Request received in which Management proposed several actions which were to be completed by April 2014.
November 2013	Maoist leader rejects results of the election his party appeared to be losing.
December 31, 2013	PDP closed
June 22, 2014	An update of the Management Action Plan received by the Inspection Panel, with some actions still pending
October 24, 2013	Inspection Panel Report and Recommendation recommending investigation submitted to the Board of Directors
July 19-27, 2014	Inspection Panel conducts fact-finding investigation visit in KDTL project area
January 27, 2015	Second update of Management Action Plan received by Inspection Panel with some actions still pending

Annex 3: Timeline of KDTL Safeguards Documents



Annex 4: Biographies of Inspection Panel Experts

Richard Fuggle undertook graduate studies at Louisiana State University, and obtained his PhD from McGill University, Canada, in 1971 for a thesis dealing with the warming and cooling of an urban atmosphere. A South Africa national, Richard is a Member of the Academy of Science of South Africa, is a Registered Natural Scientist, a Certified Environmental Impact Assessment Practitioner. He is a past President of the International Association for Impact Assessment. He also held the Shell Chair of Environmental Studies at the University of Cape Town from 1973 until his retirement in 2006.

With Andre Rabie he produced two iconic books on Environmental Management in South Africa. He has published many academic papers on aspects of environmental management and as a consultant has written numerous Environmental Impact Reports and reviews. He has wide international experience, having been involved with the World Bank's Inspection Panel in environmental reviews in Albania, Argentina, China, Colombia, Ghana, India, Kenya, Nigeria, Uganda, and Paraguay. He was also Environmental Advisor to the Caspian Development Panel and reviewed and inspected the environmental and social impact components of the Baku-Tbilisi-Ceyhan pipeline in Azerbaijan, Georgia, and Turkey. He has also served on international advisory panels for projects in Israel, Jordan, Palestine, Tanzania, and Tajikistan.

Richard Fuggle was closely involved with the establishment of both the South African Institute of Ecologists and Environmental Scientists and served on their Boards. He was also instrumental in the formation of the South African affiliate of the International Association for Impact Assessment. He chaired the committee of the Council for the Environment that pioneered Integrated Environmental Management in South Africa and was responsible for the team that produced the first set of guideline documents for IEM. Richard has also served on several South African Commissions of Enquiry.

Christopher McDowell is a social anthropologist and social development consultant with expertise in social impact assessment, involuntary resettlement and humanitarian evaluations. Dr McDowell has a PhD from the Ethnologisches Seminar at Zurich University and a Masters degree in Social Anthropology from the University of Cape Town. He has published widely on development-created population displacement and resettlement including *Understanding Impoverishment* (Berghahn, 1996), *Risks and Reconstruction* (World Bank, 2000), *Non-Conflict Displacement* (Berghahn, 2010) and *Displaced: The Human Cost of Development and Resettlement* (Palgrave Macmillan, 2013). Christopher has acted as an international resettlement specialist for the Asian Development Bank in India, China and Cambodia, and for the Inspection Panel of The World Bank in Ghana and Nepal. He has managed aid programmes in Africa and has advised the Government of The Netherlands (on asylum return), the Norwegian Government and the Internal Displacement Monitoring Centre (on programmatic responses to non-conflict displacement), and UNOCHA and AusAID on the humanitarian response to the East Timor crisis. He is currently a Reader in Political Anthropology and the Chair of the Department of International Politics at City University London.

Mukta S. Lama (Tamang) is an anthropologist and teaches at the Central Department of Sociology/Anthropology at Tribhuvan University, Kathmandu. He also served as research

director for research project on social inclusion and ethnographic studies undertaken by the Department from 2011 to 2014. He worked with ILO as an expert on indigenous issues in Nepal during 2010-2011 and served as consultant on research and evaluation studies with various international and national development organizations including UN system. He started his career as grassroots community development worker and has gained more than 25 years of experience on social development. He has also worked as international trainer on participatory and rights-based development approaches. His major areas of work include indigenous peoples issues, participatory approaches and social inclusion. He received his PhD from Cornell University in 2008. He was a Visiting Fellow at Goldsmiths College, University of London and Jawaharlal Nehru University, New Delhi in conjunction with a joint research project on "Social Inequality and Affirmative Action in South Asia" from 2009-2011. He has several scholarly publications to his credit dealing with social, cultural, political and developmental issues. His research interests includes; indigeneity, history, memory, identity, social inclusion, equality and human rights in Nepal and South Asian region.

Annex 5: About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”²⁵¹ The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having failed to comply with its own operating policies and procedures.

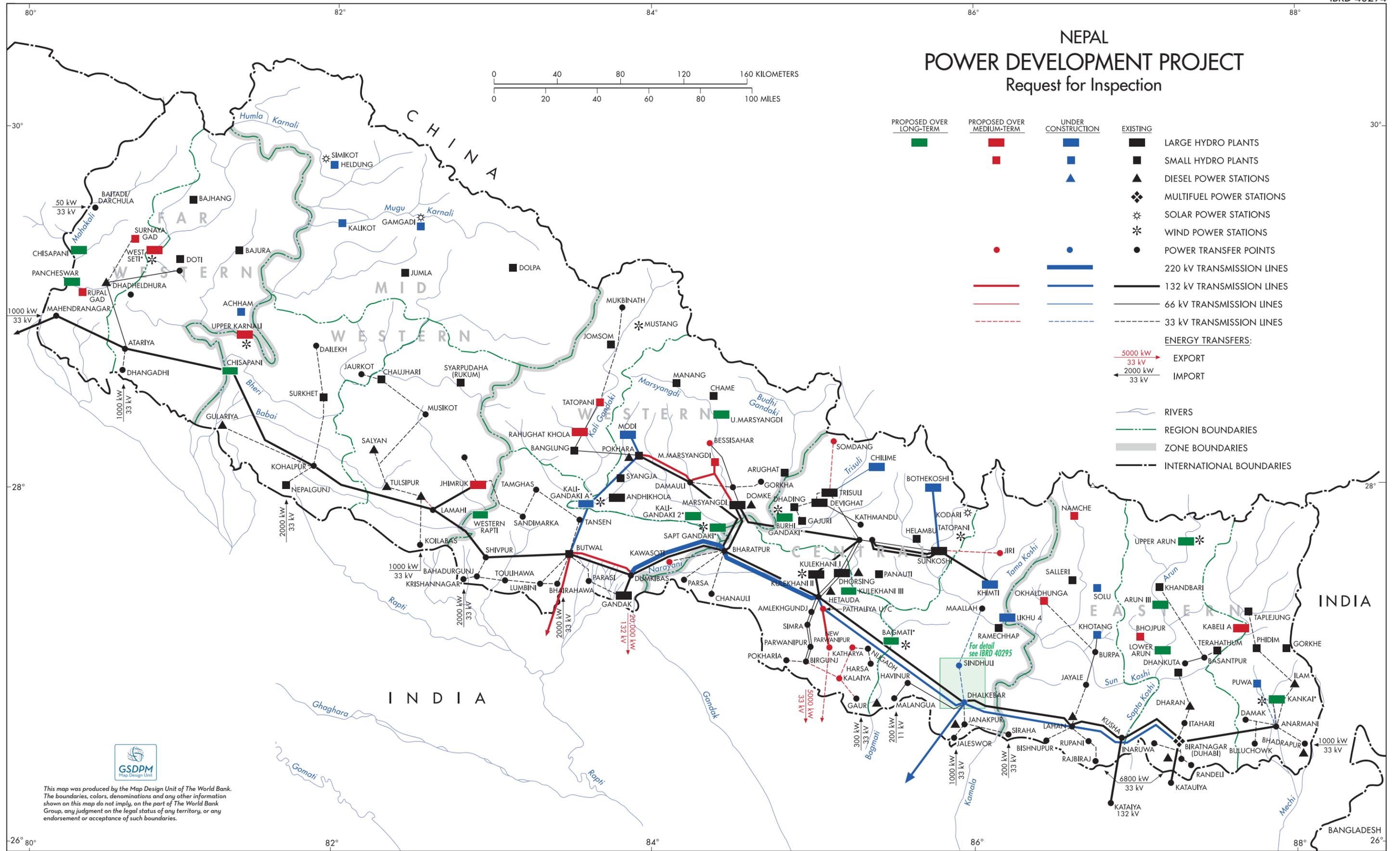
Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- If the Panel does not recommend an investigation, the Board of Executive Directors may still instruct the Panel to conduct an investigation if warranted.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel’s Report (including the Request for Inspection and Management’s Response) is publicly available through the Panel’s website and Secretariat, the Bank’s Info Shop and the respective Bank Country Office.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank would take in response to the Panel’s findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel’s findings and the Bank Management’s recommendations.

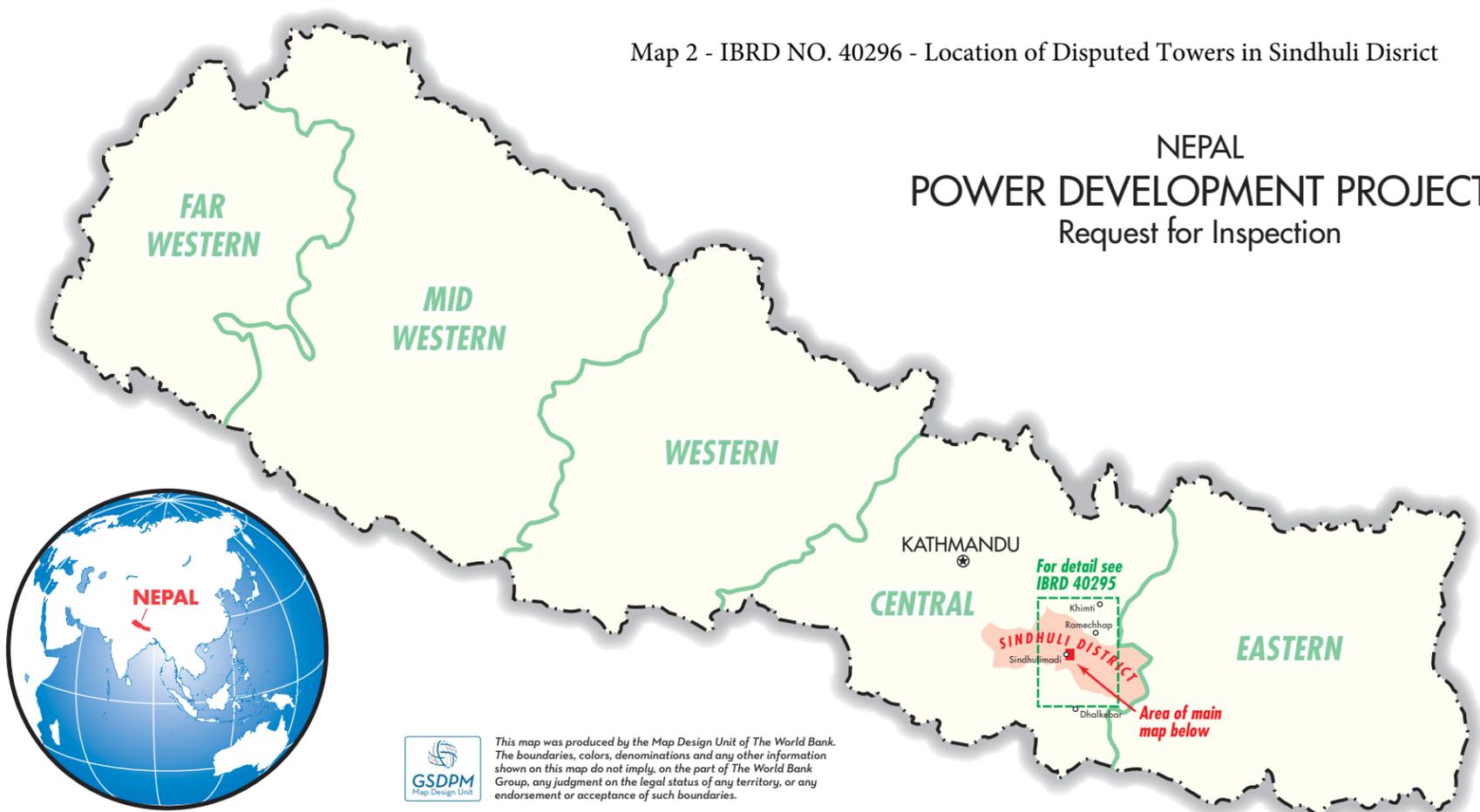
²⁵¹IBRD Resolution No. 93-10; International Development Association (IDA) Resolution No. 93-6.

- Three days after the Board's decision, the Panel's Report and Management's Recommendation are made publicly available through the Panel's website and Secretariat, the Bank's Project website, the Bank's Info Shop and the respective Bank Country Office.



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