

**FREE, PRIOR AND INFORMED CONSENT
OF THE TAMANG INDIGENOUS PEOPLES OF NEPAL**

**AN INDEPENDENT ASSESSMENT ON COMPLIANCE
WITH THE IFC PERFORMANCE STANDARDS
IN THE UPPER TRISHULI-1 HYDROELECTRIC PROJECT**

NAVIN K. RAI

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Table of Contents

List of Abbreviations	v
Acknowledgement	vii
Executive Summary	1
Main Report	27
1. RESEARCH STUDY	27
2. PROJECT PROFILE	33
2.1 Project Technical Profile	33
2.2 Project Financing Profile:	38
3. TAMANG INDIGENOUS PEOPLES	41
3.1 Tamang of Rasuwa	41
3.2 Project-Affected Tamang	45
3.3 FPIC Right of the Project-Affected Tamang	49
4. PROJECT IMPACTS	53
4.1 Project Timeline	53
4.2 Project Area of Influence	60
4.3 Project Benefits	63
4.4 Project Adverse Impacts	68
4.4.1 Loss/ Restriction of Access to Natural Resources	69
4.4.2 Project Land Expropriation	71
4.4.3 Project Physical Displacement	75
4.4.4 Project Environmental Impacts	76
4.4.5 Project Socioeconomic Impacts	78
4.4.6 Project Sociocultural Impacts	78
4.4.7 Project Health Impacts	79
4.4.8 Impacts on Women	80
4.4.9 Impacts from the Project Ancillary Facilities	82
4.4.10 Impacts from the Project Associated Facilities	83
4.4.11 Anticipated Cumulative Impacts from the Hydropower Projects	83
5. COMPLIANCE WITH THE IFC PERFORMANCE STANDARD # 7	85
5.1 Compliance Prior to the FPIC Documentation (2012 – 2018)	85
5.2 Compliance During the FPIC Documentation (2018)	88

5.3 Compliance Subsequent to the FPIC Documentation (2019 – 2021)	106
6. RESEARCH RECOMMENDATIONS	117
6.1 Company [NWEDC] Action	117
6.2 IFC Action	119
6.3 Other Lender Action	120
6.4 Project IPP Governing Board Action	120
References Cited	121
ANNEX 1: RESEARCH METHODOLOGY.....	123
ANNEX 2: DOCUMENTS REVIEWED FOR THE RESEARCH STUDY.....	126
ANNEX 3: KEY STAKEHOLDER INSTITUTIONS FOR THE RESEARCH STUDY	128
ANNEX 4: RESEARCH STUDY PARTICIPANTS.....	129
ANNEX 5: GENDER IMPACTS/ SUMMARY FIELDNOTES	135
ANNEX 6: LIST OF REVIEWED NEPAL ACTS PERTAINING TO PUBLICATIONS.....	143

List of Abbreviations

ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AJAC	Adibasi Janajati [Indigenous Peoples] Advisory Council
AoI	[Project] Area of Influence
CAO	[IFC/ MIGA Accountability Mechanism] Compliance Advisor Ombudsman
CBD	Convention on Biological Diversity
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CFUG	Community Forest User Group
CIA	[IFC] Cumulative Impact Assessment [of the Trishuli River Basin]
COD	Commercial Operation Date
Covid-19	Corona Virus Disease 2019
DFA	[Project] Demand Framework Agreement
DoED	[Nepal] Department of Electricity Development
EB	[Project IPP] Executive Board
EIA	[Project] Environmental Impact Assessment [2011]
EPC	[Project] Engineering, Procurement and Construction [Contractors]
ERM	Environmental Resources Management [Consulting Company]
ESAP	[IFC] Environmental and Social Action Plan [2019]
ESF	[World Bank] Environmental and Social Framework [2017]
ESF ESS3	[AIIB] Environmental and Social Framework Environmental and Social Standard # 3 [Indigenous Peoples]
ESIA	[IFC] Environmental and Social Impact Assessment
ESPS	[NWEDC Consortium] Environmental and Social Policy Statement [December 2016]
ESS	[World Bank] Environmental and Social Standards
FGD	Focus Group Discussion
FMO	Dutch Development Bank [Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.]
FPIC	Free, Prior and Informed Consent
GAP	[Project] Gender Action Plan
GB	[Project IPP] Governing Board
GoN	Government of Nepal
GN7	[IFC] Guidance Note # 7 [on Indigenous Peoples Policy]
GRM	[Project] Grievance Redress Mechanism
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IDA	International Development Association [World Bank Group]
IDP	Internally Displaced Person
IFC	International Finance Corporation [World Bank Group]
ILO	International Labor Organization

ILO 169	ILO Convention # 169 [on Indigenous and Tribal Peoples, 1989]
IPO	Initial Public Offering
IPP	[Project] Indigenous Peoples Plan (7 December 2018 version unless otherwise specified)
JDA	[Project] Joint Development Agreement [signed between IFC and KOSEP]
KII	Key Informant Interview
KOSEP	Korea SE Power Company
Lahurnip	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
LALRP	[Project] Land Acquisition and Livelihood Restoration Plan [December 2018]
LNP	Langtang National Park [Rasuwa]
MIGA	Multilateral Investment Guarantee Agency [World Bank Group]
MW	Mega Watts
NEA	Nepal Electricity Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NHRC	Nepal Human Rights Council
NRA	[2015 Earthquake] National Reconstruction Authority
NWCF	Nepal Water Conservation Foundation
NWEDC	Nepal Water and Energy Development Company
Oxfam	Oxfam International
PAC	Project-Affected Communities
PAF	Project-Affected Families
Project	Upper Trishuli-1 (216 MW) Hydroelectric Project
PS5	[IFC] Performance Standard # 5 [Land Acquisition and Involuntary Resettlement]
PS7	[IFC] Performance Standard # 7 [Indigenous Peoples]
SA	[IFC PS7] Social Assessment
SEP-GRM	[Project] Stakeholder Engagement Plan and Grievance Redress Mechanism
SESA	[Project] Strategic Environmental and Social Assessment
SESIA	[Project] Supplementary Environmental and Social Impact Assessment
SIMF	[Project] Social Impact Management Framework
SPS SR3	[ADB] Safeguards Policy Statement Safeguard Requirements # 3 [Indigenous Peoples]
ToR	Terms of Reference
TPA	[Project] Tripartite Agreement
TRB	Trishuli River Basin
UNDRIP	United National Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNHRC	UN Human Rights Council [Expert Mechanism on the Rights of Indigenous Peoples]
UT-1	Upper Trishuli – 1 [216 MW] Hydroelectric Project
WB	World Bank
WBG	World Bank Group

Acknowledgement

This Research Report was prepared by Navin K. Rai, former World Bank Lead Social Development Specialist and the corporate Indigenous Peoples Advisor of the World Bank from 2000 to 2012. Primary data for the Research was gathered by a research team led by Rai (anthropologist and FPIC specialist) and included a Gender Specialist (Kailash Rani Rai) and a Community Development Specialist (Deepak Tamang).

The Research was commissioned by Oxfam International, a global movement committed to the universality of human rights.

The Report is published by the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (Lahurnip), the Asia Indigenous Peoples Pact (AIPP) and the International Working Group for Indigenous Affairs (IWGIA). The Lahurnip is a pioneer organization in Nepal established by professional indigenous lawyers to work for human rights and fundamental freedom of Indigenous Peoples. The AIPP is a Chiang Mai-based Asian regional organization committed to the cause of promoting and defending Indigenous Peoples rights and human rights; it works in 14 countries in Asia with 18 national Indigenous Peoples alliances. The IWGIA is a Copenhagen-based global human rights organization dedicated to promoting, protecting and defending Indigenous Peoples' rights.

**Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
Asia Indigenous Peoples Pact
International Working Group for Indigenous Affairs**

Executive Summary

FREE, PRIOR AND INFORMED CONSENT OF THE TAMANG INDIGENOUS PEOPLES OF NEPAL

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1. Research Study

Right to Free, Prior and Informed Consent: The Nepal-Upper Trishuli-1 (216 MW) Hydroelectric Project (henceforth, the Project) sponsored by the Nepal Water and Energy Development Company (henceforth, the Company), affects adversely the Tamang Indigenous Peoples of Rasuwa. The Government of Nepal recognizes the Tamang as “Indigenous Peoples.” The core Project lenders, namely the International Finance Corporation (IFC), the Asian Development Bank (ADB), the Asian Infrastructure Investment Bank (AIIB) and the Dutch Development Bank (FMO), recognize the Tamang as “Indigenous Peoples.”

The right to Free Prior and Informed Consent (FPIC) of the Project-Affected Tamang is given in the Project context. The Project-Affected Tamang have the right to FPIC under the mandatory policies of the core Project lenders. These mandatory policies require the Company to obtain FPIC from the Project-Affected Tamang due to the following three specific adverse impacts: (a) the Company proposed to commercially develop natural resources on lands traditionally owned or customarily occupied and used by the Tamang Indigenous Peoples; (b) the Project brings about adverse impacts on land and natural resources subject to the Tamang Indigenous Peoples ownership or customary use and/or occupation; and (c) the Project relocates the Tamang Indigenous Peoples from their traditional homeland. The Project-Affected Tamang additionally have right to the FPIC under the ILO Convention # 169 (henceforth, ILO 169) ratified by the Government of Nepal (henceforth, government) in September 2007; as part of its obligations under international law, the government was required to oblige the Company to seek and acquire FPIC of the Project-Affected Tamang.

Documenting the FPIC: FPIC is recognized as the key principle that enables Indigenous Peoples to exercise their rights. There are three thresholds that must be met for acquiring the FPIC. First, it must be *free* from intimidation, coercion, manipulation and harassment. Second, it must be acquired *prior* to bringing about the impacts on the Indigenous Peoples. Thirdly, the Indigenous Peoples must be *informed* of the substantive content of the proposed activity.

On 1 November 2018, the Project Tripartite Agreement for the Indigenous Peoples Plan Implementation was signed among the Company, the local government representatives and an ad hoc “advisory council” (composed of a selected group of the Project-Affected Tamang). This Tripartite Agreement for the IPP Implementation (henceforth, Tripartite Agreement) was the documentation of the FPIC from the Project-Affected Tamang Indigenous Peoples.

The Tripartite Agreement was historic in that very few IFC financed projects had in the past acquired the FPIC from Indigenous Peoples. The key lender, IFC, declared that “the FPIC process was the first of its kind in Nepal” and asserted that, obtaining of the FPIC from the Tamang was setting “new benchmarks for engaging with indigenous communities in Nepal, by ensuring their ... consent in a large infrastructure development process.”

When one looks into the details of the seeking the FPIC however, a different picture emerges. What emerges is that the seeking of FPIC by the Company had suffered from a number of specific structural and procedural gaps, in particular in complying with the IFC Indigenous Peoples Policy (2012). There were seven major structural and procedural gaps:

1. The Company documented the FPIC long after it had carried out the land expropriation from and physical displacement of, the Tamang Indigenous Peoples; the FPIC was documented seven years (see timeline in the main report) after it was required to do so by the mandatory policies and the ILO 169.
2. The Company excluded 11 (out of 21; see below for list) Project-Impacted settlements during the process of seeking FPIC; these excluded settlements lie within the Project dam catchment area and/or impacted by the Project ancillary and associated structures.
3. The Company did not seek FPIC from the six Project-Affected community forest user groups (see below for list) directly. The Company relegated this obligation instead to a government department; the Company could not verify if the government department had sought the FPIC from the forest user groups.
4. The Company did not seek FPIC from the Tamang community at-large; it instead sought FPIC from an ad hoc “advisory council” comprised of informally selected individuals who did not bring the mandate from their respective communities.
5. The Company allocated inadequate time (two months) required for forging consensus among the Project-Affected Tamang. The Project-Affected Tamang should have been allocated at least six months lead time to forge consensus among social sub-groups (the elders, women) within each settlement as well as across all Project-Affected settlements.
6. The Company did not engage the Tamang self-governing customary institutions; these customary institutions regulate the management and use of the natural resources (forest, communal land, water).
7. The Company undermined the customary role of Tamang women in decision-making; women have a strong say both in household- and community-level decision-making.

Scope of Research: Commissioned by Oxfam International, this independent Research assessment had four specific objectives:

- i) To assess the compliance of the Company with FPIC requirements under IFC Performance Standard #7 (henceforth, IFC PS7).
- ii) To capture the perspectives of the Project-Affected Tamang on the seeking of FPIC by the Company.
- iii) To evaluate the process applied by the Company in seeking the required FPIC.
- iv) To make specific recommendations for the future implementation of the FPIC agreement.

The Research applies the IFC PS7 as the benchmark for the assessment of the FPIC process. It evaluates the implementation of the agreements and other arrangements put in place during the FPIC process. The Research attempts to capture the perspectives of the Project-Affected Tamang, including the women and elders, and records the voices of Tamang women and men on the implementation of the IPP.

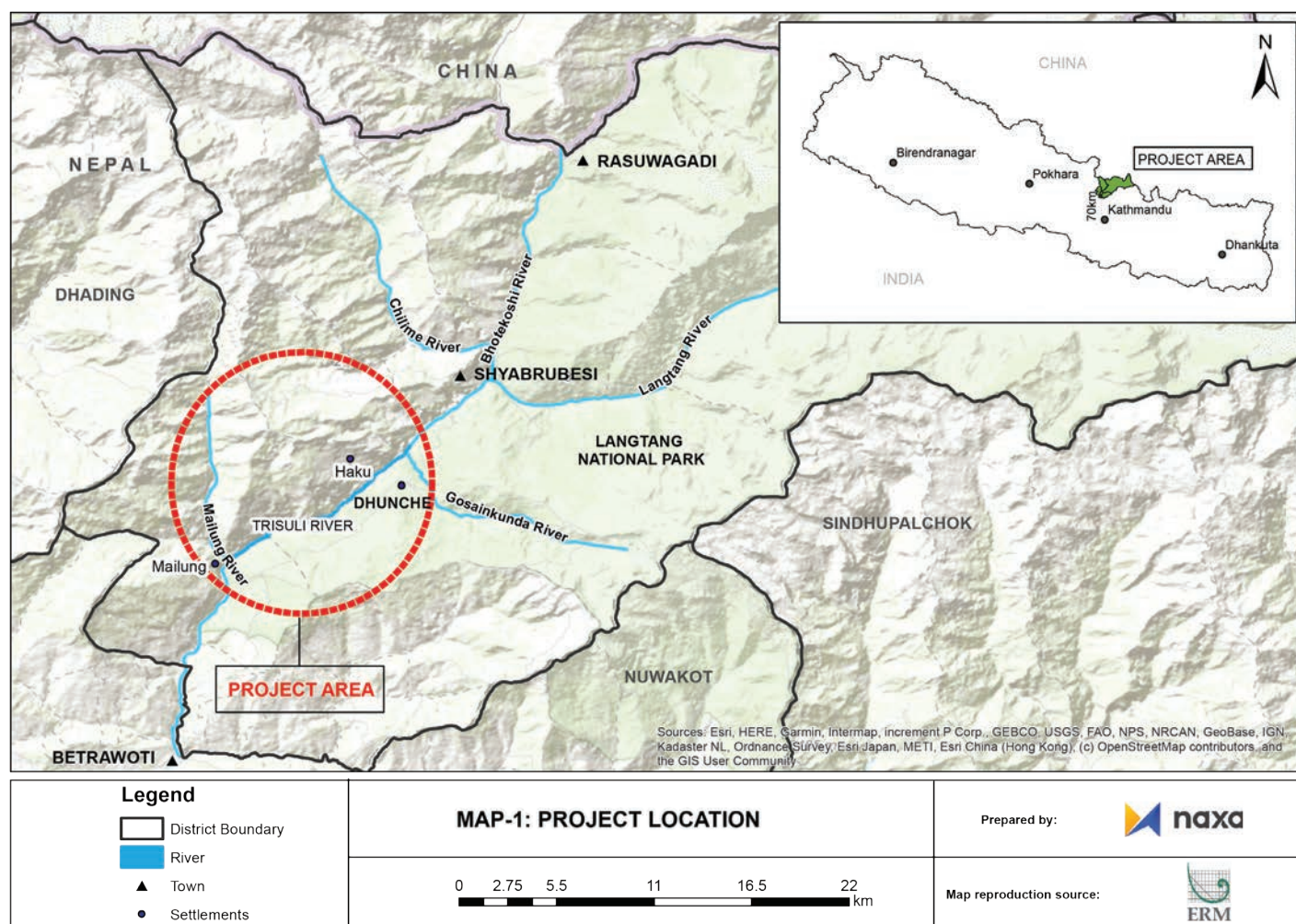
Research Methodology: The research team applied social science methodologies, namely, literature review, stakeholder consultations, focus group discussions (ten focus groups with a total of 238 participants, 88 women/ 150 men), key informant interviews (27 interviews with 11 women and 16 men), and gender analysis to gather primary data. The field research for collecting the primary data was conducted by a three-member team of technical specialists: the anthropologist and FPIC specialist, the gender specialist, and the community organization specialist. A Gender Analysis was carried out to differentiate the socio-economic impacts on women and the customary roles of women in decision-making. Two workshops (1 in Project Area Influence and 1 in Kathmandu) were organized with representatives from key stakeholder institutions to validate the findings from the focus groups and interviews. The review of the Project documents was limited to the publicly disclosed documents

by these key institutions; the Research team did not have access to pertinent Project documents from the key institutions, which were not publicly available. The Draft Research Report was disseminated to the key Project stakeholder institutions (Company, IFC, ADB, AIIB and FMO) for comments as well as any additional information on the Project. The Draft received extensive comments from these key institutions. The Draft was peer-reviewed. The Draft was reviewed by two legal experts to confirm consistency with the Nepal's currently applicable domestic legislations.

2. Project Profile

Project Technical Profile: Popularly referred to as “216” by the local population, the Project is the third largest hydropower undertaking in Nepal to-date. The Trishuli River Basin (TRB) and, in particular, the Rasuwa part of the basin where the Project is located, has the highest concentration of hydropower projects in Nepal today; there are currently 71 hydropower projects in the basin in various stages of design, construction and operation.

The Project's physical infrastructure complex is being built on what used to be traditional – private and communal – land of the Tamang Indigenous Peoples; these lands were either prime agricultural land or the “forest” areas that were extensively used for animal husbandry.

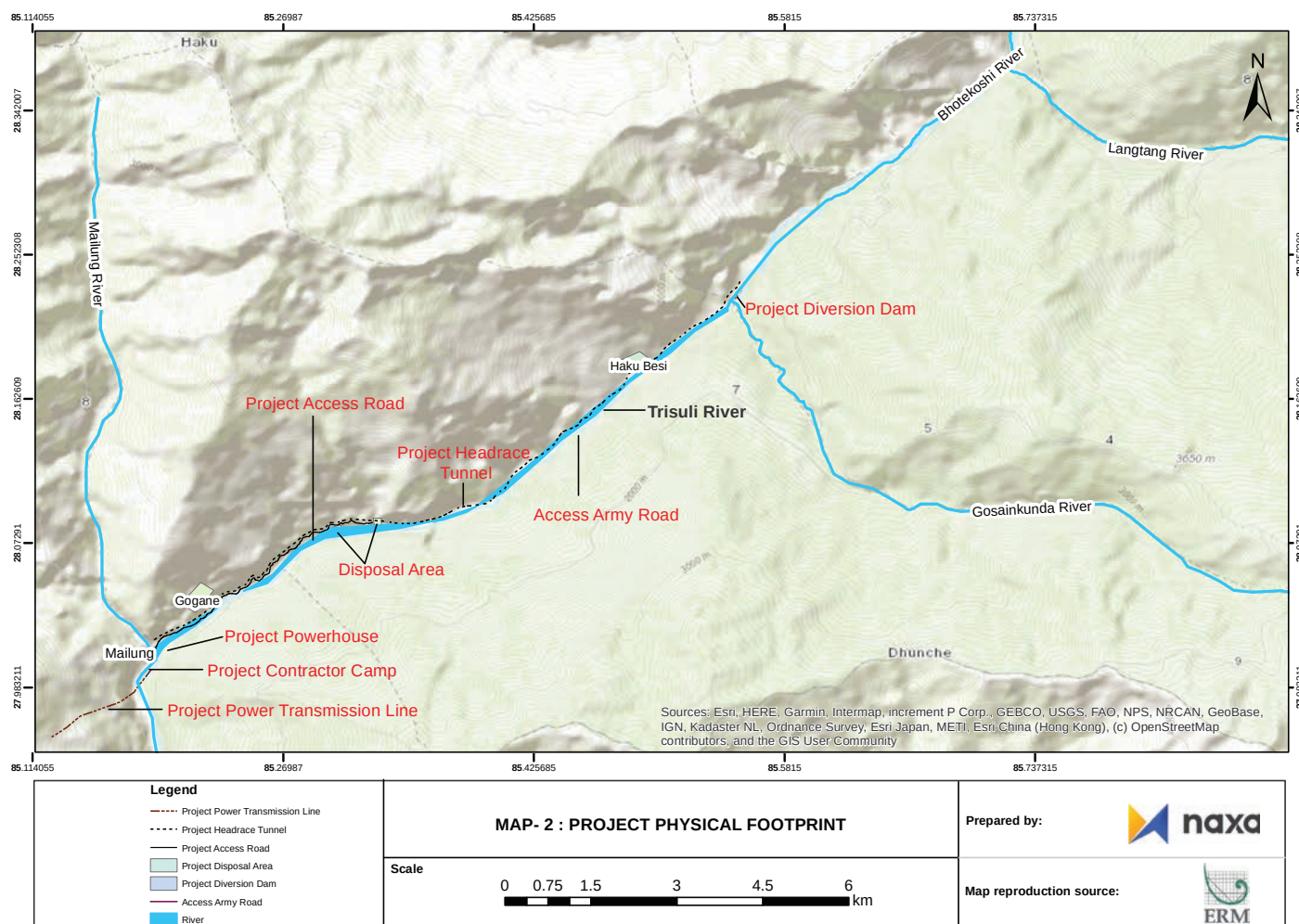


Map 1: Project Location (based on the Company maps; see ESIA 2018: Figure ES-1/1-1)

With a large physical footprint, the Project's physical infrastructure consists of a diversion dam, a headrace tunnel, an underground powerhouse, as well as numerous ancillary facilities and associated structures. The Project diversion dam is located at the confluence of the Bhotekoshi River and the Gosainkunda River within the narrow river gorge. The 101-metre-wide diversion dam creates a 2.1 ha

impoundment. The Company has completed the diversion tunnel and the river water has been diverted via the diversion tunnel in February 2023 to commence the construction activities of the headworks. The Project tunnel, 13.5 km long, will divert up to 76 cubic meters per second (m³/s) of water through a powerhouse, returning the water to the Trishuli River approximately 10.7 kilometers downstream of the dam. By February 2023, the Company has completed 4.5 km of excavation. This diversion will reduce the water flow of parts of the Trishuli River by 90% of its original water flow. Separated by a 15km stretch of the Trishuli River from the diversion dam, the Project underground powerhouse is located along the confluence of the Mailung River and the Trishuli River. The powerhouse site was severely impacted by the 2015 Earthquake. By February 2023, the Company has completed 21% of the excavation for the underground powerhouse. The Project ancillary facilities are scattered ubiquitously across the Project Area of Influence. These facilities range from a switchboard, network of access roads, innumerable campsites as well as the sites for quarries, borrows, spoil disposal, batching plant and construction yard. The Project had planned a 20.30 km long access road to link the powerhouse to the diversion dam site along steep slopes. The associated facilities, which include two major infrastructures, namely, the alternate access road and a power transmission line, take up a large swath of additional forest land.

The Project is currently utilizing the newly constructed, alternate access road, which in turn creates 30-meter-wide corridors (road, plus associated drainage, foundations, etc.) through the forested Langtang National Park.



Map 2: Project Physical Footprint (based on the Company maps; see ESIA 2018: Figure ES2; Figure 1-4; figure 2-3; Figure 6-10)

Project Financing Profile: The Project represents the largest Foreign Direct Investment in Nepal to date. Under the Project Development Agreement, the Company can operate for 30 years. The Project is financed under a “build-operate and transfer” scheme.

In March 2012, the IFC – the Project co-developer and lead arranger of the debt package – signed the Joint Development Agreement with the strategic Project sponsor (Korean Consortium).

The Project cost is USD647.4 million; this includes equity of USD194.2 million and the debt of USD453.2 million. The Company has 30% (USD194.2 million) equity shares. The Project sponsors are the Korean Consortium (KOSEP; 75 %), a Local Partner (10%) and the IFC (15%). The Project Engineering, Procurement and Construction (EPC) contractor for the main construction phase is the Doosan Heavy Industries and Construction (South Korea). PowerChina is the sub-EPC contractor. As of February 2023, the Company has employed 700 workers.

Providing a 70% (USD453.2 million) loan, the lenders include the IFC, the Asian Development Bank, the Asian Infrastructure Investment Bank and the Dutch Development Bank. Additional loan guarantees may come from the International Development Association of the World Bank and the Multilateral Investment Guarantee Agency of the World Bank Group.

3. Tamang Indigenous Peoples

Tamang of Rasuwa: The Tamang of Rasuwa are Indigenous Peoples who possess distinct characteristics, including the collective ownership of lands and resources, dependence on natural resources, assigning a pivotal role to self-governing customary institutions, the equal status of women, the practice of the traditional syncretistic religion, and their distinct language. The Tamang are one of 59 officially recognized Indigenous Peoples (*Adibasi Janajati*) under the Nepal National Foundation for Development of Indigenous Nationalities Act (2002).

Collective Ownership to Lands and Resources: The Tamang of Rasuwa have historically maintained collective attachment to the lands, territories and resources in what is referred to as the “Tamang Country;” this collective ownership was recognized by the rulers of Nepal. They continue to practice their traditional system of collective ownership of communal lands and natural resources. The Tamang associate different clans with specific geographical areas as their ‘the land where the clan is rooted.’ The various kinds of exchange-based relationships among the clans define a shared territory. The larger territory is further joined by linkages between the territorial divinity which protects the clans.

Socioeconomic Dependence on Natural Resources: The Tamang of Rasuwa have a high socio-economic dependence on natural –forest and riverine – resources. The commonly used forest resources are timber, firewood, foraging by livestock and collection of medicinal plants and non-timber forest products. The river is used for fishing and irrigation.

Self-Governing Customary Institutions: In order to sustain their socio-economic dependence on natural resources, the Tamang of Rasuwa traditionally managed the forests and rivers through their self-governing customary institutions. The Tamang assigned the obligatory role to the self-governing customary institutions for the collective decision-making to regulate and manage the use of natural resources within their respective traditional territories. Tamang culture, characterized by various traditional social institutions (such as *Nangkhori*, *Gedung*, *Chokpa*, and *Ghyang*), is organized, maintained, and regulated through these institutions. Customary laws are fully effective in the community and have a strong relevance in their village life.

Equal Status of Women: The Tamang of Rasuwa are characterized by strong gender parity; it remains the social norm in both communal and household decision-making processes. However recently, in public decision-making spheres, this equal role of women is increasingly undermined through the imposition

of the patriarchal values of the neighboring, socio-politically dominant groups. Increasing gender inequality of the Tamang women is aggravated by the state routinely undermining women's roles in public decision-making.

Practice of the Syncretistic Religion: The Tamang of Rasuwa practice a religious syncretism of animism and Tibetan Buddhism, called "Lamaism." The Tamang "live together" with supernatural elements such as spiritual beings and evil spirits. They believe in the sacred character of the natural world, from the land, mountains and forest to water bodies such as streams and river, wetlands, lakes, and ponds, and to the sky, earth, moon, sun and stars—all of which are revered accordingly.

Tamang as the Lingua Franca: In Rasuwa, the Tamang is the lingua franca. The Tamang is the most widely spoken Tibeto-Burman language in Nepal. It has its own script for sacred literature. The women and elders in particular communicate primarily in Tamang as they have a low proficiency in national Nepali language. Recently there has been a strong promotion of the Tamang language and culture through mass media. The Tamang language has been introduced in schools. Tamang men and women in general do not read English.

Victims of Historical Subordination: The Tamang in general, and the Tamang of Rasuwa in particular, are amongst the most historically subordinated and socio-culturally discriminated Indigenous Peoples of Nepal. They have endured a historical exclusion from the state apparatus; in the past, the relations between the rulers of Nepal and the Tamang were analogous to those found in colonial systems. They have suffered structural discrimination – based on a non-Hindu religion and cultural practices— from the dominant high-Hindu caste groups. The ancestral lands of the Tamang of Rasuwa have been historically subjected by the state for widespread land expropriation; the Tamang were not successful in mounting opposition to the state. In 1957, the state "nationalized" all forested areas, including those of the Tamang ancestral lands. In 1976, the state designated three-fifth of the traditional homeland of the Tamang of Rasuwa for creating one of the largest national parks in Nepal (1710 sq. km). It is no coincidence that, today, the largest number of hydropower projects in Nepal are concentrated in the traditional homeland of the Tamang of Rasuwa; the hydropower sector investors factor into their decision the fact that the Tamang remain in a politically weak position to mount a strong opposition to the land expropriation and physical displacement.

On-Going Challenges Faced by the Tamang: The Tamang of Rasuwa have since historical times witnessed tumultuous political and socioeconomic upheavals, which they have had limited capacity to impel. Historically, Rasuwa was a battleground for territorial control between Nepal and the then Tibet and China. Today, Rasuwa has the largest concentration of hydropower development activities. An international highway is being constructed along the river basin for facilitating trade and transit between China and India. A railway to link China and Nepal via Rasuwa is being currently surveyed; both countries are in discussions to finance this proposed rail project under the Chinese Belt and Road Initiative. The Tamang homeland was the hardest hit by the 2015 earthquake, which flattened entire villages, making it one of the worst affected. These ongoing challenges faced by the Tamang of Rasuwa have further exacerbated their economic and sociocultural hardships and compounded their vulnerabilities.

Project-Affected Tamang: The Tamang comprise 93.6% of the population in the Project Area of Influence. In addition to the distinct characteristics of the Tamang Indigenous Peoples in general, the Tamang of the Project Area of Influence possess the following additional specific characteristics: geographical isolation, socioeconomic insulation, small-holding land ownership, subsistence agro-pastoralism and a higher vulnerability to natural disasters.

Geographically Isolated Settlements: The Tamang of the Project AoI live in geographically isolated

settlements. Lying within a very geographically rugged area, with an altitude of over 3000 m above mean sea level, the Tamang settlements hug the rocky canyons along the steep river gorge and are confined by treacherous rivers below. Due to a limited plateau area for homestead and agriculture in this geographically unfavorable terrain, the settlements are spaced from one another widely. Most settlements have no road access to other parts of the district.

Socioeconomically Insulated Communities: The Tamang in general have a lower access to social services; only 17.9% Tamang households in the region have access to a paved road within 30 minutes walking distance. Compounded by the geographical isolation, the Project-Affected Tamang are in particular the most socially insulated communities in Rasuwa. They are forced to maintain a limited social interaction with the larger Tamang population. Not surprisingly, the Tamang of the Project AoI have the lowest access to social services in the area.

Small-Holding Land Ownership: The Project-Affected Tamang households are small land-holders. While the communal land area under their traditional occupation and use is vast, the area under cultivation is low because of the steep hills and mountains. Considering all land types, the average size of the land holdings per households is reported to be 0.29 ha of owned land and 0.44 ha of leased land. Seventy-two percent are landless or marginalized landowners (0.0 to 0.5 ha), while 28% of the landowners were small landowners (0.5 to 2.0 ha).

Subsistence Agro-Pastoralism: Confirming their higher dependence on natural resources, the Project-Affected Tamang have a higher economic reliance on agro-pastoralism, in particular the livestock herding and growing maize and potato. Agriculture with animal husbandry is the main source of livelihood for 89% of the households. Pastoralism is the major source of cash. They practice a 'transhumant' grazing system; animals are taken to high mountain pastures in the summer, and brought to lower pastures in the winter. The practice of agro-pastoralism is socially critical for the Tamang; the communities spread across wider area are connected through their traditional practices of herding sheep and yak.

Vulnerability to Natural Disasters: Steep and fragile geomorphology makes the Tamang homeland vulnerable to natural disasters. Natural disasters are critical drivers of vulnerability for the Tamang communities. The Tamang of the Project AoI are exposed to natural disasters – in particular, landslides, floods, fires and earthquakes.

FPIC Right of the Project-Affected Tamang:

FPIC Right under Lender Operational Policies: The key lenders (IFC, ADB, AIIB and FMO) have determined that the Tamang have the right to FPIC under their respective operational policies. The mandatory operational policies of these key lenders remain fully enforced in the Project context. These lenders have made a Project-level agreement to prepare the Project in accordance with the IFC's Performance Standards on Environmental and Social Sustainability, 2012; however, the Project-level agreement to prepare a Project under the IFC policies does not supersede the applicability of the lenders' Board approved operational policies. The IFC PS7 requires that the client acquires the FPIC of Project-Affected Indigenous Peoples when it impacts on lands and natural resources subject to traditional ownership or under customary use and relocates of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use; and iii) impacts on critical cultural heritage. The Project brings about the impacts on lands and natural resources under the Tamang traditional ownership and customary use. It carries out the physical relocation of the Tamang Indigenous Peoples.

FPIC Obligations under the International Conventions and UN Mechanisms: The lenders are required to ensure that the applicable national law, including those implementing host country has obligations

under international law, are abided by; the lenders may be considered complicit with the Company and the host country if they do not require the project developer to comply with the host country obligations under international law. Acquiring of FPIC from the Project-Affected Tamang is indeed an obligation of the GoN under the applicable international conventions. The obligation to recognize the right to FPIC of the Indigenous Peoples emanates from the ILO 169 (ratified by the GoN in September 2007). Furthermore, the GoN obligation is derived from the various international conventions that Nepal is a party to, in particular, the International Covenant on Economic, Social, and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Nepal is also signatory to the Convention on Biological Diversity (CBD), and the United Nations Framework Convention on Climate Change (UNFCCC). Ignoring these facts, Project documents claim erroneously that FPIC is only a lender requirement and not currently required in Nepal.

4. Project Impacts

As a large hydropower project undertaken in the traditional homeland of the Tamang Indigenous Peoples, this Project is a high-risk venture from the standpoint of adverse impacts. It has brought about, and will bring in the future, adverse environmental, economic and sociocultural impacts. While limited in its geographical extent, the adverse impacts are numerous in number and severe in terms of their degree.

Project Timeline: The Project timeline was marked by the following three distinct periods.

Project Scoping Period (2007 – 2011): During this early Project period, the Company (KOSEP) was issued permission for preparing the Environmental Impact Assessment to meet the GoN regulatory requirements. In 2011, the GoN approved the revised plan for expanding the Project AoI as well as expanding its capacity to 216 MW. The Company carried out the land survey and land identification for the Project during this period. Subsequently, the traditional land – private and communal – of the Tamang Indigenous Peoples was expropriated by the Company without adequate consultations and at a government-fixed compensation rate. The ILO 169 (applicable to this Project period; Articles 12, 13, 14 and 15) requires to safeguard rights of Indigenous Peoples regarding land and natural resources in territories traditionally occupied by them. Article 6 requires that consultation with Indigenous Peoples be carried out and specifies that Indigenous Peoples control the process by which their representatives are determined. The Project land expropriation from, and physical displacement of, the Tamang Indigenous Peoples were a fait accompli – the decision taken without giving the Project-Affected Tamang the option to refuse the land acquisition and the physical displacement by the Company. The Company sought the “intervention” of the government. Subsequently, the government applied the principle of eminent domain to expropriate land under customary use and occupation. The Company paid compensation at the rates determined by a committee composed of government civil servants, the heads of local governments and the head of the Company.

Project Preparation Period (2012 – 2018): This Project period began in March 2012 when IFC become involved both as an investor as well as the lead arranger of debt. Both the IFC PS7 (which became effective on January 1, 2012) and the ILO 169 were applicable for this Project Preparation Period. During this period and prior to documenting the FPIC, the Company continued both the land expropriation from and physical displacement of the Tamang Indigenous Peoples without the required FPIC process. Long after the land expropriation and physical displacement, the Company commissioned consultants to draft the Project plans. Consultations were held on the draft Indigenous Peoples Plan. Limited “public consultations” were held on the draft Land Acquisition and Livelihood Restoration Plan. There were, however, limited or no consultations on the other Project plans (including, ESIA, GAP, SEP-GRM, etc.). This Project period was interrupted by an earthquake in 2015 destroying some of its ancillary infrastructure and impacting its labor force. The Company however did not cease the

construction activities for associated and ancillary structures, in particular the access road and the engineering, contractor and workers' camps. During this period (on 1 November 2018), the Company documented the FPIC by signing the Tripartite Agreement (TPA) with the ad hoc "advisory council" (composed of the selected Tamang members from ten out of the 21 Project-Affected settlements). The ad hoc "advisory council," composed 87-individuals, was initially formed as an ad hoc "advisory Indigenous Peoples' committee;" the *committee* thus formed was later renamed as the "Adibasi Janajati Advisory Council" (Indigenous Peoples Advisory Council).

Project Construction Period (2018 – 2021): During this period, IFC was expected to carry out a staff verification to ascertain that the FPIC from the Tamang Indigenous Peoples had indeed been attained. There is no disclosed information that the IFC staff engaged the Project-Affected Tamang before certifying that the FPIC was indeed attained. In the meantime, the implementation of the TPA as well as the Project plans, including the IPP, remained on hold due to a long delay in fund disbursement. While the Project Financing Agreement was signed in November 2019, there was delay for agreeing to the Project financing closure (finally signed on 17 October 2022). During this period, the Company began preparation for the construction of the Project infrastructure, in particular the diversion dam. It established numerous Project ancillary facilities, including for quarries (for mining earth, stone, stone pebbles, etc.), crusher plants, borrow areas, spoil disposal site, batching plant and construction yard. As of October 2021, the construction of the ancillary and associated structures was carried out unimpeded. This period witnessed a number of complaints lodged with, and protests held against, the Company by the Project-Affected Tamang. At times the protests were violent.

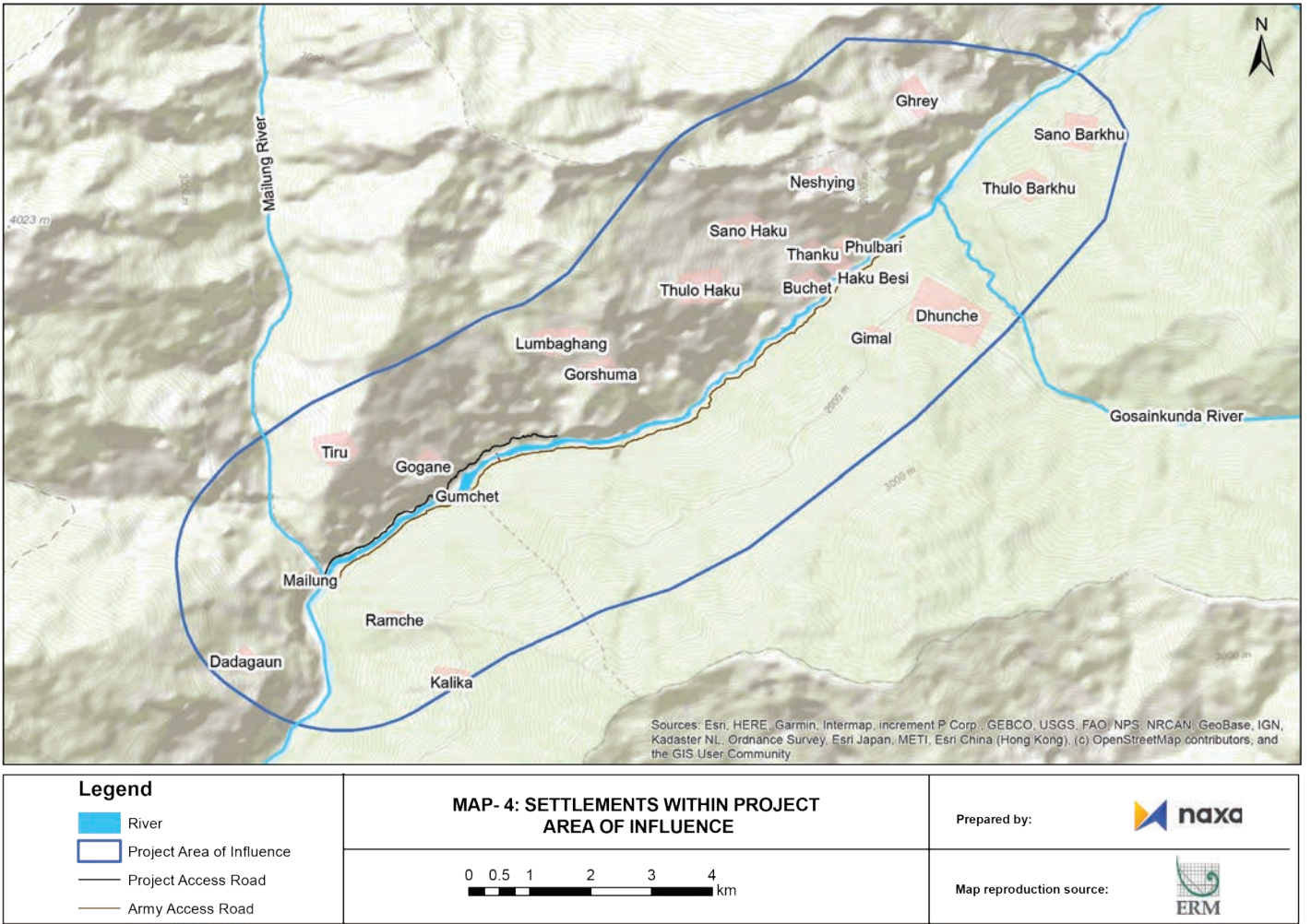
Project Area of Influence: As expected from a large hydropower project, the Project Area of Influence (AoI) covers many settlements of the Tamang Indigenous Peoples as well as other neighboring communities. A Project AoI is defined as area where the project involves specifically identified physical elements, aspects, and facilities that are likely to generate impacts, environmental and social risks and impacts will be identified in the context of the project's area of influence; it is an area that may reasonably be expected to be physically touched by Project activities, across all phases. The environmental AoI includes the area of ecosystem services impacted by the Project that benefitted the local peoples. The socioeconomic AoI includes communities affected by loss of access to resources: communities which will incur loss of access (permanent or temporary) to forest resources (e.g., firewood, food, medicine, fodder), which can have negative impacts on their livelihoods.

As the third largest hydropower undertaking in Nepal, the Project has a large physical footprint. The Project documents (EIA, ESIA, LALRP, SEP-GRM, etc.) determine a large Project AoI; all Project maps disclosed delineate a larger Project AoI. The Project EIA determines the following three categories of Project AoI: i) Category A (highly impacted area, encompassing the area of the Project construction activities); (ii) Category B (moderately impacted area, encompassing the forest areas as well as areas within the walking distance of three hours from the Project Construction area); and, (iii) Category C (minimally impacted area, encompassing areas potentially with the social, economic as well as the cultural impacts).

For the purposes of this Research, the Project AoI is categorized as follows: First, *the Highly Impacted Villages* are part of the EIA "Category A" villages affected by the land expropriation and physical displacement; this comprise of ten settlements. Second, *the Settlements Within in the Dam Catchment Area* are those impacted by the project construction activities (other than land expropriation and physical displacement); these "moderately impacted" settlements are from both the EIA Category A and B. Thirdly, *the Areas Impacted by the Ancillary and Associated Facilities* are those minimally impacted areas (EIA Category C). It should be underlined that the lands within the Project footprint area are under the customary – communal and private – occupation and/or use of the Tamang Indigenous

Peoples. In particular, the dam, the tunnel, the underground powerhouse, the access roads, and the power transmission line are being built in traditional Tamang land areas.

Ignoring the larger Project AoI detailed in the Project documents, the Project IPP (2018) delimited a much narrower the Project AoI covering only 10 “land-take” settlements, namely Hakubesi, Sano



Map 4: Project Area of Influence (based on the Company map; ESIA 2018: 5-5 Socioeconomic AoI; Figure 5-1: Environmental AoI)

Haku, Thulo Haku, Neshying, Gogone, Tiru, Thanku, Mailung, Gumchet, and Phulbari; this delimitation excluded 11 Project-Impacted settlements, namely, Lumbagang, Gorsuma, Buchet, Ghrey, Thulo Bharkhu, Sano Bharkhu, Dhunche, Gimal, Ramche, Kalika and Dandagaon. Consequently, during the process of seeking FPIC, the Company consulted only settlements encompassing those highly impacted settlements affected by the land acquisition and physical displacement. It did not consult the settlements within EIA Category B area (settlements within the dam catchment area and other moderately impacted area encompassing the forest areas) and excluded the settlements within the EIA Category C area (areas impacted by the Project ancillary and associated structures).

Project Benefits: While a number of potential Project benefits should have accrued to the Project-Affected Tamang, the Company has yet to deliver benefits to the Project-Affected Tamang. This is primarily because the Company has yet to disburse the allocated IPP budget. Moreover, there are growing worries that the Project-Affected Tamang will not receive these in a culturally appropriate and sustainable development manner, including the continued access to natural resources.

Fund for the IPP Implementation: The Project Tripartite Agreement (TPA) commits the Company to

allocate US\$ 1.125 million for the implementation of the Indigenous Peoples Plan. Four years have elapsed since the TPA was signed and the Company has yet to disburse this fund due to delays in signing the financial closure from the Project lenders (signed on 17 October 2022). A mechanism for disbursing the funds to the Project-Affected settlements has not been established. There is no clarity in the proposed institutional structure as to who will have the financial authority to administer these funds; there is a brewing conflict between the IPP Executive Board and the local government representatives as to who shall administer the funds, when these are disbursed for the IPP implementation.

Collateral Development Benefits: The Tamang may potentially derive collateral development benefits from the basin-wide cumulative regional development of hydropower. The Tamang may receive three specific collateral benefits. First, they may potentially benefit from the access to local road networks. Second, the Tamang settlements that are located in proximity to the national electricity grid may get access to the electricity. Thirdly, as the residents of Rasuwa district –not because they are Project-Affected but because they are permanent residents of the administrative district– they may have the opportunity to purchase the Project's Initial Public Offering (IPO) shares of hydropower projects.

Earthquake and Covid-19 Assistance: Against the background of the commercial exploitation by the Company of their natural resources as well as the land expropriation, and physical displacement, the Project-Affected Tamang had expected relief and rehabilitation assistance from the Company during and in the aftermath of natural disasters and crises (the 2015 Earthquake and during the Covid-19 lockdown of 2020-2021). However, the Company is said to have provided little or no assistance.

Project Adverse Impacts: The Company has conducted a comprehensive environmental impact assessment but it has not carried out comparably comprehensive social assessments on the Project. Consequently, the Project documents do not fully elaborate the degree and extent of the adverse sociocultural, socioeconomic and health impacts on the Project-Affected Tamang. Nonetheless, the Project documents (including the EIA, ESIA, LALRP, GAP, IPP as well as the IFC CIA) corroborate that the Project has brought about harms to the Project-Affected Tamang. As anticipated from a large hydropower project located in an ecologically fragile and narrow mountain basin, the Project impacts are varying in degree – from severe to moderate. The commercial exploitation of natural resources – river water, forests, etc.–under traditional ownership or customary use or occupation of the Tamang Indigenous Peoples has brought about a number of specific adverse impacts. These impacts range from land expropriation and physical displacement to economic displacement to environmental, sociocultural, health and gender impacts. The adverse impacts affect the Tamang Indigenous Peoples across the social sub-groups including the women, the elders, and the poor; the Project exposes women in particular to disproportionate and accentuated adverse impacts.

From among the adverse impacts on the Project-Affected Tamang, the involuntary resettlement – land expropriation and physical displacement – was the most culturally inappropriate impacts; it has brought about life-altering consequences. The involuntary resettlement was carried out by the Company at different times between 2009 and 2019. Relatively sizeable portions of limited arable lands – from within the mountain gorge, characterized by steep slopes and rock surfaces – were expropriated for the Project purposes. These impacts, initially economic in nature, lead to sociocultural consequences. Land expropriation resulted in landlessness and subsequently the loss of traditional livelihoods. Forced to take up wage labor, the social status of Tamang families were undermined severely. The physical displacement resulted in homelessness, and in many instances, displaced households were forced to emigrate, which forced them to detach socially from their collective community milieu.

Loss/ Restriction of Access to Natural Resources: In addition to the expropriation of the privately-titled land, the Project infrastructure is physically occupying relatively large communal areas of the Project-Affected Tamang. The Project use or control of the land under the communal use and occupation of

the Tamang is impeding their traditional access to natural resources – forests, pasture and riverine resources. The Company has imposed restrictions on the access without due consultations or negotiations. The traditional tenure rights of the Project-affected Tamang over these forests have now been jeopardized. Additionally, the restriction of access to the natural resources has brought about the loss of numerous ecosystem services the Tamang traditionally depended on.

Loss of Access to Community Forest: For millennia, the Tamang occupied, managed and used local forest areas and relied heavily on the natural resources therein for their livelihoods. Subsequent to the promulgation of the Forest Act 1993, the Community Forest User Groups (henceforth, forest user groups) were entrusted to develop, conserve, use, and manage forests, including selling and distributing forest products. The Company acquired a total of 927.32 ha of such forest user group areas. This has resulted in an impact on the land of six forest user groups (see below for list) involving 422 forest user group members. The forest user groups lost their source of construction materials, fuel, medicinal plants, etc. They lost their source of off-farm economic income. The forest user groups did not receive any compensation for this loss of access to the community forests.

Restriction of Access to the Communal Land/ Pasture: The Tamang rely on agropastoralism. The restriction of access to communal land and communally-managed pastures has added socioeconomic hardship. More seriously, this restriction is disrupting the traditional pasture management system that regulates the seasonal as well as cyclical use of communal pastures; it may jeopardize future traditional pasture management systems.

Project Land Expropriation: Expropriation of lands under customary use and/or occupation of the Tamang Indigenous Peoples – communally held land, privately-titled land and the religious trust leasehold land – has brought about adverse economic and sociocultural consequences. While the geographical extent of the land expropriation was comparatively small, the economic and sociocultural consequences were severe; these lands were expropriated from the limited productive land available within the rugged river basin – characterized by steep slopes and rock surfaces lying within a vertically narrow and deep river gorge. Land survey activities started as early as 2009. The Company completed 93% of land expropriation by 2015, if not earlier. A total 107.99 ha were expropriated; of these, 78.646 hectares are comprised primarily of community forests. 5.05 hectares are considered private lands, while 15.53 hectares are religious trust leasehold (*guthi*) lands. Land expropriation impacted 154 families (619 persons). Subsequent to 2015, there were additional land takes in 2017. The land take process applied the principle of eminent domain; it applied the government land take procedures. The Company formulated the Land Acquisition and Livelihood Restoration Plan (LALRP) in 2016 (six years after the involuntary resettlement had begun) and drafted a Supplemental LALRP in 2018; this plan was not subjected to the FPIC process and has not been implemented. Contrary to the earlier agreement, later in 2019, the GoN nullified the religious trust leasehold rights of these Tamang families; this sudden annulment of the religious trust leasehold rights was both unexpected and in violation of the agreement made between the Project-Affected Tamang and the Company; it severely eroded faith in the Company.

Project Physical Displacement: Of all the impacts, the physical displacement of the Tamang Indigenous Peoples from their traditional homeland brought about the harshest consequences; the Company carried out physical displacement of the Tamang Indigenous Peoples since 2013 and continued until 2018. While the scale was comparatively small, the adverse impacts were severe. The physical displacement resulted in the loss of structures, including primary residential structures. It was carried out without due negotiations, without adequate advance notice, without meaningful opportunities to lodge grievances and appeals, and long prior to documenting the FPIC. The compensation for asset loss was not based on negotiations per se or on the principle of replacement value; the valuation was carried out by a government agency without consultations with the Project-Affected Tamang. There was

no arrangement put in place for restoration of livelihood. Consequently, a number of Tamang families became homeless.

Project Environmental Impacts: In the context that the ecosystem of the Project AoI is fragile, the Project will bring about three specific adverse environmental impacts, namely, the loss of access to ecosystem services, the loss of biodiversity and the loss of artisanal fishing. The Project will impact the local peoples' use and access to these ecosystem services including provisioning services, which are the products people obtain from ecosystems. There will be increased landslides from the Project Road construction and from the blasting for various physical structures (dam, tunnel, quarries, etc.). There is the potential of the drying up of water sources (for drinking water and irrigation) from the Project activities. The Project will exacerbate the loss of biodiversity in the Project area that has been triggered by the numerous hydropower development undertakings and the construction of roads and highways. The Tamang of the Project AoI will experience the loss of artisanal fishing from the diversion of water and, in particular, due to diversion of river water through the tunnel for a 15 km stretch of the river.

Project Socioeconomic Impacts: The Company provided limited compensation for land acquisition and demolition of structures; it has yet to undertake the livelihood restoration and rehabilitation of the Project-Affected Tamang households. The adverse socioeconomic impacts, brought about by the land expropriation and physical displacement, were further aggravated by the 2015 Earthquake; the Company (entrusted by the government central relief agency to assist its Project-Affected people)) provided minimal earthquake relief or rehabilitation assistance.

Project Sociocultural Impacts: The Project AoI is core part of "the cultural capital of the Tamang." The Project activities have triggered a myriad of adverse sociocultural impacts on the Project-Affected Tamang including the loss of tangible sociocultural elements – erosion of the role of self-governing customary institutions, the traditional practices of collective decision-making, the traditional equitable status of women, the traditional health practices (including traditional medicine) – and the intangible cultural heritage – the traditional religious and spiritual practices, and language. The Company has not implemented required measures to avoid the sociocultural impacts on the Project-affected Tamang or taken necessary measures to mitigate such impacts.

Project Health Impacts: The Project-related activities are anticipated to result in adverse health impacts on the Tamang in the future. In particular, the Project activities will contribute to bringing reduction of the drinking water quality due to poor waste management. The blasting during the Project construction will bring localized fugitive dust, air emissions and noise pollution. The Project's immigrant workers will import and transmit a number of communicable vector-borne diseases – including tuberculosis and HIV-Aids – impacting the local population, who maintain a sociocultural insulation and thereby remain less exposed to diseases. The presence of immigrant labor (numbering 400 in February 2023 housed within a small area), who are not bound to societal Tamang norms, may exacerbate alcoholism and drug use among the youth.

Project Impacts on Women: An overriding consequence will be the loss of women's traditional decision-making roles. Tamang women enjoy an equal status socially vis-à-vis the men when it pertains to communal and household affairs, but they are being exposed to institutionalized discrimination during the transactions with the Company, as well as the state and other external parties. The Project is expected to expose women to disproportionate and accentuated adverse impacts. It will contribute to bringing about three women-specific adverse impacts: increased gender inequity, additional gender-based violence and women-specific health impacts. Women may face increased gender-based violence including trafficking of women.

Impacts from the Project Ancillary Facilities: The Project ancillary facilities – required for the main

construction phase as permanent and temporary structures – have brought about impacts additional to those from land expropriation and physical displacement. These ancillary facilities are scattered ubiquitously and in particular around the diversion dam and the underground powerhouse site. These include the access roads, the workers’ camps, the quarries and spoil disposal and other logistics terminals. These facilities have today generated adverse impacts on the Project-Affected Tamang, which are additional to those from land expropriation and physical displacement.

Impacts from the Project-Associated Facilities: The two Project Associated Structures – the alternate access road and the power transmission line – cause their respective adverse impacts on the Tamang. There has been no assessment of the adverse impacts resulting from these Project associated structures. The Company is relying intensively on the alternate access road and is using it as its “transport corridor” for accessing to the Project dam site and for transporting construction materials; this is resulting in noise, fugitive dust, air emissions, etc. The 1.2 km long power transmission line that will evacuate the electricity generated by the Project traverses through a swath of the forest user group areas.

Anticipated Cumulative Impacts from Hydropower Projects: The Tamang are anticipated to be exposed to the cumulative impacts of the hydropower activities in the Trishuli River Basin. As part of the national push for hydropower development, these undertakings (71 projects to-date) are crowded in a small geographical area. These have brought numerous – some positive but disproportionately adverse – impacts today and will bring impacts in the future on the Tamang Indigenous Peoples, including those of the AoI. For example, the hydropower projects are driving the extension of the road networks into this region.

5. Compliance with the IFC Performance Standard # 7

The assessment of the compliance of the Company with IFC PS7 focuses on the seeking of FPIC from the Project-affected Tamang. The IFC PS7, which became effective on 1 January 2012, is applied here as the benchmark operational policy for assessing on the compliance. The respective operational policies of the ADB, AIIB and FMO will be referenced, if and when they are relevant, for the specific period between 2016 and 2019, when these lenders came on board as the Project lenders. The Project lenders have made an agreement to prepare the Project in accordance with IFC PS7; notwithstanding this, the lender operational policies (ADB, AIIB and FMO) remain fully enforced. Project-level agreements do not supersede the applicability of the lenders’ Board-approved operational policies.

In this Research Report, the assessment of compliance is elaborated under three distinct Project periods: the compliance prior to seeking the FPIC (2012 – 2018); the compliance during the FPIC Documentation (2018); and the compliance subsequent to the FPIC documentation (2019-2021); the Research covered the period up to December 2021. Prior to March 2012, the IFC PS7 was not relevant. While the IFC PS7 was not applicable for the activities prior to March 2012, IFC was obliged to assess whether land expropriation prior to 2012 was carried out in a manner consistent with the requirements of the IFC PS7 and, if not, if any remediation plan was required to address the gap and to ensure its proper implementation.

Compliance Prior to the FPIC Documentation (2012 – 2018): The IFC itself, as a Company shareholder, was under mandatory obligation to comply with the FPIC requirement since March 2012 (when it signed the Joint Development Agreement with the Project sponsor). Moreover, beginning from this date, the IFC (as lead arranger of the debt package) was obliged to use its leverage to ask the Company to acquire the FPIC from the Project-Affected Tamang. It should have required the Company not to carry out the land expropriation and physical displacement without acquiring the FPIC. IFC should have required the Company to put in place and implement a “corrective action plan” to address past land expropriation and physical displacement, carried out since 2010.

This period saw widespread, and in some cases, indiscriminate lack of compliance with the mandatory lender operational policies. In particular, the Company did not comply with three specific mandatory requirements required under the IFC PS7, namely, the concluding the land acquisition and physical displacement prior to acquiring the FPIC, not conducting the required comprehensive social assessment and undermining the traditional women decision-making roles.

Concluding Land Expropriation and Physical Displacement Prior to FPIC Documentation: Subsequent to March 2012, when the IFC PS7 became applicable to the Project, the FPIC of the Project-Affected Tamang was mandatory for any land expropriation and physical displacement; FPIC should by definition be obtained prior to Project impacts. The Company had however acquired all the land it needed and had displaced the households prior to documenting the FPIC in 2018. In the particular case of the Project, the land expropriation and physical displacement was carried out under the watch of the IFC and in clear violation of its operational policies. The Company did not put in place livelihood restoration measures to mitigate adverse project impacts on affected communities, including to mitigate economic displacement caused by Project-related acquisition of arable land and associated loss of access to natural resources. Only subsequent to the land expropriation and physical displacement, a Livelihood Restoration Plan was prepared in 2015. A supplemental LALRP, prepared in 2018, has not yet been implemented.

Not Conducting Required Comprehensive Social Assessment: The Project IPP did not conduct the comprehensive Social Assessment focused on Tamang Indigenous Peoples, as required by the IFC PS7 as well as Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, 2012; this social impact assessment should have been conducted to determine the sociocultural and economic impacts on the Tamang Indigenous Peoples. The social assessment was carried out using limited primary data and outdated secondary data; for example, the IPP collated 2011 government census data and relied on the secondary data gathered during the 2011 EIA and, in a limited scale, the 2015 LALRP data. The social assessment was staggered haphazardly over a long period. The LALRP survey data was limited to those affected by the land expropriation and physical displacement by 2015; as per this 2015 data the Project land expropriation had impacted 154 Project-Affected Families (619 Project-Affected Persons). Subsequent to 2015, there were additional land takes in 2017 and consequently additional families were impacted. The Project continues to use an outdated list of Project-Affected Families.

Undermining Traditional Decision-Making Roles of Women: The Company paid little or no attention to the traditional decision-making roles of Project-Affected Tamang women during the Project preparation period. It did not follow the IFC PS7 to promote equality of opportunity and women's socio-economic empowerment, particularly with respect to access to finance, services, and employment, and otherwise to promote positive impacts on women's economic status, with particular regard to financial resources and property ownership and control. Instead, the Company undermined the traditional roles of Tamang women in household and communal decision-making. They were given limited voice during the process leading up to the documentation of the FPIC. The women, who bear the brunt of the Project's adverse impacts, were not the direct recipients of the cash compensation against the land acquisition and the demolition of the physical structures. Very few Tamang women from the Project-Affected settlements have been employed in the Project's construction.

Compliance During the FPIC Documentation (2018): FPIC from the Project-Affected Tamang was documented seven years after it was required by the lender policies as well as by the ILO 169. The Project Tripartite Agreement and the Demand Framework Agreement (signed on 1 November 2018 and 30 October 2018 respectively by the ad hoc "advisory council", the local government representatives and the Company) were the documentation of the FPIC.

The exercise of seeking FPIC from the Tamang Indigenous Peoples by the Company was historic; it was the first of its kind in Nepal. At the same time, when one looks into the details, the seeking of FPIC itself suffered from a number of structural and procedural gaps. The FPIC process suffered from ten specific gaps which are detailed in the Main Report below. In summary, by the time the Company sought FPIC, the Project had brought about major adverse impacts, in particular land expropriation and physical displacement. At this Project juncture, the Tamang Indigenous Peoples did not have options other than to “consent.” The process suffered from a fundamental flaw for not seeking the FPIC from 11 out of the 21 Project-Affected Tamang settlements lying within the Project Area of Influence (see below for list). Similarly, not seeking the FPIC from the communities-at-large was a major gap; instead, the FPIC was sought from, and documented with an ad hoc “advisory council.” The “advisory council” members, selected in an ad hoc manner (from the ten highly impacted settlements), had no mandate to represent their respective communities at large on the issue of FPIC. Moreover, the FPIC was not sought for the “Project as a whole;” it was documented for the implementation of the Indigenous Peoples Plan only; the IPP itself had limited scope and did not contain many provisions and requirements as well as key mitigation measures identified under various plans, including the LALRP, SEP-GRM and GAP. The Company did not disclose project documents in a culturally appropriate manner. It did not seek the FPIC from six Project-Affected forest user groups (see below for list). The Company pursued a culturally-inappropriate, compressed timeline for the FPIC deliberations. The Project documents did not fully elaborate the Project adverse impacts on the Tamang Indigenous Peoples. The FPIC process did not engage the Tamang self-governing customary institutions. The Company did not afford the Tamang women their traditional decision-making roles during the FPIC process.

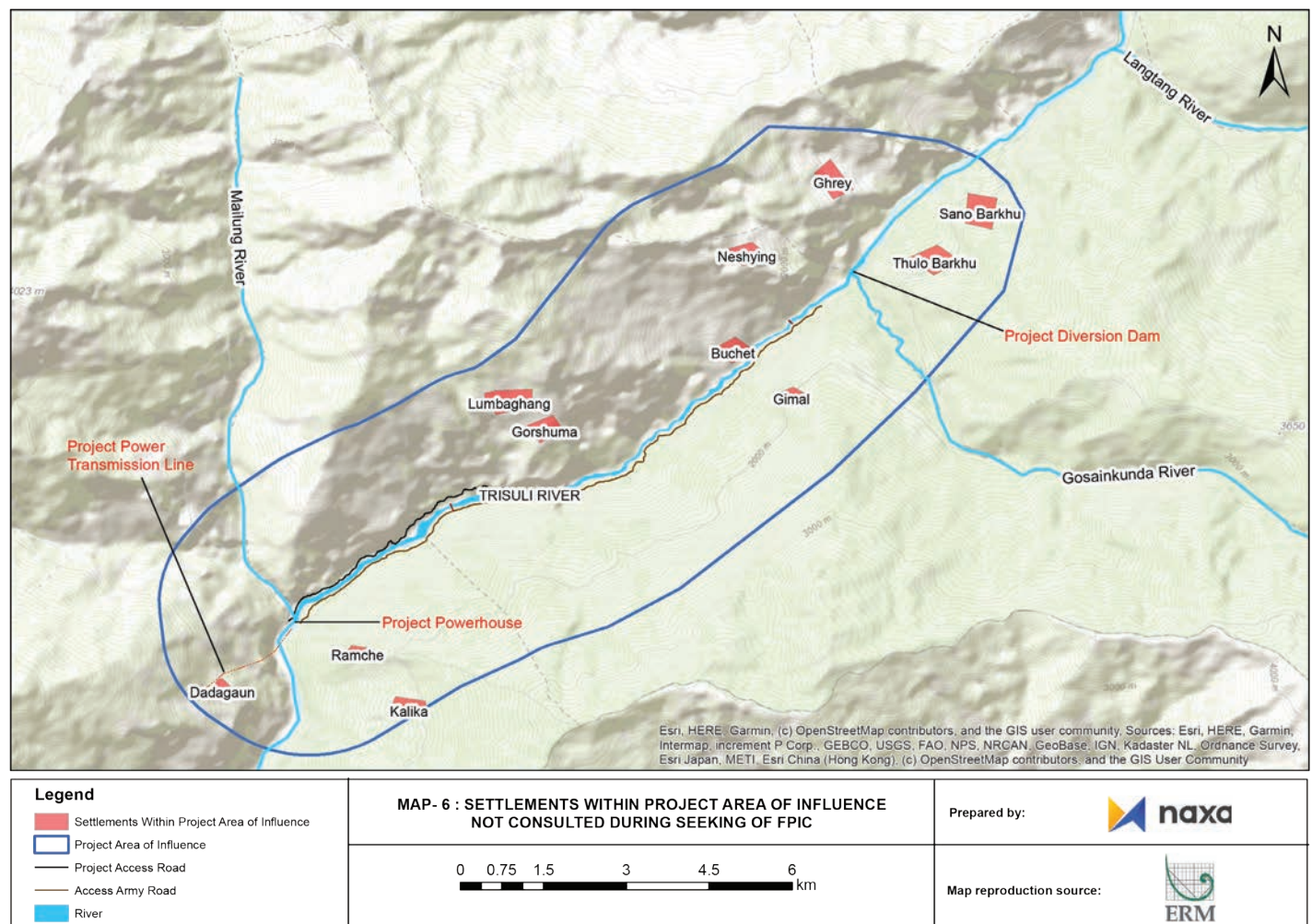
Not Disclosing Project Documents in a Culturally-Appropriate Manner: The Company carried out disclosure of the project-related documents in a limited way and in a culturally-inappropriate manner. Most documents were in English and the Company disclosed these English language documents digitally via its website. A limited number of the documents (EIA, ESIA and IPP) were translated into Nepali and disclosed. A key Project document concerning the land expropriation and physical displacement (LALRP) was not available in Nepali. The IPP was translated into Nepali; it was apparently translated into Tamang as well but this version was not publicly available. The Project documents in both English and Nepali have limited relevance to the Project-Affected Tamang, who do not read and write English, with the exception of a few with higher education. They have only limited comprehension of the Nepali language; in particular the women and elders do not speak Nepali. For the Tamang men and women who cannot read and write, the disclosure via the digital media was inaccessible.

Not Seeking FPIC for Project as a Whole: To establish the scope of the FPIC as per the IFC PS7, the FPIC process should have been initiated and documented for the “Project as a whole.” The deliberations during the FPIC process should have delved into the wider Project impacts and mitigation measures, including the key impacts pertaining to land expropriation and physical relocation. These were however not the case. The Company instead sought for, and documented, the FPIC for the specific implementation of the Project Indigenous Peoples Plan (2018), which had a narrower scope; this did not include the mitigation plan for land expropriation and physical displacement. This was one of the structural gaps in seeking the FPIC. The final version of the IPP (dated December 2018) attests that the ad hoc “advisory council” members were asked to sign onto an FPIC for the specific implementation of the IPP; the IPP records in numerous instances that the ad hoc “advisory council” members gave consent for the draft IPP package. The discussions during the FPIC process were focused primarily on the institutional arrangements and financial allocations for the IPP implementation.

Excluding Project-Affected Settlements from FPIC Process: Another major structural gap during the seeking of the FPIC was to exclude, without rationale and justification, the eleven (out of 21) Project-Affected Tamang settlements that lied within the Project AoI; these are Lumbagang, Gorsuma, Buchet

and Ghrey of Amachhodingmo Municipality Ward 1; Thulo Bharkhu, Sano Bharkhu, Dhunche and Gimal of Gosainkunda Municipality, Ward 6; Ramche and Kalika settlements of Kalika Municipality Ward 6; Dandagaon of Uttargaya Municipality, Ward 1. The FPIC documented by the Company was therefore partial in that a large section of the Project-Affected settlements was not afforded the right to participate in the FPIC process. As such, the Project-Affected Tamang from these 11 excluded settlements were not asked to, and did not, give their FPIC to the Project. Without elaborating it, the Company limited its FPIC consultation process only to those settlements impacted by land acquisition and physical relocation; the Company consulted only ten “land-take villages” namely Hakubesi, Sano Haku, Thulo Haku, Neshying, Gogone, Tiru, Thanku, Mailung, Gumchet, and Phulbari.

While not directly impacted by land expropriation and physical relocation, these 11 Project-Affected Tamang settlements are subjected to the numerous adverse Project impacts. The Company is



Map 6: Project-Affected Settlements Not Consulted during the FPIC Documentation (derived from the Company maps; see ESIA 2018: Figure 5-1: Environmental AoI)

commercially exploiting the natural resources on lands traditionally owned or customarily occupied and used by the Tamang Indigenous Peoples. The Project is bringing about adverse impacts on land and natural resources subject to the Tamang ownership or customary use and/or occupation; for example, the forest areas under customary use are impacted by the impoundment of the water for the diversion dam, the access road and by the transmission line. These 11 excluded Tamang settlements are subjected to the restrictions of access and use of, forest, pasture and water, which were under the customary occupation and use of these Tamang settlements. These excluded settlements lie within the

Dam Catchment Area. During the FPIC process, the Project AoI was shrunken ((limiting to 10 “land take” settlements) without articulating a clear rationale.

Not Seeking FPIC from Project-Affected Forest User Groups: The Company itself did not seek FPIC from the six Project-Affected forest user groups, namely, the Dachhin Kalika, Darnashila Kanyadevi, Lumbudanda, Bratar, Larbangpakha and Neshying. The Project Tripartite Agreement signed by the ad hoc “advisory council,” the local government representatives and the Company, attests that the Project-Affected forest user groups did not give the FPIC to the Company. The FPIC process thereby excluded 422 forest user group members during the FPIC process. A total of 927.32 ha of forests was protected, managed and used by the six forest user groups. Historically, the forest user group areas were under traditional management, use and occupation of Tamang Indigenous Peoples. In recent decades, the forest user groups were formally recognized by the government. The Company should have acquired FPIC of the six forest user groups prior to extinguishing their rights to manage and use the forests. However, the GoN Department of Forest acquired the areas under the forest user groups for the Company use applying the Forest Rules 1995; it extinguished the rights of the Project-Affected forest user groups, giving them little or no say. The Project Indigenous Peoples Plan attests repeatedly that it could not ascertain whether the government department had sought FPIC from these Project-Affected forest user groups and furthermore, it could not verify the adequacy of the FPIC process. To begin with, to ask a government department to apply the numerous and rigorous requirements for acquiring FPIC from the Project-Affected Tamang was neither realistic nor feasible in Nepal’s current context.

Not Engaging with the Community at-large from Highly Impacted Villages for FPIC: The Tamang community at-large should have been engaged in taking a fateful decision whether to give or withhold FPIC for a hydropower project that will commercially exploit their natural resources. The Project has already brought about, and will bring in the future, numerous life-changing impacts. During seeking the FPIC from the 10 “highly-impacted villages” however, the Company did not directly engage the community at-large; it should be noted that the community at-large from the remaining 11 (out of the 21 Project-Affected) settlements had been excluded from the FPIC process altogether. The Company instead sought the FPIC from, and documented with, an ad hoc “advisory council” comprised of selected members from these “highly impacted” settlements. Not engaging the community at-large during the process of seeking of the FPIC by the Company was a fundamental structural flaw. The members of the “advisory council” who were selected in an ad hoc manner, and, who did not have the mandate to represent their respective communities at-large on the issue of the FPIC. The process of selection of the members ignored the traditional Tamang practice of village elders representing the community at-large; most of the 87 individuals were of 30 to 40 age cohorts and with relatively higher formal educational attainment. By its name and its nature, the ad hoc “advisory council” had no specific mandate to give or withhold the FPIC on behalf of the community.”

During the process of seeking FPIC, the Company bypassed the Tamang collective decision-making procedures. The Tamang collective decision-making takes place subsequent to the intensive internal deliberations at the community at-large level. Collective decision-making is based on the principle of community (women and men) consensus, and requires intensive and extensive deliberations. Collective decision-making among the Tamang is taken first at a settlement level. Once a settlement-level decision is forged through intensive deliberations, consultations with the adjoining settlements are pursued in order to reach the inter-community decision.

Not Allocating Adequate Lead Time Required for Tamang Decision-Making: The Company pursued a culturally-inappropriate compressed timeline for seeking and documenting FPIC from the Tamang Indigenous Peoples. The Project documents indicate that the Company allocated a two-month period (September and October 2018) for consultations on the Indigenous Peoples Plan with, as well as

for documenting FPIC from, the Project-Affected Tamang. By any standard, the compressed timeline pursued by the Company for the FPIC was not cognizant of the Tamang decision-making process and was not consistent with the IFC PS7. While it is not entirely clear, the compressed timeline was perhaps driven by the Company deadline for signing the Project Financing Agreement (signed in November 1, 2019). By any measure, two months is not adequate time to allow the Project-Affected Tamang to forge consensus – first at the settlement-level and subsequently, at the inter-settlement level. Tamang decision-making is not bound by a deadline. It demands a culturally appropriate adequate lead time to forge consensus. In particular elderly people and women require time to deliberate on the pros and cons of the subject and articulate their standpoints. The community consensus across numerous settlements and social groups (elders, women, youth) on whether to give or uphold the FPIC on the commercial exploitation of their natural resources requires a long lead time.

Not Fully Elaborating Project Adverse Impacts and Mitigation Measures: The Project-Affected Tamang were not fully informed, prior to and during the seeking of FPIC, of the degree, scale and the extent of a number of the various Project adverse impacts and the commensurate mitigation measures; this was due primarily to the fact that the Company had not conducted the required comprehensive social assessment on the Project impacts. The Indigenous Peoples Plan, the primary document disclosed for seeking FPIC, did not deliberate on the central subject of the land expropriation and physical displacement that had impacted the Tamang. Inconsistent with the IFC PS7 requirement, the Indigenous Peoples Plan instead relegated the deliberations on the major impacts pertaining to land expropriation and physical displacement to the LALRP. Compounding this procedural weakness further, the LALRP (and the Supplemental LALRP) have neither been put into consultations with the Project-Affected Tamang nor implemented. Neither did the IPP deliberate comprehensively on many adverse impacts, including the environmental, socioeconomic, sociocultural and health impacts, and impacts on women.

Not Engaging Self-Governing Customary Tamang Institutions: Ignoring the requirements under the IFC PS7, the Company circumvented the Tamang self-governing customary institutions during the FPIC process. This was another major procedural flaw during the FPIC process. IFC PS7 requires the Company to acquire FPIC through these representative institutions. These customary institutions should have been afforded the primary role in any deliberations leading the decisions regarding commercial exploitation of natural resources. These customary institutions, membership of which is comprised all the households in the community, play a paramount role in the regulation and management of natural resources (forests, pasture and water). For the Tamang, the self-governing customary institution are entrusted with collective decision-making. These self-governing customary institutions are the conflict resolution mechanism at the community level and between communities.

Not Affording Women their Traditional Decision-Making Roles: Another major structural gap in the FPIC process was that the Company did not afford the Project-Affected Tamang women their traditional decision-making roles during all phases of the Project in general and during the seeking of FPIC in particular. Tamang women traditionally enjoy an equal status socially vis-à-vis men when it pertains to communal and household affairs and have a strong say in household and communal decision-making, including in the regulating and managing the natural resources. The women today are facing structural barriers due to the patriarchal culture of the dominant social groups as well the rapid intervention of the state system; they have become a disadvantaged and vulnerable sub-group. The Project has further exposed the Tamang women to numerous and disproportionate adverse impacts, above and beyond those experienced by men. Women should have been given a say in decisions leading up to the FPIC pertaining to the commercial exploitation of natural resources.

It was to the Company's credit that, during the seeking of the FPIC, it sought equal representation of women to that of men; half of the ad hoc "advisory council" members were women (younger age cohort

with formal education). It had not similarly sought women participation earlier during the critical land acquisition and physical relocation. The representation during the seeking of the FPIC was however numerical, if not tokenistic; the equal representation of women in number did not translate into influencing the outcome of the process. The Tamang women elders, who wield considerable influence over traditional decision-making processes, were not invited to the ad hoc advisory council. The deliberations were not held in Tamang; the use of Nepali during the “advisory council” deliberations was a major impediment for women members of the ad hoc “advisory council.” Led by external IFC consultants, negotiations were held in English and/or Nepali. Women in these communities do not usually comprehend English. Many of them, including members of the ad hoc “advisory council,” have limited proficiency in reading and writing Nepali. At the end, the men led the decisions regarding the FPIC and women had a minimal say in the outcome. While they were made signatories to the Project TPA and DFA, the women had no tangible say in the drafting and deliberations of these outcome documents.

Not Incorporating Demands of Project-Affected Tamang into Project Tripartite Agreement: The Company does not commit itself to implement the demands of the Project-Affected Tamang articulated in the “Demand Framework Agreement” that articulated the demands of the Project-Affected Tamang. Signed by the same parties (the Company Management, the ad hoc “advisory council” and the local government representatives) a day earlier (on 31 October 2018) prior to agreeing to the Tripartite Agreement, the implementation of the Demand Framework Agreement as an integral part of the Project IPP was a precondition. Further obscuring the problem of the Company not implementing the provisions of the agreed DFA, there are inconsistencies between the Nepali and the English versions of the signed Project Tripartite Agreement; some of these glaring inconsistencies indicate that the parties signing the TPA may have overlooked the principle of “Good-Faith Negotiations.” The demands of the Project-Affected Tamang listed in the DFA were culturally-appropriate. The demands listed in the DFA were judicious; for example, the list of demands include “employment of local people/ technical skill training for women and men” and hiring of local contractors for civil works.” The demands by the Project-Affected Tamang are fully in line with the requirements of the IFC PS7. The Demand Framework Agreement contained the pledge of NWEDC to engage in a process of dialog to respond to the multiple demands.

While, on the one hand the Tripartite Agreement was taken as the binding basis for documenting the FPIC, on the other hand, the accompanying Demand Framework Agreement signed by the same parties was disregarded. A Supplemental Agreement was to be signed; there is however no record that the Supplemental Agreement was prepared. The IPP did not integrate the binding provisions of the Demand Framework Agreement; it only attached it as an annex. One should wonder why on the one hand the Tripartite Agreement is taken as the binding basis for documenting the FPIC. On the other hand, the accompanying Demand Framework Agreement signed by the same parties is disregarded.

Compliance Subsequent to the FPIC Documentation (2019 – 2021): There were several gaps in compliance with the IFC PS7 during this period. The Company did not comply with seven additional specific mandatory policy requirements: no disbursement of allocated budget for IPP implementation, not implementing the Supplemental LALRP measures, no periodic reporting to Project-Affected Communities, unimpeded construction of the Project’s ancillary facilities, not establishing a dedicated In-House IPP implementation unit, institutional uncertainty about the Project management structure, not putting in place grievance redress mechanisms and no supervision of the Project by the lenders.

There have been four years since the Tripartite Agreement were signed. Early during this period (November 2019), the Company and the lenders signed the Project Financing Agreement. The Project financing closure was signed on 17 October 2022. Against this financing backdrop, the Company has not begun the implementation of the IPP and the Tripartite Agreement, as well as implementation of the

Supplemental LALRP agreed during the FPIC documentation process. Deferring the implementation of the Tripartite Agreement was itself a breach of trust, if not a breach of agreement.

This period witnessed a serious incident of the Company reneging its earlier commitment towards compensating the acquisition of religious trust leasehold land. The Project-Affected Tamang claim that, subsequent to the documentation of the FPIC, the traditional tenure rights of the Project-Affected Tamang over the religious trust leasehold land were invalidated by the GoN Cabinet; this was contrary to the earlier agreement. Subsequent to the documentation of the FPIC, the traditional tenure rights of the Tamang families over the religious trust leasehold land (approximately 110 *ropani*; 7 ha) were nullified by the Government at the behest of the Company; it nullified the legally documented tenure rights.

While for 4 months (between March 24 2020 and July 21 2020), the Covid-19 lockdown disrupted the lives and livelihoods of the Project-Affected Tamang, the Company Engineering, Procurement and Construction (EPC) Contractors continued unimpeded civil work as part of the preparation of the main construction. By February 2023, the EPC had completed construction of the diversion tunnel and has diverted the river water to commence construction activities of the headworks.

No Disbursement of Allocated Budget for IPP Implementation: There has been a long delay in the disbursement of committed “budgetary” resources committed for the Project implementation. The Company has not yet disbursed the allocated IPP Budget. In the meantime, four of the stipulated five years of the IPP implementation phase (2019 – 2023) have elapsed. The Company acknowledged that there is a delay in the disbursement of allocated funds.

Delay in Implementing Supplemental LALRP Corrective Action Plan: It has been eleven years since the Company initiated the physical displacement of the Tamang. The Company has yet to implement the key mitigation measures proposed under the Supplemental LALRP “corrective action plan;” these mitigation measures pertain to support to the physically displaced families, social and livelihood support and compensation for structures at replacement value. The Company planned to implement these mitigation measures only “subsequent to project start of construction;” the project construction began in 2019 but the mitigation measures have not been implemented. Acknowledging that there has been a delay over many years, the Company has committed to “expeditiously implement the LALRP “corrective action plan.” In the meantime, the physically displaced families are forced to wait for mitigation and compensation under the corrective action plan.

No Periodic Reporting to Project-Affected Communities: There was no periodic reporting to the Project-Affected Tamang on the status of implementation of the IPP. There is no formal and substantive communication between the IPP Executive Board and the Company; the IPP Board has made a written statement to the Research Team that it does not receive updates from the Company. There is no record of any meeting held between the Company and the community at-large. There were no records of any consultations with the Project-Affected Tamang on the ongoing construction of the numerous Project ancillary and associated structures.

Unimpeded Construction of Project Ancillary Facilities: There was sporadic but unceasing civil-work construction activities by the EPC Contractors around the Project ancillary and associated structures; these included construction of new network of access roads, campsites for labor, as well as the opening up of ubiquitous sites for quarries, borrows, spoil disposal, batching plant and construction yard. These construction activities were expedited during the latter part of the Covid-19 lockdown in Nepal (between March 24 2020 and July 21 2020). Since 2020, the construction of the access roads in the dam site, the Bailey bridges to access the alternate access, ground preparation for the dam, the tunnel and the power powerhouse began and are in full swing today. By February 2023, the Company has completed construction of a full concrete lining diversion tunnel (of 420m length and 5m diameter) and

has diverted the river water to commence construction activities of the headworks. The Company has completed a 4.5 km excavation (out of 13.5 km) of the tunnel. It has completed 21% of the excavation work for the underground powerhouse. An additional EPC and Workers camp was established in a new site in October 2021. The Company widened and improved the alternate access road to use it as its transport corridor; the Company transport vehicles ply this road regularly. Taking note of the fact that the Company is using the alternate access road (locally known as the “Army” road), there is worry that that Company is abandoning its the earlier agreed project access road in favor of the alternate access road; this is another example of the Company reneging its earlier commitment agreed under the Project EIA.

Not Institutionalizing a Dedicated In-House IPP Implementation Unit: As required by the IFC PS7, the Company has yet to institutionalize a dedicated IPP Support Unit staffed with qualified social scientists to implement the Project IPP; currently, the IPP implementation is managed by an overall Environmental and Social Team. This is somewhat surprising that this has been fifteen years (2007 – 2022) since the Company has been pursuing the Project and ten years since the IFC became the Project co-developer.

Institutional Uncertainty about IPP Implementation Structure: The Tripartite Agreement envisioned a IPP Management Structure; it should be noted, the proposed institutional structure did not assign any role to the Tamang self-governing customary institutions. Today, there are a number of additional institutional uncertainties about this Management Structure. After 4 years of tenure, the IPP Executive Board lacks the necessary implementation - the administrative and financial management – capacities; the Company has not extended the technical support to the IPP Executive Board in order to build its program and financial management capacities. The proposed structure, elaborated under the newly drafted IPP Implementation Guideline, is cumbersome in terms of the structure, bureaucratic in terms of its process and costly in terms of resources. For example, it proposes a periodic “election” of the IPP Governing Board; in the present political context of Rasuwa district, this proposal is fraught with risks of partisan politics. It proposes various committees for monitoring, internal evaluation; such committees may further impede the eventual IPP implementation. Moreover, there is no clarity as to who will have the financial authority to administer these funds; while the IPP Board asserts that it has the financial authority, the local government representatives (who bring the legal financial mandate under the law at the local level) contest that they should administer the IPP budget. The subsequent institutional confusion is leading into intra-community conflicts, in particular the legitimacy of the Project IPP Executive Board. The Guideline proposes consultancy services of external (international?) experts for evaluation; it is not clear who shall pay for such consultancy services and whether it shall be taken from the earmarked IPP budget; it may considerably drain the allocated budget.

Not Enforcing Worker Code of Conduct by EPC Contractor: The EPC Contractors have had on-the-ground presence in the Project AoI for the last 10 years (since 2013). While the Company states that the Worker Code of Conduct was developed and widely disseminated to the project workforce, this has not been fully enforced. The workers in particular remain unaware of the various agreements (including the Tripartite Agreement) reached between the Company and the Project-Affected Tamang. It should be underlined that the EPC Contractors and workers remain oblivious to principles and provisions laid out in the Project IPP and remain unaware of the mandatory provisions of the lender operational policies.

Not Operationalizing Grievance Redress Mechanism: Not heeding the mandatory requirement under the lender operational policies, the Company has yet to put in place a grievance mechanism that is operational on the ground; it has yet to set up an accessible mechanism to receive grievances from the Project-Affected Tamang, to document them and to resolve them. One clear pointer that the Company has not put in place the required mechanism for grievance redress is the increasing number of oral and

written complaints lodged by the Project-Affected Tamang.

In 2018, the Company proposed an “Stakeholder Engagement Plan and Grievance Redress Mechanism” (SEP-GRM); this English language document is however awaiting consultations with the Project-Affected Tamang. It did not propose to incorporate a number of culturally appropriate grievance procedures; the proposed grievance mechanism does not recognize the primacy of the Tamang self-governing customary institutions for conflict resolution. The proposed mechanism does not require the Company to receive the grievances in Tamang language.

Today, the Project-Affected Tamang are neither aware of, nor have access to, the Company grievance redress mechanisms. The lack of an operational grievance redress mechanism on the ground is resulting in a severe erosion of trust with the Company. As the complaints get festered, the lack of trust is leading to protests, at times violent protests. For example, an 11-day long protest was held by the Project-Affected Tamang in August 2021. There was violent protest by youth on 19 December 2021. The Project-Affected Tamang are said to be in consultations with the community elders and civil society to take steps to withdraw the FPIC. The Project lenders (IFC, ADB, AIIB and FMO) have their respective accountability mechanisms. Rules require the respective lenders to provide the Project-Affected people information regarding these accountability mechanisms. There is however no record that the lenders have disseminated information regarding the accountability mechanisms.

The IFC policies expressly prohibit the use of unnecessary, disproportionate, or excessive force. There are however reports of intimidation of the Project-Affected Tamang when they lodge complaints or participate in protests against the Company. Beginning 2012, the Company is in the record to have sought the “intervention” of the government officials during the land expropriation (between 2012 and 2017) when it was not able to procure land through negotiated settlement; for example, in May 2013, the District Administrative Office intervened to compel the landowners, who had refused to sell their lands, to accept compensation at a government rate. At times, the government officials have issued orders for mobilization of the police. A new Company-financed police post has been established at the village, adjacent to the dam site. There are reports of intimidation of the Tamang youth when they lodge complaints or participate in protests against the Company.

A statement made during a focus group conducted by the Research Team (in October 2021) records that the members of the Project-Affected Tamang “are considering withdrawing FPIC if the Company does not keep its promises... unless their demands are met in a timely manner and adequately.” The use of intimidation by the Company was cited as grounds for rescinding the FPIC documentation signed in 2018.

No Supervision of Project by Lenders: The lenders are not conducting periodic supervision of the implementation of the Project plans as required by their operational policies. There had been no supervision for three years since the FPIC was documented. Due to the lack of periodic supervision by the lenders, many of the policy compliance issues have not been addressed by the Company. The Lender Independent Environment and Social Advisor for the Project finally paid a visit to the Project-affected settlement, in October 2021 coinciding with the Research team’s ground presence. No report on this visit has yet been disclosed. Similarly, there are no public records of project monitoring by the Company.

6. Research Study Recommendations

This Research provides a number of recommendations for actions by the Company, the IFC, other lenders and IPP Governing Board in terms of implementing the agreements made by all the parties.

Company [NWEDC] Action:

Implement the 2018 Supplemental LALRP “corrective action plan” proposed by the IFC for the Project-Affected Families

Seek FPIC from those excluded 11 Project Directly Impacted settlements within the Project AoI as well as from the 6 Project Directly-Impacted forest user groups

Propose and agree with the Project-affected communities a Benefit Sharing Mechanism

Implement the Project Gender Action Plan

Disclose Project information regularly and in a culturally appropriate language and medium (in Tamang language and hard copies)

Establish an In-House Operational Grievance Redress Mechanism and Involve Traditional Tamang institutions to address outstanding and future grievances

Review and Restructure the Governing Structure for IPP Implementation in consultations with the community at-large

Establish a Functional Organizational Unit within the Company Management Structure to Implement the Indigenous Peoples Plan, the Tripartite Agreement and the Demand Framework Agreement

Implement the Project Tripartite Agreement

Implement the Arrangements Agreed under the Demand Framework Agreement

Ensure that the Project Engineering, Procurement and Construction Contractors do not violate the human rights of the Project-Affected Tamang

Assist the Project-Impacted Communities to plan for avoiding and/or mitigating the wider, cumulative economic and sociocultural impacts of the hydropower projects in the river basin

Invest to secure the “Social License to Operate”

IFC Action

Ask the Company to acquire the FPIC from 11 Project Directly Impacted settlements within the Project AoI as well as from the 6 Project Directly-Impacted forest user groups

Follow up with the Company on the Implementation of the Indigenous Peoples Plan, Tripartite Agreement and the Demand Framework Agreement

Provide technical assistance to the Company to strengthen its gender strategy and to implement it

Ensure that the Company discloses Project information regularly and in a culturally appropriate language and medium

Provide technical assistance to the Company to operationalize the grievance redress mechanism

Disseminate information widely about the IFC Compliance Advisor Ombudsman

Assist the Company to work with the Project-Affected Communities to avoid and/or mitigate the wider cumulative impacts of the hydropower projects in the river basin

Review the conditions for the FPIC and, when needed, facilitate the renewal

Other Lender Action

Conduct supervision at regular intervals through the Lender's Independent Environmental and Social Advisor and disclose the supervision reports in a culturally appropriate language and medium

Demand and ensure that the Company implements the corrective measures identified by the Lender's Independent Environmental and Social Advisor

Disseminate information widely about the lender independent accountability mechanisms, and in a culturally appropriate manner, among the Project-affected communities

Work with the Company and IFC to work with the Project-Affected Communities to avoid and/or mitigate the wider cumulative impacts of the hydropower projects in the river basin

Project IPP Governing Board Action

Assist the Company to Seek FPIC from the excluded 11 Project Directly Impacted Settlements and 6 forest user groups

Afford the Self-Governing Customary Institutions a role in the Implementation of the Project Indigenous Peoples Plan and facilitate these institutions in the grievance redress mechanism

Afford Women an Equal Role in the Indigenous Peoples Plan Implementation

Ensure that the Company translates the Project documents into Tamang and discloses them in hard copies

Conduct village-wide meetings to disseminate Project IPP information.

Work with the Company to Reconstitute the Project IPP Governing Board and the Executive Board for effective IPP implementation.

Conduct consultations with the Project-affected Settlements in order to put in place a culturally appropriate financial disbursement mechanism

Work with the Company and the IFC to Review the Conditions under which the 2018 FPIC was documented, and when needed, facilitate the renewal

Main Report

FREE, PRIOR AND INFORMED CONSENT OF THE TAMANG INDIGENOUS PEOPLES OF NEPAL

AN INDEPENDENT ASSESSMENT ON COMPLIANCE WITH THE IFC PERFORMANCE STANDARDS IN THE UPPER TRISHULI-1 HYDROELECTRIC PROJECT

NAVIN K. RAI ¹

1. RESEARCH STUDY

Complying with the FPIC Requirement: The Tamang Indigenous Peoples of Rasuwa, Nepal, affected by the Upper Trishuli-1 (216 MW) Hydroelectric Project (henceforth, the Project), have the right to Free, Prior, and Informed Consent under the mandatory operational policies of the core Project lenders ² as well as the ILO Convention # 169 (henceforth, ILO 169) ratified by the Government of Nepal in 2007. ³ The core Project lenders have determined that the Tamang of the Project Area of Influence meet the respective criteria for Indigenous Peoples. Subsequently, these lenders have required the Project to comply with their respective mandatory operational policies on Indigenous Peoples. The Project Environmental and Social Impact Assessment (ESIA, 2018: 7.6 – 3) and the Project Land Acquisition and Livelihood Restoration Plan (LALRP, 2018:70-71) affirm that “the requirements of carrying out Free, Prior and Informed Consent process is part of the... effort to seek international finance and meet lenders requirement...”

Free, Prior and Informed Consent (FPIC) is recognized as the key principle that enables Indigenous Peoples to exercise their rights. There are three thresholds that must be met for acquiring the FPIC. First, it must be free from intimidation, coercion, manipulation and harassment. Second, it must be acquired *prior* to bringing about the impacts on the Indigenous Peoples. Thirdly, the Indigenous Peoples must be *informed* of the substantive content of the proposed activity.

The Project is a large infrastructure undertaking (see 2.1 and 2.2 below for details). The Nepal Water and Energy Development Company (NWEDC) was required to obtain the FPIC from the Project-Affected Tamang due to the following three specific adverse impacts: (a) the Company proposed to commercially develop natural resources on lands traditionally owned or customarily occupied and used by the Tamang; (b) the Project brings about adverse impacts on land and natural resources subject to the Tamang ownership or customary use and/or occupation; and (c) the Project relocates the Tamang from their traditional homeland.

The Government of Nepal (GoN) recognizes the Tamang as “Indigenous Peoples” (see 3.1 below for details). As part of its obligations under international law to enforce compliance with the ILO 169, the GoN is required to oblige the NWEDC to seek and acquire FPIC of the Project-Affected Tamang prior to bringing about any adverse impacts on lands and natural resources under customary use or occupation (see 3.4 below for details). ⁴

- 1 This Research Report was prepared by Navin K. Rai, former World Bank Lead Social Development Specialist. Rai served as the corporate Indigenous Peoples Advisor of the World Bank from 2000 to 2012. Primary data for the Research Study was gathered by a research team led by Rai (anthropologist and FPIC specialist) and included a Gender Specialist (Kailash Rani Rai) and a Community Development Specialist (Deepak Tamang).
- 2 Namely, the International Finance Corporation, the Asian Development Bank, the Asian Infrastructure Investment Bank and the Dutch Development Bank.
- 3 The GoN ratified the ILO 169 in 2007 but it has yet to amend the commensurate domestic legislations. MDB (IFC as well as ADB and FMO; 2022) *Response to Oxfam International regarding Comments on the Draft Research Report dated July 8, 2022* states that the “GoN did not require FPIC when acquiring communally owned lands/forest.” As per international law however, the GoN is under obligation to require development projects to recognize the right to FPIC of indigenous peoples of Nepal, including the Project-Affected Tamang Indigenous Peoples (see below for details).
- 4 Prior to the documenting of the FPIC on 30 October 2018, the Project was not complying with the lender operational policies. NWEDC (2022) *Response to Oxfam International regarding Comments on the Draft Research Report dated August 7, 2022* however states that “the principle of prior consent has been ... complied through various hearings of the regulatory approvals of Environmental Impact Assessment...” It adds that it complied with “the Land Acquisition Act 1977, Environmental Protection Act 1997, Environmental Protection Regulation 1998, Guidelines for Use of National Forest Area for Project having National Priority 2019.” However, the requirements for acquiring the FPIC cannot be complied through public hearing and/or the execution of the GoN legislations.

Under its mandatory operational policies, the International Finance Corporation (IFC) - the Project co-developer and lead arranger of the debt package (see 2.2 below for details) - was expected to conduct its institutional “due diligence;” it should have conducted its due diligence prior to March 2012 (second half of 2011) ⁵ when it signed the Joint Development Agreement (JDA) with the strategic Project sponsor (Korea SE Power Company). ⁶

Documenting the FPIC: The NWEDC (henceforth, the Company) documented the seeking of FPIC from the Project-Affected Tamang Indigenous Peoples through the signing of the Project Tripartite Agreement for the Indigenous Peoples Plan Implementation ⁷ on 1 November 2018. The Project Tripartite Agreement for the Indigenous Peoples Plan Implementation (henceforth, Tripartite Agreement) was signed among the Company, the local government representatives and an ad hoc “advisory council” (composed of a selected individuals the Project-Affected Tamang).

The Tripartite Agreement was indeed historic in that very few IFC financed projects had in the past documented and/or acquired the FPIC from Indigenous Peoples. IFC ⁸ declared that “the FPIC process was the first of its kind in Nepal.... Will promote good practice.” IFC asserted that, prior to this, no hydropower Company operating in Nepal had acquired the FPIC of the Project-Affected Indigenous Peoples. “No multilateral and bilateral lenders had stipulated the acquiring of the FPIC in compliance with their operational policies. No major private sector project has implemented FPIC in Nepal to date [2018].” IFC added that the FPIC from the Tamang was setting “new benchmarks for engaging with indigenous communities in Nepal, by ensuring their participation and Consent in a large infrastructure development process.”

The seeking and documentation of the FPIC by the Company of the Project-Affected Tamang was at the same time encumbered with a number of structural and procedural gaps in complying with the IFC Performance Standard # 7 (see 5.1 and 5.2 for details). The Company sought and documented the FPIC of the Project-Affected Tamang seven years after it was required to do so by the lender operational policies and the ILO 169; it was seven years after the IFC was engaged (by signing the JDA with the strategic project sponsor). The FPIC was sought long after the Company had begun the land expropriation ⁹ and physical displacement ¹⁰ of the Tamang Indigenous Peoples; the land expropriation began as early as 2011 (and was completed in 2015) and physical displacement took place between 2014 and 2017. The FPIC process did not allocate adequate lead time for forging consensus among the Tamang community members. The process did not engage the Tamang self-governing customary institutions. The seeking of FPIC from the forest user groups was relegated to a procedure led by the GoN Department of Forest. The customary role of women in decision-making was undermined during the FPIC process. The FPIC was instead sought from the Adibasi Janajati Advisory Council (AJAC), an ad hoc Indigenous Peoples advisory committee created for the purpose of consultations on the IPP (see below 5.2 below for details); the community at-large was not engaged in the consultations on and documentation of the FPIC. ¹¹ Moreover, the AJAC (henceforth, ad hoc “advisory council”) was comprised of selected Tamang members from only ten (“highly

5 IFC does not normally disclose due diligence information to the public. IFC normally conducts a feasibility assessment of the Project, including the environmental and social impacts, in order to determine that there is no potential pre-condition that it will deem insurmountable. IFC conducts due diligence on the companies to assess their capacity to meet all of our standards and operate in good conduct.

6 AIIB (Project Summary Information, Sept 2019) records that “IFC’s engagement began during the project development stage in 2012, as part of IFC’s early project support through the IFC InfraVentures facility” (see also MDB 2022).

7 Project Tripartite Agreement for IPP Implementation: A Mutual Cooperation Agreement between the Project Adibasi Janajati Advisory Council, local Government representatives and the Nepal Water & Energy Development Company Pvt. Ltd (NWEDC). Battar, 1 November, 2018.

8 See IFC ToR for the Consultant for preparing the IPP (2018). See also Guldin (2019a, 2019b) and IHA (2020). Refer to the public PowerPoint presentations by Guldin (the IFC Consultant for the Project FPIC): Free, Prior, Informed Consent (FPIC): Lessons from Nepal. PowerPoint Presentation. Washington DC. 6 March 2019/ FPIC as Project Bonus: the UT-1 Experience. PowerPoint Presentation at the World Hydropower Congress, Paris May 2019. Also refer to International Hydropower Association: Gaining Indigenous Peoples’ consent for sustainable hydropower. 7 May 2020.

9 Land expropriation is involuntary land takes using state mechanisms but without due negotiations, including the land-for-land compensation option with the households losing the land.

10 Physical displacement is involuntary relocation without due negotiations and without any replacement housing arrangements for the displaced families.

11 NWEDC (2022) states that the advisory council was composed of members who were “selected by the community.”

impacted”) settlements. The ad hoc “advisory council” did not incorporate representatives from the remaining eleven out of the twenty-one Project-Affected Tamang settlements as well as from the six Project-Affected forest user groups (see 5.2 below and Maps 5 and 6); these Project-Affected settlements and forest user groups were not engaged by the Company to participate in the FPIC process. Four years since the Tripartite Agreement was signed, the Company has not yet begun the implementation of the Indigenous Peoples Plan (partly due to the four year delay in the signing of the financial closure by the lenders; see 5.2 below for details). At the same time, the Company has continued construction activities unimpeded except for a brief 4-month period when Nepal imposed a short Covid-19 lockdown between March 24 2020 and July 21 2020.

Scope of the Research: Commissioned by the Oxfam International,¹² this Research Study (henceforth, the Research) has four specific objectives: i) to assess the compliance of the Company with the FPIC requirement under the IFC Performance Standard #7; ii) to capture the perspectives of the Project-Affected Tamang on the seeking the FPIC by the Company in 2018; iii) to evaluate the process applied by the Company in seeking the required FPIC from the Project-Affected Tamang; and iv) to make specific recommendations for the future implementation of the FPIC agreement.

The Research applies the IFC’s Performance Standards on Environmental and Social Sustainability, 2012 (henceforth, IFC PS7) as the benchmark for the assessment on the FPIC process and, in particular, as the benchmark for engaging with Indigenous Peoples in a large infrastructure development project. The Project lenders had reached an agreement to prepare the Project in accordance with the IFC PS7 (see AIIB 2022;¹³ see also AIIB Project Summary Information, September 2019). The Research additionally assesses the degree of fulfilment of the requirements specified under the respective lender operational policies and, in particular, Indigenous Peoples policies;¹⁴ it evaluates the implementation of the agreements and other arrangements put in place during the FPIC process, including the implementation of the Tripartite Agreement (TPA) and the Indigenous Peoples Plan (IPP; version disclosed by the Company, as well as the lenders in December 2018). The Research attempts to capture the perspectives of the Project-Affected Tamang, including women and elders, and records voices of Tamang women and men on the status of, in particular, the implementation of IPP.

This Research looks beyond the focus on the Project under study. This particular Project presents an opportunity to assess progress towards FPIC and test the application of IFC commitments to Indigenous Peoples globally.¹⁵ This Research looks at the roles of multiple stakeholders and informs on future application of the FPIC by private companies, international financial institutions and governments.

Research Methodology: The Research applied social science methodologies (see Annex 1 for details on Research Methodology), namely, literature review (see References Cited and Annex 2: Documents Reviewed), communications/ consultations with key Project stakeholder consultations (see Annex 3 for detailed list), focus group discussions (10 in number; 238 participants; 150 men and 88 women), key informant interviews (27 in number; 11 women and 16 men) and gender analysis to gather primary data (see Annex 5 for list of research participants).

12 Oxfam International is a global movement committed to the universality of human rights.

13 AIIB (2022) *Comments on Oxfam Report concerning “Free, Prior and Informed Consent in The Nepal – Upper Trishuli-1 Hydroelectric Project: An Independent Assessment On Compliance with The IFC Performance Standards” dated July 14 2022.*

14 Notwithstanding that the lenders have agreement to prepare the Project in accordance with the IFC’s Performance Standards on Environmental and Social Sustainability, 2012, the operational policies of the ADB and AIIB, approved by their respective Board of Executive Directors, remain applicable for this Project. Where a lender policy has more stringent requirement than the IFC PS7, the higher requirement applies.

15 In 2017, Oxfam International sought to validate the FPIC agreement IFC client in Kenya [Tullow Oil] claimed to have acquired from the Turkana Indigenous Peoples. See Oxfam Briefing Paper: Testing Community Consent: Tullow Oil project in Kenya (November 2017).



A Gender Analysis was carried out to gather, collate and document gender-disaggregated data and information (see Annex 5: Fieldnotes Summary). The key focus of the gender analysis was to differentiate the socio-economic impacts on women and the customary roles of women in decision-making. This analysis identified gender-specific measures that should have been taken during the FPIC documentation process. This Gender Analysis was carried out through the literature review, supplemented by conducting Focus Group Discussions (henceforth, focus groups) and the Key Informant Interviews (henceforth, interviews) with women informants.

@Author/Photo/Research Study Women Focus Group



The field research for collecting the primary data was conducted by a three-member team of technical specialists: the anthropologist and FPIC specialist, the gender specialist and the community organization specialist. The Research team was assisted by community organizers, as well as by Tamang language interpreters. The primary data in this Research is dated up to October 2021, when the field research was completed.

Two workshops (1 in the Project Area of Influence and 1 in Kathmandu) were organized to validate the findings from the focus groups and interviews and were conducted with representatives from key stakeholder groups (see Annex 5 for list of participants). During these workshops, the preliminary finding of the Research was shared with, and additional information was solicited from, the participants.

@Author/Photo/Research Team with the Project IPP Executive Board



One of the key limitations of the Research was the need to rely heavily on secondary data (for additional research limitations, refer to Annex 1). The Research team did not have access to pertinent Project documents which were not publicly available ¹⁶ The review of the Project documents was therefore limited to the publicly disclosed documents by these key institutions. The Company as well as three of the primary Project lenders (IFC, FMO and ADB) directed the Research team to their institutional website for the Project documents. A number of other key institutions did not respond to the Research team requests for meeting and/or documents. ¹⁷

Supplementary secondary data was captured from the empirical social science studies conducted in geographical areas adjoining to the Project Area of Influence. These empirical studies provide disaggregated data by social groups based on first-hand field research using qualitative assessments and quantitative surveys (see Annex 1 for details). The secondary data in this Research is dated up to December 2021, when the Research Report was drafted; the Research therefore does not cover the period after December 2021.

The Draft Research Report was disseminated to key Project stakeholder institutions (NWEDC, IFC, ADB, AIIB and FMO) for seeking comments, as well as additional information on the Project. The Draft received extensive

¹⁶ There should be a number of undisclosed internal documents both with the NWEDC and the Project lenders, which are not accessible to public; for example, the IFC due diligence report on social and environmental assessments conducted prior to the signing of the JD and the FPIC verification report prepared by the IFC staff is not publicly available.

¹⁷ AIIB (Infrastructure Department) was contacted via email on October 5, 2021 requesting the Project information. An email response was received on October 29, 2019 informing the Research Team that the AIIB will not participate in the Research Study Validation Workshops on October 29 and November 3, 2021.

comments from these key institutions. The Draft Report was peer-reviewed.¹⁸ The Draft Report was reviewed by two legal experts¹⁹ to confirm consistency with Nepal's currently applicable domestic legislations (see Annex 6 for details). The comments and additional information thus received from the key stakeholder institutions, the peer reviewers and the legal experts were taken into the revision of the Research Report (henceforth, Report).

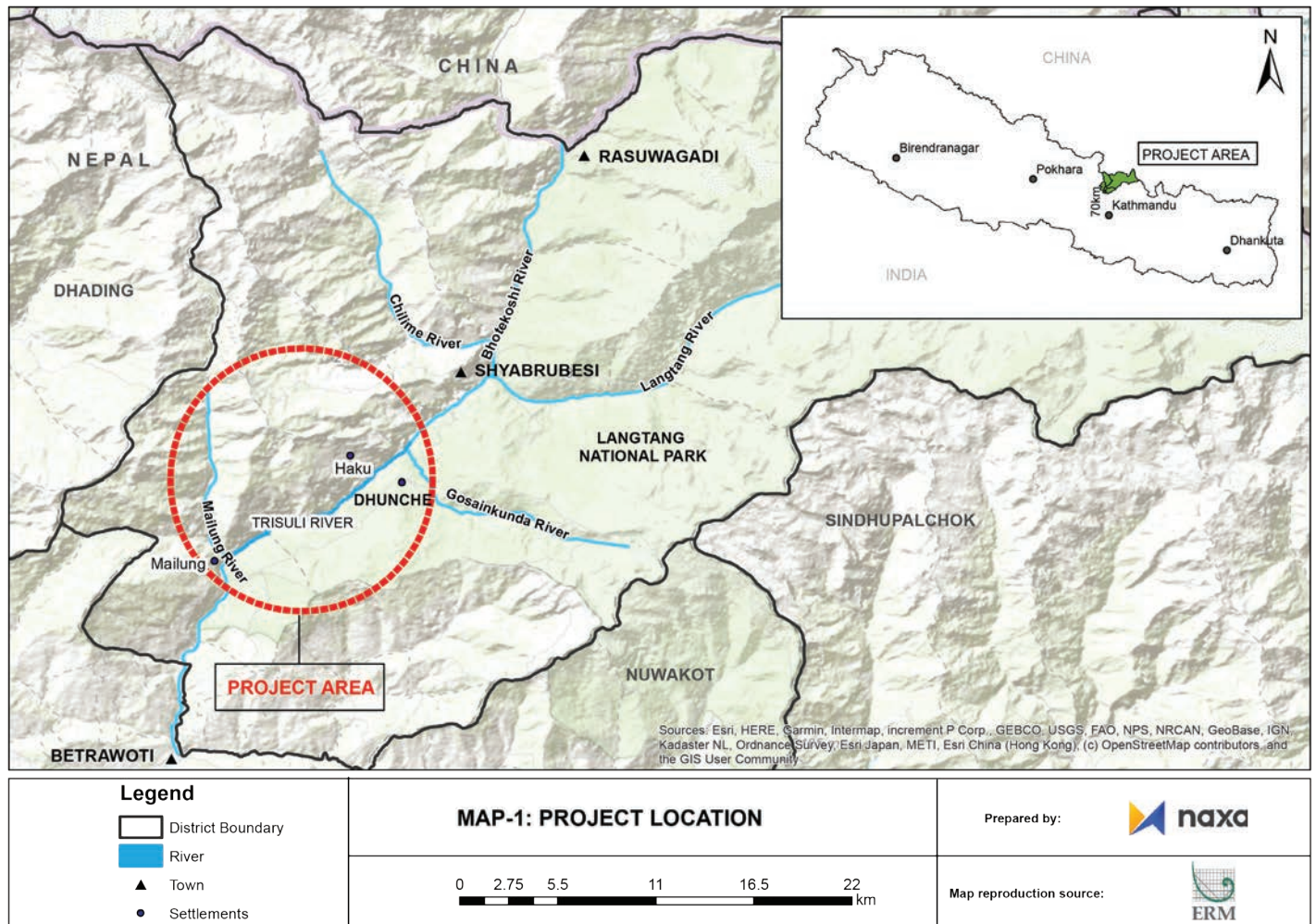
18 NomoGaia and Oxfam International conducted the peer review.

19 Two legal experts affiliated with the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples conducted the review of the Research Report against twenty-eight currently applicable Nepal Acts.

2. PROJECT PROFILE

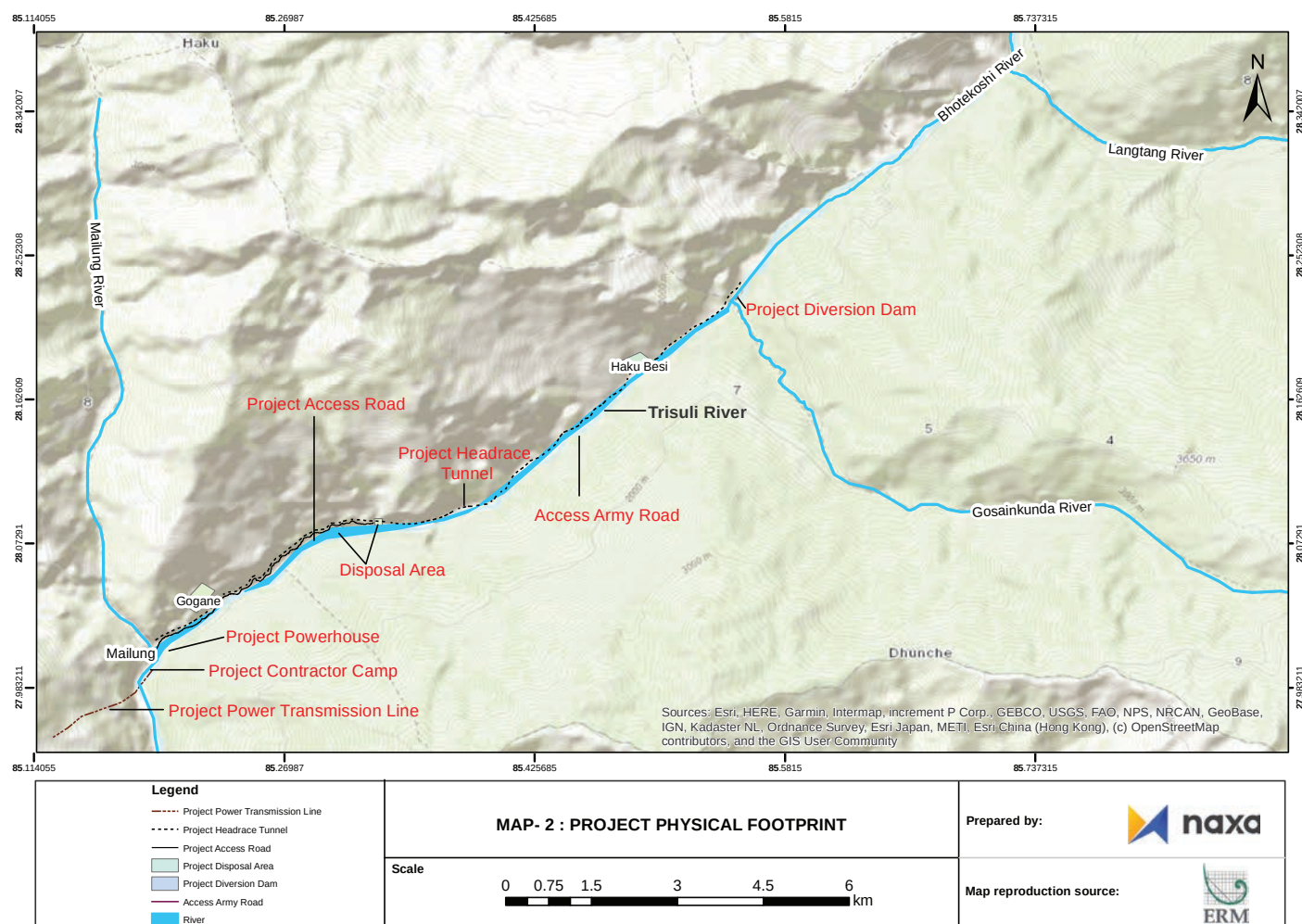
2.1 Project Technical Profile

The Upper Trishuli-1 (216 MW) Hydroelectric Project, popularly referred to as “216” by the local population, is the third largest hydropower undertaking in Nepal to-date. With a large physical footprint, the Project physical infrastructure consists of a diversion dam, a headrace tunnel, an underground powerhouse, as well as numerous ancillary facilities and associated structures. The Project physical infrastructure complex is being built on what used to be private and communal land of the Tamang Indigenous Peoples. These lands were either prime agricultural land or the “forest” areas that were extensively used for animal husbandry (see EIA 2012:102).



Map 1: Project Location (based on the Company maps; see ESIA 2018: Figure ES-1/1-1)

The Trishuli River Basin (TRB) and, in particular, the Rasuwa part of the basin, where the Project is located, witnesses the highest concentration of hydropower projects in Nepal today. There are currently 71 hydropower projects in the TRB in various stages of design, construction, and operation. “There are six operational hydropower projects ...that total 81 megawatts (MW)... approximately 41 hydropower licenses (survey and construction) have been granted by the government in the Trishuli River watershed” (Project ESIA (2018: 5-5). “Seven hydropower projects (total of 286 MW) are under construction” and at least 23 hydropower projects are in the planning stage with survey licenses being issued by the Department of Electricity Development (DoED, June 2018). “A majority of the operational and under-construction hydropower projects are ... run-of-river projects” (IFC CIA 2020:49).



Map 2: Project Physical Footprint (based on the Company maps; see ESIA 2018: Figure ES2; Figure 1-4; figure 2-3; Figure 6-10)

Project Diversion Dam: The Project diversion dam is located at the confluence of the Bhotekoshi River and the Gosainkunda River (see Map 2 above) within the narrow river gorge and in the immediate vicinity of the Hakubesi settlement (Amachhodingmo Rural Municipality, Ward 1) and the Dhunche settlement (Gosainkunda Rural Municipality, Ward 6) (refer to EIA, 2012:89). The 101-metre-wide diversion dam creates a 2.1 ha impoundment (EIA 2012:94). The Company has completed the diversion tunnel and the river water has been diverted via the diversion tunnel in February 2023 to commence the construction activities of the headworks.²⁰

@Author/Photo/ Trishuli River Gorge at the Project Diversion Dam site



Project Tunnel: The Project tunnel, 13.5 km long, will divert up to 76 cubic meters per second (m³/s) of water through a powerhouse, returning the water to the Trishuli River approximately 10.7 kilometers downstream of the dam (LALRP 2018:1). By February 2023, the Company has completed 4.5 km of excavation.²¹ This will reduce the water flow of parts of the Trishuli River by 90% of its original water flow (EIA 2012:96).

Project Underground Powerhouse: Separated by a 15km stretch of the Trishuli River from the diversion dam, the Project underground powerhouse is located along the confluence of the Mailung River and the Trishuli River in the Uttargaya Rural Municipality (Ward 1). The Powerhouse will have a surge tank (18m by 82m). The underground powerhouse site had been relocated from the initial 1.7 km downstream site (after 3 March 2011) when the DoED approved the Project Area of Influence expansion and capacity increase to 216 MW (EIA 2012:88). The powerhouse site was severely impacted by the 2015 Earthquake (IPP 2018). By February 2023, the Company has completed 21 percent of the excavation for the underground powerhouse.²²

²⁰ The Himalayan Times, Diversion Tunnel of 216-megawatt Upper Trishuli-1 project completed, March 2, 2023.

²¹ Ibid.

²² Ibid.



Project Ancillary Facilities: The Project ancillary facilities are scattered ubiquitously across the Project Area of Influence. These facilities include a switchboard, network of access roads, innumerable campsites, as well as the sites for quarries, borrows, spoil disposal, a batching plant and construction yard.

The Project had planned a 20.30 km long access road to link the powerhouse at Mailung to the diversion dam site at Hakubesi; it was to traverse along steep slopes on the right bank of the Trishuli River (EIA 2012:101).²³ As part of preparing for the main construction phase of the Project, the Company spent several years constructing an 11.84 kilometer-long/5.5-meter-wide road. However, “the original road alignment was revised, reducing the road length to 11.5 km²⁴ replacing some access roads with tunnels” (IPP 2018:17). ESIA (2018) notes that “the Project design has also been modified to include three new, but temporary, bridges ... and provide improved access to the Project dam and worker camps. Additional, short access roads and bailey bridges were built near the dam site and powerhouse (LALRP 2018:1).

The Company has established a large number of Project ancillary sites for quarries (for mining earth, stones, stone pebbles, etc. to meet construction phase requirements, especially for the reservoir wall), borrow areas, a spoil disposal site, a batching plant, and a construction yard in Hakubesi and Mailung along the right bank of the Trishuli River. A number of engineering, contractor and labor campsites are being built in and around the diversion dam site and powerhouse. Additional permanent camps are being built in Phulbari, Buchet and Gumchet (EIA 2012:102).

²³ NWEDC (2012). Report Prepared by Jade Consult, Nepal. EIA Surveys conducted in January 2011 – April 2012. Initial EIA version submitted in late 2011. On 5 November 2011, NWEDC disclosed a summary EIA for public hearing. Final version submitted in June 2012.

²⁴ This is a deviation from the 2012 EIA commitment for the PDA and the EIA (2012) and a change of Company plan from the EIA as well as the PDA agreements requiring the Company to build a “Private Road” on the right side of the Trishuli River.



Project Associated Facilities: The associated facilities,²⁵ which include two major infrastructure projects, namely, the alternate access road and a power transmission line, take up a large swath of additional forest land.

@Author/Photo/Project Alternate Access Road



²⁵ Associated facilities are: (a) directly and significantly related to the project; (b) carried out, or planned to be carried out, contemporaneously with the project; and (c) necessary for the project to be viable and would not have been constructed, expanded, or conducted if the project did not exist' "World Bank Environmental and Social Framework, (WB ESS, 2017).

The Project is currently utilizing the newly constructed, alternate access road ²⁶ which creates 30-meter-wide corridors (road, plus associated drainage, foundations, etc.) through the forested Langtang National Park. The Project will use this road to bring construction materials and mechanical and electrical equipment to the site (LALRP 2018:1; IFC CIA, 2020:50).

The Project will require construction of “a 1.2 km long single circuit 220 kV power transmission line within a 30-meter-wide right-of-way” (IPP, 2018:15). This power transmission line will evacuate the electricity generated from the switchyard to the central grid (at the Chilime Trishuli transmission line); see EIA 2012:101). The transmission line route passes through approximately 1.02 hectares of Community Forest User Group area.²⁷ This power transmission line will require additional land acquisition. For the transmission line towers, land will be procured on a permanent basis, while the right-of-way for the transmission line will be procured on a temporary basis (ESIA 2018: 7.11 – 1).

2.2 Project Financing Profile:

Under the Project Development Agreement (PDA) signed in December 2016, the Company can operate for 30 years. The Project is financed under a “build-operate and transfer” scheme; the Project diversion dam will operate under a build-own-operate-transfer scheme, with the Company owning the dam for 35 years, upon which time ownership of the dam will revert to the GoN (PDA 2016).

Project Shareholders: The Project cost is USD647.4 million. The Project Financing Plan comprises of Equity of USD194.2 million and Debt of USD453.2 million (AIIB Project Summary Information Sept 2019). “The Project represents the largest Foreign Direct Investment in Nepal to date” (ESIA 2018: 1-1). As per the MDB (2022), the first disbursement of funds was expected in 2019 but it was deferred due to a long delay in signing the financial closure.²⁸

The NWEDC Company has 30% (USD194.2 million) equity shares. The majority Project sponsors (see NWEDC website) are comprised of:

- 75 % Korean Consortium (KOSEP ²⁹, Daelim Industrial Company Limited, Daelim Industrial, Kyeryong Construction Industrial Company Limited)
- 15% IFC
- 10% Local Partner ³⁰

The Project Engineering, Procurement and Construction (EPC) contractor for the main construction phase is the Doosan Heavy Industries and Construction, South Korea. PowerChina is the sub-EPC contractor. Two of the equity partners (Daelim and Kyeryong), are working on a joint venture with the EPC contractors.³¹ As of February 2023, the Company has employed 700 workers.³²

Project Lenders: The Project lenders are providing a loan of 70% (USD453.2 million). The lenders include the IFC, the Asian Development Bank (ADB), the Asian Infrastructure Investment Bank (AIIB) and the Dutch Development Bank (FMO).

26 Locally known as the “Army Road”, this road is part of the 46 km international Nepal-China Highway (from Galchhi-Betrawati-Mailung-Syabrubesi-Rasuwegadhi). IFC CIA (2020:50) notes that “the existing Betrawati-Mailung-Syabrubesi Road is currently being upgraded, potentially to serve as a segment of China’s One Belt, One Road project.”

27 CFUG areas of Dandagaun (Uttargaya Rural Municipality Ward No. 1). The nearest settlements include Mailung Dovan and Dandagaun. The transmission line alignment, which includes five proposed towers, before connecting to the Chilime-Trishuli Transmission Line.

28 Project Financial Closure was finally signed by the lenders on 17 October 2022 (NWEDC Letter dated 17th October 2022 to the Power Trade Department).

29 KOSEP (the “Lead Sponsor,” see WB ISDS 2015)) is one of six wholly-owned power-generating subsidiaries of Korea Electric Power Corporation (“KEPCO”). KEPCO is a Fortune Global 500 company (Ranked 271) and among the world’s top 10 power utilities, with power plants in Korea as well as overseas, notably in Pakistan and Nepal.

30 Mr. Bkesh Pradhanang.

31 www.nwedc.com; posted March 26, 2020: Funding Agreed for Nepal Trishuli-1 Hydro Scheme.

32 The Himalayan Times, Diversion Tunnel of 216-megawatt Upper Trishuli-1 project completed, March 2, 2023.

Additional loan guarantees may come from the International Development Association (IDA) of the World Bank and the Multilateral Investment Guarantee Agency (MIGA). An IDA guarantee of US \$100 million is to be utilized to “help bring in commercial lenders.”³³ “The IDA guarantees would secure part of Nepal Electricity Authority’s payments to the project company and part of the project senior debt” (WB PID 2015).

Other financial institutions are considering participating, including several European Development Banks, including the French Public Sector financial institution [CDC] Group (see Company website). Additional lenders will include the Korea Export Import Bank (K-EXIM), the Korea Development Bank (KDB) and the OPEC Fund for International Development (OFID) (ESIA 2018: ES1). The Company website confirms that it “has signed Financial Agreement with nine different International Banks (IFC, ADB, AIIB, KEXIM, KSURE, CDC, FMO, PROPARCO and OFID).”

IFC as Project Co-Developer and Lender: The IFC³⁴ is both the equity shareholder (15%) and the lead arranger and provider of debt for the Project.

33 “International investors consider Nepal Electricity Authority (NEA) repayment risk and Nepal country risk as high. The IDA guarantees would therefore backstop certain payment obligations undertaken by NEA and the GoN in order to mobilize private investment and make the Project happen” (WB PID 2015).

34 “IFC—a member of the World Bank Group—is the largest global development institution focused on the private sector in emerging markets” (www.ifc.org).

3. TAMANG INDIGENOUS PEOPLES

3.1 Tamang of Rasuwa

The Tamang of Rasuwa are Indigenous Peoples who possess distinct characteristics, including collective ownership to lands and resources, dependence on natural resources, assigning a pivotal role to self-governing customary institutions, the equal status of women, the practice of the traditional syncretistic religion, and their distinct language. The Tamang are one of 59 officially recognized Indigenous Peoples of Nepal; the Tamang are recognized as an *Adibasi Janajati*³⁵ under the National Foundation for Development of Indigenous Nationalities Act (NFDIN 2002).

@Author/Photo/A Tamang Traditional Settlement (outside of the Project Area of Influence)



The Tamang live in the territory referred to as the “Tamang Country” (*yul-sa*) (Tamang 2009:270). They have historically maintained collective attachment³⁶ to lands, territories, and resources within this Tamang Country. More recently, the territory is referred to as “Tamsaling.”³⁷ While the homeland of the Project-Affected Tamang comprise the core zone, the Tamang ancestral territory encompasses the seven administrative hill districts in Nepal.³⁸

Today the Tamang comprise fifth largest Indigenous Peoples in Nepal (ESIA 2018: 7.6 -1). The Tamang -- including those who live outside the ancestral territory -- number 1,110,064 (CBS; quoted in Tamang et al. 2020:5). Tamang constitute 5.8% of the total population of Nepal (as per the 2011 Census data). In 2001, the Tamang comprised 32 per cent of the total population in the Tamang ancestral area (Tamang 2009:282). In Rasuwa, the Tamang form a majority (63.75%) of the population (LALRP 2018:28).

Collective Ownership to Lands and Resources: The Tamang of Rasuwa continue to practice a traditional system

35 In 2002, the National Foundation for Development of Indigenous Nationalities Act (NFDIN 2002) defined ‘Adibasi Janajati’ as a group or community with its own mother tongue and traditional customary practices, distinct cultural identity, social structure and oral or written history.

36 “Collective attachment means that for generations there has been a physical presence in, and economic ties to, land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites” (AIIB ESF ESS 3 definition).

37 Ibid.

38 Sindhuli, Kabhre, Sindupalchok, Rasuwa, Nuwakot, Dhading and Makawanpur.

of collective ownership of communal lands and natural resources. This collective ownership was recognized by the rulers of the State of Nepal (Tamang 2009:280). “The Tamang associate different clans (*rui*) with specific areas and villages as their ‘the land where the clan is rooted’ (*bap-sa*). The different clans possess their respective *bap-sa* distributed across the region. The various kinds of exchange-based relationships between different clans connect these *bap-sa* and thereby define a shared territory. The larger territory is further joined by linkages between the territorial divinity which protects the clans” (Tamang 2009:280).

@Author/Photo/Traditional Tamang Elder



Socioeconomic Dependence on Natural Resources: The Tamang of Rasuwa have a high socio-economic dependence on natural resources. “The Tamang... derive significant ecological and livelihood values from forests. (IFC CIA 2020:110; see also Merrey et. al. 2018:1055). “An important resource for community in terms of livelihood dependence was the natural resources, in terms of forest and riverine resources. The forest resources are commonly used for ...timber, firewood ... for foraging by livestock and collection of medicinal plants and non-timber forest product. ... the river was used ... for fishing [and] irrigation” (LALRP 2018:52; ESIA 2018: 6.3 – 37: 11, 38).

In order to sustain their socio-economic dependence on natural resources, the Tamang traditionally managed the forests through their self-governing customary institutions. In continuation of the past, in the last thirty years, the Tamang formally organized themselves into forest user groups to manage their communal lands and resources. IFC CIA (2020:72) records that “there are more than 516 Community Forest User Groups in ... the Trishuli River Basin, covering more than 95 percent of population of the area. They are concerned with communal management of forests through which local people and CFUGs can fulfill their forest product needs and can generate income through timber and nontimber forest products, thus enabling the following: i) participation of local people in forest management and sharing of benefits in an equitable manner; ii) conservation of forest through local development and poverty reduction by utilizing forest products.”

Self-Governing Customary Institutions: The Tamang of Rasuwa continue to assign an obligatory role to the self-governing customary institutions for collective decision-making to regulate and manage the use of natural resources within their respective traditional territories. IPP (2020: 28 – 29) and ESIA (2018: 6.3-11; 6.3 – 40)

record that the Tamang culture is characterized by various traditional social institutions.³⁹ Tamang communities are organized, maintained, and regulated through these social institutions. Customary laws are fully effective in the community and have a strong presence in their village life” IPP 2018:29). The Project Tripartite Agreement underlines the... “growing aspiration of self-governance...” of the Tamang.

Equal Status of Women: The Tamang of Rasuwa are characterized by strong gender parity in communal- and household-level decision-making. This gender parity is still the norm in both communal and household decision-making. In public decision-making however, this equal role to women is increasingly undermined by their male counterparts and the external state apparatus. Women’s roles are undermined through the imposition of a patriarchal values of the neighboring, socio-politically dominant groups. Increasing gender inequality of the Tamang women is reinforced by the state by routinely undermining the women’s role in public decision-making (see 5.2 below for disaggregated gender analysis).

@Author/Photo/Traditional Tamang Woman Elder



Practice of a Syncretistic Religion: The Tamang of Rasuwa practice a religious syncretism of animism and Tibetan Buddhism, called “Lamaism.” “87.45% people of the Project-affected area follow Buddhism” (EIA 2012:230, 259-260).

The Tamang of Rasuwa “live together” with supernatural elements such as spiritual beings, sacred places, feared places, altars, and evil spirits.⁴⁰ They believe in the sacred character of the natural world, from the land, mountains and forest to water resources such as streams and river, wetlands, lakes, and ponds, and to the sky, Earth, Moon, Sun and stars—all of which are seen as sacred and worshiped accordingly. They chant *mantras* when plowing the field or felling a tree so as to avoid harming living creatures as small as insects (ESIA 2018:6.3-11

³⁹ Referred to as Nangkhor, Gedung, Chokpa, and Ghyang. A Choho or Mulmi/Mukhya or Jyo is recognized as a local leader who serves voluntarily. A Choho plays multiple roles in the community including administrative, judicial and and Ditthha spiritual leader. The Mulmi or Mukhya is chosen democratically by the households of his community, Chok and Burauli assist the Mulmi to carry out his duties. “During regularly held meetings (hyulchhok) laws and regulations (hyulthhim) are proposed, discussed and adopted for the village community. As things change, these guides can be amended or annulled, as necessary.”

⁴⁰ The Tamang organize sacred ceremonies to pay respect to Mother Earth when embarking on a significant project such as opening a new road, building a new house, or any other such activity.

-12). “For the life cycle ceremonies of birth, marriage, and funerals, Lama... perform rituals. Tibetan Buddhism has integrated age-old Tamang traditions of indigenous healing practices with the use of medicinal plants” (IPP 2018:27-28).

@Author/Photo/A Buddhist Prayer Wall



Tamang as the Lingua Franca: In Rasuwa, the Tamang is the lingua franca. “About 95 percent of people in the Project-affected Haku and Ramche VDCs, and about 65 percent in Dhunche, speak the Tamang as their mother tongue” (Lahurnip 2017).

Tamang is the most widely spoken Tibeto-Burman language in Nepal. Recently there has been a strong promotion of [Tamang] language and culture through radio programming and the mass media and it has been introduced in schools. Tamang has its own script (*Tamhyg*) for ritual purposes and sacred literature (IPP 2018: 28).

Women and elders in particular communicate primarily in Tamang as they have a low proficiency in the national Nepali language. “...many... either do not understand Nepali or have difficulty expressing themselves in Nepali” (Lahurnip 2017). Only 39% of the people of Rasuwa speak Nepali language (EIA 2012:223).

Victims of Historical Subordination: The Tamang in general and the Tamang of Rasuwa in particular are amongst the most historically subordinated and socio-culturally discriminated Indigenous Peoples of Nepal. The Tamang of Rasuwa in particular have endured historical exclusion from the state apparatus. They have suffered from structural discrimination – based on religious and cultural practices—from the dominant high-caste hill groups. “The relations between the rulers of Nepal and the Tamang were analogous to those found in colonial systems” (Tamang 2009: 274, 278, 286). “One reason for such severity was the close geographical proximity of the Tamang to Kathmandu, the center of royal administration. ... there appears to have been a continuous and consistent policy on the part of the Hindu Gorkhali state particularly to exploit the labor of the people they classified as ... Tamang” (Holmberg et. al. 1999; quoted in Tamang 2009:282). “Historical and structural inequalities faced by Tamang added to the severe and disproportionate negative effects” (Holmberg and March 2015; quoted in Tamang et. al. 2020:18).

The ancestral lands of the Tamang of Rasuwa have been historically subjected by the state for widespread land expropriation. In the historical background of political subjugation (at times, violent political suppression) of dissent, the Tamang were not successful in mounting opposition to the land expropriation by the state. In

1957, the state “nationalized” all forested areas, including those of the Tamang ancestral lands. Subsequently, in 1976, the state designated nearly three-fifth (56%) of the traditional homeland of the Tamang of Rasuwa for the Langtang National Park (LNP) to create one of the largest national parks in Nepal extending over 1,710 sq. km (IFC CIA 2020:110). It is no coincidence that, today, the largest number of hydropower projects in Nepal are concentrated in the traditional homeland of the Tamang of Rasuwa. While there are many other river basins in Nepal that too bring high hydropower potential, the hydropower sector investors factor into their decision the fact that the Tamang are in a weak position to mount a strong opposition to the land expropriation and physical displacement.

Today, the Tamang continue to have a lower “linking social capital,”⁴¹ defined as the degree of access to the state apparatus. A direct consequence of the low linking social capital of the Tamang was experienced during the 2015 earthquake; many Earthquake-Affected Tamang households were left out in the relief and reconstruction assistance (Tamang et. al. 2020:68-69).

Ongoing Challenges Faced by the Tamang: The Tamang of Rasuwa have since historical times witnessed tumultuous political and socioeconomic upheavals for which they have had limited capacity to influence. The ongoing challenges faced by the Tamang of Rasuwa, in particular in the last 15 years, have further exacerbated their economic and sociocultural hardships and compounded their vulnerabilities.

Historically, Rasuwa was a battleground for territorial control between Nepal and the then Tibet and China. The Tamang witnessed a tumultuous political transition between 2006 and 2016 when the country ended the centuries old feudal monarchical system and entered a federal republic phase through drafting of a new constitution (Tamang et. al 2020:18). As stated above, the Rasuwa part of the Trishuli River basin has the largest concentration of hydropower development activities. An international highway is being constructed along the river basin for facilitating trade and transit between China and India. A railway to link China and Nepal via Rasuwa is being currently surveyed.

The Tamang homeland was the hardest hit by the 2015 “Gorkha” Earthquake. “The earthquake flattened entire villages and displaced complete village populations in Rasuwa, making it one of the worst affected districts⁴² in all of Nepal” (IFC CIA 2020:10). They continue experiencing devastating impacts on their lives and livelihoods as well as the socio-psychological stress. Earthquake-displaced families have migrated further downstream of the basin to settle into Internally Displaced People (IDP) camps.

When the Covid-19 Global Pandemic hit Nepal in early 2020, the Tamang of Rasuwa were still struggling to rebuild their lives after the Earthquake. A number of them were still living in IDP camps. Still others were living in temporary shelters or under temporary arrangements with relatives. They were suffering from underemployment or unemployment and from food scarcity. The Covid-19 lockdown (March - July 2020) brought the Tamang numerous additional economic hardships.

3.2 Project-Affected Tamang

The Tamang comprise an overwhelming majority (93.6%) of the population in the Project Area of Influence (ESIA 2018:6.3 – 39; see 4.2 below for details).

In addition to the distinct characteristics of the Tamang Indigenous Peoples of Rasuwa (described under 3.1), the Tamang of the Project Area of Influence possess the following specific additional characteristics, namely, geographical isolation, socioeconomic insulation, small-holding land ownership, subsistence agropastoralism and a higher vulnerability to natural disaster.

Geographically Isolated Settlements: The Tamang of the Project AoI live in geographically isolated settlements.

41 Linking social capital is a network connected to positions of influence and authority -- connections with influential people such as politicians, government civil servants, police, etc., who can help navigate the government rules and regulations.

42 The Tamang of Rasuwa and adjoining districts constituted 20.7 percent (6,479) of the affected population and 35.4 percent (3,150 people) of those who died (Tamang 2020: XViii – XX, 15). The earthquake damaged more than 80 percent of the houses and resulted in 43 fatalities within the Project area, and compromised the Project’s access road” (LALRP 2018:65).

Lying within the most geographically rugged part of Rasuwa, the Tamang settlements hug the rocky canyons along steep river gorge and are confined by a treacherous river below. Due to limited plateau area for homestead and agriculture in this geographically unfavorable terrain, the settlements are spaced from one another widely. “More than 60% of the district is over 3,000 m above mean sea level, and many areas have no road access” (Merry et. al. 2018:1056).

@Author/Photo/Settlements Impacted by the Project Diversion Dam Site



@Author/Photo/Tamang Settlements Geographically Isolated by the Deep Trishuli River Gorge



Socioeconomically Insulated Communities: Compounded by the geographical isolation, the Project-Affected Tamang are the most socially insulated communities in Rasuwa. They are forced to maintain a limited social interaction with the larger Tamang population of Rasuwa. Not surprisingly, the Tamang of the Project AoI have the lowest access to social services. Tamang in general have a lower access to social services. Only 17.9 percent of Tamang households in the region (14 Tamang predominant districts) have access to a paved road within 30 minutes walking distance. Only 4.3 percent have access to hospital services (Tamang et al. 2020: XXI).

@Author/Photo/A Tamang House Built under a Rock



Small-Holding Land Ownership: The Project-Affected Tamang households are small landholders. While the communal land area under their traditional occupation and use is vast, “the area under cultivation is low because of the steep hills and mountains” (IFC CIA 2020:110). The ESIA (2018: 6.3 – 32) records that “the average size of land holdings per household in the Project AoI considering all land types was 0.91 ha. ...In terms of the size of the land holdings, 72 percent of the Project-Affected Families were reportedly landless or marginalized landowners (0.0 to 0.5 ha), while 28 percent of the landowners were small landowners (0.5 to 2.0 ha).” “The average size of the land holdings per household is reported to be 0.29 ha of owned land and 0.44 a of leased land” (LALRP 2018:38).

Subsistence Agro-Pastoralism: Confirming their higher dependence on natural resources, the Project-Affected Tamang have a higher economic reliance on agro-pastoralism. They practice a ‘transhumant’ grazing system. “The traditional occupations of the Tamang in the Project area have been livestock herding and growing maize and potato” (ESIA 2018: 6.3-11). “Agriculture with animal husbandry is reported to be the main source of livelihood for 89% of the households” (LALRP 2018: 30). The practice of agro-pastoralism is socially critical for the Tamang; the communities spread across various parts of Rasuwa are connected through traditional practices such as herding sheep and yak (Lahurnip 2017).⁴³

“Agriculture in Rasuwa district is dominated by traditional crops such as buckwheat, millets, local beans, and pulses. In livestock, ... yak, and yak-cattle hybrids dominate the herds, though cows, sheep, and goats are also found in the area” (McVeigh 2004; quoted in Merrey et. al. 2018:1056). “Agriculture is mainly subsistence, with low yields; households rarely grow enough for more than a few months’ supply for the year. Livestock is a far more important source of income for most. Pastoralism is the major source of cash, and provides a buffer against

⁴³ Interview conducted by Lahurnip - 2017 Study with project-affected families of Haku (wards 8 and 9).

the highly variable tourism trade. Animals are taken to high mountain pastures in the summer, and brought to lower pastures in the winter: it is therefore a ‘transhuman’ grazing system” (Merrey et. al. 2018:1056). “Livestock rearing was reported as one of the key sources of income, with 68.75% of the Project Affected Families reporting some form of livestock holding in 2015. Of these, the most common livestock holdings were poultry, followed by goats and cattle” (LALRP 2018:46).

@Author/Photo/Practicing Animal Husbandry



@Author/Photo/Mule Train (Traditional Tamang Means of Transport)



Prior to the 2015 earthquake, more than 40% of the population in the Project AoI were engaged in agriculture. Since the earthquake, there has been a steady increase in dependence upon wage labor in construction and stone breaking (LALRP 2018: 30). About 65% of Tamang households have only 6 months or lower food sufficiency (Tamang et. al, 2020:47).

Vulnerability to Natural Disaster: The Tamang of the Project AoI are exposed to natural disasters - in particular, landslides, floods, fires, and earthquakes. “Steep and fragile geomorphology makes the area vulnerable to natural disasters. Natural disasters are critical drivers of vulnerability for communities, particularly floods, landslides, forest fires, and earthquakes” (IFC CIA 2020).

The Project Tripartite Agreement reiterates that the Project-Affected Tamang “live in villages vulnerable geographical and climatic conditions without a well-developed infrastructure, facing acute social and economic problems related to the preservation and development of traditional economic activities and sustenance of their culture and language.”

@Author/Photo/Landslides at the Project Impacted Settlement (Hakubesi)



The Tamang bring their sociocultural climate resilience capacity. However, “climate change is adding challenges to livelihoods of the mountain people. Temperatures in the high ... mountains are increasing at a significantly faster rate than the global average, with much variation among river basins.... Agriculture is highly vulnerable to climate change due to varying patterns of precipitation and glacier melting” (Merrey et. al. 2018:1056).

3.3 FPIC Right of the Project-Affected Tamang

The right to FPIC of the Project-Affected Tamang is given in particular in the context of the land acquisition and physical displacement from a hydropower project.

In the specific context of the Project, the lenders (IFC, ADB, AIIB and FMO) have determined that the Project-Affected Tamang have the right to FPIC under their respective operational policies. In addition to meeting the requirements under its policy, IFC (as well as the respective operational policies of the ADB, AIIB and FMO) is required to ensure that the clients “comply with applicable national law, including those laws implementing host country obligations under international law” (IFC PS7 para 5 GN7 Footnote 1:1). The lenders may be considered complicit with the Company and the host country if they do not require the project developer to comply with the

host country obligations under international law.

@Author/Photo/Meeting Held by the Research Team with a Community at-large



The UN Human Rights Council Expert Mechanism on the Rights of Indigenous Peoples (UNHRC 2018) underlines that “consent is a key principle that enables Indigenous Peoples to exercise their right to self-determination, including development that ... affects their lands, territories and resources” and identifies three thresholds for FPIC:

- *Free* (from intimidation, coercion, manipulation and harassment)
- *Prior* (consultation undertaken early in the conceptualization and design phases of the proposed activity providing the time necessary for Indigenous Peoples to undergo their own decision-making process)
- *Informed* (of the substantive content of the proposed activity – the nature, scope, size, pace)

Lender Operational Policies Requiring the FPIC: The 2016 Company Environmental and Social Policy Statement (ESPS) declares its commitments to: “comply with all applicable environmental and social regulations and World Bank Group Performance Standards on Environmental and Social Sustainability *without compromise* [emphasis added].”

The key lenders (IFC, ADB, AIIB and FMO) have determined that the Tamang have the right to FPIC under their respective operational policies. The mandatory operational policies of these key lenders remain fully enforced in the Project context. These lenders have made a Project-level agreement to prepare the Project in accordance with the IFC’s Performance Standards on Environmental and Social Sustainability, 2012; however, the Project-level agreement to prepare a Project under the IFC policies does not supersede the applicability of the lenders’ Board approved operational policies. The IFC PS7 requires that the client acquire the FPIC of Project-Affected Indigenous Peoples when it impacts on lands and natural resources subject to traditional ownership or under customary use and relocates of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use; and impacts on critical cultural heritage. The Project brings about the impacts on lands and natural resources under the Tamang traditional ownership and customary use. It carries out the physical relocation of the Tamang Indigenous Peoples. The following five lender policies that remain enforced require this Project to acquire the FPIC of the Tamang Indigenous Peoples

1. IFC: Environmental and Social Sustainability Performance Standard # 7 (2012)

2. MIGA: Applies the IFC Performance Standard #7 (2012)
3. ADB: Safeguard Policy Statement Safeguard Requirements # 3 (2009)
4. AIIB: Environmental and Social Policy Environmental and Social Standard # 3 (2019) ⁴⁴
5. FMO: applies IFC Performance Standard #7/ Land Governance Position Statement 2017

The IFC PS7 (updated in January 2012) enforces the requirements pertaining to the FPIC of the Indigenous Peoples. Subsequent to this Policy effective date “IFC has ... been co-developing the Project as a shareholder with approximately 15% stake since signing of the Joint Development Agreement with KOSEP in March 2012. IFC has played an instrumental role in helping develop the Project and has provided substantial technical support including on environmental and social aspects, and developing the NWEDC consortium’s environmental and social management systems, in line with the Performance Standards” (refer to IFC ISDS 2015). The IFC PS7 (2012) requires that the client acquire the FPIC of Project-Affected Indigenous Peoples in the following three conditions: i) impacts on lands and natural resources subject to traditional ownership or under customary use; ii) relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use; and iii) impacts on critical cultural heritage. The Project brings about the impacts on lands and natural resources under the Tamang traditional ownership and customary use. It carries out physical relocation of the Tamang Indigenous Peoples.

The ADB Safeguard Policy Statement Safeguard Requirement # 3 on Indigenous Peoples and the AIIB Environmental and Social Framework Environmental and Social Standards #3 similarly enforce the FPIC requirements under the above conditions. The FMO Land Governance Position Statement (2017) commits to apply the IFC Operational Policies including the IFC PS7 for investment projects that impact Indigenous Peoples land and traditional natural resources. The FMO Land Governance Position Statement (2017) underlines the Bank’s requirement that the Company obtain the FPIC from Project-affected Indigenous Peoples. “FMO requires its clients to undertake a... FPIC process for the use of their lands, resources, traditional knowledge, or intellectual property where the IFC Performance Standards require this. FMO verifies this requirement through independent advisors and its own due-diligence processes.”

FPIC Obligations under the International Conventions and UN Mechanisms: The acquiring of the FPIC from the Project-Affected Tamang is an obligation of the GoN under the applicable international conventions (in particular, the ILO 169) and the UN Mechanism (including the International Covenant on Economic, Social, and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination).

The lenders are required to ensure that the applicable national law, including those implementing host country has obligations under international law, are abided by; the lenders may be considered complicit with the Company and the host country if they do not require the project developer to comply with the host country obligations under international law. ⁴⁵ Acquiring of FPIC from the Project-Affected Tamang is indeed an obligation of the GoN under the applicable international conventions. The obligation to recognize the right to FPIC of the Indigenous Peoples emanates from the ILO 169. Furthermore, the GoN obligation is derived from the various international conventions that Nepal is a party to, in particular, the International Covenant on Economic, Social, and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Nepal is also signatory to the Convention on Biological Diversity (CBD), and the United Nations Framework Convention on Climate Change (UNFCCC). Ignoring these facts, Project documents claim erroneously that FPIC is

⁴⁴ AIIB (2022) acknowledges this: “AIIB’s Project-affected People’s Mechanism would govern complaints submitted to it under this Project.” Contradicting the fact stated above, AIIB (“Comments on Oxfam Report concerning “Free, Prior and Informed Consent In The Nepal – Upper Trishuli-1 Hydroelectric Project: An Independent Assessment On Compliance With The IFC Performance Standards dated July 14, 2022”) stated that its “Environmental and Social Policy does not apply to this Project.” It adds that, “instead, IFC’s Performance Standards apply,” and that “when AIIB extended its financing, it was conditioned on the application of IFC’s Performance Standards rather than AIIB’s Environmental and Social Policy to the Project.”

⁴⁵ NWEDC (2022) states that it “complied with “the principle of consent ... through various public hearings.” While they may meet the GoN regulatory requirements, public hearings do not meet the lender operational policy requirements regarding the FPIC, which among other require a culturally appropriate consultations and Good-Faith Negotiation leading to the documentation of the FPIC.

only a lender requirement and not currently required in Nepal.⁴⁶

In the specific context of Nepal, the obligations to recognize the right to FPIC of the Indigenous Peoples emanates from the ILO 169, ratified by the GoN in September 2007. Under Article 7, the ILO 169 recognizes the right to the indigenous and tribal people to decide their own priorities for the process of development. Additionally, Articles 12, 13, 14 and 15 safeguard rights of Indigenous Peoples regarding land and natural resources in territories traditionally occupied by them. Article 6 requires that consultation with Indigenous Peoples be carried out and specifies that Indigenous People should control the process by which representatives are determined. According to Article 6(1)a, governments shall “Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.” According to Article 6(2): “The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (Lahurnip 2020: 6).

In reference to countries that have ratified the ILO Convention 169, such as Nepal, IFC clients are obligated, above and beyond its applicable Performance Standards, to fully apply the provisions of the Convention. IFC (PS7 GN7 para 26) reiterates that “a state may have obligations or commitments to ensure that Indigenous Peoples provide their free, prior, and informed consent for matters pertaining to the overall development of indigenous territories.” The AIIB ESS3 is forthright about recognizing the obligation of the client to follow ILO Convention 169.⁴⁷

Nepal is a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR; entered into force March 1976) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD; entered into force on 4 January 1969).⁴⁸ Nepal is also signatory to the Convention on Biological Diversity (CBD), and United Nations Framework Convention on Climate Change (UNFCCC) (Lahurnip 2018:77; NFDIN 2019:6). Nepal voted in favor of United National Declaration on the Rights of Indigenous Peoples (UNDRIP adopted in 2007) in the UN General Assembly; the UNDRIP sets out the individual and collective rights of Indigenous Peoples to lands, territories and natural resources as well as their rights to culture, identity, language, employment, health, education, etc. (Lahurnip 2018).

IFC (see GN7 1) recognizes that “key UN Human Rights Conventions form the core of international instruments that provide the rights framework for members of the world’s Indigenous Peoples. In addition, some countries have passed legislation or ratified other international or regional conventions for the protection of Indigenous Peoples, such as the ILO Convention 169. In addition, various declarations and resolutions address rights of Indigenous Peoples, including the UNDRIP. While such instruments address the responsibilities of states, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states’ obligations under these instruments. It is in recognition of this emerging business environment that private sector projects are increasingly expected to foster full respect for the human rights, dignity, aspirations, cultures, and customary livelihoods of Indigenous Peoples.”

46 IPP (2018:13) states that “FPIC is ... a lender requirement and not currently required under Nepali law.” “FPIC is a lender requirement and not required by the GoN” (IFC ToR for IPP Consultant 2018). ESIA (2018: 8-10) repeats that “...although the circumstances triggering the requirement for FPIC did not exist for this Project, the lenders have decided to apply FPIC, on a precautionary basis.”

47 AIIB ESS3 states “if the laws of the country in which the Project is located mandate FPIC, the Bank may..., determine that the Client is required to apply FPIC as defined in those laws.” AIIB ToR (Free, Prior, Informed Consultation Process for Tamakoshi V HEP dated 19 October 2020) takes note that “the GoN is a signatory to ILO 169 and has endorsed the United Nations Declaration on the Rights of Indigenous Peoples.”

48 On 14 May 1991, Nepal acceded to the ICESCR, and it acceded the CERD in January 1971.

4. PROJECT IMPACTS

As a large hydropower project undertaken in the traditional homeland of the Tamang Indigenous Peoples, this Project is a high-risk venture from the standpoint of adverse impacts. It has brought about, and will bring in the future, adverse environmental, economic, and sociocultural impacts. While limited in its geographical extent, the adverse impacts are numerous in number and severe in terms of their degree (see 4.4 below for details).

4.1 Project Timeline

To comprehend the degree and extent of the Project impacts fully, these impacts are juxtaposed with the Project timeline. This Project timeline was marked by three distinct periods: the Project Scoping Period; the Project Preparation Period, and the Project Construction Period.

Project Scoping Period (2007 – 2011): The strategic Project sponsor (KOSEP) was issued permission for preparing the EIA TOR and Scoping document by the Ministry of Energy on 7 January 2007. The EIA was drafted to meet the GoN regulatory requirements.

During this early Project period, the traditional land – private and communal – of the Tamang Indigenous Peoples was expropriated by the Project sponsor without adequate consultations and at a government-fixed compensation rate (see 5.1 below for details). This period preceded lender involvement in the Project; the lender operational policies were therefore not applicable to the Project during this period. However, during the period, the Project was under obligation to comply with the ILO 169 (which was ratified by Nepal in September 2007). Among others, the ILO 169 (applicable to this Project period; Articles 12, 13, 14 and 15) requires to safeguard rights of Indigenous Peoples regarding land and natural resources in territories traditionally occupied by them. Article 6 requires that consultation with Indigenous Peoples be carried out and specifies that Indigenous People should control the process by which representatives are determined.

The Company carried out land surveys and land identification for the Project during this period. Subsequently, the land acquisition process was initiated, and, in a limited scale, land acquisition was carried out. Furthermore, on 23 February 2011, the Ministry approved the revised plan for expanding the Project AoI, as well as expanding its capacity to 216 MW (EIA 2012: 69-70).

The key Project activities during this Project scoping period were as follows (see LALRP 2018:61 and Table 6.3; ESIA 2018: 8.1 for details):

- 2007 January: Permission for preparing the EIA TOR and Scoping document issued; land identification for the Powerhouse carried out.
- 2009: Land survey for the Powerhouse conducted.
- 2010: Land procurement for the Powerhouse initiated.
- 2011 February: Revised Project proposal for expanding the Project AoI (and its capacity to 216 MW) approved; Public hearing for the Project EIA conducted.

Between 2007 and 2011, the scoping for the Project and the land surveys and initiation of the land procurement process were conducted by the Project sponsor without adequate and culturally-appropriate consultations with the Project-Affected Tamang. Only limited “public hearings” on the EIA were conducted in 2011. LALRP (2018:61) confirms that the Project sponsor undertook Project “land identification and survey activities during 2009 to 2010 without adequate consultations. Both the ESIA (2018: 8.1) and LALRP (2018:61) record that “the terrain of the Project area was difficult and accessibility to ... villages to conduct consultations was challenging during the land take process.” A few public meetings, facilitated by the GoN officials, were held in venues outside the Project AoI to inform the local people about the approval of the Project. According to NWEDC (2022) “the consultations were done in September and October of 2012 in Mailung, Gogane and Hakubesi [see Map 4 and 5 below for the locations], and subsequently in February 2013 through public meetings” (see also LALRP 2018:62). By the time these public meetings were held, the Project sponsor had completed the land identification and survey for the powerhouse and had initiated the land acquisition process.

The Project land expropriation and physical displacement of the Tamang Indigenous Peoples were therefore a fait accompli – the decision was taken giving the Project-Affected Tamang with no option but to accept land

acquisition. As per the ESIA (2018:7.5-3), the Project sponsor “started buying land for the project as early as 2010; the Company “started buying land for the project as early as 2010.” 39 families “sold” land to the company at a rate of NPR 500,000⁴⁹ per ropani;”⁵⁰ eventually, by 2017, 154 Tamang families surrendered their land for expropriation and the land from additional families was taken in 2017 for which the record is not clear (see LALRP 2018: Table 2.2). The land acquisition was based on negotiated settlements⁵¹ and cash payments, as land for land compensation was not considered viable by the company.” The GoN District Administration was asked to intervene when ownership of the land was uncertain. The project sponsor paid “compensation” to the identified landowners after ratification of the rates through the Compensation Fixation Committee (composed of government civil servants, head of district-level local government and the head of the Project sponsor). The GoN applied the principle of eminent domain to expropriate land under customary use and occupation of the Tamang Indigenous Peoples. ESIA (2018: 7.5 – 3) documents that the Project sponsor “did not consider land for land compensation a viable option because of the lack of suitable available land in the Project area...” and “had the option to fall back on the Government to use the legal land acquisition process in case there was unwillingness to sell the land.” The EIA (2011:14) recorded that “the Project land acquisition will be carried out with minimum compensation value⁵² determined by the GoN.”

@Author/Photo/Tamang Settlements Affected during the Early Project Phase (Tiru and Gogane)



Focus Group Discussions, conducted by the Research team in October 2021, record that “Mailung powerhouse land expropriation was carried out in 2009 at NPR 20,000 per ropani unit of land.” Tombabagar Gogane village land expropriation of 17/18 households were carried out in 2009–10. In 2009, Mailung land valuation by government was at NPR 150,000 per ropani. However, during 2012, when the IFC became involved, an increased land compensation of NPR 500,000 per ropani was paid. From the same FGD as above: “During the land expropriation phase, the Company had made promises to the Project-Affected Tamang including a new road construction connecting Hakubesi, preference in for employment, house for each of the physically displaced,

49 The exchange rate at the time of these transactions was approximately Nepali Rupees (NPR) 74 per 1 USD.

50 One hectare of land is equivalent to 19.65 ropani. One ropani is equal to 0.005 ha.

51 IFC PS5 defines “negotiated settlement as a situation where buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.”

52 “The current price of land in Hakubesi alone is now [2017] around 2,000,000 Nepalese rupees per 0.05 hectares of land, compared to only 500,000 Nepalese rupees during the time of NWEDC’s land acquisition scheme” (Ambay 2019:42)

social security allowances for older people, free education for children, ambulance service and financial assistance to the sick, building for the mothers' self-help group, but these have not been fulfilled."

Notwithstanding the above, NWEDC (2022) stated that "the compensation rate for land and structures was agreed as per the collective decision making and negotiations with the landowners at Mailung, Gogane and Hakubesi on 9 December 2012 (2069-08-24 BS), 12 December 2012 (2069-08-27 BS) and 19 January 2013 (2069-10-06 BS) respectively for both private and religious trust land owners. The structures were compensated based upon the evaluation report by Department of Urban Development and Building Construction which was agreed by the owners." While records of these public meetings exist, they do not document collective decision-making on the part of the Project-Affected Tamang.

NWEDC (2022) added that "all the private land and structures were compensated at one time at the rate of NPR 500,000 per ropani as agreed by the collective negotiation process with the landowners of private and [religious trust] land." Later, NWEDC (2022) acknowledged the shortcomings in the land acquisition process. It stated that "the LALRP is considered as a due diligence to consolidate the project land acquisitions process from 2013 and provides shortcomings during the land acquisition process and residual impacts to be mitigated in a time bound manner. The compensations to physical structure impacted and identified in the LALRP has been paid to the landowners based on the assessment of the Department of Urban Development and Building Construction (DUDBC), the compensation is derived as per the replacement value. The shortcoming depreciation and scrap value which was identified as not inclusive of the compensation paid was later consolidated and paid to the landowners and as such is covered under the Annex B, ESAP 16 of the executed CTA."

During this Project Scoping period, the Company was embroiled in lengthy legal and bureaucratic battles for failing to meet the terms of the licensing agreement; it was on the verge of losing its survey license twice.⁵³ Focus group discussions conducted by the Research Team record that, at the behest of the Company, members of the Project-Affected Tamang "stood for the Company" to eventually restore the survey license; i.e., members of the Tamang community defended the Company and assisted in restoring the license.

This Project Scoping period ended when the Scoping Reports were completed in 2012⁵⁴ and when IFC signed the Joint Development Agreement (JDA)⁵⁵ with the strategic project sponsor (KOSEP) in March 2012.

Prior to becoming a Project co-developer, IFC was required to conduct its due diligence. IFC PS7 GN7 (para 32, 63) reiterates that "where government decision-making processes have been directly applied at a project level (e.g., land expropriation, resettlement), the client's due diligence process should assess whether these processes have occurred in a manner consistent with the requirements of this Performance Standard and, if not, if any corrective action is feasible to address the situation."

As required by the PS7, IFC should have conducted a gap analysis, in particular on the land expropriation process carried out by the Project sponsor. While the Project documents do not inform on the specific date, an analysis of the Project timeline (see 4.1 above) indicates that IFC began its due diligence in the second half of 2011. WB ISDS (2015) records that "IFC... played an instrumental role in helping develop the Project and has provided substantial technical support including on environmental and social aspects, and developing the Company environmental and social management systems, in line with the Performance Standards."

Project Preparation Period (2012 – 2018): This Project period began in March 2012, when IFC become involved both as an investor as well as the lead arranger of debt and ended with the documentation of the FPIC in November 2018.

During this period, the Company entered into the Project Development Agreement (PDA) with the Government of Nepal (signed in December 2016). On 1 November 2018, the Company, the ad hoc advisory council (composed of the selected Tamang members⁵⁶ from ten out of the 21 Project-Affected settlements) and the local government

⁵³ Kathmandu Post News 10 August 2012; quoted in Ambay 2019: 30-31.

⁵⁴ The Scoping Reports, drafted in 2012, were finalized by the strategic Project sponsor in 2013.

⁵⁵ In addition to not disclosing the due diligence reports, IFC also does not disclose the JDA with the strategic Project sponsor.

⁵⁶ Only 85 out of the 87 members signed the TPA.

representatives signed the Tripartite Agreement (TPA) documenting the FPIC of the Project-Affected Tamang.

During this Preparation period and prior to documenting the FPIC, the Project sponsor carried out physical relocation of and additional land acquisition from the Tamang Indigenous Peoples (see 4.4 below for details).

Both the IFC PS7 (which became effective on January 1, 2012) and the ILO 169 (ratified by GoN in September 2007) were applicable for this Project Preparation Period. In 2015 and after, the Project sponsor (which included the IFC as the co-developer) commissioned consultants to draft a number of the Project plans required by the IFC mandatory operational policies, including the Project ESIA, LALRP, GAP, and SEP-GRM, to meet the mandatory lender requirements.⁵⁷ In 2018, consultations were held on the draft Indigenous Peoples Plan leading up to the FPIC documentation. Limited “public consultations” were held on the draft LALRP. There were, however, limited or no consultations on the other Project plans (see 5.2 below for details).

One surmises that the IFC conducted its required due diligence prior to signing the JDA with the strategic Project sponsor in March 2012. AIIB Project Summary Information (September 2019) records that the “scoping site visit [was] performed [by IFC] in early 2013 to assess the necessary complementary Project ESIA studies.” MDB (2022) states that “IFC did undertake a gap analysis as part of the E&S assessment process and the LALRP was developed on the basis of gap analysis findings.”⁵⁸

The timeline for the various lenders agreeing to join the lenders group is unclear.⁵⁹ Aside from the IFC becoming officially the investor and lender in March 2012, one can glean from the documents that the International Development Association (IDA; World Bank Group) was also involved along with the IFC since 2012 (see WB PID 2015). While it is not clear from the documents specifically when the agreements were entered, the other principal lenders (ADB, AIIB and FMO) agreed to become lenders at different times between 2015 to 2019.⁶⁰

The following were the key Project activities during the Preparation Period:

2012 March:	IFC signs the Joint Development Agreement with the project sponsor.
2012 June:	Project EIA disclosed.
2012 December:	Measurement of additional land acquisition carried out.
2013 March:	“Public hearings” conducted on the draft Project EIA (as part of the regulatory requirement).
2014:	Construction of the first section of the Project Access Road (along the right bank of the Trishuli River) as well as Bridge and Workers’ Camp (on the right bank of the Trishuli River).
2015:	Lenders (other than the IFC) join the consortium by approving the financing at different times.
2015:	Land take process (93 percent) completed; “public consultations” held as part of the Livelihood Restoration Plan.
2015 August:	Project-Affected Tamang protest at the Company office for the first time. Project Contractors/ Workers Camp (destroyed by the Earthquake) relocated on left side of the Trishuli River.
2016:	Company begins to utilize the alternate access road (locally referred to as the “Army Road”).
2016 December:	Company enters the Project Development Agreement.
2017:	Local Government boundaries redrawn (May 26, 2017; see Map 3 below); First Parliamentary Election held under the new constitution (December 7, 2017).
2017:	“Public consultations” held as part of the LALRP development.
2018 March:	Project IPP and GAP disclosed.

⁵⁷ The Company selected the ERM to consolidate all prior impact assessments and supplemental and complementary studies into a single Updated Non-Technical ESIA Report, along with an updated Environmental and Social Management System Framework and Environmental and Social Management and Monitoring Plans (ESMMP) Framework, including a Social Impact Management Framework.

⁵⁸ <https://disclosures.ifc.org/project-detail/ESRS/35701/upper-trishuli-1>

⁵⁹ This is often confidential and normally not disclosed.

⁶⁰ AIIB (2022) “AIIB approved its financing for this Project only on May 21, 2019.”

- 2018 June: Project ESIA (2014) updated, the Supplemental LALRP and the SEP-GRM drafted.
- 2018 August: Consultations on the Draft IPP carried out as part of the formal FPIC process with Project-Affected Tamang.
- 2018 November: Tripartite Agreement documenting the FPIC of the Project-Affected Tamang signed by the Company, the ad hoc advisory council (from the ten “land take” Project-Affected Tamang settlements) and the local government representatives.

During this Project preparation period, the Company continued both the land expropriation and physical displacement of the Tamang Indigenous Peoples without the required IFC PS7 process. The Company carried out the land expropriation and physical displacement at different times in different locations between March 2012 and 2018, and between 2012 and 2015 in particular. ESIA (2018: 7.5 – 3) records that the Company had “completed the land take process for approximately 93 percent of the land required for the Project.... Similarly, the Company had completed the land take process for 81 percent of the structures required for the Project.” The Project documents record that the Company carried out a few public meetings in the months of September and October 2012 in the villages of Mailung, Hakubesi and Gogone, with various local stakeholders including the land owners, PAFs and community representatives” (IPP 2018:36). ESIA (2018: 8.1) records that “a public hearing [was] held in March 2013. The Company requested the intervention of the District Administration when ownership of the land was uncertain. NWEDC paid ... compensation to the identified landowners after ratification of the rates through the GoN Compensation Fixation Committee.”⁶¹

Long after the land expropriation and physical displacement, the Company conducted various assessments and drafted the various Project documents either required by the GoN regulatory authorities or by the lender operational policies, including the ESIA, IPP,⁶² GAP, LALRP, etc.

Six years (2012-2018) since it was involved, the IFC had ample lead time to ensure compliance with the IFC PS7 (both as the lender and co-developer) and to rectify by putting in place a corrective action plan on the land expropriation and physical displacement carried out earlier by the Company.

In 2018, the Company drafted a Supplemental LALRP. It was a partial corrective action plan covering only the land expropriation of the privately-titled land and physical displacement; it did not address corrective action for acquisition of the communally held lands (forest and pasture under customary use of the Tamang). Furthermore, the supplemental LALRP (“corrective action plan”) was not integrated into the IPP; the IPP relegated the critical Project impacts – land acquisition and physical displacement – to the LALRP. The LALRP corrective action plan should have been the core part of the FPIC deliberations. While MDB (2022) acknowledges that “the LALRP and supplemental LALRP had been disclosed and were a part of the process of FPIC negotiations, it may have been difficult to establish a retroactive FPIC.” Additionally, the IPP did not incorporate relevant elements of other Project documents, in particular the GAP and SEP-GRM. These exclusions of the supplemental LALRP “corrective action plan” and the mitigation measures proposed by the GAP and SEP-GRM severely undermined the legitimacy of the FPIC documentation process.

This Project period was interrupted by the 2015 Earthquake destroying some of its ancillary infrastructure and impacting its labor force.⁶³ The Company however did not cease construction activities for associated and ancillary structures, in particular the alternate access road (initiated in 2014; see LALRP 2018: Table 6.3) and the engineering, contractor and workers’ camps. Qualifying the above, NWEDC (2022) claims that “the repair and maintenance of constructed section of the access road was done after the earthquake and construction of engineering, contractor and workers camps started only in 2018.”

During this Project Preparation period in 2017, the Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (Lahurnip) conducted a field-based assessment on the Project impacts. The assessment “highlighted key concerns from communities related to inadequate consultation and engagement in decision

61 Contradicting the ESIA record, NWEDC (2022) states that “the intervention of District Administration Office was sought to solve the issue of ancestral land division disputes and not for fixing the compensation rates.”

62 For example, the IPP Drafts (2018 March; 2018 July; 2018 September; 2018 October; December 2018) were prepared.

63 There are unconfirmed reports that the landslides due to the earthquake that destroyed the labor camp also killed laborers.

making.” The Lahurnip assessment concluded that the lack of the FPIC of the Project-Affected Tamang and implored the Company to acquire the FPIC from the Project-affected communities (see Lahurnip 2017).⁶⁴

@Author/Photo/ A Relocated Tamang Settlement due to the 2015 Earthquake (Mailung)



Project Construction Period (2018 onwards): This Project period commenced on 1 November 2018 when the seeking of FPIC was documented by signing the Project TPA among the Company, the ad hoc advisory council, and the local government representatives. This period continues up to the time of writing (February 2023).

During this period, and subsequent to receiving the FPIC documentation from the Company (on 1 November 2018), IFC should have carried out a staff verification to ascertain that the FPIC from the Tamang Indigenous Peoples had indeed been attained. There is however no information that the IFC staff carried out the field visit and engaged the Project-Affected Tamang before certifying that FPIC was indeed attained. Following its internal procedures, IFC normally carries out a verification of the FPIC of the Project-Affected Indigenous Peoples after it discloses the Environmental and Social Review Statement and before it submits the investment project for approval from the IFC Board. While documents on the verification process are not normally disclosed, the Project timeline indicates that IFC conducted its verification between November 2018 and early 2019.⁶⁵ The IFC staff (normally a social development specialist; not consultant) should have paid a field visit to engage with the Project-affected communities to ascertain that FPIC was indeed attained. This verification should have ascertained the adequacy of the IPP - in particular, the proposed package for impact mitigation and benefits - to address prior impacts on lands and natural resources under customary occupation and use prior to the Project construction phase.

During this period, the Company initiated construction of the Project diversion dam and established numerous Project ancillary facilities; it opened up numerous sites to meet construction requirements, including for quarries (for mining earth, stone, stone pebbles, etc.), crusher plants, borrow areas, spoil disposal site, batching plant and construction yard. While this Project Construction period was partially interrupted by the Global Covid-19

⁶⁴ The Lahurnip Study was conducted by lead researchers Subha Ghale and Shradda Ghale. Field research for this study was conducted in March, April and May of 2017.

⁶⁵ IFC prepared an Environmental and Social Action Plan (ESAP) in early 2019; IFC ESAP 2019:2 states: the Company “will produce a LALRP addendum [by 30-May-2020].”

Pandemic, the EPC contractors continued activities as part of the preparation for the main construction -- the dam and tunnel constructions in particular. As of October 2021, the pre-implementation construction of the ancillary and associated structures was carried out unimpeded.

At the same time, the implementation of the TPA as well as the Project plans (IPP, LALRP, SEP-GRM, GAP, etc.) remains on hold. This period witnessed a long delay in fund disbursement for the implementation; the Project Financing Agreement was signed in November 2019.⁶⁶ However, only in October 2022, the lenders agreed to the Project financing closure.

@Author/Photo/Construction at the Project Diversion Dam



The following were the activities carried out during this period:

2018 December:	Project IPP finalized.
2019:	Company establishes Project Associated Structures.
2019 November:	Project Financing Agreement signed by the Company and the lenders.
2020:	IFC conducts the Cumulative Impact Assessment for the basin.
2020 March:	GoN imposes four month-long Covid-19 lockdowns (March 24 2020 - July 21 2020).
2021:	GoN nullifies the traditional trust land rights of Tamang families.
2021 August:	11-Day Long Protest held by the Project-Affected Tamang.
2021 October:	Company-funded Police Post building at the settlement next to the Project Diversion Dam completed.
2021 October:	Infrastructure put in place for building the Project Diversion Dam and Headrace Tunnel.
2021 October:	Lenders Independent Environmental and Social Advisor (RINA) conducts its first supervision mission for the Project (after 3 years of documenting the FPIC).
2021 December:	Violent Protest held by Tamang Youth.
2022 October:	Project Financial Closure signed.

This period saw various complaints from the Project-Affected Tamang against the Project. It witnessed a number of complaints lodged with, and protests held against, the Company by the Project-affected Tamang. At times

⁶⁶ AIIB (2022) states "AIIB approved its financing for this Project only on May 21, 2019."

the protests were violent; IFC acknowledges incidences of violence.⁶⁷ The Tamang informants during the focus group discussions and key informant interviews consistently reported that there were incidences of intimidation against the Project-affected Tamang (see 5.3 below for details).

4.2 Project Area of Influence

The Project Area of Influence (AoI) covers 21 settlements of the Tamang Indigenous Peoples and other communities (see Map 4 below). As a large hydropower undertaking, the Project has a large physical footprint area. The Project was initially planned to have a smaller footprint. However, in February 2011, the Project AoI was expanded with GoN approval expanding its capacity to 216 MW. Ignoring the Project delimitation, a larger Project AOI (the IPP 2018, and subsequently during the process of seeking the FPIC from the Project-Affected Tamang) defined a much narrower the Project AoI covering only 10 “land-take” settlements (see Map 5) and by excluding 11 of the Project-Impacted settlements during the FPIC process (see Map 6).

A project footprint is an “area that may reasonably be expected to be physically touched by Project activities, across all phases”⁶⁸ (LALRP 2018: Glossary). The Project footprint area includes those impacted environmentally (the environmental AoI) and socioeconomically (the socio-economic AoI). The IFC PS1 (para 8) defines a Project AoI where the project involves specifically identified physical elements, aspects, and facilities that are likely to generate impacts, environmental and social risks and impacts will be identified in the context of the project’s area of influence. This area of influence encompasses:

- The area likely to be affected by: (i) the Project⁶⁹ and the client’s activities and facilities that are directly owned, operated or managed (including by contractors) and that are a component of the project; (ii) impacts from unplanned but predictable developments caused by the project that may occur later or at a different location; or (iii) indirect project impacts on biodiversity or on ecosystem services upon which Affected Communities’ livelihoods are dependent.
- Associated facilities, which are facilities that are not funded as part of the project but that would not have been constructed or expanded if the project did not exist, and without which the project would not be viable.
- Cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted.

Consistent with the definition of the Project AoI and project footprint (described in para above), the Project documents (EIA, ESIA, LALRP, SEP-GRM; prepared by the ERM Consultancy) determine a large Project AoI;⁷⁰ all Company maps disclosed (produced by the Project Consultant, ERM; see ESIA 2018) delineate a larger Project AoI.⁷¹

The EIA (2012:75) identifies nine “stream-rivers” (*khola*) in the Project watershed. These streams and rivers originate and flow through the various settlements in the watershed.⁷² These nine stream-rivers, located both at

67 MDB (2022) reads “... IFC learned through the news media of one violent incident referenced in the report on p.88, footnote #77. According to news reports, in early November a group of locals attacked and beat workers for the project contractor. IFC required NWEDC to provide a detailed note on the incident describing the cause and the way forward. NWEDC did inform the local authorities and law enforcement. Consequently, district and local authorities, including those representing the aggrieved village, NWEDC and IPP GB through mutual discussions defused the situation and agreed on a way forward with the aggrieved villagers.

68 “The Project footprint includes land used on a temporary basis such as construction laydown areas or construction haul roads, as well as disturbed areas in transport corridors, both public and private” (LALRP 2018: Glossary)

69 IFC PS1 FN 13: Examples include the project’s sites, the immediate airshed and watershed, or transport corridors. These include power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps, and contaminated land (e.g., soil, groundwater, surface water, and sediments).

70 For example, the ESIA (2018: 7.5) notes that “the Project will impact 78.6 ha of government-owned land from five community forest user groups from Dhunche and Haku.”

71 AoI encompasses three VDCs (Haku, Dhunche and Ramche) and includes areas such as Ghrey, Sano Bharkhu, Thulo Bharkhu, Dhunche, Gimal, Kalika and Dandagaon.

72 The nine “stream-rivers” are: Paling Khola, Thanku Khola, Kharshyong Khola, Daldung Khola, Lising Khola, Mailing Khola, Bhimali Khola, Ghatte Khola and Bhotekoshi Khola.

the right and left banks of the Trishuli River, clearly determining the Project AoI.

The EIA (2012:75-76) determines the following three categories of Project AoI:

- Category A: Highly Impacted Area: encompassing the area of the activity for Project Construction.
- Category B: Moderately Impacted Area: encompassing the forest areas as well as the areas within three hours walking distance from the Project Construction area.
- Category C: Minimally Impacted Area; encompassing areas outside three hours walking distance (such as the national park); while the physical and environmental impacts in the category will be minimal, this area will experience social, economic, and cultural impacts.

The Project environmental AoI is larger covering many settlements (see ESIA 2018: Figure 5.1). The environmental AoI includes the area of ecosystem services impacted by the Project that benefitted the local peoples (see 4.4.5 below). “The AoI for the ESIA covers a larger area in keeping with other potential impacts from the project” (LALRP 2018: 3). SEP-GRM (2018:6) underlines: “the Project footprint is spread across three former VDCs: Haku, Dhunche, and Ramche. ... The AoI ... is comprised of the directly affected villages ..., and areas of indirect Project impacts on ecosystem services, upon which there is livelihood dependence, and associated facilities that have a land impact.” IPP (2018:23) confirms that “the Environmental AoI is extended upstream approximately 2 kilometers, and downstream approximately 2 kilometers to where the Upper Trishuli-3A Hydropower Project is partially constructed. The Project is located in a steep canyon, so the extent of Project nuisance impacts (e.g., noise, fugitive dust, air emissions) is very limited, but we have assumed the AoI extends approximately two kilometers laterally from the Trishuli River.

The ESIA (2018: 5-5) defines the Socioeconomic AoI as including:

- Area affected by Project facilities and land acquisition: all lands acquired for Project construction and operations... in the form of economic and/or physical displacement.
- Communities affected by loss of access to resources: communities which will incur loss of access (permanent or temporary) to forest resources (e.g., firewood, food, medicine, fodder), which can have negative impacts on their livelihoods.

The LALRP confirms the larger Project AoI area. “The AoI for the project LALRP covers the directly affected villages and Village Development Committees in terms of the project footprint. Hence the Area of Influence covers the three former VDCs of Haku, Dhunche and Ramche” (Project LALRP 2018: 3; refer to Map 4 below). As per the LALRP (2018:3; see also Table 1.1 and Figure 1.1), the Project footprint is spread over across four rural municipalities (three VDCs: Haku, Dhunche and Ramche as per prior to 2015 administrative structure; see Map 3 below),⁷³ accounting for about 500 households:

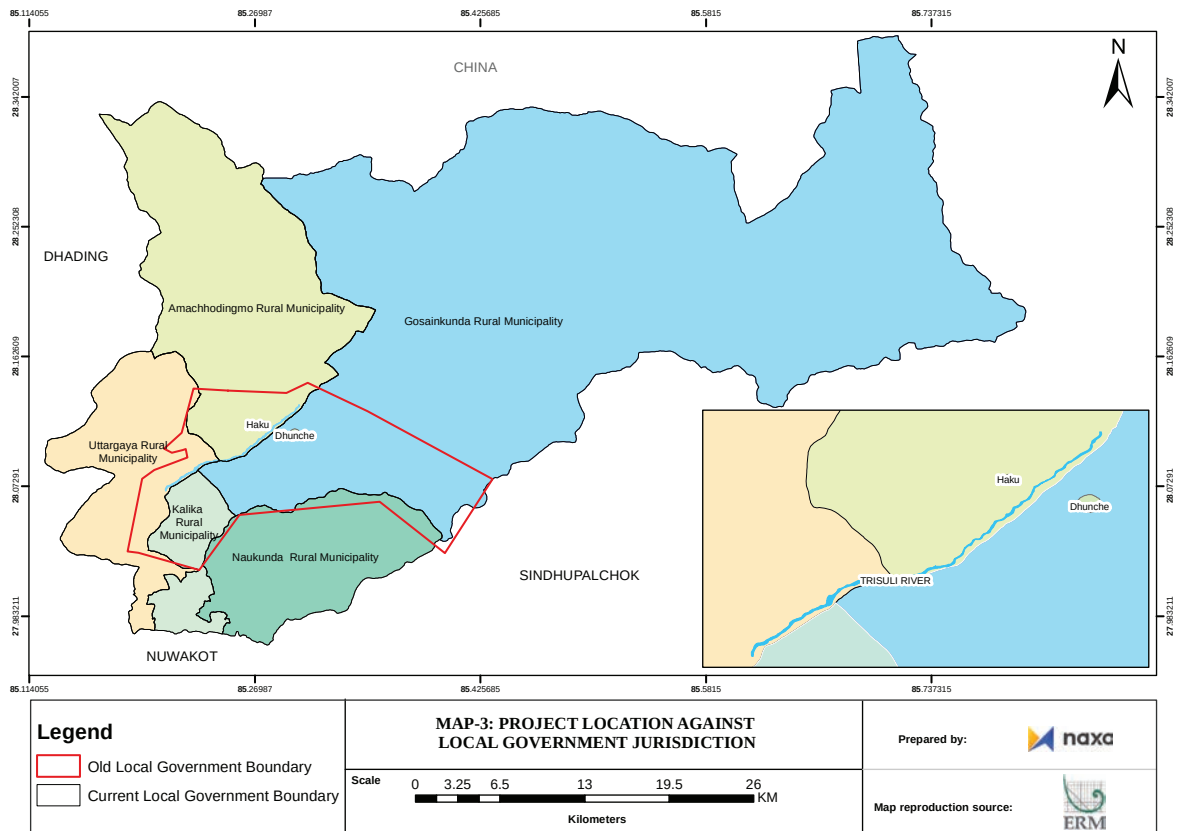
1. Hakubesi, Sano Haku, Thulo Haku, Thanku and Phulbari (Amachhodingmo Rural Municipality, Ward 1 and 2; population 2002)
2. Mailung, Gogane and Tiru (Uttargaya Rural Municipality, Ward 1; population 474⁷⁴)
3. Dhunche (Gosaikunda Rural Municipality, Ward 6; population 2744)
4. Ramche (Kalika Rural Municipality, Ward 6; population 2268)

It should be underlined that the lands within the Project footprint area⁷⁵ are under the customary - communal and private - occupation and/or use of the Tamang Indigenous Peoples. In particular, the dam, the tunnel, the underground powerhouse, the access roads, and the power transmission line are being built in traditional Tamang land areas.

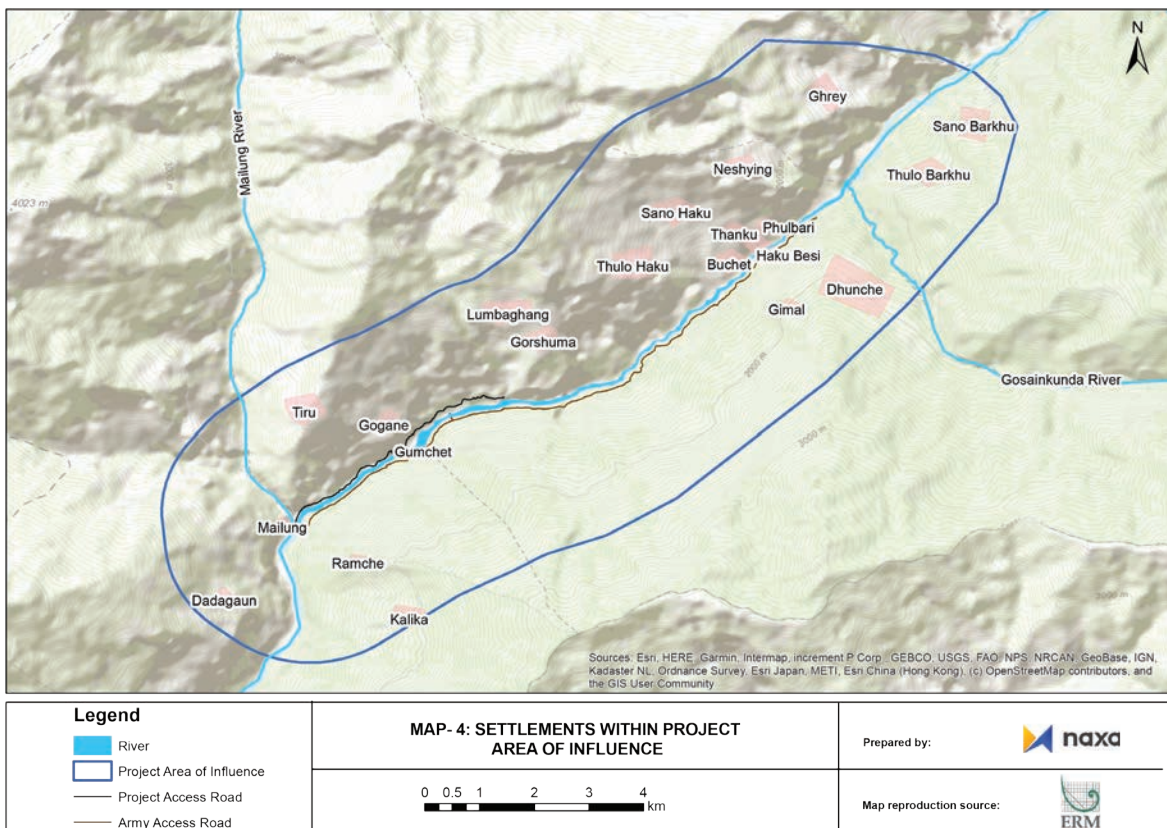
⁷³ The adoption of a new national Constitution in 2015 has been accompanied by a change in the administrative structure of Nepal. Previously, the Project was affecting 3 of the 18 VDCs in the district, now it is touching four of the five Gaunpalikas in the Rasuwa District (Table 6.3-2). This will also result in an increase in the population in the AoI (ESIA 2018:6.3-1).

⁷⁴ For population figures, please see LALRP (2018:3, Table 1.1).

⁷⁵ The Project footprint area includes lands in the Langtang National Park. Prior to the expropriation for the LNP, these areas were under the customary occupation and/or use of the Tamang indigenous peoples.



Map 3: Local Government Jurisdiction (based on the Company Map; ESIA 2018: 5-5; Figure 5-3; IPP 2018: Figure 3.2)



Map 4: Project Area of Influence (based on the Company map; ESIA 2018: 5-5 Socioeconomic AoI; Figure 5-1: Environmental AoI)



For the purposes of this Research, the Project AoI is categorized as follows:

- **The Highly Impacted Villages:** The highly-impacted “land-take” villages are part of the EIA Category A Area (see above) affected by the land expropriation and physical displacement. “The land take for the Project [which include forest and other communal areas] is from ten villages: Hakubesi, Sano Haku, Thulo Haku, Neshying, Gogone, Tiru, Thanku, Mailung, Gumchet, and Phulbari” (Refer to Map 4 below; “see IPP 2018: 23-26”).⁷⁶
- **Settlements Within the Dam Catchment Area:** The settlements within the dam catchment area are those impacted by the project construction activities (other than land expropriation and physical displacement). These “moderately impacted” settlements are from both EIA Category A and B settlements (see above). “The Project physical infrastructure and the facilities are located within Haku, Dhunche and Ramche VDCs” (Refer to Map 6 below; EIA 2012:227, 275). “The weir site is located in Dhunche and Haku (Hakubesi) (EIA 2012:70, 89). Ramche will be affected by the surge water (EIA 2012:228).⁷⁷
- **Areas Impacted by the Ancillary and Associated Facilities:** These areas impacted by the ancillary and associated structures (seen as minimally impacted) are categorized by the EIA as Category C Areas. For example, the Power Transmission line will impact one additional village (Dandagaun, Uttargaya Rural Municipality, Ward 1; refer to Map 6 below).

During the FPIC process, the Company consulted only 10 “land-take” settlements in the EIA Category A (highly impacted settlements encompassing the area of the activity for Project Construction; see Map 5 below). It did not consult the settlements within EIA Category B area (settlements within the dam catchment area and other moderately impacted area encompassing the forest areas) and excluded the settlements within the EIA Category C area (areas impacted by the Project ancillary and associated structures; see Map 6 below).

4.3 Project Benefits

The IPP (2018) identifies a number of potential Project benefits to the Project-Affected Tamang, but these benefits have yet to accrue (see below 5.3 for details). While numerous adverse Project impacts on the Project-

⁷⁶ Contradicting the IPP, NWEDC stated that “The land take is only from Mailung, Gogane, Hakubesi, Phoolbari and Thanku. The rest of the FPIC villages were included within the IPP due to the impact on common property resources.”

⁷⁷ IPP (2018:26 Table 3-2 lists Project Footprint villages that includes Dhunche and Ramche in addition to Haku.

Affected Tamang have been brought about since the last fourteen years of its existence (see 4.4 below for details), the Company has yet to deliver benefits to the Project-Affected Tamang. This is partly because the Project has yet to begin its operation but primarily because the Company has yet to disburse the allocated IPP budget (see 5.3 below for details). There are worries that the Project-Affected Tamang will not benefit from sustainable development opportunities, in a culturally appropriate manner, including continued access to natural resources, as required by the IFC PS7.

@Author/Photo/Tamang Settlement immediately above the Diversion Dam Site (Ghrey)



As per the IFC PS7, the Tamang Indigenous Peoples are entitled to benefits from the Project, above and beyond the compensation and mitigation benefits, since the Project exploits their traditional resources – river water and land - for commercial purposes (electricity generation). As per the IFC PS7, the Company should propose and agree with the Project-Affected Tamang a benefit-sharing mechanism for the life of the Project. Above and beyond the allocated IPP funds earmarked for the first five years, the Company should allocate a percentage of profits revenues coming from the generation of electricity directly to the Project-affected Tamang communities; such funds could also pay for access to electricity to all the villages affected, if not connecting them to the power generated by the Project directly. WB ISDS (2015) states: the Company “is looking into the proposed *benefit-sharing mechanisms* (emphasis added) as well as the project potential for local community support. These will be... considered into the project design.” The TPA underlines to “ensure the participation of the Indigenous Peoples ... in obtaining the benefits provided in the ... IPP.”

The 2016 Company ESPS Statement declares its commitments to: “provide benefits to the communities affected by the [Company] projects that promote the enhancements of their livelihoods.” NWEDC (2022) states that “the project royalty paid to the government that trickles down to the community will also play an important role in the socio-economic and cultural development of the Project AoI people. Apart from the above during project construction, the LALRP, IPP implemented will play an important role in the socio-economic enhancement of the impacted household. The Company adds “the project affected Tamang are benefitting from the construction activities as 43% of the total workforce (till June 2022) is local Tamang” (data source unspecified). MDB (2022) states: “the project has been providing employment to and procuring services from persons from the affected communities and implemented extensive social support to the affected communities after the earthquake. In addition, the project built a road bridge linking project-affected villages to the army highway – at the request of

affected communities – which has significantly improved their access to healthcare and other services.”⁷⁸

The IFC PS7 requires clients to take additional measures when it affects communally held lands and natural resources subject to traditional ownership or under customary use. If the client proposes to locate a project on, or commercially develop natural resources on lands traditionally owned by, or under the customary use of, Indigenous Peoples (see 4.4 below), the client shall ensure, among others, that the affected Indigenous Peoples receive culturally appropriate sustainable development opportunities, including continued access to natural resources⁷⁹ (or the equivalent replacement resources), alternative livelihoods, particularly if project development results in the loss of access to or loss of natural resources independent of project land acquisition, and a fair and equitable sharing of benefits associated with project usage of the resources. IFC (2007) underlines that “Indigenous Peoples should participate in the benefits of projects. While this can relate to direct financial benefit, it usually relates to collateral and development benefits such as employment opportunities, healthcare, education or employment.”

@Author/Photo/Project Immigrant Labor from Outside the Rasuwa District



Fund for the IPP Implementation: The Project Tripartite Agreement (TPA) commits the Company to allocate US\$ 1.125 million for the implementation of the Indigenous Peoples Plan (see below 5.3 for details). Four years have elapsed since the TPA was signed and the Company has yet to disburse this fund due to delays in signing the financial closure from the Project lenders (signed on 17 October 2022). A mechanism for disbursing the funds to the Project-Affected settlements has not been established (see 5.3 below for details). There is no clarity in the proposed institutional structure as to who will have the financial authority to administer these funds;⁸⁰ there is a brewing conflict between the IPP Executive Board and the local government representatives as to who shall administer the funds, when these are disbursed for the IPP implementation.

78 Please see video “UT1216MW Earthquake relief project” by Adventure Nepal Production PVT Ltd. Available: <https://www.youtube.com/watch?v=s39c3D9Zr6k&t=129s>

79 The client provides affected communities with access, usage, and transit on land it is developing subject to overriding health, safety, and security considerations.

80 NWEDC (2022) claims that the Draft IPP Implementation Guideline, which is awaiting consultations with and endorsement of the AJAC, will assign the responsibilities for the budget administration.

Earthquake and Covid-19 Assistance: Against the background of the land expropriation from, and physical displacement of, the Project-Affected Tamang, they had expected assistance from the Company (that was commercially developing their natural resources) during and in the aftermath of natural disasters and crises (the 2015 Earthquake and during the Covid-19 lockdown 2020-2021). However, the Company is said to have provided only limited assistance. Moreover, in spite of its pronouncement of corporate social responsibility, the Company provided little or no assistance to the Project-Affected Tamang.⁸¹ In October 2021, three years after the FPIC was documented, the Company provided USD2,000 for each Project-Affected settlement. This was however billed as part of Covid-19 Assistance.

@Author/Photo/Women (Wearing Mask for Covid-19 Protection) during a Research Focus Group (Hakubesi)



The GoN central earthquake relief entity (the Natural Disaster Relief Committee, Rasuwa), in consultations with various INGOs, had entrusted the Company to carry out earthquake relief to the ten Project-Affected settlements within the “highly impacted area.” NWEDC (2022) states that “the company provided numerous rescue operations (air evacuations) and saved many lives during the earthquake. Apart from the temporary shelters, food and logistic support, the company also built schools in Dhunche and Ramche, and a Health Post in Haku. The company provided assistance to people in the most vulnerable areas near the project. LALRP (2018:65) recorded “immediate relief of food, tarpaulin sheets, blankets, toilet pans and utensils; Distribution of corrugated galvanized iron sheets (over 1550 tons) and bamboo (8 per family) for the construction of temporary shelters and toilets; Distribution of rice and cooking oil (a total of approximately 37.7 tons of rice and 1452 liters of cooking oil).” The focus group discussions conducted in October 2021 report that the Company made available rice (2 sacks), salt, cooking oil, and corrugated roofing materials and this limited relief support was provided to only three out of ten Project-affected settlements (Mailung, Tiru and Gogane); seven settlements did not receive the relief assistance. SEP-GRM (2018:22) however records that “one of the key feedbacks from the local community

⁸¹ The Company website states that it “has been continuously contributing to Corporate Social Responsibility (CSR) activities and has planned other several CSR, Environmental & Social activities on upcoming days.” The Company has however not extended any such social responsibility assistance to the Project-Affected Tamang. The Company instead contributed to the central Prime Minister Disaster Relief Fund (2 years after the Earthquake; in September 2017). In 2018, the Company supported programs unrelated with the Project-Affected Tamang; it donated (amount not specified) to an old age home in Kathmandu and supported Nepal’s participation in the Street Child World Cup in Moscow. (See www.nwedc.com/CSR).

residing in IDP camps was the difference in access to relief support across the camps. It was reported that due to interventions of local political leaders, IDP camps such as Naubise and Bogetitar received most of the relief support from numerous NGOs/ INGOs. However, camps such as Satbise, with no strong political leader, did not receive any relief support from any NGO/INGO.”

Collateral Development Benefits: The Tamang of Rasuwa in general however may potentially derive collateral development benefits from the basin-wide hydropower development. IFC CIA (2020:139) foresees that “cumulative regional development of hydropower and ancillary facilities is likely to bring about overall physical infrastructure development with respect to roads, telecommunication, and accessibility to remote areas and access to electricity.”

The Tamang may receive three specific collateral benefits from the regional hydropower development.

- First, they may potentially benefit from the access to local road network.
- Second, the Tamang settlements within the highly impacted area (that are located in proximity to the national electricity grid) may get access to the electricity.
- Thirdly, as the residents of Rasuwa district - not because they are the Project-Affected but because they are residents of the administrative district - they may have the opportunity to purchase the Project Initial Public Offering (IPO) stock shares of the hydropower projects.

As per the Hydroelectric Development Policy (2003), 50% of the revenue generated by a hydropower project is transferred to the local governments. NWEDC (2022) stated that “the allocation of the Project royalty will be as per the Hydropower Policy, 2001.” However, this potential sharing of the revenue from the Project operation will be transferred to the district-level mechanism and will be spent for supporting development projects and social services (education, health, etc.). The benefits of the revenue share may not reach the Project-Affected villages.

Potential Access to Road Network: Should the Company complete the construction, as required by the EIA 2012, the planned 20.30 km access road from the Project Powerhouse at Mailung to the Project Dam site (see Map 2) would benefit many Project-Affected settlements. This planned access road runs along the right bank of the Trishuli River and would connect a number of Tamang villages to road network; currently, these villages, located on the right bank of the river, have no road access. However, the Company is said to be abandoning construction of this access road. The Project will instead use the newly constructed alternate access road that runs along the left bank of the river as its transport corridor (see 2.2 above). Prior to 2015, the Company constructed 5.1 kms stretch of the planned access road from the downstream point. If completed as planned, the access to road will indirectly improve access to local markets (Syabrubesi, Dhunche and Mailung) for sale of local vegetables and livestock products. The access to road will indirectly improve the access to social services (such as the District Hospital, the secondary and higher educational institutions, etc.).

Potential Access to Electricity: After prolonged and contentious negotiations, the Company has provided access to electricity a few settlements of the Project-Affected Tamang in proximity to the existing electricity grid. NWEDC (2022) stated that “the liability of the company for rural electrification is after the Commercial Operation Date. The current electrification in the Project AoI is done by the GoN. ...while extending the electricity grid for the purpose of the construction power requirements at the Power House locations, the locals of Mailung were granted the right to use the same connections.”

Project Initial Public Offering Share: In line with the past business practices of hydropower projects in Nepal,⁸² the Company is expected to offer a stock (IPO) share purchase mechanism. This mechanism is directed at all permanent residents of Rasuwa District, irrespective of whether they are Project-Affected or not and whether Indigenous Peoples or otherwise. While the Project-Affected Tamang will be eligible to purchase the IPO shares, many of them - in particular women-headed households and the elderly - may neither have financial wherewithal nor the financial resources to purchase these shares.

While the Project-Affected Tamang have been demanding that they are offered additional IPO shares and at a lower price, the likelihood of such an offer is very low. A Joint Letter from the Project Struggle Committee and

82 See IFC CIA (2020:129).

the UT-1 Concerned Committee to the Company (dated 29 August 2017) demands that: “20% of the UT-1 Shares should be sold to the residents and Rasuwa District. Above and beyond this, the Project-Affected Families and the Displaced should additionally receive 2.5% Project Shares free of cost.”

4.4 Project Adverse Impacts

While the Project documents prepared and disclosed by the Company, including the EIA, ESIA, LALRP, GAP, IPP as well as the IFC CIA, do not fully elaborate the degree and extent of the Project adverse impacts on the Project-Affected Tamang, these documents corroborate that the Project has brought about harms to the Project-Affected Tamang. The Project Tripartite Agreement (TPA) underlines that “development and production of hydropower and construction of its facilities affect local people’s native habitat, customary way of life, economic activities, indigenous knowledge.”

IFC Compliance Advisor Ombudsman (CAO) defines Project harm as “any material adverse environmental and social effect on people or the environment resulting directly or *indirectly* (emphasis added) from a Project... Harm may be actual or reasonably *likely to occur in the future* (emphasis added).”

As anticipated from a large hydropower project located in an ecologically fragile and narrow mountain basin, the Project impacts are varying in degree - from severe to moderate - ranging from land expropriation and physical displacement to economic displacement to environmental, sociocultural, health and gender impacts (see details below: 4.4.1 to 4.4.11). Moreover, the commercial exploitation of the natural resources - river water, forests, etc. - which are under traditional ownership or under customary use or occupation of the Project-Affected Tamang, brings about a number of additional adverse impacts.

The Company has conducted a comprehensive environmental impact assessment of the Project AoI. IFC has additionally commissioned a comprehensive study on the cumulative impacts of hydropower projects in the TRB. The Company has however not carried out similar comprehensive social assessments on the Project. Consequently, the Project documents do not fully elaborate the degree and extent of the adverse sociocultural, socioeconomic and health impacts brought about by the Project on the Project-Affected Tamang.⁸³

The adverse impacts affect the Tamang Indigenous Peoples across social sub-groups, including women, the elderly, and the poor. The Project exposes women in particular to disproportionate and accentuated adverse impacts (see 4.4.8 below for details).

From among the adverse impacts on the Project-Affected Tamang, involuntary resettlement – land expropriation and physical displacement (see below for definition) – was the most culturally inappropriate impact, and has brought about life-altering consequences – both at the community- and household levels. As per IFC PS5: “involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement;”⁸⁴ this includes loss of assets or access to assets that leads to loss of income sources or other means of livelihood as a result of project-related land acquisition and/or restrictions on land use. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use; and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.” “Land acquisition includes both outright purchases of property and acquisition of access rights, such as easements or rights of way” (IFC PS5).

The Project-Affected Tamang were subjected to involuntary resettlement by the Company at different times between 2009 and 2019. Relatively sizeable portions of limited arable lands - from within the mountain gorge, characterized by steep slopes and rock surfaces - were expropriated for Project purposes. These impacts, initially economic in nature, led to sociocultural consequences. For example, land expropriation, which resulted in landlessness and subsequently the loss of traditional livelihood, forced the Tamang Indigenous Peoples to

83 NWEDC (2022) claims that “the ESIA, LALRP and IPP documents cover the comprehensive assessment of socioeconomic, sociocultural, health impacts as well as impacts on women brought about by the Project.”

84 “Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in displacement” (WB ESS5:1).

take up wage labor; this in turn undermined their social status in the community severely (see 4.4.2 for details). The physical displacement resulted in homelessness, and in many instances, displaced Project-Affected Tamang households were forced to emigrate to Internally Displaced People (IDP) camps; these Tamang households were forced to detach socially from their collective community environment at the place of origin (see 4.4.3 for details).

4.4.1 Loss/ Restriction of Access to Natural Resources

In addition to the expropriation of the privately-titled land, the Project infrastructure is physically occupying relatively large communal areas of the Project-Affected Tamang. Additionally, invoking its right of way, the Company is imposing restrictions on access to these forests, pastures, and riverine resources, put in effect at the beginning of 2016.⁸⁵ The restrictions of access to communal areas were imposed on the Tamang Indigenous Peoples without due consultation and negotiation; it was imposed three years (in 2016) prior to documenting FPIC (in November 2018). The Project control and use of land and natural areas under the customary, communal use of the Tamang Indigenous Peoples is impeding their traditional access to these resources.

The IFC PS7 requires measures for projects affecting communally held lands and natural resources subject to traditional ownership or under customary use, including ensuring continued access to natural resources, identifying the equivalent replacement resources, etc. and providing affected communities with access, usage, and transit on land it is developing. The Company has however not identified the equivalent replacement resources and has not provided the Tamang with access, usage, and transit on land it is developing.

The restriction of access to the forest, pasture and water has already brought about the loss of numerous ecosystem services enjoyed by the local Tamang Indigenous Peoples. In particular, the Project-Affected Tamang face loss or restriction of access to grazing land for livestock, and collection of non-timber forest products (including firewood and medicinal plants). The Project documents attest that “the Project will result in the loss for forest used for non-timber forest products and will reduce river water flow in the 11.84 km long diversion segment between the dam and the powerhouse” (LALRP 2018:111). “The forestland lease is likely to result in impacts such as the loss of access to forest resources (e.g., firewood, fodder, timber, food, medicine) and the cutting of 3,856 trees” (LALRP 2018:105). “The acquisition of communal land will create shortages of the construction wood, fodder, firewood” (EIA 2012:315).

Loss of Access to Community Forest: For millennia, the Tamang occupied, managed, and used local forest areas. The Tamang rely heavily on natural resources for livelihoods. The forests were owned and managed by local communities until the nationalization of forests by the state in 1957. Subsequent to the promulgation of the Forest Act 1993,⁸⁶ the community forest user groups (CFUGs) were entrusted with the management of the forests. Section 25 of the Act gives power to GoN to hand over a National Forest as community forest for communities to develop, conserve, use, and manage, including selling and distributing the forest products independently by fixing their prices according to a work plan.

LALRP (2018:105) records that “the forestland required for the Project, though owned by the government, is in reality managed and protected by five CFUGs, representing 422 families.” IFC CIA (2020:72) records that “the primary concerns of the CFUGs are loss of productive forest patches. CFUGs want to ensure continued supply of ecosystem services and access to remaining forest areas. One issue is the degradation of forest cover due to project activities. There may be an increase of illegal deforestation and illegal cutting as a result of project-related activities, improved access to forest areas, and location of construction and worker camps in the buffer zones.”

The Company acquired a total of 927.32 ha of forests protected, managed, and used by six CFUGs.⁸⁷ “The project has resulted in an impact on Community Forest land of five CFUGs. This has resulted in an impact on 422 forest user group members” (LALRP 2018:2; see also IFC ESAP 2019). LALRP (2018: Table 6.1) records that a total

85 “Restrictions on land use refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly introduced and put into effect as part of the project. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, restrictions on land use within utility easements or safety zones” (WB ESF 2017)

86 Forest Act 2049 BS (1993) with amendments to 2055 BS and 2073 BS.

87 IPP (2018:45 -46; Table 5.1) identifies 6 CFUGs: Dachhin Kalika, Darnashila Kanyadevi, Lumbudanda, Bratar, Larbangpakha, Neyshing.

of “78.6 ha of Government owned, but CFUG managed, forest land”⁸⁸ was acquired in 2013 through a lease agreement, led by District Forest Office (10 September 2013).”⁸⁹

Contrary to the IFC PS7 requirements, the customary rights of the Tamang Indigenous Peoples were “extinguished” by the state by applying the principle of eminent domain. The Company did not seek and acquire the FPIC of the Project-Affected Tamang; instead, it relegated the responsibility to the GoN Department of Forest (see 5.2 below for details). This affected large swath of forests managed by six CFUGs. Not only their access to the traditional community forests is restricted, their traditional tenure rights over these forests may have been jeopardized.

@Author/Photo/Langtang National Park (impacted by the Project)



The CFUGs (henceforth forest user groups) did not receive any compensation for this loss of access to the community forests.⁹⁰ Due to the loss of access to a large area of their traditional community forests to the Project, six forest user groups lost their source of construction materials, fuel, medicinal plants, etc. They have also lost their source of off-farm economic income.

Restriction of Access to the Communal Land/ Pasture/ Water: IFC CIA (2020:130) concludes that “grazing and pasture land is not adequately compensated” for by hydropower projects. According to the focus group participants and key informants (consulted during the Research), the restriction of access to the communal land and communally managed pasture has increased the socioeconomic hardship of the Project-Affected Tamang who rely on agropastoralism. Given that these restrictions are disrupting the traditional pasture management system that regulates the use of communal pastures, these may jeopardize the future of the communal pastures (see Rai et. al. 1993).

SEP-GRM (2018: 25) records: “impact on access to natural resources: according to the consultations undertaken, it is understood that the project has resulted or will result in loss of access to natural resources such as forest

⁸⁸ This forestland belongs to the Dhunche and Haku VDCs and is under the supervision of five CFUG (LALRP 2018:104).

⁸⁹ While the 2012 EIA stated that “27.20 ha forest will be impacted by the Project” (EIA 2012:285), an earlier 2011 EIA (2011:8) attested that “about 59.64% of the Haku VDC is encompassed by the community forest.”

⁹⁰ NWEDC (2022) confirmed that the forest user groups did not receive the compensation. “The compensatory mechanisms for the CFUGs are already defined within the Company and GoN land diversion agreements dated September 10, 2013 in terms of replacement land (Clause no. 7) and replacement afforestation (Clause no. 6).”

resources and fishing resources. The community was of the opinion that the project activities resulted in the loss of more trees than had been marked as part of the lease agreement. This is reported to primarily be resultant from the debris from the road construction activities falling downslope, onto land that is not part of the lease agreement or purchased from the land owners, and by the migrant labor (400 labors in February 2023) accessing the forest for firewood.”⁹¹

@Author/Photo/Tamang Communal Pasture



4.4.2 Project Land Expropriation

The Company carried out expropriation of lands which were under customary use and/or occupation of the Tamang Indigenous Peoples. Expropriation of this land - communally held land, privately-titled land and religious trust leasehold land - has brought about adverse economic and sociocultural consequences (see 4.4.5 below for details). While the geographical extent of the land expropriation was comparatively small, the economic and sociocultural consequences were severe; the land expropriation has distressed the Project-Affected Tamang families. These lands were expropriated from the limited productive land available (see IFC CIA (2020:161; see photo below) within the rugged river basin – characterized by steep slopes and rock surfaces⁹² the Project lies within a vertically narrow and deep river gorge.

The 2016 Company ESPS Statement declares the commitment to: “minimize land acquisition and ensure that affected households are fairly compensated and actively assisted to restore and improve their livelihoods and living conditions.”

A review of a timeline of activities of the Company (refer to Section 4 above) showed that land acquisition and project site survey activities started as early as 2009 (see ESIA, 2018:8-1). SEP-GRM (2018: 13) records: “The land identification and survey for the Project’s powerhouse was undertaken in 2009-2010.... Land acquisition for the Project is from eight villages (Hakubesi, Sanu Haku, Thulo Haku, Gogone, Tiru, Thanku, Mailung, and Phulbari)” (see Maps 4 and 5) The Company completed the 93% of land expropriation by 2015, if not earlier.

91 Reiterating the IFC CIA (2020:130) findings, NWEDC (2022) stated that “the Company acknowledges the statement on resultant impact outside of the project footprint. The residual impact mitigation is duly recorded in Annex B, ESAP no. 16 (d) and adequate compensation provided to the respective CFUGs for closure.”

92 “The topography of the Rasuwa is shaped by the Trishuli River and is characterized by steep slopes and rock surfaces” (EIA 2012:103).

The Project documents put the total area of land expropriated for Project purposes at 107.99 ha. “Of these, 78.646 hectares are considered government land [considered by the Tamang as their traditional communal land], comprised primarily of community forests. 5.4 hectares are national forests that are part of the Langtang National Park. 5.05 hectares are considered private lands, while 15.53 hectares are [religious trust]-controlled lands” (ESIA 2018:10). Project ESIA (2018: 7.5 – 1) notes “about 19 percent of the land was privately owned by 20 private landowners (5.05 ha) or was [religious trust] land (15.53 ha) (see Section below for details).”

@Author/Photo/Limited Arable Land Along the Steep Trishuli River Gorge (Hakubesi)



LALRP (2018:11-12; Table 2.2) records that, by 2015, the Project land expropriation had impacted 154 Project-Affected Families (619 Project-Affected Persons; PAFs). Subsequent to 2015, there were additional land takes in 2017 and consequently additional Project-Affected Families were impacted. The Company has not updated the critical data on the PAFs (see LALRP (2018: Table 2.2).

As per the IFC PS7, acquiring FPIC was required for such land acquisition in the period after 2012 (when the IFC had signed the JDA with the Project sponsor in March 2012). IFC PS7 (para 13) requires the FPIC of the Project-Affected Tamang when there are “impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use” (IFC PS7 GN44). “Whether the project should proceed with activities that may result in adverse impacts on these lands should be subject to securing the FPIC of the Affected Communities of Indigenous Peoples” (IFC PS7 GN44).

The Company formulated the LALRP six years after involuntary resettlement had begun (in 2016). It drafted a Supplemental LALRP in 2018 but this plan was not subjected to the FPIC process. The LALRP has not been implemented. MDB (2022) acknowledges that “the LALRP has not yet been implemented due to pandemic-related project delays.”

Contrary to the provisions of IFC PS7 detailed above, the land take process by the Company applied instead the principle of eminent domain. ESIA (Table 7.5 – 2) shows that the Company acquired lands using government land take procedures; “GoN officials facilitated the land take process.” EIA (2012:396) notes: “GoN has not considered a land-for-land compensation mechanism.” “The option of replacement land was not provided to the landowners by the Company” (LALRP, 2018: 85). EIA (2012:396) reiterates that “the GoN compensation rate is decided by a committee of government civil servants, head of district-level local government and the Head of the Project;”

such a committee that includes the head of the Project is not expected to give fair compensation. NWEDC (2022) confirms that the “majority [not all] of the land was acquired through the negotiation with public as described in section 27 of the Land Acquisition Act, 1977 of GoN. The public ... made separate agreement with the Project for selling of their land as they received higher land value than the GoN rate as well as market price rate. Only the land parcel with ancestral division disputes were acquired through the intervention of District Administration Office, Rasuwa.”

Lahurnip (2020) concludes that: “the current practice of [land expropriation in Nepal] is exploitative as landowners have no say in determining the price of their land.... Only up to 10 – 20 percent of the total land value is said to be given as compensation for lands covered by the right of way. In practice, often large amounts of compensation are provided to a political party affiliated person and nominal amounts to a few other persons in order to divide and rule. ...There is no representation of Indigenous Peoples in the valuation of land and properties.” “A study by USAID (2014; quoted in IFC CIA 2020:128) of the hydropower projects in Nepal concludes that “...while procurement of land is undertaken under the provisions of the Land Acquisition Act of 1977, there are no consistent approaches for the participation of local communities, the development of context specific entitlements (especially for informal rights holders and loss of access to natural resources), and no grievance redressal. These issues are dealt with on a project-by-project basis, which has led to inconsistency in land-acquisition practices.”

Expropriation of the Religious Trust Leasehold Land: The Company had initially expropriated the Tamang religious trust (*guthi*) land under the same terms and conditions for compensation as that applied to privately-titled land. Contrary to the agreed terms, later in 2019, the GoN nullified the leasehold tenancy rights of the Tamang families. It should be noted that this nullification of the religious trust rights was carried out in 2019 immediately after documentation of the FPIC by the Company and carried during the Covid lockdown. The sudden annulment of the religious trust rights by the GoN and subsequent refusal of the Company to pay the earlier agreed compensation were actions that further severely eroded the faith of the Project-Affected Tamang in the Company.

While the religious trust land area is comparatively small, this land was irrigable, prime agricultural land located adjacent to the river. Of the land expropriated for the Project, LALRP 2018:38) attests that “15.53 ha of land is [the religious trust] land ... The impacted trust land legally belongs to a Buddhist Monastery at Swoyambhu in Kathmandu ⁹³ and comprised of 29 agricultural plots on which 60 PAFs are dependent” (LALRP 2018:79). “42 PAFs from Hakubesi, Phulbari and Thanku, were reported to have access to [religious trust] land impacted by the Project as tenants.”

For all practical purposes, ownership of the religious trust land is similar to that of the privately-titled land. What is now classified as the religious trust land had been historically occupied and used by individual families since time immemorial under the traditional system of the Tamang land tenure. Until the annulment of their tenancy rights, the Tamang enjoyed the trust land as privately-titled land. These privately-held lands had been reclassified as religious trust land during a central government cadastral survey in 1978. The government surveyors refused to give recognition to the Tamang traditional communal tenure and required the villagers to parcel the land and register it in individual household ownership. Such a move concerned the Tamang in that individual families may not be able to pay the land revenue imposed by the central government and thereby forfeit in the future their tenure rights. As a way out, the villagers decided to register the land under the religious trust of the Buddhist Monastery. ⁹⁴

The Project documents record that the Company “treated” the [religious trust] land as equivalent to private land. The Company had initially agreed to pay the compensation only equal to that of privately-titled land. This was based on the understanding that due to the long-standing dependence of the tenants on the land, the potential Project impacts were comparable to those on private land owners” (LALRP 2018:87-88); “the [religious trust] land take process was similar to the land take process for the private land; was based on negotiated settlements

⁹³ This religious trust land belongs to the Swayambhuguthi owned by a Buddhist Monastery at Swayambhu in Kathmandu.

⁹⁴ With the concurrence of the respective village headman, the villagers agreed to convert their tenancy rights to a trust, run by the Buddhist priests from Swayambhu Monastery in Kathmandu.

with the tenants; and the rates offered for the [religious trust] land were similar to those offered for the private land” (LALRP 2018:88- 89; ESIA 2018:7.5-4).

@Author/Photo/A Tamang Monastery



The focus groups and interviews carried out by the Research team record that this “annulment of the trust land was carried out by the government [Cabinet of Ministers] at the behest of the Company under the pretext that the Tamang tenants were illegal squatters on the trust land.”⁹⁵ While it disputes that it had asked the government for the annulment of the religious trust lands, NWEDC (2022) confirms that “the ownership rights obtained by the [religious trust land] claimants in the process were nullified by GoN and reinstated as government land.”⁹⁶ NWEDC (2022) elaborates that “during the forest land acquisition process the claimed [religious trust] land by the tenants in government books and records are categorized as “National Forest” and recommended by the Division Forest Office for diversion of the forest land for lease holding to the Company. Thus, through the Cabinet of Ministers decision the 76.66 ha. were leased to the project through a lease holding agreement dated 10 September 2013.”

It should be underlined here that the nullification by the state of the religious trust ownership rights of the claimants and the subsequent reinstatement of such lands under customary occupation and use as the government land were not in compliance with the provisions of the mandatory IFC operational policies. IFC PS7 GN7 (para 42) states that “No documentation of land claims (or absence of land claim) should prejudice existing or future legal proceedings of Indigenous Peoples to establish legal title.” IFC PS7 (footnote 12): “typically, Indigenous Peoples claim rights and access to, and use of land and resources through traditional or customary systems, many of which entail communal property rights. These traditional claims to land and resources may not be recognized under national laws.”

95 Salcito (2020:): One IFC client in India (Oriental Infrastructure Highway) “fully bypassed the indigenous households of Scheduled Tribes and Scheduled Castes, denying them compensation by describing them as squatters who lacked legal title to the lands they occupied.”

96 NWEDC claims that “the Company acquired the tenancy rights of the [religious trust] land following the Guthi Corporation Act, 2033 (1976), Section 30 and the Land Acquisition Act, 1977, Section 15.”

4.4.3 Project Physical Displacement

Of all the impacts, the physical displacement of the Tamang Indigenous Peoples from their traditional homeland brought about the harshest consequences. While the scale was comparatively small, the adverse impacts were severe.⁹⁷ This physical displacement of the Project-Affected Tamang was carried out without the due negotiations,⁹⁸ without adequate advance notice, without meaningful opportunities to lodge grievances and appeals, without any replacement housing arrangements for the displaced families and prior to documenting the FPIC. Applying the World Bank (ESS5 2017) definition, this physical displacement of the Tamang Indigenous Peoples was tantamount to a “forced eviction.”⁹⁹

IFC PS7(para 15) requires that physical relocation of the Indigenous Peoples will not be carried out unless FPIC has been obtained. “In the specific event that the proposed project plans to carry out physical relocation, the client is required to consider feasible alternative project designs to avoid the relocation from communally held lands and natural resources subject to traditional ownership or under customary use. If such relocation is unavoidable, the client will not proceed with the project unless FPIC has been obtained.”

@Author/Photo/Tamang Settlements Impacted Severely by the Land Expropriation and Physical Displacement



From the records, it can be surmised that the Company carried out physical displacement of the Tamang Indigenous Peoples since 2013 and continued until 2018 (see para below). The IFC PS7, applicable to the Project during this period, required the Company to acquire FPIC for the physical displacement. The Company did not pay the replacement value for this physical displacement. “The compensation for asset loss... was ... not based on the negotiation per se or on the principle of replacement value” (LALRP 2018:92). NWEDC (2022) confirms that the

97 “The core village heavily impacted by the Project, Hakubesi, ... where a large number of people have experienced dislocation” (Gurung 2020:35).

98 It should be noted that the Company applied a different procedure for the land expropriation of the Project-Affected Tamang based on a different Act (the Land Acquisition Act 1977).

99 WB ESS5 (2017: para 31) defines “forced eviction” as “the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/ or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection.” The eviction has not been “conducted in a manner consistent with basic principles of due process, including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals.”

valuation was carried out by GoN agency (Department of Urban Development and Building Construction). There was no arrangement for restoration of livelihood. Consequently, a number of families became homeless. Some of these families migrated to semi-urban areas. Those, who stayed behind in the village, use relatives' secondary structures as temporary shelters.

@Author/Photo/Internally Displaced Persons' Camp (Downstream from the Project AoI)



The physical displacement resulted in the loss of structures including primary residential structures. A total number of structures lost to the Project was 36 (LALRP 2018:96; see also ESIA 2018: 7.5 – 1). “Seven project affected families have lost all land parcels belonging to them (0.65 ha) and the houses they used to live in” (LALRP 2018:81). There was additional physical displacement in 2017 – 2018; LALRP records “an additional 5 individuals have lost 7 primary residences in 2017.” In addition to this, in 2017-2018, the Project procured 7 more structures from residents residing in Mailung for an alternative camp area (LALRP 2018:96). “Cash compensation was based on valuation by GoN agency in 2014” (LALRP 2018: Table 6.1). NWEDC (2022) confirms that “the LALRP is considered as a due diligence to consolidate the project land acquisitions process from 2013 and provides shortcomings during the land acquisition process and residual impacts to be mitigated in a time bound manner. The compensation to physical structure impacted and identified in the LALRP has been paid to the landowners based on the assessment of Department of Urban Development and Building Construction, the compensation is derived as per the replacement value. The shortcoming depreciation and scrap value which was identified as not inclusive of the compensation paid was later consolidated and paid to the landowners.”

4.4.4 Project Environmental Impacts

In the context that the ecosystem of the Project AoI is fragile, the Project will bring about three specific adverse environmental impacts, namely, the loss of access to ecosystem services, the loss of biodiversity and the loss of artisanal fishing.

The 2016 Company ESPS Statement declares the Company’s commitments to: “adopt mitigation strategies to avoid, reduce, or compensate environmental degradation, pollution.”

Loss of Access to Ecosystem Services: The Project will impact the local peoples’ use and access to the ecosystem services. “Ecosystem services are the benefits that people derive from ecosystems, including ... provisioning services, which are the products people obtain from ecosystems and which may include food, freshwater, timbers,

fibers, medicinal plants; cultural services, which are the nonmaterial benefits people obtain from ecosystems and which may include natural areas that are sacred sites and areas of importance for recreations and aesthetic enjoyment; and supporting services, which are the natural processes that maintain the other services and which may include soil formation, nutrient cycling and primary production” (WB ESF 2017).

@Author/Photo/Langtang Peak above the Trishuli River Valley



IFC CIA (2020:109) confirms that “the Trishuli River Basin provides ecosystem services that sustain the livelihoods of more than 313,862 people ... in the upstream, midstream and downstream section. ...Spatial distribution varies across physiographic zones creating microclimates that affect annual water availability. Springs are a major source of water.”

The Project will directly bring additional environmental impacts in the Project AoI. There will be increased landslides from the Project Road construction and from the blasting for the various physical structures (dam, tunnel, quarries, etc.). There is a potential for drying up of the water sources (for drinking water and irrigation).¹⁰⁰ IFC CIA (2020:53) concludes that: “The length and width of the [Project] access road may have important environmental impacts by creating 30-meter-wide corridors through landscapes (road, plus associated drainage, foundations, and so forth). Common adverse environmental impacts associated with road expansions in mountainous areas include landslides ..., slope instability, soil erosion, and roadside runoff. Project ESIA (2018:11 -1) adds: “the impacts associated with the Project’s proposed 1.184-kilometre-long transmission line and associated substation needed to evacuate the electricity generated from the Project powerhouse to the ... Chilime Trishuli transmission line.”

Loss of Biodiversity: The Project will exacerbate the loss of biodiversity in the Project area that has been triggered by the numerous hydropower development undertakings and the construction of roads and highways (and planned railways). IFC CIA (2020:4) confirms that there will be “fragmentation of habitats” in the TRB. Nepal Water Conservation Foundation (2019:27) adds: “the aquatic biodiversity is also greatly affected by water diversion from the rivers for hydropower generation. Theoretically, a downstream release of environmental flow of 10 percent of the minimum monthly discharge is legally binding but none of the hydropower projects have been observing this regulation. This breach is also carried out by hydropower projects owned and operated by

¹⁰⁰ NWCF (2019:11) notes that “This problem of drying up of springs is so serious in a terrain with the challenge of verticality ... entire settlements being abandoned for lack of water.”

Nepal's government utility the NEA." Judging from the past experience in Nepal, the Project immigrant labor (400 in February 2023) is anticipated to pursue illegal extraction of natural resources in the area.

Loss of Artisanal Fishing: One of the ecosystem services that will be impacted by the Project is the loss of artisanal fishing. The Tamang of the Project AoI will experience the loss of artisanal fishing due to diversion of river water through the tunnel for a 15 km stretch of the river. IFC CIA (2020:4 -9) concludes that "reduction in flows that may lead to degradation of ecosystem integrity and fish habitat." "Artisanal fishing livelihoods (capture fishing, subsistence fishing, and recreation fishing) have declined in the TRB. Consultations indicate that this decline is due to the reduction in fish resources, degradation of water quality and habitat, and availability of wage labor as an income-generating activity (especially linked to sand mining)."

4.4.5 Project Socioeconomic Impacts

While the Project provided limited compensation for land acquisition and demolition of structures, it did not undertake livelihood restoration and rehabilitation of the Project-Affected Tamang. As expected, this has resulted in numerous socioeconomic impacts of varying severity. In particular, it has resulted in the economic displacement¹⁰¹ of the Tamang Indigenous Peoples. NWEDC (2022) acknowledges that "the livelihood restoration activities as outlined in the LALRP and NESTP is *planned to be launched from FY 2022* (emphasis added)."

LALRP 2018 provides a glossary defining various terms:

- "Livelihood refers to the full range of means that individuals, families, and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade, and bartering."
- "Rehabilitation is understood as the re-establishing of incomes, livelihoods, living and social systems of a community."
- "Livelihood restoration refers to the re-establishing of income sources and livelihoods of people."

The adverse socioeconomic impacts on the Tamang, brought about by Project-related land expropriation and physical displacement, were further aggravated by the 2015 earthquake. LALRP (2018:121) records that the Project-Affected Tamang settlements were "one of the worst affected areas;" most of the people in Haku were rendered homeless and had lost either all or a larger part of their assets." "The internally displaced persons from Hakubesi lived in temporary camps in Dhunche, Betrawati and Gombongdanda" (Gurung 2020:39). A monitoring team composed of the federal parliamentarian determined that a number of villages including the Haku villages were unsafe for continuing to reside. As described above, the Company provided minimal earthquake relief and/or rehabilitation assistance to the Project-Affected people during and after the Earthquake. The degree and extent of the socioeconomic hardships the Project-Affected people would have been abated, had the Company delivered the earthquake relief and rehabilitation in adequate amounts, in a culturally appropriate way and in a timely manner. Until 2020, "more than 90 percent of earthquake affected people were still not rehabilitated and lived in temporary shelter" (Tamang et. al. 2020:21).

4.4.6 Project Sociocultural Impacts

The Project AoI is a core part of "the cultural capital of the Tamang." The Project activities have unintentionally triggered a myriad of adverse sociocultural impacts on the Project-Affected Tamang including the loss of tangible sociocultural elements - erosion of the role of self-governing customary institutions, traditional practices of collective decision-making, the traditional equitable status of women, traditional health practices (including traditional medicine) - and intangible cultural heritage - traditional religious and spiritual practices, and language (see 3.1 above and below 5.1 for details).

Nepal Water Conservation Foundation (2019:33) reiterates that "dams, especially large dams... have become political lightning rods because of their social consequences." The Project activities are bringing about "project-induced displacement, restriction on access to ancestral territories and resources, and influx of workers and migrants into the project areas."

¹⁰¹ "Economic Displacement refers to the loss of assets or access to assets that leads to loss of income sources or means of livelihood" (WB PS5 2017; see also LALRP 2018: Glossary).



The Company has implemented neither measures to avoid the sociocultural impacts on the Project-Affected Tamang nor measures to mitigate such impacts. The 2016 Company ESPS pledged to “understand and respect the culture, heritage and religious beliefs of the communities living within the areas of influence of the [Company] projects.” It declares commitments to: “adopt mitigation strategies to avoid, reduce, or compensate.... adverse social impacts.” The central subjects of the Project Tripartite Agreement (2018) underlined an agreement for “development of Tamang People, protection of their native habitat and preservation of their customary activities, culture and language.” It also underlined that the Company will “take measures for the minimization or prevention of the adverse impact on the customary way of life and economic activities in view of the implementation of the Project...” The Indigenous Peoples Plan (2018) proposes a number of mitigation measures to minimize and mitigate the adverse sociocultural impacts. The pledges made in the Company ESPS and commitments made in the TPA and the IPP to avoid or mitigate the adverse sociocultural impacts have however not been followed up. NWEDC (2022) acknowledges the IPP has not been implemented; “the implementation is subject to endorsement of IPP implementation guidelines by the IPP Governing Board planned for third quarter of 2022.”

4.4.7 Project Health Impacts

Project-related activities are anticipated to result in adverse health impacts on the Project-Affected Tamang in the future. In particular, the Project activities will contribute to a reduction in the drinking water quality due to poor waste management (see IFC CIA 2020:138). The “significant blasting” during the Project construction will bring the localized fugitive dust, air emissions and noise pollution (see ESIA 2018:ES-1). Judging from past experience world-wide, the immigrant Project labor will import and transmit a number of communicable vector-borne diseases – including tuberculosis and HIV-Aids - impacting the local population, who maintain a sociocultural insulation and thereby remain less exposed to diseases. The presence of immigrant labor, who are not bound to the societal Tamang norms, may exacerbate alcoholism and drug use among the youth.

The 2016 Company ESPS Statement declares the Company’s commitments to: “identify, avoid or actively manage all project related risks to the health, safety and security of affected communities.” The Company has yet to put in place measures to avoid and manage the anticipated health impacts on the local population.

4.4.8 Impacts on Women

Tamang women enjoy an equal status socially vis-à-vis the men when it pertains to communal and household affairs, but they are exposed to institutionalized discrimination during transactions with the state and other external parties (see 3.1 above for details). The women “experience systematic exclusion and discrimination, based on patriarchal system and associated values and social practices responsible for such gender inequalities” (Tamang et. al. 2020:91).

The 2015 earthquake “had a disproportionate impact on women compared to men. Of those who died, 56% were women. Women endured a higher degree of physical injury and psychological trauma. 87% women sheltering in temporary camps experienced safety and security challenges, gender-based violence and problems related to trafficking of women (Tamang et. al, 2020: XXii).

@Author/Photo/Tamang Women Walking Past a Hydropower Diversion Dam Surge Tank (unrelated to the Project under Study)



The Project is expected to expose women to disproportionate and accentuated adverse impacts. It will contribute to bringing about three women-specific adverse impacts: increased gender inequity, additional gender-based violence and women-specific adverse health impacts (see Annex 5: Gender Impacts Fieldnotes Summary). The Project Gender Action Plan (GAP, March 2018) attests that “... due to the socio-economic conditions and gender dynamics in the AoI, there was a risk that women would face differential impacts from the project activities and would not have equivalent access to the benefits accruing from the project.”

The 2016 Company ESPS Statement declares its commitments to: “promote a working environment to provide women with opportunities for gainful employment and advancement in the workplace.” The Project has however provided fewer employment opportunities, in particular to women (see below for details). NWEDC (2022) commits that it “is providing and accelerating job opportunities to the local people (including women) through the implementation of project Local Employment Plan.”

Increased Gender Inequity: An overriding consequence of the increased gender inequality is the undermining of women’s traditional decision-making role. The GAP (2018) notes: “women play a critical role in the society in terms of their role in the decision making within the household and in economic activities, especially agriculture and small businesses,” and “as a result of the exposure of the villages to the market economy and opening up of communication/ transportation routes, there has been a clearer division of labor along gender lines.”

IFC PS5 requires that the Project consultation process ensures the participation of women, and the recording of their perspectives, and the protection of their interests in the planning of the project and resettlement activities. IFC PS7 (para 14) states that “the assessment of land and natural resource use should be gender inclusive and specifically consider women’s role in the management and use of these resources.”

Following the prevalent practice of patriarchy in Nepal, men in the village act as the primary party to negotiate with external actors. EIA (2012:313) forewarned that: “men hold the legal land title of the land and property of the Project-Affected families.¹⁰² ...If the men misuse the compensation money, the family will bear the brunt of poverty. Women have little say in the decision process.” In spite of this warning, the Company “negotiated with men” during the land acquisition and physical relocation. This contributed to the disenfranchisement of women from holding legal land titles.

@Author/Photo/Women Waiting for a village meeting (Hakubesi)



Focus group and interview statements (recorded by the Research team in October 2021) record that “women do not receive information [from external parties] directly. They are made to receive information indirectly via their male counterparts.” GAP (2018) records that “the women from [two Project-Affected villages] were observed to have minimal understanding of the project and its activities and were not aware of the negotiation process, while it was underway.” GAP (2018) adds that “the women are less aware and updated in land related matters.”

Increased Gender-Based Violence: Among the Tamang Indigenous Peoples, “women are generally more vulnerable than men due to gender-based violence and trafficking,¹⁰³ disparities in health care and education access, low decision-making authority, higher rates of poverty and lower linking social capital. When calamities strike [or external interventions occur], women’s vulnerabilities are accentuated. Because of the pre-existing gender inequalities, discriminatory cultural norms, and women’s gendered roles [in patriarchal society], women become more prone to gender-based violence, including sexual assault, physical abuse and human trafficking” (Tamang et al. 2020:95).

¹⁰² “Only 8% of the women have legal ownership of property” (LALRP 2018:29).

¹⁰³ “Girls trafficked from Nepal are often recruited into prostitution or sold as domestic slaves in India. Since the earthquake, at least 245 children have been intercepted from being trafficked or illegally placed in childcare homes” (Tamang 2020:92).

EIA (2012:316, 317) recognizes that the women will face increased gender-based violence including prostitution and women trafficking. Interview statements recorded by the Research team notes: “we are worried that our women will be “corrupted” due to contact with the immigrant workers. We are worried that the immigrant workers will be disrespectful to local women and would make sexual overtures. We are thinking of ways to protect them.” GAP (2018) commits that “an attempt will be made to increase women’s awareness on aspects such as potential in-migration due to the project, code of conduct for the workers, risks such as human trafficking, sexually transmitted diseases, potential of accidents due to vehicular movement, provisions in place for women’s safety and security etc.” The Company has yet to implement the GAP.

@Author/Photo/A Woman Informant along the roadside



4.4.9 Impacts from the Project Ancillary Facilities

The Project ancillary facilities - required for the main construction phase as permanent and temporary structures - have today brought about impacts additional to those from land expropriation and physical displacement. These ancillary facilities are scattered ubiquitously, and in particular, around the diversion dam and the underground powerhouse site. These include the access roads, the workers’ camps, the quarries and soil disposal, other logistics terminals. These facilities – permanent and temporary – have today generated adverse impacts on the Project-Affected Tamang, which are additional to those from land expropriation and physical displacement.

IFC CIA (2020:54) states: “Ongoing construction activities and imminent mobilization for projects under planning will require key resources:

- Quarries and borrow areas to meet construction phase requirements, especially for the reservoir wall.
- Workforce (mostly skilled workers and some unskilled workers) for headworks, tunnel, and powerhouse construction.
- A construction workers’ camp, spoils disposal area, laydown areas, access roads, water treatment plant, concrete batching plant, and aggregate crushing plant.
- Site preparation and tunneling work generate spoils that need to be properly disposed of in a designated spoils disposal area.
- Accommodation arrangements including ancillary elements such as potable water, sewage infrastructure, utilities to run the worker camps, and so forth, which tend to impinge on and use local infrastructure.”

A focus group statement recorded by the Research team states that “debris disposal in the river has raised the river level, causing flooding of houses in Mailung.” An interview statement records that “the Company is digging a tunnel under our settlement. Our area is already very landslide prone. We worry that this will lead to increasing landslides.”

@Author/Photo/A Newly Constructed Project Bailey Bridge at the Diversion Dam Site



The Company has prepared a Construction Environmental and Social Monitoring and Management Plan. It is however “awaiting implementation during the project construction phase” (NWEDC 2022).

4.4.10 Impacts from the Project Associated Facilities

The two Project Associated Structures - the alternate access road and the power transmission line - cause their respective adverse impacts on the Project-Affected Tamang. The Company is relying intensively on the alternate access road and is using it as its “transport corridor” for accessing the Project dam site and for transporting construction materials. The 1.2 km long power transmission line that will evacuate the electricity generated by the Project traverses through a swath of the forest user group areas.

There has been no assessment of the adverse impacts resulting from these Project associated structures. The use of the alternate access road is resulting in noise, fugitive dust, air emissions, etc. ESIA (2018: 7.11 – 1) records that “the transmission line route passes through approximately 1.02 hectares of forest user group area.” The Company has yet to conduct consultations and negotiation on the land acquisition for the transmission line. IFC ESAP (2019:2) states: the Company was to “produce a LALRP addendum containing additional disclosure, consultation, compensation and other arrangements [by 30-May-2020];” There is no record that this addendum was drafted.

4.4.11 Anticipated Cumulative Impacts from the Hydropower Projects

The Project-Affected Tamang are exposed to the cumulative impacts¹⁰⁴ of the hydropower activities in the Trishuli River Basin. The TRB has one of the largest concentrations in Nepal of such hydropower undertaking as part of the national push for hydropower development. These undertakings are crowded into a small geographical area.

¹⁰⁴ Cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the Project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted: LALRP (2018 Glossary).

There are 71 hydropower projects in the basin in various stages of design, construction, and operation.

These hydropower projects have brought numerous - some positive but disproportionately adverse - impacts today and will bring impacts in the future on the Tamang Indigenous Peoples of Rasuwa, including the Tamang of the Project Aol.

@Author/Photo/A Hydropower Dam in the Trishuli River (unrelated to the Project under Study)



IFC ESAP (2019:1) concludes that “cumulative livelihood impacts linked to economic displacement will be significant in view of multiple projects.” IFC CIA (2020:161) records the impacts from cumulative land acquisition. “TRB level 650 hectares of land requirement and potential acquisition may entail significant economic and physical displacement, mostly of indigenous Tamang communities. ... Land-based livelihoods may not be significantly affected, but landowners may need to move upland, away from productive areas along the bank that will be within the land footprint and/or diversion reaches.” “Hydropower development combined with stressors and key regional initiatives cumulatively affect valued environmental components such as aquatic and terrestrial biodiversity, livelihoods, cultural and religious sites, and water resources within the TRB. The coinciding project development timelines of hydropower developments in the planning stage are likely to further accentuate localized impacts pertaining to community health and safety, labor influx, pressure on local resources (especially drinking water, roads, and health infrastructure), and demographic and economic changes. The upstream reach is likely to be more significantly affected due to the number of projects that are coming up in Mailung River, Langtang National Park, and Salankhu River.” IFC CIA (2020:50) adds that “roads in the TRB are concentrated in the middle part of the watershed, where the population density is higher and the topography is more favorable. The development of hydropower projects in the upper part is driving the extension of the road networks into this region. However, construction of roads in this part of the watershed requires significant investments in both construction and maintenance because of the remote location and the harsh topography.”

IFC ESAP (2019:1) commits that the Company “will become an active participant in the multi-stakeholder platform [by 01-Oct-2019] to manage the cumulative impacts and risks from multiple and cascading hydropower projects existing in, or planned for, the TRB.”

5. COMPLIANCE WITH THE IFC PERFORMANCE STANDARD # 7

The assessment of the compliance by the Company with the IFC PS7 (and where applicable, other lender operational policies) is detailed below; this assessment especially focuses on the seeking of FPIC from the Project-Affected Tamang. The assessment of compliance is elaborated under three distinct Project periods: compliance prior to seeking FPIC (2012 - 2018); compliance during FPIC documentation (2018) and compliance subsequent to FPIC documentation (2019-2021); this Research covered the period up to December 2021.

The IFC PS7, which became effective on January 1, 2012, is applied here as the benchmark operational policy for assessing compliance and, in particular, for engaging with the Project-Affected Tamang. The Project lenders have made agreement to “prepare the Project” in accordance with the IFC’s Performance Standards on Environmental and Social Sustainability, 2012 (see AIIB Project Summary Information, September 2019). The mandatory operational policies of these key lenders however remain fully enforced in the Project context and the Project-level agreement to prepare a Project under the IFC policies does not supersede the applicability of the lenders’ Board approved operational policies. Therefore, the respective operational policies of the ADB, AIIB and FMO will be referenced, if and when they are relevant, for the specific period between 2016 and 2019, when these came on board as the Project lenders.

Prior to March 2012, the IFC PS7 was not applicable. The Company had been carrying out its Project-related activities (such as land identification for the powerhouse) since 2007 when it was issued permission for preparing the EIA to meet the GoN regulatory requirements. While the IFC PS7 was not applicable for activities prior to March 2012, IFC was required to assess whether land expropriation prior to 2012 was carried out in a manner consistent with the requirements of the PS7 and, if not, if any remediation plan was required to address the gap and to ensure its proper implementation. Based on the global assessment of the IFC investment projects affecting Indigenous Peoples, Salcito (2020:4, 8) concludes that “IFC clearly identified impacts on indigenous lands and populations that were already underway ... but nevertheless, moved forward with investments. IFC has not yet articulated how it can finance projects where prior consent was demonstrably not sought, and how it might contribute to remediation of prior impacts and prevention of future ones.”

5.1 Compliance Prior to the FPIC Documentation (2012 – 2018)

This period began in March 2012, when the IFC (the lead arranger of the Project loan as well as the shareholder) signed the Joint Development Agreement with the strategic Project sponsor (KOSEP). This early period saw widespread, and in some cases, indiscriminate lack of compliance with the mandatory lender operational policies. During this period, the Company did not comply with three specific mandatory requirements required under the IFC PS7, namely, the concluding the land acquisition and physical displacement prior to acquiring the FPIC, not conducting the required comprehensive social assessment and undermining women’s traditional decision-making roles.

As per the PS7, the IFC, as a shareholder, was under mandatory obligation since March 2012 to comply with the FPIC requirement. Beginning from this date, the IFC should have used its leverage (as lead arranger of the debt package) to ensure compliance to PS7 by its Company. It should have required the Company to acquire FPIC from the Project-Affected Tamang; it should have required the Company not to carry out the land expropriation and physical displacement without acquiring FPIC of the Tamang Indigenous Peoples. Among others, the IFC and other lenders should have required the Company to put in place and implement a “corrective action plan” to address past land expropriation and physical displacement, carried out since 2010. In 2018, a Supplemental LALRP was drafted, which contained a partial corrective action plan. This action plan has however not yet been implemented.

Concluding Land Expropriation and Physical Displacement prior to FPIC Documentation: Subsequent to March 2012, when the IFC PS7 was applicable, the FPIC of the Project-Affected Tamang was mandatory for any land expropriation and physical displacement. The Company had however acquired all the land it needed and had displaced the households (see 4.1 above for details) before October 2018, prior to documenting the FPIC. In the particular case of the Project, the land expropriation and physical displacement was carried out under the watch of the IFC and in clear violation of its operational policies.

FPIC should by definition be obtained prior to Project impacts. IFC GN7 (para 30) states: “At a minimum FPIC should be obtained prior to any of the circumstances [such as land expropriation and physical displacement] requiring FPIC taking place.” IFC GN7 (para 44) adds: “Whether the project should proceed with activities that may result in adverse impacts on these lands should be subject to securing the FPIC of the Affected Communities of Indigenous Peoples.” Ignoring this, IFC clients often give reasons for foregoing the FPIC as “Indigenous lands are already expropriated” (Salcito 2020:6).

The mandatory operational policies of IFC as well as other lenders (ADB, AIIB and FMO) implore that the land expropriation and physical displacement of Indigenous Peoples should be avoided, and if and when it is not feasible, such land expropriation and physical displacement should be carried out only subsequent to acquiring FPIC from the Project-Affected Indigenous Peoples. IFC PS7 (para 15) states “the client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from communally held lands and natural resources subject to traditional ownership or under customary use.” If such relocation is unavoidable the client will not proceed with the project unless FPIC has been obtained as described above. IFC GN7 (para 45): “Because physical relocation of Indigenous Peoples is particularly complex and may have significant and irreversible adverse impacts on their cultural survival, the client is expected to make every effort to explore feasible alternative project designs to avoid any physical relocation of Indigenous Peoples from their communally held traditional lands or customary lands under use. Any physical relocation should only be considered after the client has established that there is no feasible alternative to relocation and the client has secured the FPIC of the Affected Communities of Indigenous Peoples, building on the process of their informed participation.” IFC Notes on ILO 169 (March 2007) states: “Convention 169 views the relocation of Indigenous Peoples as an exceptional measure.”

Instead of acquiring the FPIC of the Project-Affected Tamang as per the IFC PS7, the Company applied the principle of eminent domain. ESIA (2018: 7.6 – 3) records that “the NWEDC has carried out the land acquisition process for both private and forest land as per provisions of the laws in Nepal.”¹⁰⁵ LALRP (2018: 70-71) confirms that FPIC was not carried out prior to land expropriation process: “the Company ... carried out the land acquisition process for both private and forest land as per provisions of the laws in Nepal.” In Nepal in the past, the state routinely expropriated land for any government undertaking (creation of parks, road construction, agriculture farms, etc.). In 1977, the Land Acquisition Act was put in place to accelerate the widespread land expropriation for “development projects” including for hydropower projects in Rasuwa and elsewhere.

When the land expropriation and physical displacement were carried out, the Company should have put various mitigation measures in place; “Livelihood restoration measures are required to mitigate adverse project impacts on affected communities (i.e., to mitigate economic displacement caused by Project-related acquisition of arable land and associated loss of access to natural resources) (see LALRP 2018:119). A Livelihood Restoration Plan was prepared in 2015. The 2015 earthquake resulted in significant impacts and internal displacement of a large number of people from local villages. A new LALRP was prepared with an intent to update the 2015 Plan in keeping with the present post-earthquake context” (LALRP, December 2018:1). It has however not been implemented. The LALRP (2018:137) notes: “the entitlements... are to be implemented by an implementation partner... The implementation partner will in turn identify NGOs/ INGOs, government bodies and other partners for implementing specific entitlements identified;” The Company has however neither identified the implementation partner nor the NGOs/INGOs for the implementation of entitlements.

Lahurnip (2020) notes that land expropriation by the GoN regularly violates the rights of Indigenous Peoples and is initiated without compensation, consultation and FPIC.¹⁰⁶ The Nepal Supreme Court made a landmark decision (issued on 18 September 2017; see above 3.1.4) in favor of the communities; “The court has ordered the government to first acquire land to resettle the families affected by road expansion and provide them with sufficient compensation,” and “unless there is an alternative to house the affected families, no activities should be

¹⁰⁵ ESIA adds that “As Nepal does not have any specific law that mandates a FPIC requirement or defines how the process is to be carried out, the FPIC process was not carried out prior to the land acquisition process.”

¹⁰⁶ “The government of Nepal initiated massive road expansion with the distance of 996 km in Kathmandu valley, the capital city of Nepal. The valley is the traditional land of Newa Indigenous Peoples that includes three big cities (Kathmandu, Lalitpur and Bhaktapur) with 2,517,023 (26.92% Newar) population. The projects demolish the houses of Newa IPs and local communities, destroy cultural heritage sites and likely to affect around 150,000 (90% Newa) people” (Lahurnip 2020).

carried out that could impinge on people's right to residence."

Not Conducting Required Comprehensive Social Assessment: One of the procedural gaps was not conducting the comprehensive social assessment on the Project impacts as required by the IFC PS1. The Company carried out only a limited social impact assessment to determine the sociocultural and economic impacts on the Tamang Indigenous Peoples. The social assessments were carried out using limited primary data and outdated secondary data. When they were carried out, these assessments were staggered haphazardly in timeline (see para below for details).

The Project IPP, which was drafted in 2018 (seven years after the land expropriation and physical displacement had commenced), did not conduct the comprehensive Social Assessment focused on Tamang Indigenous Peoples as per the IFC PS7 requirements. In particular, this Social Assessment should have updated the socioeconomic data subsequent to the 2015 earthquake that brought about multiple and far reaching demographic and socioeconomic changes among the Project-affected Communities.¹⁰⁷ Instead, the IPP collated 2011 government census data and relied on the secondary data gathered during the 2011 EIA and, in a limited scale the 2015 LALRP data (which in turn had used the 2011 census and EIA data).

One of the glaring examples of the incomplete Project data is the outdated list of the Project-Affected Families from the land expropriation and physical displacement; the Project continues to use this outdated list of the Project-Affected Families (see LALRP 2018:11-12: Table 2.2). The Project 2015 LALRP collated survey data limited to those affected by the land expropriation and physical displacement by 2015. As stated above, as per this 2015 data, the Project land expropriation had impacted 154 Project-Affected Families (619 Project-Affected Persons). Subsequent to 2015, there were additional land takes in 2017 and consequently additional Project-Affected Families (PAFs). The LALRP (2018: Table 2.2) states that "the PAFs associated with the land take in 2017 are not presently covered" in the LALRP data and that this "shall be updated once the socio-economic survey for the same is complete." However, the socio-economic survey was not conducted.

AIIB (Project Summary Information, September 2019) claims that: "IFC's review involved a detailed assessment of the completeness and quality of the Project's ESIA process, as well as related supplemental studies that were prepared as part of IFC's early engagement. ... The final environmental and social appraisal site visit in April 2018 involving E&S specialists from the IFC, ADB, the MIGA, AIIB and FMO." ADB (2018:2) adds that "the social impacts of [the Project] on the local population are addressed through a number of completed management plans publicly disclosed by NWEDC and IFC in late July 2018," including Project LALRP, SEP-GRM and IPP.

It should however be noted that the Project Strategic Environmental and Social Assessment (SESA) as well as GAP, ESIA, updated ESIA used the 2011 EIA data derived from the secondary national census data. ESIA (2018: 6.3-2) records: "the socioeconomic information available for the district and ... Project area is restricted to the Census Data of 2011 and the information collected during the Supplemental Project ESIA in 2014." In 2016, the Project undertook "an environmental and social gap analysis and status assessment of the Project within the AoI, in the post-earthquake condition. But this was limited in scope and geographical coverage. The assessment covered only the land ownership and housing status." And this gap analysis did not cover the settlements within the highly impacted villages except Mailung (LALRP 2018:66).

Undermining Traditional Women Decision-Making Role: The Project paid little or no attention to the traditional decision-making roles of Project-Affected Tamang women during the Project preparation period (2012-2017). This was one of the structural gaps in documenting the FPIC. As per the focus group and interview conducted by the Research team with the women in 2021 (see Annex 5 for list of participants), the traditional role of the Tamang women in household and communal decision-making was severely undermined during this period; for example, the women were given no voice during the process leading up to the documentation of the FPIC. The women, who bear the brunt of the project adverse impacts, were not the direct recipients of the compensation from the Project; the Project cash compensation was paid to men. Very few Tamang women from the Project-Affected settlements have been employed in the Project construction.

The lender operational policies require that clients assess the challenges faced by women. IFC PS7 (para 14)

107 "The 2015 earthquake leveled the whole village [of Hakubesi] to the ground and left the entire population homeless" (Ambay 2019: 27).

states that: “the assessment of land and natural resource use should be gender inclusive and specifically consider women’s role in the management and use of these resources.” AIIB ESP (para 14) emphasizes “the importance of gender equality for successful and sustainable economic development and the need for inclusiveness and gender responsiveness in the Projects (AIIB) supports. The Bank supports its clients to identify potential gender-specific opportunities as well as gender-specific adverse risks and impacts under their Projects and to develop mitigation measures to avoid or reduce such impacts and risks. The Bank encourages Clients to enhance the design of their Projects in an inclusive and gender-responsive manner to promote equality of opportunity and women’s socio-economic empowerment, particularly with respect to access to finance, services, and employment, and otherwise to promote positive impacts on women’s economic status, with particular regard to financial resources and property ownership and control.”

@Author/Photo/ A Tamang Woman attending Agricultural Chores



5.2 Compliance During the FPIC Documentation (2018)

The Company documented the FPIC of the Project-Affected Tamang seven years after it was required by the lender operational policies as well as by the ILO 169; the FPIC was documented seven years since the IFC became co-developer in the Project (by signing the JDA with the strategic Project sponsor). The Project TPA was signed on 1 November 2018 by the ad hoc “advisory council,” the local government representatives and the Company. This signing of the Project TPA was recorded as the documentation of the FPIC from the Project-Affected Tamang.

By the time the Company sought the FPIC of the Project-Affected Tamang, the Project had brought about major adverse impacts, in particular land expropriation and physical displacement. At this juncture of the Project, the Tamang Indigenous Peoples did not have option other than to “consent.” This was clearly against the principle of FPIC and a clear violation of the IFC PS7.

The process of the FPIC documentation began in April 2018, when the Project disclosed for the first time the draft Indigenous Peoples Plan (IPP). Providing technical assistance to the Company, the IFC hired consultants ¹⁰⁸ to draft the Project IPP and to subsequently facilitate the documentation of the FPIC (IPP 2018:6).

108 Cross-Cultural Consulting Services; CCCS) and NEFIN (a national indigenous peoples organization).

The exercise of seeking the FPIC from the Tamang Indigenous Peoples by the Company was nonetheless historic in that very few IFC financed projects had in the past acquired the FPIC from Indigenous Peoples. Based on a global assessment of the IFC investment projects affecting Indigenous Peoples, Salcito (2020:1) states that “In eight years, IFC has applied its Indigenous Peoples performance standard in 29 projects out of a portfolio of 2116. No more than four have resulted in a documented FPIC process accepted by communities.”

IFC claimed that the FPIC from the Project-Affected Tamang was setting “new benchmarks for engaging with indigenous communities in Nepal, by ensuring their participation and Consent in a large infrastructure development process,” and that “the FPIC process was the first of its kind in Nepal.... Will promote good practice.” IFC states that, prior to this, no hydropower Company operating in Nepal had acquired the FPIC of the Project-affected Indigenous Peoples. No “multilateral and bilateral lenders had stipulated the acquiring of the FPIC in compliance with their operational policies. No major private sector project has implemented FPIC in Nepal to date [2018]” (see 1.00 above for references). IFC Consultant concluded that the FPIC was a “Project Bonus” and a “community gift.” It further added that “Project was started 12 years ago, but there were no signs of success and few local Tamang supported it,” and that “with FPIC, a new door has opened for both the project and the Tamang community to achieve a ‘win-win.’”¹⁰⁹

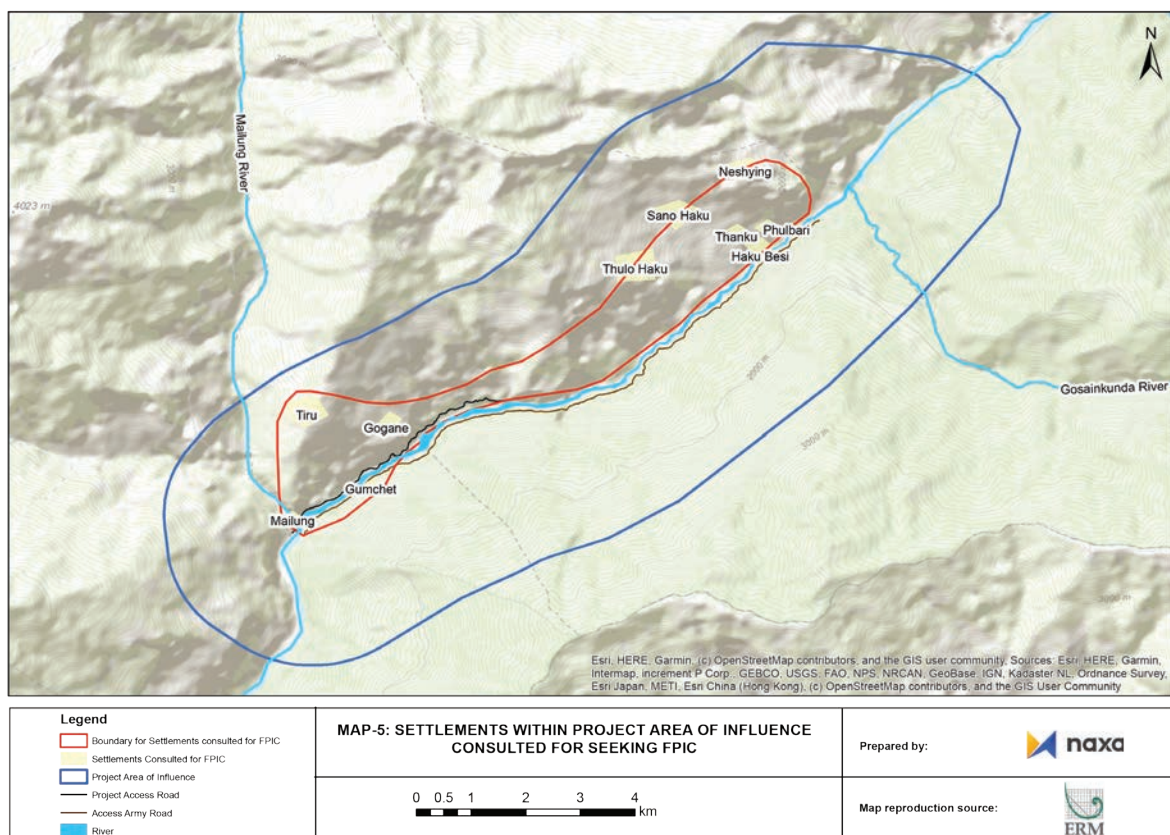
While the Company did document the FPIC from the ten highly impacted, land-take Tamang communities, when one looks into the details, a different picture emerges. What emerges from an assessment of compliance with the IFC PS7 is that seeking FPIC itself had suffered from a number of structural and procedural gaps. To begin with, FPIC was not sought for the “Project as a whole” (as required by the IFC PS7). It was documented for the implementation of the Indigenous Peoples Plan only; the IPP had a limited scope and did not contain many provisions and requirements as well as key mitigation measures identified under various plans, including the LALRP, SEP-GRM and GAP (see para below for details). A major weakness of the FPIC process was excluding several Project-Affected Tamang settlements determined by the Project documents (EIA, ESIA, LALRP) as part of the Project AoI (see para below for details). There were several additional gaps in compliance with the PS7 during the FPIC documentation process. During this period, the Company did not comply with a number of specific requirements under the IFC PS7, namely, not disclosing project documents in a culturally appropriate manner, not seeking the FPIC from the Project-Affected forest user groups, pursuing compressed timeline for the FPIC deliberations, not fully elaborating the Project adverse impacts on the Tamang Indigenous Peoples, not engaging the self-governing customary Tamang institutions, not affording women their traditional decision-making role and not incorporating demands of the Project-Affected Tamang into the Project Tripartite Agreement. The details are described under respective sub-headings below.

IFC was expected to fully assess the FPIC process to ascertain and verify that the FPIC had indeed been attained by complying the IFC PS7 requirements. Upon receiving FPIC documentation (on 1 November 2018) from the Company, IFC was expected to carry out staff verification to ascertain that the FPIC from the Tamang Indigenous Peoples had indeed been attained (see 4.1 above). The Project timeline indicates that IFC conducted its verification between November 2018 and early 2019. This verification should have ascertained that the FPIC was indeed attained and there was adequacy of the IPP – in particular, the proposed package for impact mitigation and benefits - to address the impacts prior for to the Project construction phase.¹¹⁰

Not Disclosing Project Documents in Culturally-Appropriate Manner: Inconsistent with the requirements of the IFC PS7, the Company carried out disclosure of the Project-related documents in a limited way and in culturally-inappropriate manner. This was one of the procedural gaps in documenting the FPIC. Most documents were in English and the Company disclosed the English language documents digitally via its website. A limited number of the documents (EIA, ESIA and IPP) were translated into Nepali and disclosed. A key Project document, the LALRP, concerning the land expropriation and physical displacement, was not available in Nepali. The IPP was translated into Nepali; it was apparently translated into Tamang language but it was not publicly

¹⁰⁹ See Guldin (2019a, 2019b).

¹¹⁰ MDB (2022) states: “Whilst such documents are not disclosed by IFC, a summary of the findings of this review were disclosed in the ESRS disclosed by IFC.” Available here <<https://disclosures.ifc.org/project-detail/ESRS/35701/upper-trishuli-1>>



Map 5: Project-Affected Settlements Consulted during the FPIC Documentation (based on the Company map; IPP 2018: Figure 3-1; ESIA 2018: Figure 5-2)

Prior to 2015, the Company submitted its reports to the GoN as part of meeting its regulatory requirements. But it did not share these with the Project-Affected Tamang. “Documents related to the ‘survey’ conducted by the Company prior to 2015 were given to the government, not to the villagers” (Ambay 2019:39).

IFC PS7 (GN19) states that “... project information should be made available in an understandable format, using indigenous languages...” IFC PS1 (para 31) adds that “the client will tailor its consultation process to the language preferences of the Affected Communities, their decision-making process, and the needs of disadvantaged or vulnerable groups. If clients have already engaged in such a process, they will provide adequate documented evidence of such engagement.”

The following documents were translated into Nepali and were disclosed:

1. EIA (Initial version November 2011) to meet the regulatory requirement as part of application for the GoN approval process; this document in Nepali surreptitiously leaves out part 1.7 of the report which contains details about the Project impacts (see EIA 2011:7) and the EIA (revised version July 2012; prepared by ESSA).
2. ESIA (December 2014) disclosed with partial content leaving out key all annexes; this key document in Nepali, leaves out Annexes, including critical ones (Annex A and B: 2014 Supplemental Social and Environmental Baseline; 2014 Cumulative Impact Assessment; Annex F: 2014 Environmental and Social Management Planning).
3. IPP (March 2018; this version was used for FPIC process); the final draft Project IPP (September 2018) was

¹¹¹ The chair of IPP Executive Board, who had copy of a Nepali version of the IPP, was unaware the Tamang version. The NEFIN team (who facilitated the FPIC documentation) informed the Research team there was no Tamang version. Notwithstanding this, NWEDC (2022) claims that the “final Project IPP (December 2018) ... is well documented ... in Tamang (May 2019) and disseminated to the public henceforth.”

disclosed to the ad hoc “advisory council”; the final version of the Project IPP (December 2018) was available only in English version; it was neither translated into Nepali nor disseminated to the Project-Affected Tamang. The Project documents in both English and Nepali have limited relevance to the Project-Affected Tamang; they do not read and write English, with the exception of a few with higher education. The Tamang have only limited comprehension of the Nepali language; in particular, the women and elderly people do not speak Nepali. The Tamang in general have the lowest (32.6%) literacy rate in Nepal; “Tamang have... low (2.1%) completion rate of higher education,” and the “literacy rate for people above 40 years is only 59.5% (compared to aged 40 and below is 89.2)” (Tamang 2020: XXi, 58).

As detailed above, Tamang is the lingua franca in Rasuwa including the Project AoI; ¹¹² the Project-affected Tamang are non-Nepali speakers, with the exception of those youth age cohorts who have attended the formal schooling. Tamang is “language of communication,” especially among the elders and women who bring limited Nepali comprehension; Nepali is used for “limited way to engage in short informal conversation” (EIA 2012:260). Tamang elders and women cannot read and write in Nepali. Women key informants stated: “We women are conversant in Tamang. When someone speaks to us in Tamang, we understand fully. We can participate in a Tamang language meeting without difficulty. If we are spoken to in Nepali, we face difficulty to comprehend. We cannot participate in meetings held in Nepali. Nepali language is not very useful to us.” SEP-GRM (2018:42) records that “...certain groups of the Tamang community, such as those in the villages of Tiru and Gogone, only speak the Tamang language. Furthermore, the literacy level amongst the community is generally low, with formal education only gaining importance with the present generation.” SEP-GRM (2018:24) further confirms that “the [Company] engagement activities undertaken as part of the regulatory impact assessment and supplementary ESIA process have primarily been in Nepali language, while most local community speaks Tamang. The project has not undertaken adequate information disclosure for the project, to allow the community to understand the project activities and potential impacts.”

For the Tamang men and women who cannot read and write, the disclosure via the digital media was inappropriate. IPP (2018:29) records that “one out of 3 of the Tamang in the Project area are illiterate... literacy rate among women is significantly lower at 59.9% than for the men, of whom 78.4 are literate.” This was reiterated by the EIA (2012:317): “of the literate population, 50 percent is reported to have education until the primary level, while only 16 percent of the population is reported to have received the [high school level] and only seven percent has education above the intermediate level.”

The Company ignored its pledge to undertake disclosure of Project relevant information in Tamang language. The 2016 Company ESPS declares its pledge to “recognize the values of Indigenous Peoples living within the area of project and take appropriate actions to address and satisfy their concerns. ... disclose all relevant project information to project stakeholders in a timely and inclusive manner and maintain open lines of communication with stakeholders throughout the life of the Project.” ESIA (2018: 8-10) states that “disclosure and consultation process shall be done in a culturally appropriate manner. The guiding principle for such a process includes: ... Conduct the process in the Tamang language; ... Ensure the disclosure is made at the village and district levels; SEP-GRM (2018:42) commits that “... information disclosure shall be undertaken in the local Nepali or Tamang Language.” LALRP (2018, Box 5.1) committed that “the consultations with a particular [Indigenous Peoples] community will be carried out in their respective mother-tongues/dialects for their easy comprehension.” ESIA (2018: 8-10) stated that “disclosure and consultation process shall be done in a culturally appropriate manner. The guiding principle for such a process includes: ...Conduct the process in the Tamang language; ... Ensure the disclosure is made at the village and district levels; ... Provide adequate opportunity to community members for responses and suggestions; ... and document the outcome of the process in terms of commitments, duties, and accountabilities by different parties.” ESIA (2018: 8-10) states that “the nontechnical executive summaries of the Social Impact Management Framework and other management plans will be translated into the Tamang language. These executive summaries will be disclosed to the local community and local administration (for advisory role) by NWEDC by providing copies in strategic locations and notifying the community about this through appropriate and diverse channels. The local community shall be provided with at least 15 days to review the disclosed summaries.”

112 Non-Tamang people in the Project AoI (such as Dalit and other indigenous peoples) also speak Tamang (Project EIA 2012:260).

Underlining that the Company had ignored its pledge, the Project Struggle Committee and the Project Concerned Committee, in a Joint Letter to the Company (dated 29 August 2017), demanded that: the current English version of the Project EIA should be translated into Nepali and Tamang languages understandable to all and should be made available to all Project-Affected Families.

The lack of Project documents in the language they comprehend is resulting in material consequences to the Project-Affected Tamang. To begin with, they remain uninformed about the content of the English versions which are at times inconsistent with the Nepali versions. For example, they remained uninformed that the English version of the TPA will be binding and that this is inconsistent with the original Nepali version (drafted earlier and the content of this version was the basis for signing the FPIC agreement). Three examples are listed below:

1. The Nepali version of the Tripartite Agreement (signed among the ad hoc “advisory council”, the local government representatives and the Company) certifies that “The Agreement has been made in Nepali and English... For the easier comprehension of the content by the local Tamang community, the TPA will be translated into Tamang and will be annexed in the final Project IPP.” On the other hand, the English version of the TPA omits this significant agreement clause reached by the parties regarding the translation of the TPA and the annexing it into the Project IPP. Consequently, as described above, the final IPP (December 2018) was not translated into Tamang and was not disclosed.
2. The Nepali version of the TPA does not specify which of the two versions - neither Nepali nor English - will prevail if there are any discrepancies. The English version however inserts a consequential clause: “In the event of any discrepancy between the Nepali and English texts of this Agreement, the English text shall prevail.” Most of the ad hoc “advisory council” and the local government representatives, who could not read English, were unaware of this major discrepancy in the document they were signing into.
3. The Nepali version of the “Statement of the “advisory council” of the Indigenous Peoples Plan” (made subsequent to the signing of the Tripartite Agreement on 1 November 2018) articulates the five key objectives of the Project IPP.¹¹³ The English version however omits these key IPP objectives without justification.

Not Seeking FPIC for Project as a Whole: The Company did not seek the FPIC of the Project-Affected Tamang for the “Project as a whole” as required by the IFC PS7; the Project documentation attests this consistently (see below for details). The Company instead sought for and documented the FPIC for the specific implementation of the Project Indigenous Peoples Plan (IPP - 2018) which had a narrower scope; the discussions during the FPIC process were focused primarily on the institutional arrangements and financial allocations for the IPP implementation. This was one of the structural gaps in seeking the FPIC.

The final version of the IPP (dated December 2018) attests that the ad hoc “advisory council” members were not asked to sign onto an FPIC for the Project as a whole; they were asked to sign onto an FPIC for the specific implementation of the IPP. The IPP (2018:13, 122) records in numerous instances that the ad hoc “advisory council” members gave consent for the draft IPP package. IPP (2018:13) records that “in the project-financing context for this specific project, the concept of seeking “prior consent” is defined as *seeking consent from affected Tamang communities for a draft package—a Project IPP* (emphasis added) -- of proposed impact mitigation measures and benefits prior to lending decisions by prospective financiers and prior to the main construction phase.” IPP (2018:41) reiterates further that “the consent process was carried out seeking approval for i) the revised Indigenous Peoples Plan, ii) the Demands Framework Agreement, and iii) a document spelling out three-sided implementation arrangements by [ad hoc “advisory council”] representatives, the three local Ward governments, and the Company.” It adds that the ad hoc “advisory council” approved “the general content and principles of this first Indigenous Peoples Plan as shared... during this Third Meeting of the [ad hoc “advisory council” and affirm that by our signatures we [ad hoc “advisory council” members agree to co-implement the IPP as per the Tripartite Implementation Agreement duly signed by the three partners.”

Seeking the FPIC for the implementation of the Indigenous Peoples Plan alone did not meet the conditions for seeking the FPIC for the Project as a whole. To establish the scope of the FPIC as per the IFC PS7, the process should have been initiated and documented for the “Project as a whole.” IFC GN7 (para 22) states that “...it should

¹¹³ See “Agreement and consent granted by the Advisory Council of the Indigenous Peoples Plan for implementation of Upper Trishuli -1 (216 Megawatt), Indigenous Peoples Plan Implementation and Project Construction” (2 November 2018).

also define what would constitute consent from Affected Communities of Indigenous Peoples.” IFC GN7 (para 28) adds that “FPIC applies to those aspects of project design, activities, and outcomes associated with the specific potential adverse impacts ..., and which directly affect communities of Indigenous Peoples.”

To acquire the FPIC for the Project as whole, it is implicit that the deliberations during the FPIC process should have delved into the wider Project impacts and mitigation measures. However, this was not the case. For example, the process did not deliberate on the central subject of land expropriation and physical relocation; the FPIC process relegated the discussions on these impacts and mitigation measures to the Project LALRP (2018). The FPIC process did not probe on the Project impacts to the forest user groups. The forest user groups were not consulted during the FPIC process; the Project impacts on the forest user groups were relegated to the government department (see below). The FPIC process did not focus on the widespread impacts of, and mitigation measures for the ubiquitous ancillary and associated structures; in fact, the FPIC process was carried out without an assessment of impacts (see 5.1 above for details), including from the transmission line and the alternate access road.

The Statement ¹¹⁴ of the “advisory council” of the Indigenous Peoples Plan (made subsequent to the signing of the Tripartite Agreement on 1 November 2018) clarifies that the “decision [for providing the FPIC] was made by the representatives and the local people of highly impacted 10 villages.” To acquire the FPIC for the Project as whole, it was conditional that all of the Project impacted 21 Tamang settlements and six forest user groups should have been engaged in, and should have concurred with, the process. Instead, only the selected members from the 10 “highly impacted” “land-take” participated in the discussions and signed the TPA as the documentation of the FPIC. The selected members from a section of Project-Affected settlements were signing on behalf of their 10 settlements only. These members obviously had neither the intention to misrepresent, nor the mandate from, the remaining 11 settlements and 6 forest user groups; the selected members knew, for example, that they could not represent a distant Tamang settlement that is being impacted by the transmission line.

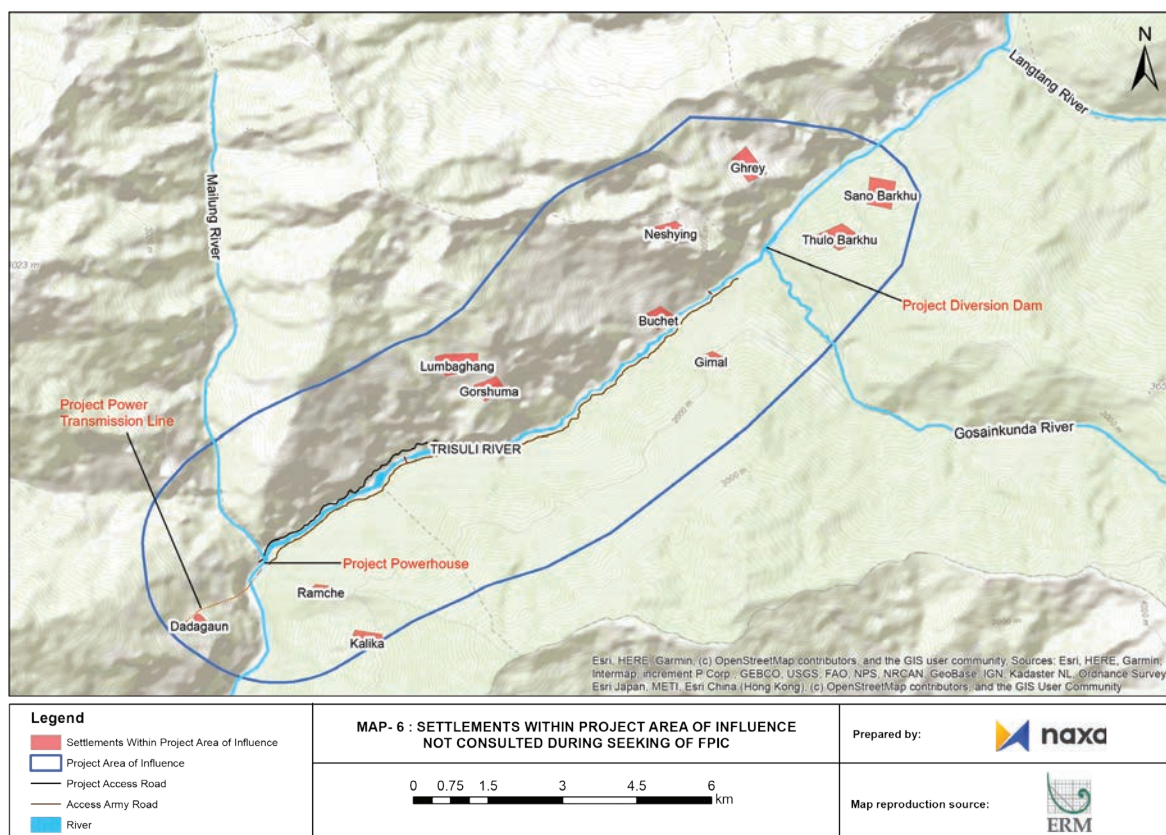
As stated above, the IPP did not incorporate many provisions and requirements as well as mitigation measures, including land expropriation and physical displacement identified under the various plans, including the LALRP, SEP-GRM and GAP. The Project IPP (2018:4-5) confirms that it was drafted with specific objectives, which were limited to the following:

- “To help preserve the religion, culture, life style, traditional knowledge, and skills of the local Indigenous People, the Tamang, so that they are passed on to new generations.
- To share relevant information on possible negative effects and mitigation measures as well as opportunities for project benefits with project-affected communities and their representatives.
- To strengthen Project environmental effects disclosure and provide timely, objective and complete information to the ten FPIC villages of the actual and/or potential impacts of the Project on the environment, and the measures taken to prevent and/ or minimize any potential negative effects.
- To seek their suggestions for making the proposed mitigation measures and various action plans more effective, appropriate and acceptable to them by identifying opportunities and actions to enhance positive impacts of the project on the Tamang Indigenous People.
- To enhance the capacity of the residents of the ten Project-Affected villages to actively participate in the self-management of their own affairs. Such capacity-building could range from leadership training, to technical skills enhancing (e.g., for accounting, report-writing, budget preparation, traditional economic and cultural activities, business planning, driver’s licenses), to heightened cultural and ethnic self-awareness.
- To enhance social, cultural, and economic development. Improving the lives and livelihoods of the Tamang Project-Affected People through the implementation of social and economic development plans in a culturally appropriate manner. Cultural revival, economic viability of traditional economic enterprises, employment preferences, and improved social conditions will be targeted areas for support. Long-term strategic planning with the concept of sustainable development (including perhaps ethnic hydro-tourism as an objective) will also be emphasized.”

¹¹⁴ Agreement and consent granted by the Advisory Council of the Indigenous Peoples Plan for implementation of Upper Trishuli -1 (216 Megawatt), Indigenous Peoples Plan Implementation and Project Construction (2 November 2018)

Contradicting the records detailed above, IPP (2018:41, 43) subsequently inserts a confounding statement that “... although the FPIC process has been aiming all along for consent of Indigenous Peoples Plan only, the [ad hoc “advisory council”] delegates decided that they also consented for the project itself.”¹¹⁵ It further amplifies the unqualified statement that “formal consent was granted by the community [the ad hoc “advisory council”] for both the project and the Project IPP.” It is confounding that, while the FPIC process had been focused all along in deliberating the specific consent for the IPP, the ad hoc “advisory council” decides in the last minute to give consent for the Project itself. These statements highlight two unexpected developments towards the end of the FPIC documentation process. First, the ad hoc “advisory council” decided, in the last minute, to contravene the earlier agreed consultation parameter to giving specific consent only for the IPP implementation and to go above and beyond the parameter. Second, the ad hoc “advisory council” which, to begin with, had no mandate from the community at-large to take decisions on their behalf - took the decision to bestow, almost as an afterthought, the consent for the Project itself.

Excluding Project-Affected Settlements from FPIC Process: One of the major structural gaps during the seeking of the FPIC was to exclude, without justification, eleven (out of 21) Project-Affected Tamang settlements that lied within the Project AoI (see Map 6 below). The FPIC documented by the Company was therefore partial in that a large section of the Project-Affected settlements was not afforded their right to participate in the FPIC process.



Map 6: Project-Affected Settlements Not Consulted during the FPIC Documentation (derived from the Company maps; see ESIA 2018: Figure 5-1: Environmental AoI).

The Project EIA (2012) and subsequently, the ESIA (2018) determined that these excluded 11 Tamang settlements lie within the Project-AoI (see 4.2 above for details). While not directly impacted by land expropriation and physical relocation, these Tamang settlements are subjected to the numerous adverse

¹¹⁵ MDB (2022) reiterates that “the need for FPIC was identified on the basis of impacts assessed for the entire project.” IPP (2018:41) notes: “Formal Consent was granted by the community for both the Project and the Project IPP...” Project IPP (2018:6): “Consent for both the Project and the Project IPP were obtained.” Project IPP (2018: FN 9: “Note too that during the series of series of meetings held by community representatives between 30 October and 1 November, consent was not only granted to the Project IPP but also for the UT-1 project itself.”

Project impacts. The Company is commercially exploiting the natural resources on lands traditionally owned or customarily occupied and used by the Tamang Indigenous Peoples. Furthermore, the Project is bringing about adverse impacts on the forest areas under the customary use are impacted by the impoundment of the water for the diversion dam, the access road and by the transmission line. These excluded 11 Tamang settlements are also subjected to the restrictions of access and use of, forest, pastures, and water (see 4.4.1 for details), which were under the customary occupation and use of these Tamang settlements.

Not consulting on, and not documenting of, the FPIC from these 11 excluded Project-Affected Tamang settlements (see Map 6 above), directly impacted by the commercial development of, as well as the restriction of access and use of, their natural resources, breached the FPIC right of the Tamang Indigenous Peoples. Excluding the Project-Affected settlements for the purposes of seeking FPIC was inconsistent with the IFC PS7 and other lender policy requirements. IFC PS7 requires the Company to engage these settlements and seek their FPIC under the given conditions of commercial development of and restriction of access to natural resources. Under these mandatory lender policies, the Company must seek FPIC when it impacts land and natural resources subject to traditional ownership or under customary use. The lender policies “requires a client to seek FPIC of affected IP communities under specific circumstances, including ‘where a project impacts on land and natural resources subject to traditional ownership or under customary use’” (LALRP 2018:69; see also WB PS7).

The Company has determined since 2010 (and recorded as such in the EIA 2012 and ESIA 2018 among others) a larger Project Area of Influence (see Map 4 above) encompassing the 21 Tamang settlements. As discussed under 4.2 above, the Project AoI encompasses a larger geographical area. The Project documents (EIA, ESIA, LALRP, SEP-GRM, etc.) determine a larger Project AoI and all Company maps disclosed in these documents delineate a larger Project AoI. For example, the ESIA (2018:5-2) records that the Project directly impacted Dhunche (2744 people) and Ramche (2688) settlements (see Map 4; refer to Project ESIA Map of Environmental AoI, Figure 5.1 and 5.2) and Project ESIA Table 7.9-1). In 2018, the IPP and, subsequently during the process of seeking the FPIC from the Project-Affected Tamang, however, shrunk the Project AoI (limiting to 10 “land take” settlements) without articulating a clear rationale.

The Company limited its FPIC consultation process only to those settlements impacted by land acquisition and physical relocation (see Map 5) and ignored those settlements within the Project AoI impacted by commercial exploitation of the forest, pastures, and water (see Map 6). The Company consulted only settlements under the EIA “Category A,” encircling the ten “highly impacted villages” (see Map 5 above). The process thereby excluded the Project-Affected settlements subjected to the restriction of use and access to the land and natural resources under their traditional ownership or customary use and/or occupation; these are settlements and forest user group areas impacted by the commercial exploitation of the forest, pastures and water. The 11 Project-Affected settlements excluded were under mapped as the EIA “Category A”; “Category B” and “Category C” (see 4.2 above for details). The FPIC process excluded the settlements within the Dam Catchment Area (EIA Category A and B area), the settlements impacted by the Project ancillary and associated structures (EIA Category C area) and the forests under the Tamang CFUG management and use (see 4.2 above for details).¹¹⁶ The Category B areas encompass the moderately impacted areas – impacts on forest, pasture, water under the customary occupation and use of the Tamang Indigenous Peoples – that lied within three hours walking distance from the Project Construction area. The Category C areas are minimally impacted areas -- that lie outside three hours walking distance; among others, the EIA Category C area are exposed to the Project-induced social, economic, and cultural impacts.

As quoted above, the Statement¹¹⁷ of the ad hoc “advisory council” of the Indigenous Peoples Plan (1 November 2018) clarifies that the technical team did not visit the adjacent Project directly impacted settlements for FPIC

¹¹⁶ NWEDC (2022) disputes this assertion and clarifies that “the criteria ... adopted and applicable for FPIC for the Project is “impacts on land and natural resources subject to traditional ownership and under customary use.” This justification however does not answer why the Project-Affected settlements within the dam catchment area and those impacted by the Project ancillary and associated structures as well as those forest user groups (see below for details) were excluded from the FPIC process. As described 3.1 above, the Project-Affected Tamang within the identified Project AoI traditionally practice collective ownership of land and resources and follow traditional management of natural resources. The Project is carrying out commercial exploitation of the traditional natural resources (including forests and water).

¹¹⁷ *ibid.*

consultations; it visited only the highly impacted ten villages and “conducted information, counseling and explanation program.” It further clarifies that “decision [for providing the FPIC] was made by the representatives and the local people of highly impacted 10 villages.” “Minutes of Meeting held at Lumbagang on 21 October 2020 attended by 55 participants records: that three villages Lumbagang, Gorsuma and Buchet were excluded in the FPIC process and that they demand that the Company acquires the FPIC from these villages.” Focus group discussions conducted by the Research team in October 2021 record the following:

- “The settlement of Ghrey is located immediately vertically above the dam site, about half a km above. The Project uses our land, forest, and water. But our settlement was excluded. It should be included in the list of the highly impacted villages.”
- “Gosainkunda Rural Municipality Ward 5: Thulo Bharkhu/ Sano Bharkhu were consulted in the early stages of the Project preparation; there were no further information from the Company.”
- “The villages were considered as ‘highly impacted’ area initially and were consulted during the Project EIA phase. The Project uses the water from our Gosaikunda River. The dam [submerge] site was our pastureland since time immemorial, but we were excluded from the Project benefits.”

The IPP ignored the findings and conclusions of the Project ESIA (June 2018: 5-5) on socioeconomic AoI. “The Socioeconomic AoI [of the Project] is thereby *considerably larger than the area where direct Project impacts will occur* [emphasis added].” ESIA (2018:) records that “[the Project] is directly affecting four of the five [rural municipalities] in the Rasuwa District. These are the four [rural municipalities] included in the Social AoI as potentially being directly impacted by the Project and receiving local benefit sharing from the Project: Amachhodingmo, Uttargaya, Kalika, Gosainkunda” (see ESIA 2018: Figure 5.3). The IPP ignored the assessment of the Project AoI determined by the Project EIA 2011 and ESIA June 2018 (the latest update).

The IPP, and subsequently, the FPIC process, excluded the following eleven settlements of the Project-affected Tamang within the AoI:

1. Three settlements (Lumbagang (18 families), Gorsuma (9 families) and Buchet (unknown) located within the Category A Project Highly Impacted, lie within the administrative political boundary of Amachhodingmo (Ward 1); these three settlements are located right in the center of the Highly Impacted Villages. The forest and pasture under the traditional use and occupation of these three settlements were affected. Without any justification and qualification, the Tamang residents of these excluded villages were not invited to participate in the FPIC process.
2. Five Settlements within the immediate dam catchment area (Ghrey of Amachhodingmo Municipality Ward 1 as well as Thulo Bharkhu, Sano Bharkhu, Dhunche and Gimal of Gosainkunda Municipality, Ward 6). Ghrey is vertically above the dam and its community forest/ winter pasture will be submerged by the dam. EIA (2012: 95) identifies the dam site as near Sano Bharkhu. Sano Bharkhu and Sano Bharkhu are directly above the dam and Project uses the Gosainkunda River and community forest. The settlement of Gimal is 500m immediately above the Project associated structure (the alternate access road). The forest, pasture and water under the traditional use and occupation of these five settlements were impacted by the Project.
3. Two additional Settlements impacted by the Project ancillary facilities (Ramche and Kalika settlements of Kalika Rural Municipality Ward 6); Ramche will be affected by the surge water.
4. One Settlement impacted by the Power Transmission Line (Dandagaon of Uttargaya Municipality, Ward 1); forest user group area under the customary use of this settlement will be impacted by the Project.¹¹⁸

Not Seeking FPIC from Project-Affected Forest User Groups: One other widest structural gap during the FPIC process was not seeking the consent from the six Project-Affected forest user groups (CFUGs).¹¹⁹ The forest user group areas were under traditional management, use and occupation of Tamang Indigenous Peoples and the government had formally recognized the right of the Tamang to manage and use these forests.

In addition to the excluded 11 Project-Affected settlements, the IPP, and subsequently the FPIC process, excluded

¹¹⁸ NWEDC (2022) acknowledges “However, for the project financing requirement FPIC for transmission line is a condition subsequent for the Company.”

¹¹⁹ These forest user groups are Dachhin Kalika, Darnashila Kanyadevi, Lumbudanda, Bratar, Larbangpakha and Neshying.

“422 CFUG members from six CFUGs”¹²⁰ (LALRP 2018:2; see also IFC ESAP 2019). A total of 927.32 ha of forests protected, managed, and used by six forest user groups have been affected by the Project.

Not seeking the FPIC from the Project-Affected forest user groups during the seeking of the FPIC in 2018 was a clear violation of the IFC PS7. IFC PS7 (FN 12) underlines: “Typically, Indigenous Peoples claim rights and access to, and use of land and resources through traditional or customary systems, many of which entail communal property rights. These traditional claims to land and resources may not be recognized under national laws”. Both CIA (2020:40) and ESIA (2018: 7.6 - 3) implore that “based on Project impacts on Government-owned Forest land communally administered by CFUGs, whose members belong to Indigenous Peoples Communities including Tamang ..., it is determined that FPIC is applicable to this Project.” IPP (2018:12) notes that “as the project impacts the government-owned lands and natural resources subject to traditional ownership/under customary use of the Tamang (i.e., CFUG-administered forest land), the requirement of FPIC for the project is triggered.” Prior to the development of the Indigenous Peoples Plan, the Company and IFC had made commitments that “consent will be based on communal benefits offered at the CFUG level to offset any project-related impacts on CFUG resource usage.”

As per the IFC PS7, the Company should have acquired the FPIC of the six Project-Affected forest user groups prior to extinguishing their rights to manage and use the forests. From the Project records (see below), it is clear that the GoN acquired the areas under the forest user groups for the Company use as per the Forest Rules 1995.; the GoN extinguished the rights of the Project-Affected forest user groups without giving them a say. The IPP (2018) could not ascertain whether the GoN Department of Forest had sought the FPIC from these Project-Affected forest user groups. The IPP recorded that the FPIC consultations conducted by the Department of Forest could not be verified due to lack of documentation. IPP (2018:12) states that “The [District Forest Office] is reported to have carried out the consultation with CFUGs and obtained consent holding General Assembly of these three concerned CFUGs as per Forest Rules 1995. As the process documentation is not available, the adequacy of the process could not be judged.” Contradicting the above records, MDB (2022) claims that “the members of the 5 CFUGs (excluding transmission line impact) representing 10 FPIC villages were included for the FPIC and consent granted during the FPIC process in 2018.” The Project Tripartite Agreement signed by the ad hoc “advisory council,” the local government representatives and the Company, does not attest that the forest user groups gave the FPIC to the Company.

To begin with, asking a government administrative department to apply the numerous and rigorous requirements for acquiring FPIC from the Project-Affected Tamang was neither feasible nor realistic in Nepal’s current context. Acknowledging that FPIC had not been duly acquired from the Project-Affected forest user groups, the IPP (2018:45) states that the Company “will follow a process ... to ensure that [forest user group] is brought into the FPIC agreement. Subsequently, the IFC¹²¹ asked the Company (not the GoN) to acquire an FPIC from the forest user groups impacted by the transmission line before 30 May 2021. The Company “will seek the FPIC of the Guptepakha Community Forest User Group in relation to impacts of the 1.1 km transmission line on their resource use. Consent will be sought well prior to the start of transmission line construction, which is due to begin 3 years after mainstream Project construction begins. The consent process will be appropriately scaled given the extent of impacts and associated agreements will be documented and disclosed in an annex to the IPP” (IFC ESAP 2019: 3).

Contradicting to what are recorded in the IPP (2018) and IFC ESAP (2019) as detailed above, and contrary to the provisions of the IFC PS7, NWEDC (2022) argues that the Tamang Indigenous Peoples led forest user groups need not give their FPIC for the acquisition of lands and forests under customary occupation; these forests can be acquired as per the Guideline with standard related to the use of National Forest Area for project having National Priority – 2019. It adds that “the Project has acquired all necessary consents from the impacted communities during the EIA process approval [conducted in 2012] and ... during approval for diversion of forest to the Project prior to the Lender requirement of FPIC process was initiated in 2018.” NWEDC (2022) further adds that “the Company has already sought under Clause 6 (3) of the Guideline with standard related to the use of National

120 These CFUGs are Dachhin Kalika, Darnashila Kanyadevi, Lumbudanda, Bratar, Larbangpakha and Neyshing.

121 Salcito (2020:12) records that:” prior to the development of the IPP, the IFC claimed that consent will be based on communal benefits offered at the CFUG level to offset any project-related impacts on CFUG resource usage.”

Forest Area for project having National Priority – 2019 consent from Guptepakha Community Forest, the consent for diversion of forest land and such approval is awaiting approval from the concerned GoN authorities.”

Not Engaging Community At-Large from Highly Impacted Villages for FPIC: The Tamang community at-large should have been engaged in taking a fateful decision whether to give or withhold FPIC for a hydropower project that will commercially exploit their natural resources. The Project has already brought about, and will bring in the future, numerous life-changing impacts. During seeking the FPIC from the 10 “highly-impacted villages,” the Company did not directly engage the community at-large from these 10 “land-take” settlements; it should be noted that the community at-large from the remaining 11 (out of the 21 Project-Affected) settlements had been excluded from the FPIC process altogether. The Company instead sought the FPIC from, and documented with, an ad hoc “advisory council” comprised of selected members from these “highly impacted” settlements. Not engaging the community at-large during the process of seeking of the FPIC by the Company was a fundamental structural flaw. The members of the ad hoc “advisory council” who were selected in an ad hoc manner and who did not have the mandate to represent their respective communities at large on the issue of the FPIC. The IFC consultants, in collaboration with a few Tamang leaders, identified the 87 individuals (43 women) from among the Project-Affected Tamang.¹²² These 87 individuals came from the limited ten “highly impacted villages” within the Project AoI (see Map 5 above; see 4.2 above for details); the remaining eleven Project-Affected communities within the AoI (see Map 6 above), who happened to live outside of the highly impacted villages, were not asked to represent themselves into the “advisory council.” The process of selection of the members ignored the traditional Tamang practice of village elders representing the community at-large; most of the 87 individuals were of 30 to 40 age cohorts and with relatively higher formal educational attainment.¹²³ At the behest of the IFC consultants, these 87-individuals initially formed an ad hoc advisory Indigenous Peoples committee for coordination with the consultants. It was later renamed as the “Adibasi Janajati Advisory Council” (Indigenous Peoples Advisory Council; AJAC). Subsequently, the ad hoc “advisory council,” composed of 87 selected individuals, was morphed into a “advisory council” of the Project-Affected Tamang and was tasked to deliberate on the IPP and to give FPIC on behalf of the community-at -large.¹²⁴ By its name and its nature, the “advisory council” had no specific mandate to give or withhold the FPIC on behalf of the community. The IPP (2018:6) notes that “the FPIC-based IPP Draft... produced in September 2018 ... was disclosed to [these] village representatives during the Second Working Group and [ad hoc “advisory council”] Meetings. A Second FPIC Draft was submitted to both the Working Group and [ad hoc “advisory council”] prior to their late October Meetings.”

As detailed above, the Tamang practice a collective decision-making process that takes place subsequent to intensive internal deliberations, which requires deliberations at the community at-large level. This collective decision-making is based on the principle of the community (women and men) consensus (see above 3.2 for details). Such consensus process requires intensive and extensive deliberations. Collective decision-making among the Tamang is taken at an individual settlement level. The Tamang self-governing customary institutions facilitate the deliberations aiming to forge a high degree of consensus.

Not Allocating Adequate Lead Time Required for Tamang Decision-Making: The Company pursued a compressed timeline for seeking and documenting FPIC from the Tamang Indigenous Peoples. The Project documents indicate that the Company allocated a two-month period (September and October 2018) for consultations on the Indigenous Peoples Plan and for documenting the FPIC from the Project-Affected Tamang.

By any standard, the compressed timeline pursued by the Company for the FPIC was not cognizant of the Tamang decision-making process and was not consistent with the IFC PS7. This was one of the procedural gaps in seeking the FPIC. While it is not entirely clear, the compressed timeline was perhaps driven by the Company deadline for signing the Project Financing Agreement (signed in November 1, 2019). By any measure, two months is not adequate time to allow the Project-Affected Tamang to forge consensus - first at the settlement-level and

122 MDB (2022) claims that “AJAC was formed through an extensive (and intensive) participatory process and was represented by 1 lama, 1 shaman, 1 CFUG member, 1 youth, 1 woman social leader, 1 teacher, 2 landless/poor householders, 2 social workers/socially prominent persons.” But the focus group discussions held by the Research team do not corroborate this. The AJAC members were publicly challenged at community at-large meetings as to who gave them the mandate to represent the community community at-large.

123 There was unconfirmed claim that majority of the 87 individuals came one dominant political party.

124 It has been reported that only 85 of the 87 agreed to sign the TPA documenting the FPIC.

subsequently, at the inter-settlement level. Tamang decision-making is not bound by a deadline. It demands a culturally appropriate adequate lead time to forge consensus. In particular, elderly people and women require time to deliberate on the pros and cons of the subject and articulate their standpoints. Once a settlement level decision is forged, consultations with the adjoining settlements are pursued in order to reach the inter-community decision. The community consensus across numerous settlements and social groups (elders, women, youth) on whether to give or uphold the FPIC on the commercial exploitation of their natural resources requires a long lead time.

As per the IFC PS7, the Tamang Indigenous Peoples should be afforded adequate time required for their internal deliberations and coming to a “consensus;” it requires that the Company allocate sufficient time for the Tamang to fully consider and deliberate on their concerns with the Project. IFC PS7 (para 10) states that “the client will undertake an engagement process with the Affected Communities of Indigenous Peoples This process will: Provide sufficient time for Indigenous Peoples’ decision-making processes.” IFC PS7 (GN Footnote 4) notes: “Internal decision-making processes are generally ... collective in nature. There may be internal dissent, and decisions may be challenged by some in the community. The consultation process should be sensitive to such dynamics and allow sufficient time for internal decision-making processes to reach conclusions that are considered legitimate by the majority of the concerned participants” IFC PS7 (GN19) adds that the consultation “processes with and within affected communities of Indigenous Peoples will frequently span an extended period of time. Providing adequate information to the members of the indigenous community about a project’s potential adverse impacts and proposed minimization and compensation measures may involve an iterative process involving various segments of the community. Thus, (i) consultation should start as early as possible in the risks and impacts assessment process; (iv) the communities should have sufficient time for consensus building and developing responses to project issues that impact upon their lives and livelihoods; and (v) clients should allocate sufficient time to fully consider and address Indigenous Peoples’ concerns and suggestions about the project in the project design and implementation.”

Not Fully Elaborating Project Adverse Impacts and Mitigation Measures: Prior to and during the seeking of the FPIC, the Project-Affected Tamang were not fully informed of the extent, degree, and scale of a number of the various Project adverse impacts and the proposed mitigation measures. This was due primarily to the fact that the Company did not conduct the required comprehensive social assessment on the Project impacts (see 5.1 above).

The IFC mandatory operational policies (PS1, PS5 and PS7) require that, prior to seeking the FPIC, the Indigenous Peoples Plan must inform the Project-affected communities the Project impacts and their mitigation measures. IFC GN7 (para 58) states that “agreed mitigation and compensation mechanisms (and associated development interventions) should be documented in an agreement and delivered as an integrated program ... through a Project IPP.” IFC PS7 (GN13) notes that the Project IPP “should detail actions to minimize and/or compensate for adverse social and economic impacts, and identify opportunities and actions to enhance positive impacts of the project on the Indigenous Peoples.” “IFC GN7 (Annex 1) states that the Project IPP should:

- “Clearly describe the measures agreed to in the process of information disclosure, consultation, and informed participation to avoid, minimize and mitigate potential adverse effects on Indigenous Peoples.... Whenever feasible, avoidance or preventative measures should be given primacy over mitigatory or compensatory measures.”
- “In the project-financing context for this specific project, the concept of seeking ‘prior consent’ shall imply seeking consent from affected Indigenous Peoples’ communities for a draft package of proposed impact mitigation measures and benefits prior to the main phase of ... project development (i.e., prior to the main construction phase).”

The Indigenous Peoples Plan (2018), the primary document disclosed for seeking the FPIC, did not deliberate on the central subject of the land expropriation and physical displacement that had impacted the Tamang. Neither did the IPP deliberate comprehensively on many adverse impacts, including the environmental, socioeconomic, sociocultural and health impacts and impacts on women. This was contrary to the Company commitment that the IPP will elaborate the Livelihood Restoration Plan. LALRP (2018:120) committed that “the Project plans to continue engaging with PAFs through the forthcoming FPIC process to determine optimal livelihood restoration

strategies - and associated PAF priorities.”

The Indigenous Peoples Plan relegated the deliberations on the major impacts pertaining to the land expropriation and physical displacement to the LALRP. IPP (2018:3) underlines that “the LALRP... responds to the requirements of PS 5. As such, the mitigation measures specifically directed at mitigating, reducing, or avoiding negative effects of the land acquisition needed by NWEDC for the Project are outlined in that document. Similarly, the benefits allocated to the Project-affected Families (PAF) who have lost land, assets, or access to such assets are also separately described in the LALRP and are not repeated here in the IPP.” The IPP (2018:44) adds that “the LALRP deals with the project’s direct effects related to the land and assets procurement process.” IPP (2018:83): “the demands [from ad hoc “advisory council”] were dealing with the immediate pre-construction land acquisition and compensation issues, rather than appropriate to a long-term social development plan, and thus they are referred to the LALRP.” Contesting the above statement, NWEDC (2022) states that “the IPP during the FPIC process were well informed on the project impacts from land acquisition and the entitlements foregoing from the LALRP through culturally appropriate methods. ...The IP Plan is not a standalone plan and is not decoupled with other relevant social management plans.” NWEDC (2022) however reconfirms that the IPP did not elaborate on the impacts from land expropriation and physical displacement; it acknowledges that this was included under other Project documents; “the IPP is considered one of the social impact framework documents within the umbrella ESIA, 2018. The LALRP deals with land acquisition impacts and mitigation measures to directly affected household from land acquisition.”

Not Engaging Self-Governing Customary Tamang Institutions: As a major procedural flaw, the Tamang self-governing customary institutions were circumvented during the FPIC process in a clear violation of the provisions stipulated in the IFC PS7. These customary institutions should have been afforded the primary role in any deliberations leading the decisions regarding commercial exploitation of natural resources (Rai et. al., 1993). It is a well-documented fact that these customary institutions of Tamang Indigenous Peoples, membership of which is comprised all the households in the community, have paramount role in the regulation and management of the natural resources (forests, pastures, and water; see 3.1 above for details). These self-governing customary institutions, among others, are the conflict-resolution mechanism at the community level.

ILO 169 6.1(a) requires the Company to acquire FPIC through the representative institutions; for the Tamang, this is the self-governing customary institution entrusted for collective decision-making. The Project lender operational policies similarly instruct the clients to afford the customary institutions the key role in the decision-making process leading to the FPIC. For seeking of the FPIC “... a framework document or plan [should] identify representatives of Affected Communities of Indigenous Peoples (IFC GN7 para 22, 23). IFC PS7 (para 10) underlines that “the client will undertake an engagement process with the Affected Communities of Indigenous Peoples ... This engagement process includes stakeholder analysis and engagement planning, disclosure of information, consultation, and participation, in a culturally appropriate manner.” IFC PS7 (GN 10) adds that “the engagement process will take account of existing social structures, leadership, and decision-making processes.” IFC PS7 (GN 17) states that “clients should adopt [consultation] approaches that build upon existing customary institutions and decision-making processes utilized by the Affected Communities of Indigenous Peoples.” IFC GN7 (para 37) elaborates that “the process of achieving the FPIC of Affected Communities of Indigenous Peoples may require investment in building relevant institutions, decision-making processes and the capacity of Affected Communities.”

Committing the Company to consult the self-governing customary institution, Project ESIA (2018: 8-10) recorded that “the guiding principle for [FPIC] process includes: Ensure the participation of the traditional leaders and regional representatives of Indigenous Peoples Organizations,” and it committed to “ensure the participation of the traditional leaders and regional representatives of Indigenous Peoples Organizations.” ESIA (2018: 7.6 - 3) confirms that “an FPIC process will ...focus on project-affected Indigenous Peoples communities ... and their *traditional representatives*” (emphasis added).

Review of the Company documents however reveals that the Tamang self-governing customary institutions were not tasked to deliberate on the commercial use of their natural resources (forests, water) during the FPIC process. Instead, as discussed above, the FPIC of the Tamang Indigenous Peoples was sought through the ad hoc “advisory council” that had neither specific mandate to give nor to withhold the FPIC on behalf the community. MDB (2022)

acknowledges this and commits that the Company will “strengthen the community engagement including through broad based engagement with traditional institutions, formal local governance institutions ... and directly with members of the affected communities.”

Not Affording Women Their Traditional Decision-Making Role: The Company did not afford the Project-Affected Tamang women their traditional decision-making roles during all phases of the Project, including during the seeking of the FPIC. This was an example of a structural gap in the FPIC process.

As elaborated above, Tamang women enjoy an equal status socially vis-à-vis the men when it pertains to communal and household affairs (see 3.1 above for details). They have a strong say in household and communal decision-making, including in the regulating and managing the natural resources. Given this context, women should have been given a strong say in decisions leading up to the FPIC pertaining the commercial exploitation of natural resources. However, the Project exposed the Tamang women to numerous, and in disproportionate degree of, adverse impacts, which are above and beyond those experienced by men (see 4.4.8 above).

The Project lender policies implore clients to engage women in a meaningful manner throughout the life of the Project. IFC PS7 requires that women are afforded a strong role in decisions pertaining to a proposed project. IFC PS5 requires that “the consultation process should ensure that women’s perspectives are obtained and their interests factored into all aspects of resettlement planning and implementation.” IFC PS1 (para 31) states that “the consultation process should (i) capture both men’s and women’s views, if necessary, through separate forums or engagements, and (ii) reflect men’s and women’s different concerns and priorities about impacts, mitigation mechanisms, and benefits, where appropriate. The client will document the process, in particular the measures taken to avoid or minimize risks to and adverse impacts on the Affected Communities, and will inform those affected about how their concerns have been considered.” IFC PS7 (GN 16) adds that “the engagement process will take into account of existing social structures, leadership, and decision-making processes as well as social identities such as gender and age, and be cognizant of, inter alia:

- The existence of patriarchal traditions and social norms and values that may limit women’s participation in leadership roles and decision-making processes; and,
- The need to protect and ensure the legal rights of indigenous women.”

The Project documents (EIA, ESIA, LALRP, GAP and IPP) contain pronouncements about women’s participation. The Company formulated a Gender Action Plan (GAP; March 2018) but this plan awaits implementation. The GAP (March 2018):

- “Provides an understanding of the role of women in the Area of Influence for the project and puts in place specific measures for women to be put in place as part of the LALRP process.
- This GAP shall be implemented in parallel with the other plans prepared as part of the larger SIMF [Social Impact Management Framework] for the project, including the Livelihood Restoration Plan, Stakeholder Engagement Plan, Indigenous People’s Development Plan and Grievance Redressal Mechanism.
- The primary objective of the GAP is to ensure equivalent participation of women in the project lifecycle and decision-making processes, in keeping with the project context stated above. The GAP is thus aimed at putting in place, specific targets and performance indicators to ensure gender inclusion and facilitate women’s involvements in the project lifecycle. ...the GAP is aimed at identifying specific measures within these plans which would allow for gender inclusion and parity.”

SEP GRM (2018) states that:

- “The Project will give the implementation of the GAP as much importance as other project activities and ensure the availability of the required resources. Since the GAP is linked to the implementation of the SIMF, the specific plans such as LALRP, SEP and GRM put in place the specific requirements for resources and documentation and monitoring.
- The Company will facilitate the involvement of women in the public meetings held for the project as well as any other public meeting/ discussions held in the villages, especially during the FPIC process. The objective is not just to increase the attendance of women in these meetings, but also enhancement in their participation in discussions and decision making. For this purpose, the Company will identify key women in the community

with leadership qualities who can assist in creating awareness amongst women and encouraging them to participate in project led engagement. Also, specific engagement will be undertaken with women for this purpose across the project area.”

It was to the Company’s credit that, during the documentation of the FPIC, it sought equal representation of women to that of men; half of the ad hoc “advisory council” members were women. It had not similarly sought women participation earlier during the critical land acquisition and physical relocation. SEP-GRM (2018: 24) records that “the engagement activities undertaken for the project thus far [2015] did not allow for adequate participation of women.” While the project’s baseline indicates that around 15 percent of the Project-Affected families are headed by women (NESS 2014:54), the Company does not take into account women’s specific concerns and challenges associated with the project. IFC CIA (2020:74) states: “women’s groups (across a range of communities) have reported lack of direct engagement and inclusion by hydropower developers beyond invitations to participate in meetings and public hearings.”

The numerically strong representation of women during the FPIC process did not translate into influencing the outcome of the process. At the end, the men led the decisions regarding the FPIC and women had a minimal say in the outcome. While they were made signatories to the Project TPA and DFA, the women had no tangible say in the drafting and deliberations of these outcome documents; the Agreements do not indicate that the challenges by the women today were the subject of the deliberations. It was revealing that the Project DFA demands that “women are consulted and benefitted in a gender sensitive way/ protected from gender-based violence from immigrant labor.” Lahurnip (2017) confirms that “participation of women in the entire [Project] consultation process was inadequate and tokenistic.” The disaggregated gender analysis, the focus group discussions and the interviews conducted by the Research team validate that the representation of women during the seeking of the FPIC was purely numerical and not substantive. For example, the Tamang women elders, who wield substantial power in the traditional decision-making regarding the management and use of natural resources, were not even represented in the process; the women representatives came from the younger age cohort with formal education.

The Tamang women of Rasuwa today are experiencing loss of their traditional equal status and have become a disadvantaged and vulnerable sub-group.¹²⁵ The patriarchal culture of the dominant social groups as well the rapid intervention of the state system, the Tamang women face structural barriers. For example, the language of communication during the FPIC process was a major impediment; the deliberations were not held in Tamang. Led by external consultants, negotiations were held in English and/or Nepali. As stated above, women do not comprehend English. Many of them including women members of the ad hoc “advisory council” bring limited proficiency in reading and writing Nepali.

The Disaggregated Gender Analysis (see Annex 5) carried out by the Gender Expert¹²⁶ from the Research team concludes the following:

1. Women were promised a great many things by the Company during early meetings.
2. Tamang women traditionally play key roles in collective decision making and participate actively in social events. Women however feel that they have been excluded from all major Project-related decisions, as well as the decision-making process. Women feel “left out” in key decisions including the land expropriation and physical displacement. They bear the major family burden for loss of land and houses. They express an acute anxiety associated with being landless or homeless and in some cases, both. They feel they will not be able to secure food for their family and will not be able to afford housing. While women made up half the participants (50%) in consultations about the FPIC, this group of women came from the young and school-educated. Older women who manage land and natural resources are the culturally appropriate cohort group, but they were not selected to participate in the consultations.
3. While the expressed Company policy was to ensure improvement in the livelihood of the Indigenous Tamang women, the opposite has occurred. Women therefore express frustrations or even anger towards the

¹²⁵ WB ESF (2017) defines: “Disadvantaged or vulnerable refers to those who may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project’s benefits. Such an individual/group is also more likely to be excluded from/unable to participate fully in the mainstream consultation process and as such may require specific measures and/or assistance to do so...”

¹²⁶ The disaggregated gender analysis was carried out by Kailash Rani Rai.

Company. They have not only lost their agricultural land and housing to the Project, but they have also been restricted by the Company from accessing traditional natural resources (pastures, minor forest products including firewood, etc.). While a small number of men have been employed by the Company, women have been generally excluded. Women report that they not only suffer gender discrimination, but they also get rejected for employment by the male staff of Company “based on their judgement of sexuality. Some are rejected because they are a new mother. Others are rejected because of their “weight.” Still other are rejected because they are older women” (Key Informant Interview).

4. Women worry that their traditional status as equal to that of men will be challenged and that men impose on them patriarchal values that are professed by mainstream society and that they will be relegated to a subordinate role vis-à-vis the men. Already, the women are experiencing increased exclusion from their male counterparts in the financial transactions, including the compensation money paid to them for the land expropriation. Men have networks outside the village and with external parties including the Company. Decisions are made outside the village venues. Women learn of the decisions after the effect.
5. As the women and the elders are relegated to a diminished role in the community and the younger generation takeover, the women worry that they will not be able to perpetuate the social, cultural, linguistic and religious traditions and to handover to the next generation. This makes them worried that eventually, they may lose their Indigenous Peoples identity.
6. In addition to the disproportionate and accentuated impacts (social, cultural, economic, etc.) on women, they are also undergoing psychological stress that they will face increased gender-based discrimination and gender violence in their own homes. They will face sexual humiliation and insult as well as physical violence from the immigrant Company workers.
7. Contrary to a widespread assumption, women and elders will not benefit from the sale of IPO shares to the locals by the various hydropower companies. Most of them do not hold a bank account which is a precondition for purchasing the IPO shares. They hold little knowledge about share trading (the market, the share prices and the steps to buy and sell the shares); local men also have limited knowledge but they may have a network to assist them in share trading.
8. While there is potential to access the market for their household produce, the access roads remain few and largely undependable.
9. Women as well as elders and children suffered disproportionately severely during and following the 2015 earthquake. While the Company had taken on the responsibility for providing earthquake relief assistance, they did not deliver this relief.

Women focus group informants added that:

- “In the beginning, the Company promised to look after the women and to provide for all their needs. They promised to finance women-focused livelihood programs, provide skill trainings, provide social security allowances for women headed households as well as elders, provide resources for education of the children. Believing in their words, we handed over our rights to land to them. Today, we neither have arable agricultural land nor any homestead for us “to stand on it.” Neither we have control over the pasture area for our livestock nor we are allowed to collect dead branches for firewood and dry leaves for the kitchen. The Company is instead carrying out construction activities in a fast pace.”
- “After the 2015 earthquake, we could afford only one meal a day and were to feed the family only a half-full stomach. Women shouldered the greatest social and psychological burden of the hardship. Still a number of families live in IDP camps. They wish to return to their traditional home area, but their lands had been acquired earlier by the Project. Whatever small parcels of land are remaining were destroyed by the landslides caused by the earthquake. The problem of the landless and the homeless is aggravating the frustrations with the Company Project.”
- “Women are not recognized as a target group to receive information from the Project IPP related information. For meetings and discussions about the Company, the information is circulated using mobile phones and social media (WhatsApp, email, Facebook, Messenger or other online). Only a small number of women and the elders have access to such devices or media. These media limit the information to the new [younger]

generation.”

- “We mobilized the community, in particular women, [for the protest against the Company in 2021] and compelled the Company staff to not leave their offices. Expressing our frustrations, we broke three office chairs. The Company relented to fulfilling our demands expeditiously. They offered the protesters tea at the end. But we are since waiting. We hope that they will listen [to our demands] this time. Otherwise, we will protest again.”

Not Incorporating Demands of Project-Affected Tamang into Project Tripartite Agreement: The Project Tripartite Agreement (signed on 1 November 2018 among the Company Management, the ad hoc “advisory council” and the local government representatives), did not incorporate the demands of the Project-Affected Tamang; the demands were detailed in a separate document, entitled the “Demand Framework Agreement” (DFA) signed by the same parties a day earlier (31 October 2018).

It is somewhat bewildering that the Project TPA does not commit the Company to agree to implement the demands of the Project-Affected people contained in the DFA (a binding document). One should wonder why on the one hand the Project TPA is taken as the binding basis for documenting the FPIC. On the other hand, the accompanying Project DFA signed by the same parties is disregarded.

The DFA contained the pledge of NWEDC to engage in a process of dialogue to respond to the multiple demands (enumerated in IPP Annex 6A and 6C). A Supplemental Agreement was to be signed to include the DFA an integral part of the Project IPP and to address the provisions contained there; it was to include the annex of the List of Additional Demands of the Indigenous Peoples (see below for the list). However, there is no record that the Supplemental Agreement was prepared. The IPP did not integrate the binding provisions of the DFA; it only attached it as an annex.

This DFA contained the pledge of the Company to engage in a process of dialogue to respond to the multiple demands enumerated below. The Eleven Demands were:¹²⁷

1. Cultural Preservation/ Protection/ Construction of Buddhist Structures/ Observance of Buddhist Kongyur/ Tengyur Prior to Construction
2. Employment of Local People/ Technical Skill Training for Women and Men
3. Hiring of Local Contractors for Civil Works (As Per Project Tripartite Agreement)
4. Housing and Land for The Resettled Families
5. Free Electricity; (Project IPP states “Free Electrification Area in Only Within 500m of Power Station and Headworks”)
6. 10% Company Share Free of Cost: (PDA Requires 10% Share at Face Value
7. Construction of Agri Road (Gogane to Lumbaghang)
8. Physical Protection of Land Adjacent to Project Construction Sites
9. Payment of Social Allowances (Senior Citizen, Women Headed Households)
10. Provision of Ambulance/ Grant to People Who Fall Sick
11. Women are Consulted and Benefitted in a Gender Sensitive Way/ Protected from Gender-Based Violence from Immigrant Labor

The DFA was binding in that the Project-Affected Tamang had agreed to sign the TPA only under the conditions that the Project “DFA will be implemented an integral part of the [Project] IPP” (see IPP Annex 7). IPP (2018:41) attests that: “the consent process was carried out seeking approval for ... the Demands Framework Agreement. The Project TPA was accompanied by the DFA as its integral part. The DFA outlined the terms and conditions of the FPIC. Among others, the DFA stipulated the sale of Project IPO shares to the Project-affected communities and a preference to local people for the Project employment. Furthermore, the IPP (2018:119) records: that” the Company agreed subsequently to include the DFA as an integral part of the TPA.”

¹²⁷ “A Framework Agreement for Consensus Agreement Relating to Community Demands Presented by the UT-1 FPIC and IPP Working Group,” signed on 1 November 2018 by both AJAC members and CEO (see IPP Annex 7).

The Company is however on the record that the demands listed in the DFA could not be addressed “due to several factors including available budget, financial feasibility of the project and the Project Development Agreement that has been signed with the Government of Nepal” (see DFA 2018). This excuse seems difficult to believe. The Company does not violate its Project Development Agreement while giving shares to the Project-Affected Tamang free of cost. For a hydropower project costing USD 650 million, it is a miniscule amount to finance the construction of an agricultural road.

The demands of the Project-Affected Tamang listed above were culturally-appropriate. For example, the list of demands included a provision that a Buddhist ritual officiated by monks (*konguer puja*) be held both prior to major project construction and prior to project operation. The Company made repeated pronouncements (recorded in the IPP among others) that it will fully respect cultural rights of the Tamang. During the signing of the DFA, the Company CEO “announced the immediate acceptance of the demand for the Buddhist ritual to be held both prior to major project construction and prior to project operation.” However, in flagrant violations of this recorded agreement, the Company continues to offend that Tamang by ignoring this demand prior to the Project construction. The Company CEO had also announced the gift of two ambulances to the communities; had the Company kept its word and delivered the ambulances, it would have saved scores of lives, in particular of women during childbirth. The Demanding that “Women are Consulted and Benefitted in a Gender Sensitive Way/ Protected from Gender-Based Violence from Immigrant Labor” was not only appropriate but also imperative to the Company; this demand too is ignored by the Company to-date. The demands listed in the DFA were judicious. It is fair that the Company meets the demand for “employment of local people/ technical skill training for women and men” and hiring of local contractors for civil works.”

A number of demands by the Project-Affected Tamang are fully in line with the requirements of the IFC PS7. The Project-Affected Tamang have been subjected to the land expropriation and physical relocation. They have asked to give FPIC for the commercial development of their resources. The Company on its part should negotiate with the Project-Affected Tamang for Company shares at free of cost (in addition to PDA provision of 10% share at face value allocated to all population of the administrative district) and the demand for housing and land for the resettled families.

As per the PS7, the Project-affected Tamang are entitled to benefit from the Project, above and beyond the compensation and mitigation benefits, in particular since the Project exploits their traditional resources for commercial purposes. IFC GN7 (para 59) states that “in large-scale projects, the client may be able to offer a more comprehensive set of development benefits, as part of its community or regional development effort, or effort to stimulate local enterprises and economy. The client may also look for opportunities to support existing programs tailored to deliver development benefits to Indigenous Peoples, such bilingual educational programs, maternal, and child health and nutrition programs, employment generation activities, and arrangements for micro-credit schemes.” PS7 GN7 (Annex 1): IPP should “clearly describe measures to enable Indigenous Peoples to take advantage of opportunities brought about by the project, and to conserve and manage on a sustainable basis the utilization of the unique natural resource base upon which they depend. Such opportunities should be culturally appropriate.” IFC GN7 (Annex 1): IPP should “clearly describe measures to enable Indigenous Peoples to take advantage of opportunities brought about by the project, and to conserve and manage on a sustainable basis the utilization of the unique natural resource base upon which they depend. Such opportunities should be culturally appropriate.”

Further obscuring the problem of the Company not implementing the provisions of the agreed DFA, there are inconsistencies between the Nepali and the English versions of the signed Project TPA. Some of these glaring inconsistencies indicate that the parties signing the TPA may have overlooked the principle of “Good-Faith Negotiations.” The original Nepali version of the TPA, which was drafted earlier, was the basis document for negotiations and subsequently for the signing of the TPA. The English version of the TPA contains numerous inconsistencies with the original Nepali version; it should be noted that an overwhelming majority of the “advisory council” members and the local government representatives could not read English and did not refer to the English version. Four examples of inconsistencies are listed below:

1. The Nepali version of the TPA states that “The Agreement has been made in Nepali and English... For the easier comprehension of the content by the local Tamang community, the Project IPP will be translated

into Tamang and will be annexed in the final Project IPP.” The English version of the TPA however omits the significant agreement clause regarding the translation of the Project IPP into Tamang language and the annexing it into the Project IPP.

2. The Nepali version of the TPA does not specify which of the two versions (Nepali or English) will prevail if there are any discrepancies. The English version however inserts a consequential clause that “in the event of any discrepancy between the Nepali and English texts of this Agreement, the English text shall prevail.”
3. The Nepali version of the “Statement of the “advisory council” of the Indigenous Peoples Plan” (made subsequent to the signing of the Project Tripartite Agreement on 1 November 2018) details five key objectives of the IPP. The English version omits these five key objectives.
4. The Nepali version of the Project TPA contains a full list of names and signatures of the AJAC members. The English version however omits this list.

5.3 Compliance Subsequent to the FPIC Documentation (2019 – 2021)

There were several gaps in compliance with the IFC PS7 during this period. The Company did not comply with a number of additional specific requirements under the IFC PS7. There had been four years since the TPA was signed. There has however been no disbursement of allocated budget for IPP implementation, not implementing the Supplemental LALRP measures, no periodic reporting to Project-Affected Communities, unimpeded construction of the Project ancillary facilities, not establishing a dedicated In-House IPP implementation unit, institutional uncertainty about the Project management structure, not putting in place grievance redress mechanism and no supervision of the Project by the lenders. Deferring the implementation of the agreement was itself a breach of trust, if not a breach of agreement. MDB (2022) “acknowledges that, primarily due to project execution delayed by the Covid-19 pandemic and other factors, the performance of the project since the FPIC agreement in 2018 has fallen short of the requirements of IFC Performance Standards. The IPP was expected to be implemented post first disbursement, which was expected within one year. For various reasons, including the pandemic, disbursement has been delayed.”

This period began in 2019 when IFC verified, using its internal process, that FPIC was indeed attained from the Tamang Indigenous Peoples. Early during this period, the Company and the lenders signed the Project Financing Agreement (1 November 2019). The Project financing closure was signed on 17 October 2022. Against this financing backdrop, the Company has not begun the implementation of the IPP and the Tripartite Agreement, as well as implementation of the Supplemental LALRP agreed during the FPIC documentation process.

This period witnessed a serious incident of the Company reneging its earlier commitment towards compensating the acquisition of religious trust leasehold land. The Project-Affected Tamang claim that, subsequent to the documentation of the FPIC, the traditional tenure rights of the Project-Affected Tamang over the religious trust leasehold land were invalidated; this was contrary to the earlier agreement. As described above (see 4.4.2), the GoN Cabinet nullified the legally-documented tenure rights pertaining to approximately 110 *ropani* (7 ha). This legal action was a clear violation of both the IFC PS7 as well as the principal provision agreed under the IPP (viz. respecting the traditional land rights of the Tamang Indigenous Peoples). This was also contrary to the principle elaborated in the LALRP and reiterated by the ESIA and SEP-GRM. While the Covid-19 lockdown disrupted the lives and livelihoods of the Project-Affected Tamang in 2020 and 2021, the Company EPC Contractors continued unimpeded civil work construction as part of the preparation of the main construction. This period witnessed a number of complaints lodged and protests held against the Company by the Project-Affected Tamang.

No Disbursement of Allocated Budget for IPP Implementation: There has been a long delay in the disbursement of committed resources committed for the IPP implementation. Four years since the signing of the Project TPA and DFA, the Company has not yet disbursed the allocated IPP Budget. In the meantime, four of the stipulated five years of the IPP implementation phase (2019 – 2023) have elapsed.

IFC PS7 (para 18) requires that “the client will ensure the timely and equitable delivery of agreed measures to the Affected Communities of Indigenous Peoples.” The IFC had asked the Company to provide Project IPP finance by January 2020 “prior to main construction phase.” IFC ESAP (2019:3) commits that “NWEDC will make financial and technical provision for full implementation of Project commitments in the Indigenous Peoples Plan [by 01-Jan-2020], including, i.e., funding for agreed programs, logistical support for regular Project IPP implementation.”

The Project TPA underlined that the Company will “contribute to the institutional, social and economic development of the indigenous community.”

The TPA (2018) inserted a clause, without full disclosure to the ad hoc “advisory council,” to impose a condition of financial closure by the lenders for the disbursement of IPP funds. It states that “TPA shall take effect as soon as signed by the three Parties and the Project IPP is officially launched [1 November 2018].” The TPA adds that the disbursement of the US\$1.125 million for five years start from the date of Project Financial Closure (finally signed on 17 October 2022). This TPA further adds that the NWEDC will “ensure the funding of traditional economic activities and social development support programs ...in the amount US\$ 1.125 million in total for five years starting from the financial closure.” The ad hoc “advisory council” members were however not briefed on the implications of this clause; they did not anticipate a delay in the disbursement of IPP funds. The IPP Executive Board informed the Research team that they were not “fully informed about this financial disbursement clause and they did not assume that the budget disbursement will be after 3 or 4 years of seeking the FPIC.” Contesting this, NWEDC (2022) claims that “the financial closure requirement for the project is fully informed in all IPP Executive Board meetings to the member and the Company understands the affected communities are aware on the requirements for disbursement.” The Company (see NWDC 2022) confirms that there is a delay in the disbursement of allocated funds and states that “previously the implementation of IPP was linked with the financial closure. ... the delay in financial closure has made the IPP implementation uncertain. MDB (2022) informs that the Company has agreed to “expeditiously implement the IPP.” The Company informs that it “plans to decouple financial closure with the IPP implementation” (NWEDC 2022).

Delay in Implementing Supplemental LALRP Corrective Action Plan: The Company has yet to implement the key mitigation measures proposed under the Supplemental LALRP “corrective action plan.” These mitigation measures pertain to support to the physically displaced families, social and livelihood support and compensation for structures at replacement value.

It has been eleven years since the Company initiated physical displacement. The Company plans to implement these mitigation measures only “subsequent to project start of construction” (see below for details). This is somewhat surprising; the physically displaced families have waited 11 years for the mitigation and compensation under the corrective action plan. The Company carried out physical displacement of the Tamang Indigenous Peoples since 2013 and continued until 2018. The Company did not acquire FPIC for the physical displacement and it did not pay the replacement value for this physical displacement; the compensation for asset loss was not based on negotiations per se or on the principle of replacement value (see 4.4.3 above).

As per the IFC ESAP 2019:2, “the Company will develop a Plan to implement the following key supplemental mitigation measures based on the Project LALRP report [by 01-Oct-2019]:

- Provide additional support to physically displaced families to ensure that they are able to successfully re-establish their homes and livelihoods elsewhere;
- As per Project LALRP and Project IPP assign preference to affected families for employment opportunities;
- Provide for additional social and livelihood support to those individuals identified as especially vulnerable;
- Compensate the owners of a number of uncompensated structures at replacement value, without deduction of depreciation cost and scrap value and inclusive of VAT;
- Provide compensation for any trees damaged by construction activities outside the lease area (primarily on the downslope areas of the access road construction, where sliding debris has damaged additional trees); and
- Provide compensation for trees and crops that had been damaged and assessed as entitled for additional compensation in the Project LALRP.”

Acknowledging that there has been a delay over many years, MDB (2022) informs that the Company has agreed to “expeditiously implement the LALRP.” Contradicting this however, NWEDC (2022) states the “Project already completed the compensation for any structures as well as compensation for the plants,” and that “supplemental measures were completed in November 2020. The first two bullets above are conditions [viz. additional support to physically displaced families to re-establish homes and livelihoods elsewhere and preference to affected families for employment opportunities] to LALRP implementation which are underway.” NWEDC (2022) clarifies

that “the Company plans to implement the livelihood support and entitlement to the Project-Affected families as per the provisions mentioned in ...Project LALRP Report, 2018, subsequent to project start of construction.”

No Periodic Reporting to Project-Affected Communities: There was no periodic reporting to the Project-Affected Tamang. Moreover, there was no consultation on the ongoing construction of the numerous Project ancillary and associate structures. Focus group participants for this Research confirmed that “the Contractors have been engaged in Project construction activities since the Covid-19 lockdown but there is no consultation with the local people.”

There was no update on the status of implementation of the Project IPP as well as the TPA. The Project IPP Executive Board, in a written statement in October 2021, stated that “since the granting of the FPIC, there is no formal and substantive communication between the IPP Executive Board and the Company.”

ESIA (2018: 7.6 - 4) committed that the Company “would initiate Project IPP implementation under tripartite supervision and each party fulfils their commitments.” The Project TPA “assumes obligations [by the signing parties] and take decisions based on the principles of equal partnership, *transparency*, and *prompt notification* and rely on joint responsibility with the Indigenous Peoples.” It records an agreement on disclosure of information about the environmental impact of the Project. It asks to “ensure the timely provision of objective and complete information for the local communities about the existing and/or potential impact of the Project on the environment and about the measures taken to prevent and/or minimize any possible adverse impacts.”

IFC PS1 *para 36) requires: “the client will provide periodic reports to the Affected Communities that describe progress with implementation of the project Action Plans on issues that involve ongoing risk to or impacts on Affected Communities and on issues that the consultation process or grievance mechanism have identified as a concern to those Communities. If the management program results in material changes in or additions to the mitigation measures or actions described in the Action Plans on issues of concern to the Affected Communities, the updated relevant mitigation measures or actions will be communicated to them. The frequency of these reports will be proportionate to the concerns of Affected Communities but not less than annually.” “The Company will ensure that the EPC contractor hires sufficient community liaison officers [by 01-Oct-2019] to properly manage community-project relations during the construction period. The EPC community liaison team will include both female and Tamang-speaking officers” (IFC ESAP 2019:1).

Unimpeded Construction of Project Ancillary Facilities: There was sporadic but unceasing civil-work construction activities by the EPC Contractors (Doosan Heavy Industries and PowerChina) around the various Project ancillary and associated structures. These infrastructures included construction of new network of access roads, campsites for labor as well as the opening up of ubiquitous sites for quarries, borrows, spoil disposal, batching plant and construction yard. These construction activities were expedited during the latter part of the Covid-19 lockdown in Nepal (between March 24 2020 and July 21 2020). Since 2020, the construction of the access roads in the dam site, the bailey bridges to access the alternate access, ground preparation for the dam, the tunnel and the power powerhouse began and are in full swing today.¹²⁸ By February 2023, the Company has completed construction of a full concrete lining diversion tunnel (of 420m length and 5m diameter) and has diverted the river water to commence construction activities of the headworks. The Company has completed a 4.5 km excavation (out of 13.5 km) of the tunnel. It has completed 21% of the excavation work for the underground powerhouse.¹²⁹ An additional Engineering, Contractor and Workers camp was established in a new site in October 2021. The Company widened and improved the alternate access road to use it as its transport corridor; the Company transport vehicles ply this road regularly. Taking note of the fact that the Company is using the alternate access road (locally known as the “Army” road), there is worry that that Company is abandoning its the earlier agreed project access road in favor of the alternate access road. The IPP Executive Board, in its written statement (October 2021) claimed “the Company is abandoning the agreed 16 km Mailung – Hakubesi Road; it has only completed 4.5 km section. Reneging its commitment, it has now decided to not to complete the road.” This is another example of the Company reneging its earlier commitment agreed under the Project EIA.

Not Institutionalizing a Dedicated In-House IPP Implementation Unit: The Company has yet to

128 Kantipur Online news (21 November 2021).

129 The Himalayan Times, Diversion Tunnel of 216-megawatt Upper Trishuli-1 project completed, March 2, 2023.

institutionalize a dedicated IPP Support Unit staffed with qualified social scientists to implement the Project IPP and the TPA This has been fifteen years (2007 – 2022) since the Company has been pursuing the Project and ten years since the IFC became the Project co-developer.

@Author/Photo/Project Transport along the Alternate Access Road



IFC PS1 (para 17) requires that “the client ... will establish, maintain, and strengthen as necessary an organizational structure that defines roles, responsibilities, and authority... Specific personnel ...with clear lines of responsibility and authority should be designated. Key environmental and social responsibilities should be well defined and communicated to the relevant personnel and to the rest of the client’s organization. Sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous environmental and social performance.” IFC PS1 (para 18) states that “personnel within the client’s organization with direct responsibility for the project’s environmental and social performance will have the knowledge, skills, and experience necessary to perform their work, including current knowledge of ... the applicable requirements of Performance Standards 1 through 8. Personnel will also possess the knowledge, skills, and experience to implement the specific measures and actions required under the ESMS and the methods required to perform the actions in a competent and efficient manner.”

The 2016 Company ESPS declares the Company’s pledge to “organize, train and equip project management to identify and address environmental and social issues throughout the life of the project.” The Project TPA envisioned the establishment of an “Project IPP Support Unit at the Company.” Project SEP-GRM (2018:55) proposed a detailed organizational structure as follows: “the project will identify specific project personnel who are to manage the stakeholder engagement and grievance redressal process through the life of the project. ...these personnel will be responsible for ensuring the implementation of the SEP, including information disclosure and the documenting of the activities undertaken.” Project LALRP (2018:148) records that “the overall responsibility for the implementation of the LALRP is with the Company. This process shall be led by the Environmental and Social Management cell (ESMC) that will be established in NWEDC. The Liaising team head will report to the ESMC head at NWEDC and will be supported by Community Liaison officers (CLOs) who will be primarily responsible for undertaking regular interaction and mobilization activities with the community.” Project GAP (2018): “the project will also consider engaging a reputed third party in the form of the organization (NGOs/ CSOs) working in the field of women empowerment and gender dynamics, familiar with the region and are

acceptable to the community.” MDB (2022) informs that the Company will “establish a formal organization within company management for effective and expeditious implementation of the project IPP.”

Institutional Uncertainty about IPP Implementation Structure: The central subject of the Project TPA was to “establishing the Project IPP Management Structure.” The TPA stipulated that there will be an “annual joint meeting” with the Company Management and “drafting of “recommendations for the adoption of regulations as related to the efficient implementation of the Project IPP.”

There are however a number of institutional uncertainties about the Project IPP Management Structure. The subsequent institutional confusion is leading to intra-community conflicts, in particular the legitimacy of the Project IPP Executive Board. NWEDC (2022) acknowledges the above-described uncertainties and proposes a new IPP Implementation Guideline,¹³⁰ the draft of which awaiting consultation with the IPP Governing Board.¹³¹ MDB (2022) informs that the Company will “streamline the procedures to enhance transparency and fairness in flow of project related benefits to the affected communities.”

Inconsistent with the provisions of the IFC PS7, the proposed IPP institutional structure does not engage the Tamang self-governing customary institutions (see 3.1 above for details). IFC PS7 (para 10) states that “the client will undertake an engagement process with the Affected Communities of Indigenous Peoples. ...This engagement process includes stakeholder analysis and engagement planning, disclosure of information, consultation, and participation, in a culturally appropriate manner. In addition, this process will” ...involve Indigenous Peoples’ representative bodies and organizations (e.g., councils of elders or village councils), as well as members of the Affected Communities of Indigenous Peoples.”

The proposed IPP Implementation Structure (as envisioned under the newly drafted IPP Implementation Guideline) is cumbersome in terms of the structure and bureaucratic in terms of its process. It proposes consultancy services of external (international?) experts for evaluation; it is not clear who shall pay for such services. It proposes a periodic “election” of the IPP Governing Board; this proposal is fraught with risks of partisan politics. It proposes various committees for monitoring, internal evaluation; such committees may slow down the IPP implementation. At the same time, there is no clarity in the proposed structure as to will have the financial authority to administer these funds; there is already a conflict between the Project IPP Executive Board and the local government representatives as to who shall administer the funds for the IPP implementation. Equally serious issue is that a number of the specific administrative wards from three rural municipalities that lie within the Project Area of Influence (Gosaikunda, Kalika and Naukunda) were not invited to join the IPP Governing Board.

The proposed IPP implementation structure also envisions a Project IPP Oversight Board (composed of 20 members Governing Board, 3 local government representatives and 3 Company staff) and the IPP Executive Board (4 members). This is another cumbersome structure; it is unclear how such an oversight board would function vis-à-vis the existing IPP Executive Board. There is uncertainty about the term-limits of the Oversight Board.

Moreover, the Company has not extended technical support to the IPP Executive Board in order to build its program and financial management capacities. After 4 years of tenure, the IPP Executive Board lacks the implementation - administrative and financial management - capacities. IFC PS7 (GN 17) “clients should assess the capacity of the existing institutions and decision-making processes to deal with the wide array of new issues introduced by the project. In many situations, projects introduce issues that existing institutions and decision-making processes are poorly equipped to address. Inadequate capacity and experience may result in decisions and outcomes that have detrimental consequences for the Affected Communities and project relations with them. Specifically, poor processes, decisions, and outcomes may lead to challenges to existing institutions, decision-making processes, and recognized leadership, and to disputes over agreements between the Affected Communities of Indigenous Peoples and the project. Building awareness and capacity to address issues that can

130 See Upper-Trishuli-1 Hydroelectric Project: Implementation Guidelines for Indigenous Peoples Plan Based on FPIC Indicators. (Draft prepared by NEFIN and CCCS (version March 2022).

131 NWEDC (2022): “In order to comprehend the IP plan, the IPP implementation guideline (yet to be endorsed by IPP GB) is prepared and circulated to the wider IPP GB members. Once endorsed and the capacity building is enhanced the institutional unclarity and governance bodies decision making process would be clear.”

reasonably be predicted to occur can strengthen both Affected Communities and project agreements with them.”

Not Enforcing Worker Code of Conduct by EPC Contractor: The EPC Contractors have had ground presence in the Project AoI since 2013. However, the Worker Code of Conduct has not been fully enforced.

@Author/Photo/ Project EPC Contractors Inspecting the Diversion Dam Construction Site



@Author/Photo/Project Technical Personnel at an Associated Facility



IFC ESAP (2019:1) commits that the Company “shall ensure that the EPC contractor develops and implements a Worker Code of Conduct [by 01-Oct-2019] that emphasizes the importance of appropriate behavior, respect for local communities and customs, and compliance with all Nepalese and Lenders’ requirements.” Project SEP-GRM (2018:56) and LALRP (2018:151) commit to “ensure that the contractors/third parties abide by the principles established as part of the SEP and GRM. Wherever possible, relevant conditions will be inserted into the contracts, including right to investigate reported incidents and penalties for non-compliance.” Project GAP (2018) adds: “[the Project] will be ensured that the contractors/third parties abide by the principles established as part of the SIMF. Wherever possible, relevant conditions will be inserted into the contracts, including right to investigate reported incidents of violence against women and penalties for non-compliance.”

From the focus groups and interviews conducted by the Research team with the Project-affected Tamang, it is obvious that the EPC Contractors in general, and their workers in particular, remain unaware of the various agreements reached between the Project-Affected Tamang and the Company. For example, they remain oblivious to principles and provisions laid out in the Project IPP and remain unaware of the mandatory provisions of the lender operational policies. NWEDC (2022) claims that “the Worker Code of Conduct is developed and widely disseminated to the project workforce during induction and intermittently as required. The provision of the Social Impact Management Framework has been adequately inserted as part of the EPC contractor obligations in relevant sections and the same has been approved by the Company and the governing Lenders before execution at the end of 2020.”

Not Operationalizing Grievance Redress Mechanism: The Company has yet to put in place a grievance mechanism that is operational on the ground; the Company has yet to set up an accessible mechanism to receive grievances from the Project-Affected Tamang, to document them and to resolve them; the Project-Affected Tamang neither are aware of, nor have access to any grievance redress mechanism. One clear pointer that the Company has not put in place the required mechanism for grievance redress is the increasing number of oral and written complaints lodged by the Project-Affected Tamang. As the complaints fester, it leads to protests; at times violent protests (see below for details).

Focus groups and interviews conducted by the Research team confirm consistently that there is no such grievance redress mechanism to date that is accessible to them and operational on the ground. Lahurnip (2017) records that “there is no effective grievance redress mechanism. This mechanism, its process, and system should be designed and finalized before the FPIC process.”

In 2018, six years after the IFC was engaged as co-developer, the Company did propose a grievance redress mechanism. The Stakeholder Engagement Plan and Grievance Redress Mechanism (SEP-GRM) is however awaiting implementation. Moreover, the SEP-GRM was drafted without consultations with the Project-Affected Tamang. It did not propose to incorporate a number of culturally appropriate grievance procedures. For example, the proposed grievance mechanism does not recognize the primacy of the Tamang self-governing customary institutions. The proposed mechanism does not require the Company to receive the grievances in Tamang. The disclosed document in English remains of little value to the Project-Affected Tamang, in particular the elders and women. Acknowledging the above gaps, MDB (2022) informs that the Company will “further strengthen the ... grievance redress processes including through broad based engagement with traditional institutions, formal local governance institutions and authorities, and the institutions created within the IPP framework (AJAC and IPP governing board) and directly with members of the affected communities.”

IFC GN7 (para 21) provides a detailed guidance on the grievance redress mechanism. It states that “affected Communities of Indigenous Peoples should be enabled to raise and receive client responses to grievances and complaints. The client may utilize the general grievance mechanism for the project in accordance with the requirements ...outlined in IFC GN7 specifically dedicated to the Affected Communities of Indigenous Peoples.... The grievance mechanism should be designed in consultation with the Affected Communities of indigenous peoples. The grievance mechanism should be culturally appropriate and should not interfere with any existing processes or institutions within the Affected Communities of Indigenous Peoples to settle differences among them. The grievance mechanism should provide for fair, transparent, and timely redress of grievances at no cost, and if necessary, provide special provisions for women, youth and the elderly. As part of the engagement process, all members of the Affected Communities of Indigenous Peoples should be informed of the client’s grievance

mechanism. IFC PS GN7 (Annex 1) states that “When designing the grievance procedures, the client will take into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples. Affected Communities (both women and men) must be informed of their rights and the possibilities of administrative and legal recourse or remedies, and any legal aid available to assist them as part of the process of consultation and informed participation. The grievance mechanism should provide for fair, transparent and timely redress of grievances without costs, and if necessary, provide for special accommodations for women, youth and the elderly, and other vulnerable groups within the community, to make their complaints.”

Many Project documents (IPP, SEP-GRM, etc.) claim on the contrary that such a grievance mechanism was put in place by the Company in 2016 and is accessible to all stakeholders. SEP-GRM (2018) states that “an external stakeholder GRM was instituted by the project in 2016 to provide a forum for the community and other stakeholders to voice their concerns, queries, and issues. This mechanism ...is currently under implementation, providing stakeholders with a single channel through which concerns can be raised and responses received.” MDB (2022) asserts that “Lenders Independent Environmental and Social Advisor, ... supervision visit, from the 18th to the 22nd of October 2021’ ... obtained evidence that: i) a GRM Procedure has been developed and is overall aligned with IFC PS1 and ADB SPS. Grievances records are correctly kept... To further strengthen the GRM and its implementation, NWEDC has agreed to implement specific measures, including expanded community engagement.”

The SEP-GRM (2018-43) proposes that “WBG standards require Grievance Mechanisms to provide a structured way of receiving and resolving grievances. Complaints shall be addressed promptly using an understandable and transparent process that is culturally appropriate and readily acceptable to all segments of affected communities, and is at no cost and without retribution.” IFC PS1 (para 35) states that “the grievance mechanism should be scaled to the risks and adverse impacts of the project and have Affected Communities as its primary user. It should seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies. The client will inform the Affected Communities about the mechanism in the course of the stakeholder engagement process.” This SEP-GRM (2018) also commits the Company to the following principles:

- The process for grievance resolution shall be transparent, in harmony with the local culture, and in the appropriate language. It shall explicitly assure potential users that the mechanism will not impede their access to other judicial or administrative remedies.
- Every member of the community or groups shall have access to the grievance procedure. Any individual or group that is directly or indirectly affected by the Project’s and its contractors’ activities, as well as those who may have an interest in the Project or the ability to influence its outcome, either positively or negatively, can raise a grievance. To allow all stakeholders to have access to the mechanism, the grievance redressal procedure will be made available in the local languages of *Nepali and Tamang* and any other language preferred by the community.

The lack of a grievance redress mechanism operational on the ground is resulting in a severe erosion of trust with the Company. At times, the lack of trust is leading to protests by the Project-Affected Tamang. For example, an 11-day long protest was held by the Project-Affected Tamang in August 2021. There were violent protests by youth on 19 December 2021; this incident was confirmed by the Project lenders (see below for details).¹³²

A Letter addressed to the Company from the Rasuwa chapter of the national umbrella indigenous people’s organization (NEFIN; dated 5 April 2021) stated that the numerous complaints lodged by various Project-affected communities through the official Project IPP Executive Board have gone unheard due to the ill-intention of some of the Company staff. Through this Letter, the NEFIN Rasuwa implored the Company to implement the agreement under the Project IPP as it is written in a timely manner. Another The Letter from a “Project Struggle Committee” to the Company (dated September 8, 2021) articulates the following four grievances:

132 MDB (2022) confirms: “Unfortunately, IFC learned through the news media of one violent incident... According to news reports, in early November a group of locals attacked and beat workers for the project contractor. IFC required NWEDC to provide a detailed note on the incident describing the cause and the way forward.”

1. Non-disbursement of the allocated Project IPP budget but the accelerated project civil work without prior information;
2. Abandoning of the completion of 16 km Mailung – Hakubesi road (along the right bank as per the Project EIA); IFC EIA (2012:291) records that NPR 5 million will be allocated for the road network in Hakubesi;
3. Non-payment of compensation for the religious trust land expropriation; and
4. Construction of a police post building in Hakubesi on at the land expropriated by the Project without any information and consultation.

@Author/Photo/A Newly Constructed Police Post at A Settlement (Hakubesi) Adjacent to the Diversion Dam Site



The IFC policies expressly prohibit the use of unnecessary, disproportionate, or excessive force. There are however reports of intimidation of the Project-Affected Tamang when they lodge complaints or participate in protests against the Company.¹³³ Various Project documents record that the Company has sought the “intervention” of government officials during the Project land expropriation. LALRP (2018:90) records that “Government intervention was resorted to by Company for selected cases in which the Company was not able to procure land through negotiated settlement.” It further records that “in May 2013, the District Administrative Office intervened to compel the landowners, who had refused to sell their lands, to accept compensation at a government rate (see LALRP 2018: Table 6.3). ESIA (2018: 8.1) records; “the Company requested the intervention of the District Administration when ownership of the land was uncertain.” ESIA (2018: 7-5.3) records that the Company made it clear that it was “willing to pressure the government into helping it acquire land should there be “unwillingness to sell the land” (see also NWEDC, 2018b, p.7-5.3). The Company has also sought the government help for providing security to its construction activities. A Newspaper,¹³⁴ quoting the GoN official, reported: “There is report that two [Company] technical staff were beaten and injured by a disgruntled group. ... Complaining that employment was not provided to the locals and the local produce were not purchased [by the Company], the locals went to the Project site and the physical fight ensued.... I [GoN official] have issued order for mobilization of the police. The official added: “We will extend a reliable security to the Company.” A

133 MDB (2022) confirms: “...NWEDC did inform the local authorities and law enforcement. Consequently, district and local authorities, including those representing the aggrieved village, NWEDC and IPP GB through mutual discussions defused the situation and agreed on a way forward with the aggrieved villagers.”

134 Kantipur Online news, 21 November 2021. <https://www.onlinekhabar.com/2021/11/1042100>

new Company-financed police post has been established at the village of Hakubesi, adjacent to the dam site; the information from the IPP Executive Board confirmed that the building was financed by the Company.

The Project lenders (IFC, ADB, AIIB and FMO) have their respective accountability mechanisms. Rules require the respective lenders to provide the Project-affected people information regarding these accountability mechanisms. There is no record that the lenders have disseminated information regarding the accountability mechanisms to the Project-Affected Tamang. The IFC and MIGA have the Compliance Advisor Ombudsman (CAO). ADB has the Accountability Mechanism. FMO has its Independent Complaints Mechanism. AIIB has its Project-affected People's Mechanism (PPM) "to provide an opportunity for an independent and impartial review of submissions from Project-affected people who believe they have been or are likely to be adversely affected by AIIB's failure to implement the applicable environmental and social policy in situations when their concerns cannot be addressed satisfactorily through the Project-level grievance mechanism or the processes of AIIB's Management." AIIB (2022) confirmed that "AIIB's Project-affected People's Mechanism (PPM) would govern complaints submitted to it under this Project... AIIB is working with the client to further improve the dissemination of information about the PPM among the Project affected people."

A statement made during a focus group (in October 2021 conducted by the Research Team) records that the members of the Project-Affected Tamang "are considering withdrawing FPIC if the Company does not keep its promises;" that they are in consultations with the community leaders and civil society to take steps to withdraw the FPIC "unless their demands are met in a timely manner and adequately." The use of intimidation by the Company was cited as grounds for rescinding the FPIC documentation signed in 2018. The Clause 6.3 of the Tripartite Agreement is referred here; the Clause states that "this Agreement may be terminated by mutual consent of the Parties."

No Supervision of Project by Lenders: The lenders are not conducting periodic supervision of the implementation of the Project IPP, LALRP, SEP-GRM, GAP, etc. as required by their operational policies. There was no supervision for three years since FPIC was documented. The Lender Independent Environment and Social Advisor for the Project finally paid a visit to the Project-Affected settlement in October 2021 (overlapping with the Research team). No report on this visit has yet been disclosed. Due to the lack of periodic supervision by the lenders, many of the operational policy compliance issues elaborated above (under 6.1, 6.2 and 6.3) have not been addressed. Similarly, there is no public records of the project monitoring by the Company.

IFC PS1 (para 22) states that "the client will establish procedures to monitor and measure the effectiveness of the management program, as well as compliance with any related legal and/or contractual obligations and regulatory requirements." IFC GN7 (para 34) reiterates the requirement for monitoring the conditions under which the FPIC was documented from the Project-Affected Tamang; it states that "FPIC entails consent for specific project activities, impacts and mitigation measures as anticipated at the time when consent is given. While the agreement should be valid for the duration of the project, for projects with an extended operational lifespan, it is good practice to monitor Project IPPs or similar action plans and be flexible in adapting them as needed if circumstances change, while maintaining the overall principles, commitments, and mutual accountabilities outlined in the agreement."

6. RESEARCH RECOMMENDATIONS

This Research provides a number of recommendations for actions by the Company, the IFC, other lenders and IPP Governing Board in terms of implementing the agreements made by all the parties.

6.1 Company [NWEDC] Action

Implement the 2018 Supplemental LALRP Action Plan proposed by the IFC for the Project-Affected Families: The Company should implement the measures proposed by the IFC for addressing the prior land expropriation and physical displacement impacts. The mitigation measures should include support to the physically displaced families, social and livelihood support, and compensation for structures at replacement value. Where necessary, the company should arrange access to arable land to those affected by land expropriation,¹³⁵ provide replacement housing for those physically relocated and support economic activities to restore the livelihoods of Project-Affected People to the original level. MDB (2022) has confirmed that the Company will “expeditiously implement the LALRP.” Additionally, regarding the specific case of the annulment of rights to the religious trust leasehold land, the Company should abide by its earlier agreement, and pay the due compensation to the Project-Affected families without delay to the families affected by this annulment.

Seek FPIC from those excluded 11 Project Directly Impacted settlements within the Project AoI as well as from the 6 Project Directly-Impacted forest user groups: The Project-Affected settlements within the dam catchment area and/or impacted by the associated structures as well as the Project impacted CFUGs were excluded in the 2018 FPIC process. The Project-Affected forest user groups had not been compensated for their loss of access to natural resources as well as environmental services. IFC had asked the Company to acquire the FPIC from the impacted CFUGs before 30 May 2021.¹³⁶ Once FPIC is acquired, the Company should allocate additional commensurate budget to implement the “IPP plans” agreed with these communities and forest user groups. The forest user groups should also be compensated for their loss due to the Project restriction of access to natural resources.

Propose and agree with the Project-Affected communities a Benefit Sharing Mechanism: The Company should propose and agree with the Project-affected Tamang a *Benefit Sharing Mechanism* for the life of the Project to allocate a percentage of profits revenues coming from the generation of electricity directly to the Project-affected Tamang communities. The Company should negotiate with the Project-Affected Tamang for Company shares at free of cost (in addition to PDA provision of 10% share at face value allocated to all population of the administrative district). The *Benefit Sharing Mechanism* should be above and beyond the allocated IPP funds allocated by the Company and earmarked for the ten highly impacted settlements for the first five years (and commensurate funds to be agreed with the excluded 11 Project-Impacted settlements and forest user groups). NWEDC (2022) informs that “the elaborated company has already developed Local Benefit Sharing Plan as per the provision in Project Development Agreement (PDA) plan signed with GoN on December 2016. ...The plan will be implemented after the financial closure and main construction begins. The royalty sharing is also defined as per Electricity Act, 1992.” MDB (2022) confirms that the Company will “streamline the procedures to enhance transparency and fairness in flow of project related benefits to the affected communities.”

Implement the Project Gender Action Plan: The Company should operationalize a culturally appropriate gender strategy that takes into account the differential challenges faced by women; this gender strategy should recognize the role of Tamang women and Tamang norms around gender equity. It should establish a communication and dissemination mechanism for providing regular (six monthly) and public updates to the community at-large in the Tamang language, including on progress towards meeting commitments made in Tripartite Agreement, perhaps on a quarterly basis, or at least every 6 months.

Establish an In-House Operational Grievance Redress Mechanism and Involve Traditional Tamang

¹³⁵ LALRP (2018:119) recommends that “Project-related livelihood restoration options should focus on gaining access to arable land (either in their original villages or elsewhere), in order to achieve long term rehabilitation.”

¹³⁶ IFC ESAP (2019): “NWEDC will seek the free, prior, informed consent of the Guptephaka Community Forest User Group in relation to impacts of the 1.1 km transmission line on their resource use. Consent will be sought well prior to the start of transmission line construction, which is due to begin 3 years after mainstream Project construction begins.”

institutions to address outstanding and future grievances: This mechanism should recognize and incorporate traditional Tamang grievance redress mechanisms. The Company should establish and maintain a regular culturally- appropriate communication/ meaningful dialogue with the Project-Affected Communities. MDB (2022) confirms that the Company will “strengthen the grievance redress processes including through broad based engagement with traditional institutions, formal local governance institutions and authorities, and the institutions created within the IPP framework (ad hoc “advisory council” and IPP governing board) and directly with members of the affected communities.” Using this culturally-appropriate grievance redress mechanism, the Company should update the list of current grievances of the Project-Affected Tamang and address them at the earliest possible date.

Review and Restructure the Governing Structure for Project IPP Implementation in consultations with the community at-large: The Company should recognize the traditional roles of the Tamang self-governing customary institutions and work towards establishing and building rapport with such institutions. It should address the institutional lack of clarity and uncertainty about the Project IPP Implementation Structure. It should remove the institutional uncertainty regarding the time-terms of the Project IPP Governing Board and the IPP Executive Board. MDB (2022) confirms that the Company will “strengthen the community engagement ... including through broad based engagement with traditional institutions ...and directly with members of the affected communities.”

Establish a Functional Organizational Unit within the Company Management Structure to Implement the Indigenous Peoples Plan, the Tripartite Agreement and the Demand Framework Agreement: The Company should allocate adequate resources, including for recruiting experienced staff for the implementation. MDB (2022) confirms that the Company will “establish a formal organization within company management for effective and expeditious implementation of the project IPP.” NWEDC (2022) elaborates that “IPP Guideline has been prepared by CCCS and Central NEFIN to further simplify the implementation of the IPP. The draft of the guideline has been circulated to the IPP GB members for review. Once the IPP implementation guidelines will be endorsed by the IPP GB then IPP Support Unit and other Program Committees will be established and functionalized to launch IPP formally.”

Implement the Project Tripartite Agreement: Now that the Financial Closure has now been signed, The Company should disburse the committed Project IPP Funds without delay. It should assist the Project IPP Executive Board to build its program and financial management capacity for the IPP implementation. NWEDC (2022) clarifies that “Previously the implementation of IPP was linked with the financial closure. ...the delay in FC has made the IPP implementation uncertain. ... the company has now initiated the consultation with local AJAC members for IPP launch. ... Endorsement of IPP Implementation Guidelines will further initiate the formation of four different Program Committees and their implementation. Once the Program Committees are finalized NWEDC will release the budget accordingly.”

Implement the Arrangements Agreed under the Demand Framework Agreement: The Company should implement the measures agreed under the Demand Framework Agreement and as part of the Project Tripartite Agreement. In particular, the Company should give priority to the Project-affected Tamang in the local employment. NWEDC (2022) states that the Demand Framework accordingly. “Agreement is “subjected to the economic viability of the project, prevailing laws of Nepal, the collective rights of Indigenous People, the PDA signed with GoN and the financing documents. The company during course of project implementation will carry out consultations with affected IP communities and the governance bodies subject to the above. IPP (2018:41) confirms that: “The consent process was carried out seeking approval for ... the Demands Framework Agreement. The Project TPA was accompanied by the Project Demand Framework Agreement (Project DFA) as its integral part. The DFA outlined the terms and conditions of the FPIC. Among others, the Project DFA stipulated the sale of Project IPO shares to the Project-affected communities and a preference to local people for the Project employment.”

Ensure that the Project Engineering, Procurement and Construction Contractors do not violate the human rights of the Project-affected Tamang: It should ensure that the Company EPC Contractors respect

the Tripartite Agreement and that the Contractors do not violate by the Project IPP arrangements. The EPC Contractor should draft a code of conduct, consult the Project-affected communities and implement it. These documents should be made publicly available in Tamang language. NWEDC (2022) clarifies that “the company, EPC contractor and its sub-contractors abide to respect the human rights of all the concerned stakeholders including the local Tamang community, workers etc. ... The contractors have developed and implemented various management plans like Human Resource Policy, Cultural Heritage Management Plan, Labor Influx Management Plan, Community Health and Safety Management Plan, Workers Code of Conduct, Workers Accommodation Management Plan, etc.”

Assist the Project-Impacted Communities to plan for avoiding and/or mitigating the wider, cumulative economic and sociocultural impacts of the hydropower projects in the TRB: The Company should work with IFC (the shareholder and lead arranger of debt) to assist the Project-Affected Communities to minimize and mitigate the wider cumulative impacts. NWEDC (2022) commits to the “Cumulative Impact Assessment and Management: Hydropower Development in the Trishuli River Basin, Nepal ... prepared by IFC. NWEDC will become active participant in the multi-stakeholder platform to manage the cumulative impacts and risks from multiple and cascading hydropower projects existing in, or planned for, the Trishuli River Basin. The Construction Environmental and Social Management Plan (CESMMP) prepared and under execution by the project contractors will implement the corrective measures to mitigate the E&S impact under the project AoI.”

Invest to secure the “Social License to Operate”: The Company should aim to secure the social license to operate in the Project, in order for it to be able to operate for 30 years without conflict. Most importantly, it should initiate and maintain culturally appropriate dialogue with the Project-Affected Communities, implementing mitigation measures without delay and providing culturally appropriate development assistance. NWEDC commits that “the company will continue proper consultation and engagement with affected Tamang communities to secure the Social License to operate.”

6.2 IFC Action

MDB (2022) response to the Research Report recognizes that “the delays have caused distress to affected communities, and based on ...the supervision findings, IFC agrees with certain recommendations in the Research Report and has conveyed similar recommendations to the Company.” It commits “to work with NWEDC to address identified shortcomings so that the project is able to meet IFC’s Performance Standards.”

Ask the Company to acquire FPIC from 11 Project Directly Impacted settlements within the Project AoI as well as from the 6 Project Directly-Impacted forest user groups. This is to document FPIC from those excluded 11 settlements and 6 forest user groups in the 2018 FPIC process.

Follow up with the Company on the Implementation of the Project IPP, TPA and DFA.

Provide technical assistance to the Company to strengthen its gender strategy and to implement it. It should ask the Company to implement the Gender Action Plan and extend technical assistance to the company in strengthening its gender strategy.

Ensure that the Company discloses Project information regularly and in a culturally appropriate language and medium: It should make available documents in Tamang language and in hard copies.

Provide technical assistance to the Company to operationalize the grievance redress mechanism: It should ask the Company to update the current list of grievances of the Project-Affected Tamang and implore the Company to address them. Where necessary, it should mediate between the Project-Affected Tamang Indigenous Peoples and the Company to address the complaints and protests.

Disseminate information widely about the IFC Compliance Advisor Ombudsman: The information should be disseminated widely among the Project-Affected Communities to enable them unrestricted access to it.

Assist the Company to work with the Project-Affected Communities to avoid and/or mitigate the wider cumulative impacts of the hydropower projects in the Trishuli River Basin: The IFC should facilitate the proposed Trishuli Hydropower Development Forum to work to assist the Project-Affected Tamang to avoid or mitigate the wider cumulative impacts of the hydropower projects.

Review the conditions for the FPIC, when needed and facilitate the renewal: It should ensure (and monitor) that the conditions under which FPIC was documented and are met by the Company at all times throughout the life of the Project. The principles and arrangements for FPIC are reviewed and monitored, especially when it goes into operation and key milestones to renew FPIC are set.

6.3 Other Lender Action

Conduct supervision at regular intervals through the Lender's Independent Environmental and Social Advisor and disclose the supervision reports in Tamang language.

Demand and ensure that the Company implements corrective measures identified by the Lender's Independent Environmental and Social Advisor.

Disseminate information widely about the lender independent accountability mechanisms, and in a culturally appropriate manner, among the Project-affected Communities in order that they may access these mechanisms when their grievances remain unaddressed.

Work with the Company and IFC to work with the Project-Affected Communities to avoid and/or mitigate the wider cumulative impacts of the hydropower projects in the TRB.

6.4 Project IPP Governing Board Action

Assist the Company to Seek FPIC from the excluded 11 Project Directly Impacted Settlements and 6 forest user groups.

Afford the Self-Governing Customary Institutions a role in the Implementation of the Project Indigenous Peoples Plan and facilitate these institutions in the grievance redress mechanism.

Afford Women an Equal Role in the Indigenous Peoples Plan Implementation.

Ensure that the Company translates the Project documents into Tamang and discloses them in hard copies.

Conduct village-wise meetings to disseminate Project IPP information.

Work with the Company to Reconstitute the Project IPP Governing Board and the Executive Board for effective IPP implementation.

Conduct consultations with the Project-affected Settlements in order to put in place a culturally appropriate financial disbursement mechanism.

Work with the Company and the IFC to Review the Conditions under which the 2018 FPIC was documented, and when needed, facilitate the renewal.

References Cited

- Acharya, Sushan, Catherine M. Jere and Anna Robinson-Pant (2019) *Indigenous Adult Women, learning and social justice: Challenging deficit discourses in the current policy environment*. Research Gate. April 2019.
- ADB (2009): Safeguard Policy Statement, Manila, June 2009.
- ADB (2019): Initial Poverty and Social Analysis [of the Project Area] (March 2019).
- AIIB (2019): Environmental and Social Framework. Beijing (amended February 2019).
- AIIB (2022): AIIB Comments on Oxfam Report concerning “Free, Prior and Informed Consent in the Nepal – Upper Trishuli-1 Hydroelectric Project: An Independent Assessment on Compliance with The IFC Performance Standards dated July 14, 2022.
- Ambay, Mark Anthony Ventura (2019) *Dammed: Hydropower Development Impacts on Indigenous Peoples Rights in Nepal*. Mahidol University. MA Thesis.
- Ghale, Shradha (2015): “Misguided Priorities.” *The Kathmandu Post*, June 24 2015.
- Government of Nepal (2015): [Nepal] National report submitted to the UN Human Rights Council in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (November 2015).
- Guldin, Greg (2019a): *Free, Prior, Informed Consent (FPIC): Lessons from Nepal*. (Public PowerPoint Presentation by the IFC Consultant for the Project FPIC). Washington DC. 6 March 2019.
- Guldin, Greg (2019b) FPIC as Project Bonus: the UT-1 Experience. PowerPoint Presentation at the World Hydropower Congress, Paris May 2019.
- Gurung, Rukh (2020) *State Response to the Aftermath of 2015 Earthquake in Rasuwa*. In Study of Society [Nepali], Vol. 15, pp 33-58, 2020. Martin Chautari, Kathmandu.
- IFC (2012): Policy and Performance Standards on Environmental and Social Sustainability. Washington, DC., 2012.
- IFC ESAP (2019): Environment and Social Action Plan (ESAP): Upper Trishuli-1 Hydroelectric Project.
- IFC CIA (2020). Cumulative Impact Assessment and Management: Hydropower Development in the Trishuli River Basin, Nepal. IFC, Australian Aid and Norwegian Ministry of Foreign Affairs.
- IHA (2020): Gaining Indigenous Peoples’ consent for sustainable hydropower. International Hydropower Association May 2020.
- ILO (1989): Convention # 169 on Indigenous and Tribal Peoples. Geneva.
- ILO-(2015): [Nepal] Draft National Action Plan for the Implementation of ILO 169. ILO-Nepal. May 2015.
- Lahurnip (2017): Study on the Impact of the Upper Trishuli 216 MW Project on the Indigenous Communities of Rasuwa. The Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples, Kathmandu.
- Lahurnip (2018): Where Everyone works to build a crimeless society: Indigenous Justice System of the Thakali and Tharu. Submitted to Governance Facility, Kathmandu.
- Lahurnip (2021): Kathmandu Valley Road Widening and Expansion Project. 2021.
- MacDonald, Mott (2009). Enhancing Development Benefits to Local Communities from Hydropower Development. A Literature Review, May 2009. The World Bank. Washington, DC.
- MDB (2022): (IFC as well as ADB and FMO) Response to Oxfam International regarding Comments on the Draft Research Report dated July 8, 2022.
- Merrey, Douglas James, Abid Hussain, Deepak Dorje Tamang, Bhuwan Thapa, Anjal Prakash, *Evolving high altitude livelihoods and climate change: a study from Rasuwa District, Nepal*. In Food Security (2018) 10:1055–1071.
- NFDIN (2019): Free, Prior and Informed Consent (FPIC) of Indigenous Peoples. [Nepal] Draft National Implementation Guidelines for FPIC of Indigenous Peoples. WWF-Nepal. Prepared by GoN National Foundation for Development of Indigenous Nationalities. Kathmandu.
- NWCF (2019). Water Scarcity: Nepal Country Snapshot. Nepal Water Conservation Foundation. Kathmandu. (May 2019).
- NWEDC (2022): NWEDC Response to Oxfam International regarding Comments on the Draft Research Report dated August 7, 2022.

Oxfam (2017): Briefing Paper: Testing Community Consent: Tullow Oil project in Kenya. November 2017.

Project DFA (2018): A Framework Agreement for Consensus Agreement Relating to Community Demands Presented by the UT-1 FPIC and IPP Working Group (Signed at Battar, Nuwakot on October 30, 2018).

Project EIA (2011): Summary of Environmental Impact Assessment Public Hearing, 11 November 2011. NWEDC. Summary prepared by Jade Consult. Kathmandu, 2011.

Project EIA (2012): Upper Trishuli-1 Hydroelectric Project (216 MW): Environmental Impact Assessment (EIA) Study Report Submitted by NWEDC to the Nepal Ministry of Energy, Department of Electricity Development. Kathmandu, 2012.

Project ESIA (2014): Complementary Social Baseline: Supplemental Environmental and Social Impact Assessment, Upper Trishuli-1 Hydropower Project. NWEDC. Report prepared by the Nepal Environmental and Scientific Services Pvt Ltd (NESS). Kathmandu, December 2014.

Project ESIA (2018): Environment and Social Impact Assessment Part 1, 2, 3 and 4 (June 2018) and the Updated Non-Technical Project ESIA Addenda (March 2018). NWEDC. Prepared by ERM. Kathmandu.

Project GAP (2018): Draft Gender Action Plan: Upper Trishuli -1 Hydropower Project (part of the updated Social Impact Management Framework) Consultation. NWEDC. Prepared by ERM. Kathmandu, March 2018.

Project LALRP (2018): Land Acquisition and Livelihood Restoration Plan. NWEDC (Prepared by ERM), Kathmandu, June 2018.

Project IPP (2018): Indigenous Peoples Plan. NWEDC. Prepared by ERM and CCCS. Kathmandu, December 2018.

Project SEP-GRM (2018): Stakeholder Engagement Plan and Grievance Redressal Mechanism. NWEDC. Prepared by ERM. Kathmandu, June 2018.

Project TPA (2018): Tri-Partite Agreement for the Project IPP Implementation: Mutual Cooperation Agreement. (Signed at Battar, Nuwakot on November 1, 2018).

Rai, Navin K., M. B. Thapa (1993): Indigenous Pasture Management in High-Altitude Nepal: A Review. HMG Ministry of Agriculture/ Winrock International, Kathmandu.

Salcito, Kendyl (2020): FPIC at the IFC: How Performance Standard 7 Could Better Protect Indigenous Peoples and Uphold Human Rights, Nomogaia, October 2020.

Sunuwar, Dev Kumar (2022): *Hydroelectric Development Violates Human Rights on Nepal's Likhu River*. In Cultural Survival, Newsletter January 2022.

Tamang, Mukta S. Tamang (2009) *Tamang Activism, History, and Territorial Consciousness*. In Ethnic activism and civil society in South Asia. David N. Gellner Editor. Sage Publications, New Delhi, 2009 Chapter 10 pp. 269-290.

Tamang, Mukta S. (2016): *Concerns and Expectations of the Indigenous Peoples during the Earthquake Reconstruction and Rehabilitation*. Paper read at a Conference organized by the NFDIN, Kathmandu, 24 May 2016.

Tamang, Mukta S., Dhanendra V. Shakya, Meeta S. Pradhan, Yogendra B. Gurung and Balkrishna Mabuhang (2020). Community Resilience Capacity: A Study on Nepal's 2015 Earthquake and Aftermath. Tribhuvan University, Kathmandu.

UNHRC (2018): Expert Mechanism on the Rights of Indigenous Peoples: Study of the Expert Mechanism on the Rights of Indigenous Peoples. UN Human Rights Commission, Geneva, July 2018.

World Bank (2000): Dams and Development: A new Framework for Decision-Making (A Report of the World Commission on Dams). Washington, DC., November 2000.

World Bank (2003): Seeking a Better Balance: The World Bank and Extractive Industries. Washington, DC.

World Bank (2009a). Benefits Sharing and Hydropower: Enhancing Development Benefits of Hydropower Investment Through an Operational Framework – Concept Note. The World Bank, October 2009.

World Bank (2009b). Enhancing Development Benefits to Local Communities in Hydropower Projects, Technical Workshop Transcript, June 26, 2008, Washington, DC. The World Bank. 2009.

World Bank (2011): Benefit Sharing and Hydropower: Enhancing Development Benefits of Hydropower Investments Through an Operational Framework. Final Synthesis Report. Washington, DC., December 2011.

World Bank (2017): The World Bank Environmental and Social Framework. IBRD/WB, Washington

Annexes

ANNEX 1: RESEARCH METHODOLOGY

Review of Literature: Approximately 130 documents -reports, articles, book chapters, thesis, etc., including those in the Nepali language - were reviewed (see Literature Cited above). Of them, 18 key documents were used as the secondary sources of data and information (see Annex 2: Documents Reviewed).

In particular, supplementary secondary data was captured from the following five empirical studies conducted in the administrative district of Rasuwa where the Project is located. These empirical studies provide disaggregated data by social groups based on first-hand field research using qualitative assessments and quantitative surveys.

2017: The Lahurnip Study. This Study documented the lack of FPIC (prior to October 2018) of the Project-Affected Tamang. Conducting a field-based assessment of the Project, the Study “highlighted key concerns from communities related to inadequate consultation and engagement in decision making” and that the Company was violating the GoN rules as well as the Lender (IFC) operational policies on Indigenous Peoples. The Lahurnip urged the Company to comply with Nepal’s domestic legislation and the lender operational policies by acquiring the FPIC from the Project-Affected Communities.

2018 Food Security Article: A team of researchers ¹³⁷ prepared an article on the impact of climate change on the Tamang communities based on a qualitative, in-depth field data collection in five specific sites in Rasuwa ¹³⁸ in September 2016.

2019: Mahidol University Thesis. ¹³⁹ This thesis was based on fieldwork conducted in Hakubesi, the settlement most severely impacted by the Project land acquisition and physical displacement. Drawing on primary data from in-depth interviews and field research as well as secondary data, this thesis concludes that hydropower development in Nepal violates the rights of the Indigenous Peoples. The study focuses on the events surrounding the dam and the adjacent village during the pre-implementation stage of the Project, from conception to mid-2018.

2020: Martin Chautari Article: ¹⁴⁰ This article based on a field study at Hakubesi documents at length the hardships faced by residents of Hakubesi during and after the 2015 Earthquake as well as the challenges faced by the GoN to carry out the earthquake damage assessment, rescue, relief, and reconstruction.

2020 Tribhuvan University Study: The field-based study, ¹⁴¹ used quantitative surveys and qualitative assessments of a larger geographical region (covering Rasuwa and the thirteen other earthquakes hardest hit districts ¹⁴²). This study contains empirical data on the current status of gender equality and social inclusion during and following the earthquake disaster. It contains disaggregated data by various social groups, including the numerically predominant Tamang of the region. It documents a disproportionate impact of the earthquake on, and a lower level of relief and reconstruction assistance to, the Tamang Indigenous Peoples.

Key Stakeholder Consultation: A total of 20 institutions/ organizations were identified (see Annex 4 for the detailed list of contacts and communication).

Fourteen key institutions were identified for interviews. ¹⁴³ Contacts with responsible staff in these institutions were established. A number of these institutions were provided a briefing by the Research Team on the Research on the implementation of FPIC in the Project area. Meetings – face-to-face and virtual – were held with a number of these institutions.

137 A team of five researchers, led by James Merrey (Merrey et. al. 2018) prepared this article.

138 Gatlang, Goljung, Chilime, Thuman, and Ghrey); Ghrey is one of the Project-affected settlements.

139 Mark Anthony Ventura Ambay. *Dammed: Hydropower Development Impacts on Indigenous Peoples Rights in Nepal* (2019) (2019) Field research for this thesis was conducted in April and May of 2019.

140 Rukh Gurung (2020). Martin Chautari is a research organization based in Nepal that conducts research on cross-cutting themes of gender and social inclusion. The field research for the Article was conducted in Hakubesi during the post-Earthquake period between December 2015 and May 2016. This was supplemented by second phase field research in March 2018.

141 Mukta S. Tamang et. al. (2020). The Central Department of Anthropology conducted a study, *Community Resilience Capacity: A Study on Nepal's 2015 Earthquake and Aftermath*. The study was carried out in 2018 – 2019.

142 Rasuwa, Bhaktapur, Dhading, Dolakha, Gorkha, Kathmandu, Kavrepalanchowk, Lalitpur, Makawanpur, Nuwakot, Okhaldhunga, Ramechhap, Sindhuli, and Sindhupalchhok.

143 NWEDC; IFC, ADB, ILO – Nepal, NFDIN, NEFIN (a Nepal umbrella organization of the Indigenous Peoples), Lahurnip, WWF-Nepal, CSRC, ERM (consultancy company that prepared the ESIA, IPP, GAP and LALRP), NESS (consultancy company that prepared SEIA (2012-16), RINA (Registro Italiano Navale hired by the lenders as the Independent Environment and Social Advisor for PROJECT), Oxfam Nepal and the Nepal REDD Implementation Centre. AIIB, ERM and RINA had no offices in Nepal. FMO Nepal was engaged in the research since its inception and design phases.

Focus Group Discussion: For primary data collection, the Research relied on focus group discussions (henceforth, focus groups) and key informant interviews.

The focus groups were guided by the data and information gathered during the initial research phase, particularly from the literature review as well as the review of gender disaggregated data. Focus Groups were conducted in bilingual Nepali and Tamang languages, for elderly who do not comprehend Nepali, to ensure that participants can air their views clearly.

The Research team employed focus group methodology to conduct intensive group discussions, often in mixed groups of men and women (10 in number; 238 participants; 150 men and 88 women; see Annex 5 for list of research participants.). The focus groups were organized in the Project Highly Affected Villages, ¹⁴⁴ as well as adjoining settlements ¹⁴⁵ within the Project AoI (see Map 4). The focus groups in the adjoining settlements were to assess the extent of the Project AOI as well as to understand the larger impacts of hydropower projects on the Tamang of Rasuwa.

Key Informant Interviews: The key informant interviews (henceforth, interviews) were employed to validate the information gathered during the focus groups. They were also applied to gather additional secondary data and in particular to understand the degree and extent of physical and/or economic displacement, including restriction to or loss of access to natural resources and loss of employment. Interviews also provided an analysis of impacts based on gender and age cohorts (e.g., elders, youth).

Key informants were identified during the focus groups (see Annex 5 for list of participants). While the interviews (27 in number; 11 women and 16 men; see Annex 5 for list of research participants) were conducted in Nepali and Tamang languages, the interviews with elderly women informants were conducted in the Tamang language. The key informants were identified both from the Highly Impacted Villages, ¹⁴⁶ as well as from the adjoining settlements (see Map 4). ¹⁴⁷

Disaggregated Gender Analysis: The Gender Expert reviewed literature on the Indigenous Peoples and gender issues in Nepal in general and gender, Indigenous Peoples and development projects in particular, including a number of works by the Gender Specialist herself. ¹⁴⁸ The review included the Project Draft Gender Action Plan (part of the Social Impact Management Update, 2018) and the 2019 article on Indigenous adult women, learning and social justice: Challenging deficit discourses in the current policy environment. ¹⁴⁹

The Gender Expert conducted both the focus groups and the interviews with key women groups/ key women informants (see Annex 5 for list of participants). The Gender Expert was assisted by an experienced bilingual woman community mobilizer to conduct the focus groups and interviews in Tamang language.

The disaggregated Gender Analysis aimed to gather, collate, and document gender-disaggregated data and information. This analysis, carried out through the literature review, was supplemented by conducting the focus group discussions and the interviews with women informants. The key focus of the gender analysis was to differentiate the socio-economic impacts on women, women roles in decision-making, etc. (see Annex 5: Gender Impacts Fieldnotes Summary).

The 2017 Lahurnip Study had recommended to “ensure both quantity and quality with respect to the representation of women in project-related consultations and decision-making processes. Women’s concerns should be clearly reflected in the mitigation plans/measures.” The Study stated the research should “take into account women’s crucial role in the management of agriculture and forest resources. The distinct impacts of land (and forest) acquisition on women should be documented and addressed properly to make sure women’s status does not deteriorate further.”

The disaggregated gender analysis was to identify potential gender-specific measures that should have been taken during the FPIC negotiation process, which was also one of the recommendations by the Lahurnip study. It included analysis of the risks and impacts and to determine mitigation measures to avoid or reduce such impacts and risks. It included questions about how men and women were being affected differently by the Project and whether any benefits were accruing differently to women, and those impacts might have any future consequences on family dynamics. The women informants were also asked about their degree of participation in the Project consultations and FPIC processes. The Gender Analysis structured the data as follows:

144 1 IPP Executive Board; 1 Mailung (women and men); 3 Hakubesi (1 women and 2 with men only).

145 1 Sano Bharkhu and Thulo Bharkhu immediately adjoining the Project dam site); 1 Ghrey (vertically above the Project dam site); 2 Gatlang (1 women and 1 man; on subject of larger impacts of hydropower projects in Rasuwa on the Tamang.

146 4 Hakubesi (4 women); 1 Tiru (man); 1 Gogane (man); 1 Nyeshing (man); 1 Local Government (man)

147 2 Syabrubesi (1 women; 1 men); 1 Gatlang (men)

148 Kailash Rani Rai: An edited volume on the Social, Cultural and Political Contexts of Indigenous Women of Nepal 2016; articles on The Political Participation and Indigenous Women in Nepal 2020; and Indigenous Women Movement in Nepal 2017.

149 Acharya et. al. (2019).

1. Gender disaggregated data and information.
2. Gender-specific impacts, including economic displacement and health impacts.
3. Gender roles and disparities in the decision-making process.

Validation Workshop: Two workshops (1 in Project Area and 1 in Kathmandu) were organized to validate the findings from the focus groups and interviews and were conducted with representatives from key stakeholder groups (see Annex 5 for list of participants). During these workshops, the preliminary findings of the Research were shared and additional information was solicited.

The Project Area Validation Workshop (in bilingual Nepali and Tamang languages) was conducted in the settlement (Hakubesi ¹⁵⁰) adjoining the Project Dam site on October 31, 2021, with the Project-Affected Tamang stakeholders. A total of forty- three participants, both men and women, including the members of the Project Indigenous Peoples Plan Governing Board, IPP Executive Board as well as one representative of the elected Local Government (see Annex 5 for the participant list) attended.

The Second Validation Workshop (in bilingual English and Nepali) was held for the Kathmandu-level Project stakeholders on November 3, 2021. This Workshop was attended by twenty-one participants representing the IPP Governing Board and IPP Executive Board, NEFIN, IFC, the GoN agencies (including the GoN National Foundation for Development of Indigenous Nationalities), Human Rights organizations, INGOs, etc. (see Annex 5 for the participant list).

¹⁵⁰ Initially planned to be held in the district headquarters (Dhunche), the validation workshop was held at Hakubesi at the behest of the Project IPP Executive Board.

ANNEX 2: DOCUMENTS REVIEWED FOR THE RESEARCH STUDY

1. [Project] Indigenous Peoples Plan (December 2018): Final version of this Project IPP document and its earlier versions (June 2018, March 18, etc.) are the primary source of information for the FPIC process undertaken in the Project.
2. [Project] Tri-Partite Agreement for the Project IPP Implementation (signed on November 1, 2018). This is a legally binding “Mutual Cooperation Agreement” among the Project parties (the AJAC, the local Government representatives, and the Company).
3. [Project] Land Acquisition and Livelihood Restoration Plan (June 2018). This document is key for the FPIC process to assess the scale and degree of involuntary resettlement of the Tamang Indigenous Peoples.
4. [Project] Stakeholder Engagement Plan and Grievance Redressal Mechanism (June 2018).
5. [Project] Environment and Social Impact Assessment Part 1, 2, 3 and 4 (June 2018) and the Updated Non-Technical Project ESIA Addenda (March 2018).
6. [Project] Draft Local Benefit Sharing Plan (for the Project area) (March 2018).
7. (Project) Draft Gender Action Plan: Social Impact Management Update (March 2018): This document proposes to address the gender disparity issues in the Project context.
8. ADB Initial Poverty and Social Analysis [of the Project Area] (March 2019).
9. Lahurnip. Documenting the Lack of FPIC: In 2017, Lahurnip conducted a field-based assessment of the Project. Study on the Impact of the Upper Trishuli 216 MW Project on the Indigenous Communities of Rasuwa (2017): This Study provided the baseline for this Oxfam International Research.
10. IFC: Policy and Performance Standards on Environmental and Social Sustainability (2012), including the IFC’s Access to Information Policy (2012). In particular PS 1 - Assessment and Management of Environmental and Social Risks and Impacts; PS 4 - Community Health, Safety and Security; PS 5 - Land Acquisition and Involuntary Resettlement; PS 6 - Biodiversity Conservation and Sustainable Management of Living Natural Resources; PS 7 - Indigenous Peoples and PS 8 - Cultural Heritage. These Performance Standards stipulate the mandatory requirements under to measure the FPIC implementation in the context of Project.
11. ADB Safeguard Policy Statement (June 2009), including Safeguard Requirements 1: Environment, Safeguard Requirements 2: Involuntary Resettlement and Safeguard Requirements 3: Indigenous Peoples.
12. AIIB: Environmental and Social Framework (amended February 2019), including the Environmental and Social Standard 1: Environmental and Social Assessment and Management, Environmental and Social Standard 2: Involuntary Resettlement and Environmental and Social Standard 3: Indigenous Peoples.
13. IFC: Environment and Social Action Plan (ESAP; 2019): This document outlines the conditions that the Company is required to meet before the Project Financial Closure date, including putting in place community grievance redress mechanism, addressing grievances related to the religious trust land claims, implementing supplemental Land Acquisition measures, seeking FPIC of the community forest user group impacted by the transmission line.
14. IFC: Cumulative Impact Assessment and Management: Hydropower Development in the Trishuli River Basin (May 2020). This report also provides the larger context of the hydropower development in the TRB.
15. NWEDC Response to Oxfam International regarding Comments on the Draft Research Report (dated August 7, 2022).
16. MDB (IFC as well as ADB and FMO) Response to Oxfam International regarding Comments on the Draft Research Report (dated July 8, 2022).
17. AIIB Comments on Oxfam Report concerning “Free, Prior and Informed Consent in The Nepal – Upper Trishuli-1 Hydroelectric Project: An Independent Assessment on Compliance with The IFC Performance Standards (dated July 14, 2022).
18. Oxfam Briefing Paper: Testing Community Consent: Tullow Oil project in Kenya (November 2017). This report provides a review of the FPIC implementation in an IFC project.
19. Nomogaia – FPIC at the IFC: How Performance Standard 7 Could Better Protect Indigenous Peoples and Uphold Human Rights (October 2020). This is a global review of the IFC implementation of the FPIC world-wide.
20. ILO Convention # 169 on Indigenous and Tribal People (the Legally-binding international Convention ratified by Nepal on August 22, 2007 which recognizes the rights of Indigenous Peoples to FPIC) and ILO-Nepal - Draft National Action Plan for the Implementation of ILO 169 (May 2015).

21. WWF-Nepal/ Nepal National Foundation for Development of Indigenous Nationalities: Draft National Implementation Guidelines for FPIC of Indigenous Peoples (2019).
22. World Bank: Benefit Sharing and Hydropower: Enhancing Development Benefits of Hydropower Investments Through an Operational Framework. Final Synthesis Report (December 2011).
23. World Bank: Dams and Development: A new Framework for Decision-Making (A Report of the World Commission on Dams) (November 2000).
24. World Bank: Seeking a Better Balance: The World Bank and Extractive Industries (2003).
25. Mott MacDonald. Enhancing Development Benefits to Local Communities from Hydropower Development. A Literature Review, May 2009. The World Bank. 2009.
26. The World Bank. Benefits Sharing and Hydropower: Enhancing Development Benefits of Hydropower Investment Through an Operational Framework – Concept Note. The World Bank. 2009.
27. The World Bank. Enhancing Development Benefits to Local Communities in Hydropower Projects, Technical Workshop Transcript, June 26, 2008, Washington, DC. The World Bank. 2009.
28. The World Bank. Benefit Sharing and Hydropower: Enhancing Development Benefits of Hydropower Investments Through an Operational Framework: Concept Note (October 2009).
29. Mukta S. Tamang: “Tamang Activism, History, and Territorial Consciousness” (a chapter in an academic book edited by Oxford University professor) (2009). This document provides ethnographic and historical data on the Tamang Indigenous Peoples.
30. Mark Anthony Ventura Ambay. *Dammed: Hydropower Development Impacts on Indigenous Peoples Rights in Nepal (2019)*. Mahidol University (an autonomous research institute in Thailand). MA Thesis. Field research for this thesis was conducted in the Project-affected Hakubesi Village in April and May of 2019.
31. Rukh Gurung. [Nepal] State Response to the Aftermath of 2015 Earthquake in Rasuwa.” (2020) Research conducted by Martin Chautari (a research organization based in Nepal that conducts research on cross-cutting themes of gender and social inclusion). In *Study of Society* [Nepali], Vol. 15, pp 33-58, 2020. The field research for the Article was conducted in Hakubesi during the post-Earthquake period between December 2015 and May 2016. This was supplemented by second phase field research in March 2018.
32. Mukta S. Tamang, Dhanendra V. Shakya, Meeta S. Pradhan, Yogendra B. Gurung and Balkrishna Mabuhang.” Community Resilience Capacity: A Study on Nepal’s 2015 Earthquake and Aftermath. (2020) The Study, carried out in 2018 – 2019, provides detailed data on the impacts of 2015 Earthquake on the Project-Affected Tamang.
33. Douglas James Merrey, Abid Hussain, Deepak Dorje Tamang, Bhuwan Thapa, Anjal Prakash (2018). *Evolving high altitude livelihoods and climate change: a study from Rasuwa District, Nepal*. In Food Security (2018) 10:1055–1071. This article on the impact based on a qualitative, in-depth field data collection in five specific sites in Rasuwa (Gatlang, Goljung, Chilime, Thuman, and Ghrey) in September 2016; Ghrey is one of the Project-affected settlements

ANNEX 3: KEY STAKEHOLDER INSTITUTIONS FOR THE RESEARCH STUDY

3.1. PROJECT SPONSORS

- 3.1.1. Nepal Water & Energy Development Company (NWEDC)/ IPP Coordination staff/Deputy Project Manager Ganesh Neupane/ Social Manager Madhu Khaniya / Environment and Social Manager Dipesh Bista
- 3.1.2. Nepal Electricity Authority/ Managing Director Kulman Singh Ghising; signed the Power Purchase Agreement with the NWEDC could not attend the UT-1 Validation Workshop in Kathmandu due to other commitments)
- 3.1.3. Nepal Federal Ministry of Energy/ Dept of Electricity Development; signed the Project Development Agreement with the NWEDC (did not respond to the Research team meeting request)

3.2. MULTILATERAL/ BILATERAL DEVELOPMENT BANKS

- 3.2.1. IFC/ Asia Advisory Lead of Environment, Social and Governance Kate Lazarus/ Senior Social Development Specialist Sustainability and Gender Solutions Department Jason Jacques Paiement/ Nepal CMU Operations Santosh Pandey/ Part-Time Consultant Dr. Kunshang Lama/ Part-Time Consultant Ms. Norsang Tamang Hakubesi, Rasuwa
- 3.2.2. ADB/ Principal Social Safeguards Specialist Jocelyn Erlinda S. Munsayac/ Principal Environmental Safeguards Specialist Aida Khalil Gomez
- 3.2.3. AIIB/ Prakash Bajoria (Beijing)
- 3.2.4. FMO the Hague, Netherlands/ Senior Environment and Social Advisor Shibani Bose

3.3. INDIGENOUS PEOPLES ORGANIZATIONS/ CIVIL SOCIETY

- 3.3.1. NEFIN/ NEFIN CCPP/ Chair of Federal Secretariat Jagat Baram/ Vice-Chair Gobinda Chhantyal/ Climate Change Specialist Tunga Bhadra/ Secretary Lakpa Dhokpya
- 3.3.2. LAHURNIP/ Shankar Limbu, Bhim Rai, Durga Yamphu/ Consultant Subha Ghale
- 3.3.3. NFDIN (National Foundation for Development of Indigenous Nationalities), Ministry of Local Government)/ Vice-Chair Gokul P Gharti/ Ram Maden
- 3.3.4. CSRC (Community Self-Reliance Centre) Nepal/ Jagat Basnet
- 3.3.5. Oxfam Nepal/ Prakash Kafle

3.4. OTHERS

- 3.4.1. Nepal Human Rights Council (did not respond to the Research team meeting request)
- 3.4.2. Federal Ministry of Law (did not respond to the Research team meeting request)
- 3.4.3. Federal Ministry of Local Government (did not respond to the Research team meeting request)
- 3.4.4. Nepal National Planning Commission (did not respond to the Research team meeting request)
- 3.4.5. Nepal Water and Energy Commission Secretariat (did not respond to the Research team meeting request)
- 3.4.6. Nepal REDD Implementation Centre, Federal Ministry of Forests and Environment/ Undersecretary GIS Shankar Adhikari / Information Officer Undersecretary Budget and Program Yajnamurti Khanal
- 3.4.7. ILO Nepal/ Saloman Rajbanshi/ Research Consultant for ILO 169 Dr. Mukta Lama / Research Consultant Dr. Krishna Bhattachan
- 3.4.8. ERM (Environmental Resources Management; prepared the UT1 ESIA IPP LRP (no office in Nepal)
- 3.4.9. Nepal Environmental & Scientific Services Pvt Ltd (NESS); prepared SIA 2012-16/ Salil Devkota
- 3.4.10. WWF Nepal/ Country Representative Dr. Ghanshyam Gurung/ Head Policy and Governance Program Ekraj Sigdel / Environmental and Social Safeguards Specialist Biswash Praja

ANNEX 4: RESEARCH STUDY PARTICIPANTS

LIST OF PARTICIPANTS

MAILUNG: 17/10/2021

1. Iman Tamang (M)
2. Suryaman Tamang (M)
3. Nurpha Tamang (M)
4. Buddhi B. Tamang (M)
5. Sabina Kumari Tamang (F)
6. Kanchhimaya Tamang (F)
7. Tirtha B. Tamang (M)
8. Sharmila Tamang (F)
9. Mingma Tamang (F)
10. Saraswati Tamang (F)
11. Sukadev Tamang (M)
12. Shaili Maya Tamang (F)
13. Shanti Maya Tamang (F)
14. Chhomo Maya Tamang (F)
15. Rajman Tamang (M)
16. Amrit Tamang (M)
17. Tilak Tamang (M)

HAKUBESI KAKSING: 18/10/2021

1. Mendo Yanjen Tamang (F)
2. Mendo Tamang (F)
3. Pemba Shanmo Tamang (F)
4. Lajiwanmo Tamang (F)
5. Lajiwanmo Tamang (F)
6. Shedekhi Tamang (F)
7. Buti Tamang (F)
8. Shrimaya Tamang (F)
9. Faijom Tamang (F)
10. Buti Yalmo Tamang (F)
11. Kanchhi Maya Tamang (F)
12. Sershang Tamang (F)
13. Norsang Tamang (F)
14. Dekhi Tamang (F)
15. Dawa Dekhi Tamang (F)
16. Chhendol Tamang (F)
17. Chhiring Dolmu Tamang (F)
18. Chhemmin Tamang (F)
19. Mendo Shan Tamang (F)
20. Jomchi Tamang (F)
21. Maya Devi Tamang (F)
22. Bima Tamang (F)
23. Sonam Tamang (F)
24. Phurpa Lhamo Tamang (F)
25. Mijom Tamang (F)
26. Asmita Tamang (F)

HAKUBESI PHULBARI: 18/10/2021

1. Lhayalmo Tamang (F)
2. Chengasanmo Tamang (F)
3. Buddimaya Tamang (F)
4. Kochung Tamang (F)
5. Mendo Buti Tamang (F)
6. Sonam Buti Tamang (F)
7. Dekhi Tamang (F)
8. Yamo Tamang (F)
9. Kaisang Chhomo Tamang (F)
10. Pemba Chhewang Tamang (M)
11. Kanchha Tamang (M)
12. Yukesh Tamang (M)
13. Chyupsi Tamang (F)
14. Shor Tamang (M)
15. Pasang Dindup Tamang (M)
16. Debi Tamang (F)
17. Nurpu Tamang (M)
18. Saraswati Tamang (F)
19. Kami Tamang (M)
20. Chhomo Tamang (F)
21. Kami Dawa Tamang (M)
22. Purna Sing Tamang (M)

HAKUBESI THANKU: 18/10/2021

1. Bimala Tamang (F)
2. Shirimaya Tamang (F)
3. Laji Sanmo Tamang (F)
4. Sermendo Tamang (F)
5. Lamjung Tamang (F)
6. Lachhin Tamang (F)
7. Gobinda Tamang (M)
8. Jit B. Tamang (M)
9. Tenjen Tamang (M)
10. Dawa Kami Tamang (M)
11. Rajan Tamang (M)
12. Nirmaya Tamang (F)
13. Debi Mendo Tamang (F)
14. Serchhewang Tamang (F)
15. Nimbuti Tamang (F)
16. Karsang Chhomo Tamang (F)
17. Man B. Tamang (M)
18. Kipa Tamang (M)
19. Buddiman Tamang (M)
20. Layul Tamang (M)
21. Suresh Tamang (M)
22. Satprasat Tamang (M)
23. Dipa Tamang (F)
24. Bishal Tamang (M)
25. Rani Mendo Tamang (F)

HAKUBESI KAKSING: 18/10/2021

1. Karsang Tamang (M)
2. Dindup Tamang (M)
3. Damai Sing Tamang (M)
4. Dawa Keshang Tamang (M)
5. Bahadur Tamang (M)
6. Kami Dorje Tamang (M)
7. Lakpa Tamang (M)
8. Suntala B.K. (M)
9. Ganesh Tamang (M)
10. Krishna B. Tamang (M)
11. Ngawang Tamang (M)
12. Karsang Namgyal Tamang (M)
13. Chhekte Tamang (M)
14. Kipa Chhiring Tamang (M)
15. Nimgyal Tamang (M)
16. Lorke B.K. (M)
17. Jureli B.K. (M)

BHARKHU THULO-SANO: 19/10/2021

1. Aang Dawa Tamang (M)
2. Jyal Chhiring Tamang (M)
3. Ramesh Tamang (M)
4. Kebi Tamang (M)
5. Jyal Dorje Tamang (M)
6. Tempa Risang Tamang (M)
7. Lakpa Tempa Tamang (M)
8. Anil Blon (M)
9. Pema Dorje Tamang (M)
10. Lakpa Rinjen Tamang (M)
11. Nima Gyaljen Tamang (M)
12. Kisha Wanju Tamang (M)
13. Sonam Tamang (M)
14. Chhowang Namgel Ghale (M)
15. Tashi Phinjo Tamang (M)
16. Shant B. Tamang (M)
17. Kanchha Tamang (M)
18. Kakyan Tamang (M)
19. Phurpa Shingi Tamang (M)
20. Kami Sing Tamang (M)
21. Samden Tamang (M)
22. Namgyal Tamang (M)
23. Kanchha Tamang (M)
24. Kami Chhowang Tamang (M)
25. Gyalchhiring Tamang (M)

GHREY: 21/10/2021

1. Nabina Tamang (F)
2. Dawa Norchu Tamang (M)
3. Dawa Tamang (M)

4. Ram B. Tamang (M)
5. Phurpa Tamang (M)
6. Pasang Gauchan (M)
7. Pemba Chhiring Tamang (M)
8. Sailesh Tamang (M)
9. Kanchha B. Tamang (M)
10. Nima Chhele Tamang (M)
11. Saroj Tamang (M)
12. Pemba Gomjen Tamang (M)
13. Nima Norche Tamang (M)
14. Nima Tamang (M)
15. Binod Tamang (M)
16. Dawa Pemba Tamang (M)
17. Karma Tamang (M)
18. Lhagen Tamang (M)
19. Dawa Mingmar Tamang (M)
20. Memwar Tamang (M)
21. Pasang Chhiring Tamang (M)
22. Lakpa Dorje Tamang (M)
23. Raju Tamang (M)
24. Minmar Dorje Tamang (M)
25. Phurpa Dawa Tamang (M)
26. Abinash Tamang (M)
27. Lakpa Tamang (F)
28. Washag Tamang (F)
29. Nirshang Tamang (F)
30. Pasang Chhomo Tamang (F)
31. Thulo Kanchhi Tamang (F)
32. Dawa Dolmo Tamang (F)
33. Sershang Tamang (F)
34. Sangita Tamang (F)
35. Prajol Tamang (M)
36. Pemba Norsang Tamang (F)

THULO HAKU: 22/10/2021

1. Prem Lama (M)
2. Kishan Tamang (M)
3. Pasang Tamang (M)
4. Som B. Tamang

GOGANE/ TIRU: 23/10/2021

1. Chhekte Tamang (M)
2. Nim Kaisang Tamang (M)
3. Nim Darke Tamang (M)
4. Wangyashi Tamang (M)
5. Man Bahadur Tamang (M)
6. Dharma Bahadur Tamang (M)
7. Upreng Tamang (M)
8. Karchyung Tamang (M)
9. Phurpa Lama Tamang (F)

10. Sonam Tamang (M)
11. Kep Tshering Tamang (M)
12. Kaji Tamang (M)
13. Kaji Tamang (M)
14. Nir Maya Tamang (F)
15. Laji Wangmo Tamang (M)
16. Dawa Butti Tamang (F)
17. Yanjen Tamang (F)
18. Khumjyo Tamang (F)
19. Chupsi Tamang (F)
20. Suna Wangdi Tamang (M)
21. Dilli Bahadur Tamang (M)
22. Nim Dindu Tamang (M)
23. Saat Prasad Tamang (M)
24. Lawang Tamang (M)
25. Phool Maya Tamang (F)
26. Pasang Norbu Tamang (M)
27. Dawa Keshang Tamang (M)
28. Tharjom Tamang (F)
29. Kanchha Lama (M)
30. Ram Tamang (M)
31. Layul Tamang (M)
32. Tshering Nurpu Tamang (M)
33. Karbo Tamang (M)
34. Ramesh Tamang (M)
35. Kami Dawa Tamang (M)
36. Shersang Tamang (F)
37. Nurpu Tamang (M)
38. Tenjen Tamang (M)
39. Karshang Tamang (F)
40. Fejom Tamang (F)
41. Piwa Tamang (F)
42. Krishna Maya Tamang (F)
43. Laji Sangmo Tamang (F)

HAKUBESI VALIDATION WORKSHOP: 22/10/2021

44. Kami Dawa Tamang (M)
45. Kep Chhiring Tamang (M)
46. Kipa Chhiring Tamang (M)
47. Upreng Tamang (M)
48. Dawa Kami Tamang (M)
49. Norsang Tamang (F)
50. Chhekte Tamang (M)
51. Dawa Keshang Tamang (M)
52. Sonam Tamang (M)
53. Kami B. Tamang (M)
54. Chupshi Tamang (M)
55. Pem Chhowang Tamang (M)
56. Kami Chhowang Tamang (M)
57. Chhiring Nurpu Tamang (M)

58. Rajan Tamang (M)
59. Man B. Tamang (M)
60. Nangsi Tamang (F)
61. Lari Mende Tamang (F)
62. Karma Norke Tamang (M)
63. Nima Tamang (M)
64. Dawa kami Tamang (M)
65. Raju Tamang (M)

VALIDATION WORKSHOP, KATHMANDU: 03/11/2021

1. Jagat Basnet (M)
2. Prakash Kafle (M)
3. Gokul Prasad Gharti (M)
4. Kunshang Lama (M)
5. Durga Rai (M)
6. Bhim Rai (M)
7. Ram Maden (M)
8. Rajendra Maharajan (M)
9. Mukta S. Lama (M)
10. Biswash Chepang (M)
11. Lakpa Sherpa (M)
12. Salil Devkota (M)
13. Gobinda Chhantyal (M)
14. Man Bahadur Tamang (M)
15. Manoj Rai (M)
16. Subha Ghale (F)
17. Navin Rai (M)
18. Kailash Rai (F)
19. Deepak Tamang (M)
20. Unamaya Tamang (F)
21. Chhiring Darke (M)

माथिल्लो त्रिशुली-२१६ आयोजनाको लैंगिक पक्ष: फिल्ड नोट संक्षेप

नीतिगत रूपमा आयोजनाले महिलाका अवस्था साविकभन्दा खस्कन नदिने सुनिश्चित गर्नुपर्ने भनिएपनि प्रभावित क्षेत्रका आदिवासी तामाङ महिलाहरुको सहज जनजीविका सुनिश्चित गरिएको छैन । आयोजना सञ्चालनको पूर्वतयारीको क्रमदेखि पछिल्लो विकासक्रमसम्म आइपुग्दासमेत महिलाका समस्या र सरोकारहरुलाई ध्यान दिइएको छैन । उनीहरु आयोजनासम्बन्धी महत्वपूर्ण र गम्भीर विषयहरुमा हुने निर्णय प्रक्रिया र निर्णायक भूमिकाभन्दा बाहिर छन् । आयोजनाले उपलब्ध गराउनुपर्ने वा आयोजनासँग उपलब्ध भएको कुनैपनि खालको व्यवस्था खासगरी आर्थिक क्रियाकलाप र लाभमाथिको पहुँच र त्यसको भोगचलनको सम्भावनाबाट पनि उनीहरु टाढा छन् ।

गाउँ-गाउँसम्म पुर्याउने कृषि तथा ग्रामीण सडक निर्माण तथा विस्तार कार्यले स्थानीय तथा बाह्य बजारसम्मको उनीहरुको पहुँचमा थोरै सहजता ल्याएको छ । स्थानीय कृषि तथा पशुपंक्षीजन्य उत्पादनदेखि बिक्री बितरणको काममा महिलाहरु आफै संलग्न हुन सक्दा त्यसवापत आउने रकममा उनीहरुको नियन्त्रण बढ्दै गएको छ । त्यसले परिवारको आधारभूत आवश्यकता धान्ने महिलाका जिम्मेवारी जस्तै खाना, लत्ताकपडा आदिको परिपूर्ति गर्नमा केही सहजपन ल्याएको छ । तर, महिलाहरुको नियन्त्रणमा रहने त्यो रकम असाध्यै थोरै परिमाणमा हुने गरेको छ । मूलतः परिवार धान्नकै लागि कृषि र पशुपालन गर्दै आएका अति प्रभावित क्षेत्रका बासिन्दाहरुमध्ये ८१.१४ प्रतिशतले वर्षको ३ महिना मात्रै पुग्ने खाद्यान्न उत्पादन गर्ने गर्छन् । २.२४ प्रतिशतले मात्रै ९ महिना पुर्याउन सक्छन् । अति प्रभावित क्षेत्रका तामाङ समुदायसँग न खेतीयोग्य र सिचाईयुक्त पर्याप्त जग्गाजमिन छ, न त उद्योग-व्यापारको निमित्त प्रशस्त स्रोत-साधन र थलो नै । आवश्यकताका बस्तु परिपूर्तिकै लागि महिलाहरुले अति सीमित स्रोत साधनमै स्व-उत्पादित खुद्राखुद्री सामानहरु बिक्री गरेर पाएको उक्त रकमले उनीहरुको जनजीविकालाई झिनो सहयोग मात्रै पुर्याउने गरेको छ । यद्यपि सडक निर्माण तथा विस्तार कार्यलाई व्यवस्थित रूपमा गाउँवस्तीसम्म पुर्याउन सकेमा महिलाहरु साना उद्यमी तथा व्यवसायी बन्न सक्ने कुरामा उनीहरु उत्साहित र आशावादी रहेको भेटिए । साथै विकासका पूर्वाधार तथा भौतिक संरचनाहरु स्थानीय सामाजिक-सांस्कृतिक अनकूलताअनुरूप व्यवस्थित रूपमा निर्माण गरिनुपर्ने कुरामा उनीहरु सहमत छन् ।

विकासको पक्षमा रहँदारहँदै पनि तामाङ महिलाहरु २१६ सँग सम्बन्धित विकास निर्माणका कामकाजहरूसँग रुष्ट छन् । आयोजनाले उनीहरुको थातथलोमा जलविद्युत उत्पादन कार्यमार्फत विकास निर्माणको काम गरेवापत 'राम्रो' जनजीविकाको सुनिश्चितता गरिदिने वचन दिएको तर वचन पूरा नगरेको हुँदा आफूहरु ठगिएको महशुस गर्ने गरेका छन् । आयोजना सञ्चालनका निमित्त न्यायोचित क्षतिपूर्ति/मुआब्जा/विकल्प बिना

उनीहरूको थातथलो/पूख्यौली भूमि, प्राकृतिक स्रोत साधन (जल, जमिन, जंगल) भोगचलनमा प्रतिबन्ध र नियन्त्रण लगाइएको छ । मुआब्जा स्वरूप आयोजनाका तर्फबाट कम्पनीले उपलब्ध गराएको निश्चित रकम प्रायः जसो महिलाहरूको हातमा परेन । पूख्यौली बसोबासको थलो गुमाएर पाएको उक्त रकमले अन्यत्र बन्दोबस्त गर्न सकिदैनथियो भन्ने कुरामा उनीहरू जानकार छन् । र, त्यसलाई कहाँ कसरी सदुपयोग गर्ने भनेर उपायहरूको खोजी गर्ने क्रममै राम्रोसँग सोचविचार गर्न नपाउँदै उक्त रकम यत्तिकै सकियो भन्ठान्छन् । आयोजनाले उनीहरूको गाँस, बास र जनजीविकालाई चौतर्फी रूपमा खुम्च्याउँदै लगेको छ । आयोजनाले तामाङहरूसँग सहमति गरेअनुरूप कुनैपनि काम व्यवहारमा नउतारेकोले उनीहरूले आफू ठगिएको महशुस गर्ने गरेका छन् । हाकुबेसीका एक तामाङ महिलाले भन्नुभयो, “पहिले तपाईंहरूलाई हामी हेर्छौं, तपाईंहरूको सबै आवश्यकताका कुरा पूरा गरिदिन्छौं भने । हामी पनि हो त भनेर पत्यायौं, खुरुखुरु जग्गा दिएर पठायौं, अहिले न खेती गर्ने जग्गा छ, न आफू उभिने जमिन छ, न त पशुपालनका लागि चरिचरणको क्षेत्रहरू नै आफ्नो नियन्त्रणमा छन् । आफ्नै आँगन छेउको जंगलमा कुहिएको दाउरा र सुकेको पात लिन जान पनि नपाउने भयौं । उसले गरिदिन्छु भनेको कुरा त कहाँ गयो, गयो” ।

आयोजना अति प्रभावित क्षेत्रका आदिवासी तामाङहरू २०७२ साल (२०१५)को भूकम्पबाट पनि निकै प्रभावित बनेका थिए । आयोजनाकै कारणले अति प्रभावित केही गाउँहरूले त्यसबखत अति आवश्यकीय आपतकालिन राहत पाउन सकेनन् । आयोजना अति प्रभावित क्षेत्रहरू आयोजनाकै जिम्मेवारी हो भन्ने बुझाईलाई सकार्दै सरकारी निकायले ती क्षेत्रलाई आफ्नो जिम्मेवारीको दायराबाट बाहिर राख्यो । गैरसरकारी एवं निजी तवरमा राहत प्रदान गर्नेहरूले पनि उक्त क्षेत्रलाई आयोजनाको दायित्वमै सुम्पिएर प्राथमिकताबाहिर राखे । त्यसबेला आयोजना सञ्चालन गर्ने कम्पनी र आदिवासी तामाङहरूबीचमा जग्गा जमिन लिएवापतको मुआब्जा, घरबारविहिन पारिइएकाहरूको पुनस्थापना, स्वतन्त्र, अग्रिम जानकारीसहितको मञ्जुरीलगायतका विषयमा विवाद चुलिएको थियो । अति प्रभावित क्षेत्रका तामाङ समुदाय र आयोजनाबीचमा रहेको तनावपूर्ण सम्बन्धका कारण विपद्को बेलामा न कम्पनीले राहत वितरण गर्न सक्यो न त समुदायले नै खुशीसाथ कम्पनीले दिनुपर्ने राहत लिने मनसाय देखायो । तामाङको पूख्यौली बसोबासको थलोलाई भूकम्पले तहसनहस पारेपछि उनीहरू विस्थापित बने । तत्काल उपलब्ध हुनुपर्ने अति आवश्यक सेवा तथा सहयोगहरू उनीहरूले एकदमै नगण्य मात्रामा पाए । महिला, पाका र बालबालिकाहरूले त्यसको चरम मार झेले । एक दिनमा एक छाक त्यो पनि आधा पेट खाँदै/खुवाउँदै, परिवारका सदस्यहरूको सुरक्षा र बिग्रदो स्वास्थ्यलाई महिलाहरूले जसोतसो धान्नुपर्यो । भूकम्पका कारण विस्थापित बनेकाहरू अति प्रभावित क्षेत्रका कतिपय तामाङहरू अझै पनि अव्यवस्थित र आपतकालीन काम चलाउ तवरमा बसेकै बस्तीहरूमा बसोबास गरिरहेका छन् । जहाँ शारीरिक एवं मानसिक स्वास्थ्य, स्कूले उमेरकाहरूको शिक्षा, महिला तथा बालबालिकाहरूको सुरक्षा, खाद्य सुरक्षालगायतका कुराहरूको अभावसँगै उनीहरू बसीरहेका छन् । कतिपय परिवारहरू आफ्नो पुरानो थलो फर्केर

पुनस्थापित हुने स्वःप्रयासमा छन् । आयोजनाले अति प्रभावित क्षेत्रका तामाङहरुसँग सम्झौता गरेअनुरूपको कुनैपनि व्यवस्था अहिलेसम्म अभ्यासमा नल्याएको कारण उनीहरुको पुनस्थापना तथा सुरक्षित बसोबासमा समस्या चुलिदै गइरहेको छ । कतिपय त्यस्ता परिवारसँग भएको थोरै जमिन पनि आयोजनाले लिएपछि आफ्नो पुरानो थलोमा फर्केर खुट्टा टेक्ने जमिनसमेत बाँकी नरहेकोले भूमिहिन सुकुम्बासीमा परिणत भइ अलपत्र परेका छन् । त्यस्तो समस्यासँग जुध्नका लागि परिवारका पुरुषहरु कामको खोजीमा प्राय बाहिरबाहिरै भौतारिने र घरव्यवहारको दैनिक कामकाजदेखि परिवारको सबैखालका जिम्मेवारी प्रायः महिलाले एकदमै सीमित स्रोत साधनको भरमा ब्यहोर्नु परेको छ ।

अति प्रभावित क्षेत्रका महिलाहरुले उनीहरु समक्ष २१६ को तर्फबाट कम्पनीले महिला लक्षित कार्यक्रमहरु सञ्चालन गर्ने, महिलाको क्षमता अभिवृद्धि गर्ने सीपमूलक तालिमहरुको व्यवस्था गर्ने, एकल महिला घरमूली र वृद्धवृद्धाहरुलाई सामाजिक सुरक्षा भत्ता दिने, बालबच्चाहरुको शिक्षाको व्यवस्था गर्ने प्रतिबद्धता गरेको कुरा बारम्बार दोहोर्छिरहे । NWEDC को प्रतिवेदनमा उल्लेख भएअनुरूप अति प्रभावित क्षेत्रका आदिवासीहरुको क्षमता अभिवृद्धि तथा सीप विकास तालिममा प्राविधिक शिक्षा- ड्राइभिङ, सुरक्षा गार्ड, इलेक्ट्रिसियन, मिस्त्री जस्ता पुरुषका लागि उपयुक्त ठानिने प्रकृतिका रहेका छन् । सूचीको पुछारमा ब्यूटीसियन तथा ब्यूटी पार्लरको तालिम उपलब्ध गराउने कुरा लेखिएको छ । आदिवासी तामाङ महिलाहरु अधिकांशको जनजीविकाको शैली र प्रणाली एवं स्थानीय परिवेशमा उक्त तालिम एक नौलो परिक्षण हुनसक्छ । तर उक्त सीपमूलक तालिम प्राप्त गरिसकेपछि महिलाहरुले आफ्नो थातथलोबाहिरका शहर उन्मुख तथा शहरी क्षेत्रमा गएर व्यवसाय शुरु गर्ने र टिकाउने ल्याकत राख्नु अनिवार्य हुन आउँछ । जुन अति सीमित संख्याबाहेकका अधिकांश तामाङ महिलाहरुको सामाजिक-आर्थिक-भौगोलिक अवस्था प्रतिकूल छ । आयोजनाको कामकाज द्रुत गतिमा सञ्चालन हुन थालिसकेपनि सूचीमा राखिएका कुनैपनि क्षमता अभिवृद्धिको तालिम अहिलेसम्म उपलब्ध गराइएको छैन । न त पूर्व शर्तअनुरूप तामाङहरुले रोजगार नै पाएका छन् ।

आयोजना सञ्चालनका निमित्त आवश्यक पर्ने कामदारहरुमध्ये १० देखि १५ प्रतिशत स्थानीय जनशक्तिलाई प्राथमिकता दिने NWEDC को प्रतिवेदनमा उल्लेख छ । आदिवासी तामाङहरुको सामूहिक माग र दबाब थ्रेग्रकै लागि आँलामा गन्न सकिनेजति स्थानीय कामदारलाई कम्पनीले रोजगार दिएको भएपनि लैंगिकताको हिसाबले महिलाहरु विभेद र बहिष्करणमा पारिएका छन् । मैलुङस्थित कम्पनीको कार्यलयमा भान्सा तथा सरसफाईको कामको लागि आसपासमा अस्थायी बसोबास गर्दै आइरहेका मैलुङकै विस्थापित ३ जना तामाङ महिलाहरुलाई कुराकानीको लागि बोलाइयो । तीनैजना महिलाहरुलाई उनीहरुको यौनिकता र लैंगिकताको आधारमा तोकिएको कामको लागि अयोग्य ठहर्याइ फर्काइयो । मैलुङमा गरिएको महिला लक्षित समूहकेन्द्री छलफल (FGD)अनुसार एकजना ४५-५० वर्षीय महिलालाई 'बढी उमेर पुगीसकेकोले काममा खट्न सक्नुहुन्न' भनेर उनलाई आफ्नो कार्यक्षमता प्रदर्शन गर्ने मौका नै नदिइकन उमेरलाई आँल्याएर फर्काइयो । अर्को २४- २६ वर्षीय विवाहित महिला, जो सानो बच्चाको आमा पनि थिइन्, लाई 'यति सानो बालबच्चा भएको आमालाई कम्पनीले काममा राख्दैन । बच्चासँग काम गर्न गाह्रो हुन्छ पछि आउनुस्' भनेर उनको मातृत्वलाई आधार

बनाएर पन्छ्याइयो । अर्को महिलालाई भने ‘तपाईं मोटी हुनुहुँदोरहेछ, यहाँ काम गर्न सक्नुहुन्न’ भनेर उनको शारीरिक आकारप्रकारमाथि टेकेर काममा राख्न मनाही गरियो । जबकी पुरुषहरूको हकमा भने कम दक्ष हुनु, कम पढाई हुनु वा लेखपढ गर्न नसक्ने हुनु र सीप नहुनुलाई औँल्याउने गरिएको छ ।

त्यसो त आयोजना कार्यन्वयनको पूर्वतयारीदेखि पछिल्लो चरणको छलफल, परामर्शहरूसम्ममा महिलाको पर्याप्त सहभागिता हुन सकेको छैन । आदिवासीहरूको विशेष अधिकारसहितको मानवअधिकार हनन् हुन नदिनका लागि गरिएको स्वतन्त्र, अग्रिम जानकारीसहितको मञ्जुरी चरणबद्ध प्रक्रियाहरू समेत विभिन्न कारणले अति प्रभावित क्षेत्रका महिला तथा पाका व्यक्तिमैत्री भएनन् । अति प्रभावित क्षेत्रका आदिवासीहरूलाई उनीहरूको आफ्नो ठाउँबाट बाहिर ल्याएर सीमित प्रतिनिधिहरूमाझ त्रिपक्षीय सम्झौता गरियो । जुन नियम संगत नहुनुका साथै समय, स्थान, स्रोतसाधन आदिको हिसाबले महिला तथा पाका व्यक्तिहरूको सहज पहुँचभन्दा बाहिर रह्यो । अध्ययन टोलीको अति प्रभावित क्षेत्र अध्ययनको क्रममा त्यहाँ युवा पुस्ताबाहेक अधिकांश महिला तथा पाका व्यक्तिहरू आफ्नै तामाङ भाषामा बाहेक नेपाली भाषामा अति सामान्य रूपमा मात्रै संवाद गर्न सक्ने र लेखपढ गर्न भने मुश्किल पर्ने गरेको पायौं । आफ्नै मातृभाषामा दैनिक कामकाज, व्यवहार र जनजीविका चलाइरहेका आदिवासी तामाङहरूसँगको छलफल तथा परामर्शका दौरान उनीहरूको मातृभाषाको प्रयोग गरिएन (घले २०१७ मा पनि यो कुरा लेखिएको छ) । आवश्यक कागजात, प्रतिवेदन तथा दस्तावेजहरू अधिकांश अंग्रेजी र केही नेपाली भाषामा मात्रै उपलब्ध हुँदा ती सामाग्रीहरू अझैपनि भाषिक हिसाबले उनीहरूको पहुँचबाहिर नै रहेका छन् । संवाद, छलफल तथा परामर्शहरू स्थानीय एवं आदिवासीय सामाजिक-सांस्कृतिक चालचलन, परिवेश र भाषाअनुकूल गरिनुपर्ने अन्तर्राष्ट्रिय मापदण्ड भएपनि त्यसलाई अति प्रभावित क्षेत्रका तामाङहरूको हकमा व्यवहारमा लागू गरिएन । हाकु बेसीस्थित आमा समूहकी अध्यक्षले व्यक्तिगत अन्तर्वार्तामा संवाद र छलफलको भाषाको सन्दर्भमा भन्नुभयो, ‘हामीलाई तामाङमा भन्यो भने राम्रोसँग बुझ्छ । तामाङकै कुरा गर्यो भने मजाले गर्न सक्छ । नेपालीमा हामीलाई कुरा भन्यो भने धेरै बुझ्दैन, त्यो हामीलाई काम लाग्दैन । हामीले नेपालीमा कुरा गर्यो भने अलिकति मात्रै भन्न सक्छ’ । भाषाकै कारण आयोजनासँग सम्बन्धित आफ्ना विशेष आदिवासीय हकअधिकार र आयोजनाको कार्ययोजनाबारेको सही, पूरा र पर्याप्त सूचना पाउनबाट उनीहरू वञ्चित पारिए । परिणाम, आदिवासी तामाङ महिलाहरूले आफ्नो आदिवासीय लैंगिक हकअधिकारबारेमा सामूहिक तवरमा सोचविचार र छलफल गरेर आफ्ना कुराहरू राख्ने अवसर पाएनन् । पाका व्यक्तिहरूले उनीहरूसँग रहेको आदिवासीय मौलिक प्रथा-परम्पराजन्य ज्ञान-सीप र अनुभवहरूको आधारमा आफ्नो हकअधिकारको निमित्त बोल्ने अवसर पाएनन् । आयोजनासम्बन्धी जे जति छलफल, परामर्श र सम्झौताहरू भएका छन् ती लैंगिकताको हिसाबले थोरै मात्रामा संवेदनशील देखिएपनि आदिवासीय लैंगिकताको दृष्टिकोणबाट भने ती पूर्ण रूपमा प्रतिकूल नै भए ।

आदिवासी विकास योजना (IPP)को संरचनामा लैंगिक समान सहभागिता गरिनु सकारात्मक कुरा हो । त्यसले आदिवासी तामाङ महिलाहरूलाई विकास निर्माणको आर्थिक-राजनीतिक-पर्यावरणीय-सामाजिक पाटोहरूमा जानकार हुन र ती पाटाहरूसँगै आफ्नो हकअधिकारहरूलाई कसरी उठाउने भन्ने सन्दर्भबारे बुझ्न मद्दत पुगेको छ । महिलाहरूले कम्पनीसँगको सम्झौता, वादविवाद र अडानहरूमा महिलाकेन्द्री, वृद्धवृद्धाकेन्द्री तथा बालबालिकाकेन्द्री विशिष्ट समस्या र सरोकारका मुद्दाहरू राख्नमा भूमिका खेल्दै आइरहेका छन् । तर निर्णायक भूमिकामा लैंगिक समान सहभागिता छैन । भुइँ तहमा महिलाहरूको प्रभावकारी सहभागिता र आवाज उठ्ने गरेपनि निर्णायक तहमा उनीहरूको आवाज र सरोकारका कुरा वेवास्तामा पर्दै आएको छ ।

समुदायका उत्पादनशील उमेर समूहका र सामाजिक-राजनीतिक सम्बन्ध-सम्पर्क केही हदसम्म स्थापित गर्न सफल पुरुषहरूको चिन्ता भने विकास निर्माणका ठूलूला आर्थिक-राजनीतिक-वातावरणीय जस्ता सदृश्य (visible) असरहरू रोक्ने र आयोजना निर्माण एवं सञ्चालनको कामबाट सक्दो चाँडो लाभ कसरी लिने भन्नेतर्फ केन्द्रित रहेको छ । त्यस्ता विषयवस्तुहरूमा प्रायःजसो पुरुषहरूको एकलौटी सरह कायम छ । महिलाहरू भने दैनिक जीवनमा भोग्नुपरेरहेका व्यवहारिक समस्याहरूसँग जुध्नु र आफ्ना परिवारका पुरुष सदस्यहरूको आडभरोसा बन्नेतर्फ नै बढी केन्द्रित रहने गरेका छन् । हाकुबेसी र फूलबारीस्थित कम्पनीले लिएको केही परिवारको जग्गा भूकम्पपश्चात फेरबदल भएको कार्ययोजनाका कारण प्रयोगमा ल्याइएका छैनन् । पहिले उनीहरूले उब्जनी गर्दै गरेको जमिन र जंगल उपयोगमा ल्याइएको छैन । हाकुबेसीमा गरिएको व्यक्तिगत अन्तर्वार्तामा त्यहाँ भएका रुखहरूको मक्लिएको हाँगाबिगा दाउरा बाल्नको लागि र सुकेको पातपतिंगर सोत्तर हाल्नको लागि लिन जाँदा सुरक्षा बलको प्रयोग गरी त्यहाँबाट खेदाइयो र उनीहरूलाई चोरीको आरोप लगाइएको कुरा दुइजना महिलाहरूले साक्षीको रुपमा बताएका थिए । त्यसबेला सुरक्षाकर्मीहरू घरघरमै पुगेर कारवाही गर्ने मनस्थितिमा पुगेका थिए । परिवारका पुरुषहरूलाई सुरक्षाकर्मीहरूबाट बचाउनकै लागि महिलाहरू अघि सरेर सुरक्षाकर्मीहरूको सामना गरेका थिए । उनीहरूमाथि हुन सक्ने भौतिक एवं शारीरिक आक्रमण रोकथामको उपायको रुपमा महिलाहरूले त्यस्तो जुक्ति अपनाएका थिए ।

तामाङ महिलाहरूको सामुदायिक एवं सामाजिक भूमिका र संलग्नता उल्लेखनीय रहेपनि उनीहरूलाई आयोजनासम्बन्धी सूचना प्राप्त गर्ने प्राथमिक समूह वा स्रोत व्यक्तिको रुपमा लिइन्न । आयोजनासम्बन्धी छलफल वा बैठकहरूको पूर्वतयारी वा सूचनाहरू मोबाइल फोन सम्पर्क, इमेल, फेसबुकको म्यासेन्जर वा अन्य अनलाइन वा सामाजिक सञ्जालहरूमार्फत् गर्ने गरिन्छन् । मोबाइल फोनजस्ता उपकरणमा पहुँच राख्ने र त्यसलाई चलाउन साक्षर अवस्थाका पाका व्यक्ति र महिलाहरू न्यून छन् । अनलाइन सूचना प्रविधिको पहुँचमा त नयाँ पुस्ताका प्रविधिमैत्री सीमित व्यक्तिहरूमात्रै रहेका छन् । समग्रमा आयोजनाको प्रभावको रुपमा वृहतदेखि सूक्ष्म स्तरका बहुप्रकृतिका प्रभावहरूसँग उनीहरू जुधिरहेका छन् ।

२१६ आयोजनाका कारणले तामाङ महिलाहरू सामाजिक-साँस्कृतिक-भौतिक-आर्थिक र वातावरणीय मारमा मात्रै परेका छैनन् । उनीहरू आफ्नो बसोबासको थलो गुम्नेदेखि आफ्नो अस्मिता र यौनिकतामाथि आइपर्ने

यौनजन्य हिंसा, दूर्व्यवहार र आक्रमणको असुरक्षा तथा सम्भावित उच्च जोखिमहरुको मानसिक त्रासमा पनि उत्तिकै पर्न थालेका छन् । अति प्रभावित गाउँहरुमध्येको हाकुबेसी, फूलबारी गाउँ त्यसै पनि सुख्खा पहिरो र बाढीसहितको पहिरोको उच्च जोखिममा रहेको छ । त्यसमाथि गाउँकै मुनिबाट जलविद्युत उत्पादनको निमित्त सुरुङ खन्ने योजना पारित भइसकेको छ । हाकुबेसीका एक तामाङ महिलाले 'पहिले पहिरोले लैजाला भन्ने डर थियो, सुरुङ खनेपछि त कुनै दिन पुरै गाउँ नै सोहोरिएर त्रिशुलीमा खस्नेछौं भन्ने डर लाग्न थालेको छ' भन्नुभयो । हाकुबेसीका महिलाहरुले उक्त सुरुङ आफ्नो बस्ती मुनि नखनिदिए राम्रो हुन्थ्यो भन्ने मनसाय पनि व्यक्त गरेका थिए । यद्यपि यसलाई समुदायको मागको रूपमा अघि सारिएको छैन ।

आयोजनाले अति प्रभावित क्षेत्रका तामाङहरुको उचित पुनस्थापन, व्यवस्थापन र जनजीविकाको ख्याल नगरीकन काम अगाडि बढाउन थालेको संकेत र उदाहरणहरु प्रशस्तै छन् । तामाङहरुको हकमा आयोजना निर्माणदेखि सम्पन्न हुनेवेलासम्म त्यही भइरहेको खण्डमा उनीहरूसँग भएको परम्परागत जीविकोपार्जनको स्रोत र माध्यम असाध्यै खुम्चिएर जानेछ । आदिवासीय जनजीविकाभन्दा बेग्लै खालको दिनचर्या र जनजीवनमा ढालिनुपर्ने हुनसक्छ । अति प्रभावित क्षेत्रका तामाङहरु कामकाजको लागि पुरुषहरु बाहिर जाने गरेपनि वैवाहिक सम्बन्ध प्रायः आफ्नै समुदाय र गाउँभित्रै हुँदै आएकोले सामाजिक-साँस्कृतिक-भाषिक-धार्मिक-आध्यात्मिक जीवनशैली कायम राखीराख्न र तिनलाई एक पुस्ताबाट अर्को पुस्तामा हस्तान्तरण गर्नमा महिला तथा पाका व्यक्तिहरुको भूमिका प्रभावकारी रहँदै आएको छ । विस्थापन, पुनस्थापना तथा बाह्य समुदायसँगको मिश्रित बसोबास एवं सघन अन्तरक्रियासँगै नयाँ जीवनशैलीमा ढालिदा उनीहरुको त्यस्तो भूमिका प्रभावहीन बन्न पुग्नेछ । उनीहरुको मौलिक पहिचानका अवयवहरु द्रुत गतिमा नाशिदै जाने छ । शैक्षिक-आर्थिक-सामाजिक-साँस्कृतिक-मानसिक लगायतका अवस्थाका कारण परम्परागत जीवनशैलीभन्दा बाहेकको जीवनचर्या अपनाउन असमर्थ रहने जमातमा महिला तथा पाका व्यक्तिहरु पर्छन् । उनीहरु उचित विकल्प, पूर्वाधारको अभावको बीचमा नयाँ जीवनशैलीमा ढालिनुपर्ने उच्च सम्भावना झेलनुपर्ने मानसिक चिन्तामा पनि छन् ।

रसुवा जिल्लामा धेरैवटा जलविद्युत आयोजनाहरु सञ्चालित हुँदा त्यसले उपलब्ध गराउने लाभबाट लाभान्वित हुनबाट पनि महिलाहरु वञ्चित भइरहेका छन् । उदाहरणको लागि त्यहाँ सञ्चालित विभिन्न जलविद्युत आयोजनाहरुले स्थानीयबासीहरुलाई निश्चित सेयर छुट्याएर वितरण गर्यो । त्यसले महिलाहरुले आफ्नो नाममा बैंक खाता खोल्ने र सेयर किनेर सेयर धनी बन्ने अवसर दियो । तर सेयर किनबेचको तौरतरिका, सेयर बजारको दरभाउ र त्यसको प्रक्रियाबारेमा उनीहरु अनभिज्ञ छन् । उनीहरु सेयर धनी भएपनि त्यसबाट लिनुपर्ने आर्थिक लाभ लिने अवस्थामा छँदै छैनन् । उनीहरु सबै खालका आर्थिक कारोबारहरु हाताहाती नै गर्ने गर्छन् । बैंकिङ कारोबार तथा आर्थिक चलखेलको आधुनिक पद्धति अपनाउने अवस्थामा पुगिसकेका छैनन् । किनकी बैंकिङ तथा सेयर कारोबार जस्ता कुराहरु उनीहरुको दैनिक जनजीवनको अंग थिएन र बन्न सकेको पनि छैन ।

उनीहरू निष्क्रिय सेयर धनी वा बैंक खातावालको रुपमा मात्रै रहीरहेका छन् । २१६ को हकमा यही अवस्था दोहोरिन नदिनको लागि समुदायले केही पहल लिनु आवश्यक छ ।

२१६ ले आदिवासीहरूको हकमा स्वतन्त्र, अग्रिम जानकारीसहितको मञ्जुरी अनिवार्य शर्त मान्दै उनीहरूको विकासको लागि निश्चित रकम विनियोजन गरेपनि आयोजना सम्पन्न गर्ने सबैजसो कार्ययोजना र तिनको कार्यन्वयनको तौरतरिकाहरू आदिवासीय मौलिक प्रचलन, प्रथा र दर्शनमैत्री छैनन् । आदिवासीय मौलिकता, दर्शन र जीवनशैली प्रतिकूल विकासका आयोजना, कार्ययोजना र कार्यन्वयनको ढाँचाले वृहत रुपमा समुदायको ऐतिहासिक आधारस्तम्भहरू कमजोर पार्न ठूलो भूमिका खेल्छ । महिला तथा पाको उमेरका व्यक्तिहरूलाई प्रायजसो प्रक्रियाहरूमा स्वतः पाखामा राख्ने र उनीहरूको भूमिका र सरोकारहरूलाई निस्तेज पार्ने गर्छ । आयोजनाको दीर्घकालिन प्रतिकूल असरको रुपमा त्यस्तो कार्य बढ्दै जानेछ । त्यसले आदिवासी समुदायभित्र अभ्यासमा रहँदै आएको लैंगिक सन्तुलित प्रथा परम्परा र अभ्यासहरूलाई समेत निष्क्रिय पार्दै अनुपयोगी बनाउदै लैजानेछ । आदिवासीय लैंगिक असन्तुलित भूमिका र प्रचलनहरूमा समुदायलाई अभ्यस्त पार्दै लैजानेछ । आयोजनाको दीर्घकालिन त्यस्ता प्रभावहरूबारेमा आयोजना र कम्पनीलाई समुदाय आफैले खबरदारी गर्ने र समुदाय आफै सचेत भएर अघि बढ्नुको विकल्प छैन ।

अध्ययनगरिएका ऐनहरू :-

- (१) प्रतिलिपीअधिकार ऐन, २०५९
- (२) प्रतिस्पर्धा प्रवर्द्धन तथाबजार संरक्षण ऐन, २०६३
- (३) प्रशासकियकार्यविधि (नियमितगर्ने) ऐन, २०१३
- (४) प्रादेशिकविकास योजनाहरू (कार्यान्वयनगर्ने) ऐन, २०१३
- (५) भ्रष्टाचार निवारण ऐन, २०५९
- (६) लिखतहरूको गोप्यता सम्बन्धी ऐन, २०३९
- (७) वित्तियमध्यस्थताको कामगर्ने संस्था सम्बन्धी ऐन, २०५५
- (८) विदेशीलगानीतथाप्रविधि हस्तान्तरण ऐन, २०२१
- (९) विद्युत ऐन, २०४९
- (१०) विद्युतनियमनआयोग ऐन, २०७४
- (११) वैयक्तिकगोपनियता सम्बन्धी ऐन,
- (१२) सम्पत्ति सुद्धिकरण निवारण ऐन, २०६४
- (१३) सार्वजनिकनीति साभेदरीतथालगानी ऐन, २०७५
- (१४) सार्वजनिक सुरक्षा ऐन, २०६३
- (१५) सुरक्षितकारोवार ऐन, २०६३
- (१६) सुशासन (व्यवस्थापन र नियमनगर्ने) ऐन, २०६४
- (१७) अन्तर्राष्ट्रिय फाइनान्स कर्पोरेशनको सदस्यताप्राप्तगर्ने ऐन, २०२२
- (१८) अन्तर्राष्ट्रिय विकास एशोसियसनको सदस्यताप्राप्तगर्ने ऐन, २०१९
- (१९) अन्तर्राष्ट्रिय वित्तियकारोवार ऐन, २०५४
- (२०) आर्थिक कार्यविधितथावित्तियउत्तरदायित्व ऐन, २०७६
- (२१) ऋण तथाजमानत ऐन, २०५५
- (२२) छापाखाना र प्रशासन सम्बन्धी ऐन, २०४८
- (२३) नेपाल ऐजेन्सी ऐन, २०१४
- (२४) विद्युतिय (इलेक्ट्रोनिक) कारोवार ऐन, २०६३
- (२५) मुलुकी देवानी संहिता, २०७४
- (२६) मुलुकीअपराध संहिता, २०७४
- (२७) नेपालको संविधान, २०७२
- (२८) बिदुतिय कारोवार ऐन २०६३

अष्टेरा कानूनहरु
विशेष ध्यानदिनुपर्ने

मुलुकी देवानी संहिता, २०७४

- दफा ६ सार्वजनिकहितविपरित हुने गरी कामगर्न नपाउने
- दफा ७ कानूनविपरितको कामअमान्यहुने
- दफा ८ गल्लीगर्नेले क्षतिव्यहोर्नु पर्ने
- दफा १४ देवानी दायित्ववाट छुटकारा नपाउने
- दफा १५ कानूनविपरितकाप्रथावा परम्परालाई मान्यतानर्दिईने
- दफा १६ विदेशीको हकमापनिलागू हुने
- दफा १९ विशेष व्यवस्थाभएकोमा भेदभाव गरेको नमानिने –आदिवासीजनजाति
- दफा २० स्वतन्त्रता र अधिकार हुने
- (क) आफ्नो विचार राख्ने तथा अभिव्यक्तगर्ने
- (ख) आफ्नो समुदायको भाषा, लिपीवा संस्कृतिको संरक्षण र सम्बर्द्धन गर्ने
- दफा ५० स्वार्थ वाझिने भएमा निर्णयमाभागलिनहुने
- दफा २५६(ड) बौद्धिक सम्पत्तिवा रोयल्टी स्वरूपप्राप्त गरेको

मुलुकीअपराध संहिता, २०७४

- दफा ७ कानूनवमोजिमवाहेक सजायनहुने
- दफा २१ असलनियतले दिएको जानकारीवाट क्षतिपुगेमा कसूर नहुने
- दफा ४९(४) वर्गीय, जातिय, क्षेत्रिय, साम्प्रदायिक घृणा, द्वेष गर्न गराउनहुँदैन
- दफा ५०(३) नेपाल सरकार वा नेपाल सरकारको कामकारवाहीको सम्बन्धमा कसैले लेखेर, वचनले, अरु कुनै किसिमवाट निराधार वा अप्रमाणित कुरा देखाई नेपाल सरकार प्रति घृणा, द्वेष गर्न गराउनहुँदैन ।
- दफा ५१(२)(क) नेपालको अन्तर्राष्ट्रिय छवि उपर अपमानहुने होच्याउने वा घृणा, द्वेष फैलाउने ।
- दफा ७० भुठा अफवाह फैलाउनहुने
- दफा ८४ भुठा जानकारी दिनहुने
- दफा २५३ आपराधिकलाभ (क्सटर्सन) लिनहुने
- क्षतिपुर्तिदफा २५४

वैयक्तिकगोपनियता सम्बन्धी ऐन, २०७५

- दफा २(८) कुनै निर्णय प्रकृत्यामा पेशागतवाविशेष रायदिने व्यक्तिले त्यस्तो प्रकृत्यामा के कस्तो रायवाधारणा व्यक्त गरेको थियो भन्ने विषय ।

दफा २(घ) सम्पत्तिभन्नाले चलवाअचल, भौतिकवाअभौतिक, मूर्त वाअमूर्त सम्पत्ति सम्भन्नु पर्ने ।

प्रतिलिपीअधिकार ऐन, २०५९

दफा २(क) किताब, पर्चा, लेख, शोधपत्र

दफा २(ख) रचयिता

दफा ५ दर्ता अनिवार्य नभएको ।

दफा २४ आर्थिक अधिकार मध्ये केहीशर्त तोकीप्रयोग गर्न अनुमतीदिन सक्ने ।

विद्युतिय (इलेक्ट्रोनिक) कारोवार ऐन, २०६३

दफा ४७ विद्युतिय स्वरूपमा गैरकानूनी कुरा प्रकाशगर्ने

दफा ५८(क) क्षतिपुर्ति भराई दिने

दफा ५९ प्रचलितकानूनवमोजिम सजायगर्न बाधानपुग्ने

दफा ७६ क्षतिपुर्ति

नेपालको संविधान २०७२

धारा १६ सम्मानपूर्वक वाचनपाउने हक

धारा १७ स्वतन्त्रताको हक

धारा ५१(ख)(१)(२) मानवअधिकार र अन्तर्राष्ट्रिय सन्धी सम्भौता

धारा ५१(छ)(१) स्थानिय समुदायलाई प्राथमिकता र अग्राधिकार दिदै प्राप्तप्रतिफलहरुको न्यायोचितवितरण

धारा ५१(छ)(५) भौतिक विकासवाट वातावरणमा पर्नसक्ने जोखिमलाई न्युनकरण

धारा ५१(ज)(८) समुदायसंग सरोकार राख्ने निर्णयहरुमा सहभागी गराउने
आदिवासीजनजातिअधिकार



Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
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International Working Group for Indigenous Affairs