



**LAHURNIP**

LAWYERS' ASSOCIATION FOR  
HUMAN RIGHTS OF NEPALESE INDIGENOUS PEOPLES



August 9, 2018

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***Via Electronic Mail***

**Re: Deficiencies in Initial Environmental Examination for the 220 kV Marsyangdi Corridor Transmission Line (Udipur – New Bharatpur segment)**  
*Nepal Power System Expansion Plan*  
*European Investment Bank Project # 2013-0599*

Dear Mr. Hurst and Mr. Cannon:

Today, on the International Day of the World's Indigenous Peoples, we are writing at the request of Indigenous and other communities in the Lamjung district of Nepal who are affected by the 220 kV Marsyangdi Corridor high voltage transmission line (the “Marsyangdi Corridor”), which is part of the European Investment Bank (“EIB”) funded Nepal Power System Expansion Project<sup>1</sup> (“Nepal PSEP”).

Our organizations<sup>2</sup> were requested by the Free Prior and Informed Consent (“FPIC”) and Rights Forum (the “FPIC & Rights Forum”) to support them in their engagement with the EIB. The FPIC & Rights Forum is a grouping of local Indigenous and non-Indigenous people in Lamjung district, who are organizing together in solidarity to demand that hydropower sector development in their region is rights-based.<sup>3</sup> The FPIC & Rights Forum is the umbrella organization of local Struggle Committees that have been formed at the village level. Currently, the FPIC & Rights Forum reportedly includes 8 local-level Struggle Committees – in different communities in Lamjung district – that are in the path of the Marsyangdi Corridor. Local people are concerned the Marsyangdi Corridor is being

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<sup>1</sup> See, EIB project page for *Nepal Power System Expansion Project*, available at <http://www.eib.org/en/projects/pipelines/pipeline/20130599>.

<sup>2</sup> The Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is a Kathmandu (Nepal) based civil society organization of Indigenous lawyers. LAHURNIP provides free legal aid services, and works to promote, protect and defend the human rights of Indigenous peoples in Nepal. Accountability Counsel is a United States based organization which amplifies the voices of communities around the world to protect their human rights and environment. As advocates for people harmed by internationally financed projects, Accountability Counsel uses community driven and policy level strategies to access justice.

<sup>3</sup> The people in Lamjung district are affected by multiple hydropower generation projects (for example, the Nyadi and the Dordi hydropower projects) and transmission lines (for example, European Investment Bank funded 220 kV Marsyangdi Corridor and the 132 kV Bhulbhule Mid-Marsyangdi high voltage transmission lines).

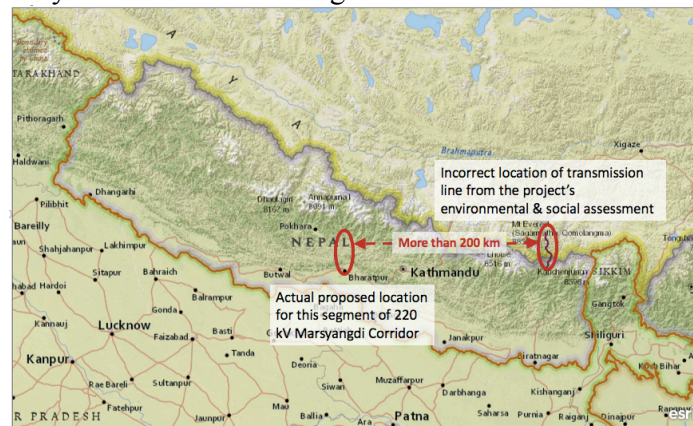
implemented without consultation or their agreement. Together, they are demanding the project respect their rights as required under the EIB's rules, and Nepali and International law.

This letter sets out gaps in the EIB's planning, design, and implementation of the Marsyangdi Corridor, including deficiencies in the 'Initial Environmental Examination'<sup>4</sup> (IEE) for the Udipur-Markichowk-Bharatpur segment, and failures to follow international and domestic law. The letter concludes with the FPIC & Rights Forum's requests for forward-looking action from the EIB.

## **I. Key deficiencies in the IEE identified by an independent expert**

Following a request from the FPIC & Rights Forum to better understand the IEE, we consulted Dr. Mark Cherniak, Staff Scientist with the United States based organization Environmental Law Alliance Worldwide<sup>5</sup> (ELAW) to assess the adequacy of the IEE as an independent expert. ELAW's independent expert reviewed the IEE and produced a report, enclosed with this letter.<sup>6</sup> A brief summary of the report's findings along with our own observations are described below:

- 1. Incorrect geographic coordinates for the location of the transmission line.** The IEE is required to state exactly where the project is going to be located. However, the geographic coordinates (that are stated in the IEE)<sup>7</sup> are wrong. The Marsyangdi Corridor is actually going to be in the Western region of Nepal. But the geographic coordinates provided in the IEE show the line to be located mostly in China, with a small portion going through the Eastern region of Nepal. The IEE's failure to provide the correct location of the line calls into question the accuracy of other analysis conducted.<sup>8</sup> See figure below:



<sup>4</sup> Nepal Electricity Authority, *Initial Environmental Examination - Marsyangdi Corridor (Udipur-New Bharatpur)* (September 2017), available at <http://www.eib.org/en/infocentre/registers/register/80938653> (since January 2018) [hereinafter, "IEE"]. The name of the document "Initial Environmental Examination" is misleading in this case because our understanding is that the IEE is also the final level of environmental and social assessment that the EIB has agreed to for this segment of the project.

<sup>5</sup> ELAW is a global alliance of attorneys, scientists, and other advocates collaborating across borders to promote grassroots efforts to build a sustainable, just future. For more information see <https://www.elaw.org/>.

<sup>6</sup> ELAW, *Evaluation of the Initial Environmental Examination (IEE) for the Marsyangdi Corridor (Udipur – New Bharatpur) 220 kV Double Circuit Transmission Line* (August 9, 2018), available online at <https://elaw.org/system/files/attachments/publicresource/Adequacy%20of%20IEE%20for%20Marsyangdi%20Corridor%20220%20kV%20TL%20.pdf> [hereinafter, "ELAW Report (2018)"].

<sup>7</sup> IEE, at 37-38 and 40-41.

<sup>8</sup> ELAW Report (2018), at 7-8.

2. **Failure to consult with people under the transmission wires.** Any environmental and social assessment must consult with local people affected by the project. The Marsyangdi Corridor project consists of towers and wires (which are hung in between the towers). Less than 5% of the land for the project will be taken for the towers. The remaining 95% of land for the project will be below the transmission wires. However, the IEE only appears to consider people whose land will be taken for transmission towers as project affected households, and did not conduct surveys and robust consultations for people whose land falls under the transmission wires.<sup>9</sup> This fails to sufficiently recognize people whose land falls below the wires, and near the transmission line, who will suffer material impacts.<sup>10</sup>
3. **Analysis for route selection was not done properly.** The EIB's Environmental and Social Handbook requires that environmental and social assessments for EIB funded projects must consider alternative routes for the project.<sup>11</sup> The assessment must compare the social, environmental, and other impacts for the different routes, and then choose the route that minimizes impacts. Unfortunately, the IEE's assessment of alternative routes for the transmission line seems superficial.<sup>12</sup> The IEE also does not seem to adequately account for social impacts of alternative routes.<sup>13</sup>
4. **Public safety impacts were not properly addressed.** There have been cases of children and adults in Nepal being electrocuted to death due to wires falling down and other accidents.<sup>14</sup> The IEE does not sufficiently account for these increased public safety risks.<sup>15</sup> Additionally, the proposed width of the Right of Way (of 30 meters) in the IEE is too small. For public safety reasons, the Right of Way needs to be wider.<sup>16</sup>
5. **Inadequate assessment of existing flora and fauna in the area.** The IEE determined which plants, birds, and animals are in the area by relying primarily on sightseeing or birdwatching over a short period of time. It is unclear whether trained staff did more than one-off spot checks for most locations. Even sustained checks over a short period would not be adequate. Instead, field surveys have to be conducted for at least one year to account for seasonal variation in species' abundance and location. Trapping and use of technology to record seasonal variation is also important. Unfortunately, the IEE does not report doing so.<sup>17</sup> Additionally, the IEE fails to: assess the risk of electrocution of monkeys that are in the project area, and propose measures to mitigate such risks.<sup>18</sup>

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<sup>9</sup> IEE, at 18 and 65.

<sup>10</sup> ELAW Report (2018), at 9.

<sup>11</sup> European Investment Bank, *Environmental and Social Handbook* (December 2013) at paras 70-71, available at [http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) [hereinafter, "EIB – E&S Handbook"].

<sup>12</sup> ELAW Report (2018), at 5-7.

<sup>13</sup> IEE, at 100-102.

<sup>14</sup> See, for e.g., The Himalayan Times, *Two kids die as high-tension wire snaps, falls upon them in Butwal* (16 August 2016), available at <https://thehimalayantimes.com/nepal/two-kids-die-touching-snapped-high-tension-transmission-line-butwal>.

<sup>15</sup> ELAW Report (2018), at 9-10.

<sup>16</sup> ELAW Report (2018), at 10-11.

<sup>17</sup> *Id.*, at 11-13.

<sup>18</sup> *Id.*, at 17-18.

6. **Impacts to forests do not appear to be credibly minimised.** The IEE states there will be a loss of 90.65 hectares of forested area as a result of construction of the transmission line. This suggests nearly half of the area in the path of the Udipur-Markichowk-Bharatpur segment of the Marsyangdi Corridor might be going through forested area. At the same time, the IEE also claims to go along the forest's edge in order to avoid fragmentation of forests. If the line is close to forest boundaries, then, from an environmental perspective, the route of the line should be moved slightly in order to avoid encroachment of forest cover.<sup>19</sup>
7. **Assessment of the project should be done holistically, rather than small parts separately.** The IEE was done for the Udipur-Markichowk-Bharatpur segment of the Marsyangdi Corridor only, not for the whole project.<sup>20</sup> However, the Udipur-Markichowk-Bharatpur segment is one part of the larger Marsyangdi Corridor, and the Marsyangdi Corridor is itself one component of the Nepal PSEP, which appears to be part of the South Asia Sub-regional Economic Cooperation Power System Expansion Project. The EIB's environmental and social rules preclude "salami-slicing" projects precisely because project impacts can be underestimated when assessments are done for smaller parts of a project.<sup>21</sup> As a result, an IEE for the Udipur-Markichowk-Bharatpur segment of the transmission line on its own could be misleading. The environmental and social assessment for the Nepal PSEP, or at least the Marsyangdi Corridor component, should be done together as a whole.
8. **Failure to look at cumulative impacts from all projects in Lamjung.** There are many hydropower generation and transmission line projects coming up in Lamjung district, and the surrounding area. Many community members are affected by more than one project. In this context, Nepali law and the EIB's rules require a "cumulative impacts assessment" of the project along with other sources of similar impacts in the geographical area. According to the EIB's own environmental and social rules, it has to play a leadership role in ensuring this kind of cumulative impacts assessment is conducted.<sup>22</sup> However, the IEE only examines one segment of one of many transmission lines and hydropower generation projects in the region. This is not correct. Consideration should be given to the cumulative impacts of all hydropower generation and transmission line projects in Lamjung, and the surrounding region, together.<sup>23</sup>
9. **Failure to conduct a Strategic Environmental Assessment.** The Nepal PSEP is one project in a larger plan, program, and policy for hydropower development in Lamjung district (and the province) with a view towards national and international trade. The IEE does not make reference to any Strategic Environmental Assessment (SEA) that has been conducted to support this larger set of plans, programs, and policies. There is growing recognition of the importance of doing SEAs prior to developing individual projects that are parts of larger plans, programs, and policies.<sup>24</sup> There are numerous examples where international funders have applied SEAs as a

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<sup>19</sup> *Id.*, at 14-16.

<sup>20</sup> *Id.*, at 18-19.

<sup>21</sup> E&S Handbook, at para 68.

<sup>22</sup> *Id.*, at para 69.

<sup>23</sup> ELAW Report (2018), at 19-21.

<sup>24</sup> ELAW Report (2018), at 21-24.

planning tool for multiple related projects within the energy sector.<sup>25</sup> The EIB's own policies express support for conducting SEAs,<sup>26</sup> and should be heeded in this context.

## **II. Failure to follow international and domestic law**

The FPIC & Rights Forum in Lamjung district is demanding that the Nepal PSEP respect the rights of locally affected people, and comply with the EIB's environmental and social rules, the United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organization Convention No. 169, Constitution of Nepal 2015, and Nepali laws. Under international and domestic laws and norms, projects are required to consult with, and seek the consent of locally affected people, especially Indigenous Peoples. However, the FPIC & Rights Forum in Lamjung district asserts that the Marsyangdi Corridor has yet to provide adequate information or consultation for the project, or secure FPIC from locally affected people.

The Nepal Supreme Court's recent landmark ruling – relating to the Kathmandu Roads Expansion project – confirms the importance of consultation with locally affected peoples as part of a larger framework of rights-based development. Forty-seven locals had filed a case against the Nepal government's decision to expand the Tribhuvan Highway without paying compensation to the affected parties. The Court reiterated that the government has to balance infrastructure development with civil rights, and avoid adverse impacts on the environment and sites of archeological importance.<sup>27</sup>

Like the Kathmandu Roads Expansion case, the Marsyangdi Corridor is a linear infrastructure project where there has been a failure to ensure adequate compensation despite the project's significant impacts to private land. Additionally, as demonstrated by the deficiencies in the IEE, there has been a failure to give due consideration to environmental impacts. To have a rights-based community decision-making process, communities must be provided accurate and complete information. However, as illustrated by ELAW's report, the information in the IEE is neither accurate nor complete.

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<sup>25</sup> See, for e.g., Asian Development Bank, *Integrating strategic environmental assessment into power planning* (2015), available at <https://www.adb.org/sites/default/files/publication/162112/strategic-environmental-assessment-power-planning.pdf>; and International Finance Corporation's *Strategic Environmental Assessment process for the Hydropower Sector in Myanmar*, which is documented at [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/news/event/s/strategic+environmental+assessment+of+the+hydropower+sector+in+myanmar+meeting](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/event/s/strategic+environmental+assessment+of+the+hydropower+sector+in+myanmar+meeting)

<sup>26</sup> EIB, *Statement of Environmental and Social Principles and Standards* (2009), at 13, available at [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf); E&S Handbook, at paras 4, 13, 15-16 and 18.

<sup>27</sup> *Sanu Shreshtha et al v Nepal Government*, Nepal Supreme Court, Order 073-WF-0003 BS 2075 (2018), at para 31. The Nepal Supreme Court observed that when the government – through its officers or agencies – uses its power to forcefully intervene on private property, it directly implicates property rights and other constitutionally protected rights such as rights to clean environment, housing, mobility, and economic livelihoods. Additionally, the Court took a more holistic approach to acknowledge that forced displacement also impinges the rights to education, religious freedom, language and culture, recognizing that these negative impacts tend to particularly create injustice to citizens from economically deprived communities. The Court held that Nepal's constitution requires protecting the rights of economically deprived communities and increasing civil participation and community buy-in for projects, and noted this would result in timely completion of development projects which would be beneficial to all. The Court concluded by issuing directive orders requiring project development to be conducted in a rights respecting manner, while keeping conservation of the environment and sites of archeological significance at the center of developing and executing a development project. (*Id.*, at para 32.)

Additionally, information has to be provided accessibly, and the project should be open to listen and make changes including respecting the local communities' rights to give or withhold consent. However, the IEE is almost exclusively in English. There are five pages in Khas Nepali, while the rest of the IEE, nearing 200 pages, is in English. Further, neither the summary nor the report is provided in the Gurung language, which is the language of the most populous group in the district. If project information is not accessible to communities this tends to preclude their ability to meaningfully engage with the project. Together, these gaps in the IEE point to a failure to consult, which is the cornerstone of FPIC.

The key demand of the FPIC & Rights Forum is that projects in Lamjung respect their rights to FPIC. Though the IEE acknowledges that the largest group in Lamjung district are Indigenous Gurung people, it fails to identify and adopt a robust FPIC methodology in its approach. Additionally, people who are in the path of the transmission line were reportedly not engaged in the preparation of the IEE, with consultations limited primarily to those whose land is acquired for the towers. This is problematic because not only has there been a failure to follow FPIC, but affected communities have been explicitly left out of the consultation process.

Another concern that community members have expressed is that money, which had been set aside for compensation and community benefits in past projects, has not always reached the stated purposes or beneficiaries. The FPIC & Rights Forum is concerned the Marsyangdi Corridor will follow suit.

### **III. Moving forward**

The FPIC & Rights Forum is asking that all plans for construction be put on hold until the project adopts a robust FPIC process, and has worked with communities to remedy gaps in the IEE.

Any such FPIC process must address communities' concerns, including the following:

- i. Lack of adequate information disclosure and consultation about the project and its impacts;
- ii. Lack of FPIC for the project from affected communities, especially Indigenous Peoples;
- iii. The project taking land or putting restrictions on how affected landholders and other users can use their own land;
- iv. Economic impacts to land under and adjacent to the Right of Way, including:
  - a. Devaluation of property values,
  - b. Difficulty to secure mortgages for affected land, and
  - c. Lack of adequate compensation for affected land;
- v. Impacts on community resources, including schools, temples, sacred sites, etc.;
- vi. Environmental impacts, including cutting trees, and electrocution of birds and animals;
- vii. Safety fears about electrocution by wires and increased lightning;
- viii. Visual impacts;
- ix. Sound impacts; and
- x. Fears about impacts of electromagnetic radiation on the health of children, elderly people, women, livestock, and crops.

Local people have had poor experiences with other projects in the region. They hope the EIB can play a leadership role in raising the standards of project implementation in the district. Implementing the Marsyangdi Corridor in a rights-respecting manner would contribute to raising environmental and social standards, and help the EIB fulfil Pillar 3 - 'EIB Additionality' identified in its Results Measurement Framework.



We urge you to start taking actions to implement communities' requests. Please let us know if you have any questions. Please send correspondence to Shankar Limbu ([shankar1database@gmail.com](mailto:shankar1database@gmail.com)) and Siddharth Akali ([siddharth@accountabilitycounsel.org](mailto:siddharth@accountabilitycounsel.org)). We look forward to your immediate action on these matters.

Sincerely,

Shankar Limbu

Secretary, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

Siddharth Akali

South Asia Consultant, Accountability Counsel

Encls. Report titled "*Evaluation of the Initial Environmental Examination (IEE) for the Marsyangdi Corridor (Udipur – New Bharatpur) 220 kV Double Circuit Transmission Line*" by Environmental Law Alliance Worldwide (ELAW), dated August 2018

c.c. Gunnar Muent, Deputy DG, Safeguards & Quality Management, Projects Directorate  
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Sonja Derkum, Head of Division, Complaints Mechanism  
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Juan Manuel Sterlin Balenciaga, Deputy Head of Division, Civil Society

n.b. This letter is public.

p.s. Power of attorney given by community members to LAHURNIP is available upon request, subject to agreement of confidentiality.