European Investment Bank

CM Complaints Mechanism

Nepal Power System Expansion

Complaint SG/E/2018/39

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

16 March 2021

Prepared by

Complaints Mechanism

_____

External Distribution
Complainant
Promoter
Accountability Counsel
LAHURNIP

Internal Distribution
Management Committee
Secretary General
Inspector General
EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the EIB-CM's reply have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was "created" by the Maastricht Treaty of 1992 as a European Union (EU) institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: http://www.eib.org/about/accountability/complaints/index.htm

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ADB	Asian Development Bank
CBD	Convention on Biological Diversity
CDO	Chief District Officer
CFUG	Community Forest Users' Group
CIA	Cumulative Impact Analysis
CMPTR	Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
DDC	District Development Committee
DFO	District Forest Office(r)
EIA	Environmental Impact Assessment
EIB-CM	EIB Complaints Mechanism
E&S	Environmental and social
EMP	Environmental Management Plan
ESDS	Environmental and Social Data Sheet
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESPS	Environmental and Social Principles and Standards
ESSD	Environment and Social Studies Department
EU	European Union
FGD	Focus group discussion
FPIC	Free prior and informed consent
GRM	Grievance Redress Mechanism
IAR	Initial assessment report
IEE	Initial Environmental Examination
ILO	International Labour Organization
IPDP	Indigenous Peoples Development Plan
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
NEA	National Electricity Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	National Foundation for Development of Indigenous Nationalities
NGO	Non-governmental organisation
PAP	Project-affected people
PRA	Participatory rapid/rural appraisal
PSEP	Power System Expansion Project
RAP	Resettlement Action Plan
RIPP	Resettlement and Indigenous Peoples Plan
RoW	Right of Way
SEA	Strategic Environmental Assessment
SEP	Stakeholder Engagement Plan
TP	Transparency Policy
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
VDC	Village Development Committee

EXECUTIVE SUMMARY

In October 2018, the Free Prior and Informed Consent (FPIC) and Rights Forum from Lamjung district (Nepal) submitted a complaint with a request for mediation regarding the EIB-funded 220 kV Marsyangdi Corridor transmission line and other hydropower sector development in the region. The complaint mainly concerns Component 2 of the Power System Expansion Project (PSEP or the "Project").

Following the initial assessment phase in July 2019, the EIB Complaints Mechanism (EIB-CM) proposed to facilitate a collaborative resolution process. Given the absence of an agreement with the Promoter on the proposed way forward, the complaint became subject to a compliance review in August 2019, in line with EIB-CM policy.

The table below presents the different allegations received from the Complainant and EIB-CM's conclusions following its investigation.

No.	Allegations made in the complaint		EIB-CM's conclusions (Compliance with the project applicable standards) [1]
1	**Significant gaps in environmental and social due diligence for the PSEP, especially the 220 kV Marsyangdi Corridor**	1.1 Failure to apply the higher Environmental Impact Assessment (EIA) standard for the environmental and social impacts assessment(s) for the PSEP, or at least for the 220 kV Marsyangdi Corridor and associated hydropower sector development	**Partly grounded** EIA process and formal document for both of the transmission lines in the Marsyangdi Corridor not fully in line yet with the EIB requirements based on its environmental and social (E&S) standards, the finance contract, and as indicated in the Bank's appraisal documents.
		1.2 Salami slicing of the PSEP when evaluating environmental and social impacts/Lack of Cumulative Impact Analysis (CIA)	**Partly grounded** The Initial Environmental Examination (IEE) report for Udipur-Bharatpur contains some information on cumulative impacts of the Project, though is considered not satisfactory. The (draft) EIA report for Manang-Udipur does not contain an assessment of cumulative impacts of the Project yet. Not yet in line with the explicit requirement of an assessment of the potential cumulative impacts (as part of the EIA procedures) as spelled out in the Bank's appraisal documents, and in the finance contract.
		1.3 Lack of Strategic Environmental Assessment	**Not grounded**
2	**Failure to comply with EIB requirements on consultation and information disclosure**	2.1 Lack of adequate and meaningful consultations with project-affected people, especially in Lamjung district and	**Partly grounded** A number of shortcomings identified in view of EIB E&S standards. Absence of a Stakeholder

[1] This is meant to provide a quick snapshot. For more details about the EIB-CM's findings and conclusions, please refer to Section 5 of the report.

No.	Allegations made in the complaint		EIB-CM's conclusions (Compliance with the project applicable standards) [1]
	and violation of the rights to information, language and dignity	with people affected by the Right of Way (RoW)	Engagement Plan is not compliant. Other issues range from low levels of participation, especially of women, lack of clarity about the extent of consultation with people affected by the RoW, and in general about the representativeness of participants in public consultations, to the level of effectiveness and meaningfulness of the public consultation process.
		2.2 Inadequate participation and agreement seeking from affected communities in decision-making about the Project	
		2.3 Lack of adequate disclosure of information about the Project and its impacts in a manner that is accessible to affected local people, including indigenous peoples	
3	**Lack of FPIC for the Project from affected communities, especially indigenous peoples**		**Partly grounded** Absence of timely and sufficient attention to determine the applicable indigenous peoples-related requirements during Project preparation, and to the process of engaging with indigenous peoples during Project implementation. No satisfactorily documented evidence of the engagement process with indigenous peoples and outcome. Absence of an updated/final Indigenous Peoples Development Plan. Not in line with the EIB E&S standards and other project applicable standards as presented in Section 5.3.
4	**Failure of the Project in Lamjung to adhere to special protections for involuntary resettlement and land acquisition (EIB standards and national law and policy)**	4.1 Failure to comply with requirements for physical and economic displacement and land acquisition in terms of process and procedures (lack of adequate notice, information and consultation; absence of plans; lack of transparency in calculation of compensation)	**Grounded** Limitations in consultation process. Resettlement Action Plans (RAPs) not finalised (problematic for the Udipur-Bharatpur transmission line since tower construction has already started, and the land acquisition process and payment of compensation are on-going). Moreover, available draft RAPs do not deal with land use restriction issues. Not in line with the EIB E&S standards, and contractual obligations (for the Udipur-Bharatpur transmission line).
		4.2 Inadequate compensation, especially for landholders under the RoW	**Not able to conclude**
5	**Insufficient consideration for a series of environmental and social impacts and the need for appropriate mitigation measures**		**Partly grounded** Scope for improvement as part of finalisation of EIA procedures.

While the responsibility for compliance with the project applicable standards lies with the Promoter and the local authorities, the EIB is required to appraise and monitor projects to ensure that they meet the project applicable standards. The report indicates some strengths and weaknesses **in relation to the EIB's role** (Section 5.6, B., and Table 6).

The services developed a corrective Environmental and Social Action Plan following their monitoring mission in June 2019 (see major elements in Annex 2). The EIB-CM considers this as a positive step taken to address the significant issues identified up to that point. It appears that the services have not yet been able to reach an agreement with the Promoter about implementation of the plan.

On the basis of the observations made in this report, the EIB-CM makes the following recommendations to the Bank:

1. **Update the corrective Environmental and Social Action Plan as soon as possible**.
2. **Engage closely with the Promoter the soonest possible with a view to strengthen its capacity. At the minimum,** this implies the **need for engaging expert(s) in stakeholder engagement, with specific expertise in indigenous peoples, (not later than six months).**
3. **Continue to strengthen EIB monitoring of the Project and follow up closely with the Promoter**, provide technical guidance on E&S matters in view of EIB's requirements, and monitor the updated corrective Environmental and Social Action Plan's implementation on a bi-monthly basis.
4. **In line with the finance contract, ensure that the status of progress** made in the **updated corrective Environmental and Social Action Plan's implementation** is a **major determinant in EIB proceeding with disbursements** for the Marsyangdi Corridor component of the Project.
5. **Organise a workshop to present the Guidance Note on Stakeholder Engagement in the EIB Operations** (for promoters) **as soon as possible** with the Promoter/the ESSD and other key stakeholders.
6. **Develop an internal procedural checklist** to assist EIB staff in the **due diligence of the quality of the assessment of potential significant cumulative effects** of a concerned project as part of the EIA process and report.

The EIB-CM will start monitoring implementation of the above recommendations within six months following issuance of the Conclusions Report.

The EIB-CM **fully supports** the actions included in the **corrective Environmental and Social Action Plan** that was prepared by the services. The EIB-CM makes few additional recommendations at project implementation level.

CONCLUSIONS REPORT

Complainant: Free Prior and Informed Consent (FPIC) and Rights Forum from Lamjung district, Nepal
Date received: 8 October 2018
Confidential: No
Main subject of complaint: Lack of adequate environmental and social impacts analysis, lack of adequate consultation, lack of FPIC, failure to comply with provisions related to involuntary resettlement

1 THE COMPLAINT

1.1 On 8 October 2018, the Free Prior and Informed Consent (FPIC) and Rights Forum from Lamjung district in Nepal (the "Complainant") sent a letter to the EIB Complaints Mechanism (EIB-CM) submitting a request for mediation regarding the EIB-funded 220 kV Marsyangdi Corridor high-voltage transmission line and other hydropower sector development in the region. The letter states that in the event that a collaborative resolution process is not possible or concludes without resolution of the issues, the EIB-CM should initiate a compliance review.

1.2 The EIB-CM considers that the allegations made by the Complainant can be characterised as falling under four main groups of issues: (i) alleged lack of adequate and holistic (strategic) environmental and social impacts analysis; (ii) alleged issues relating to adequate and meaningful stakeholder engagement, including proper consultation, agreement seeking and information disclosure on the Project, its impacts and how each impact can be avoided, mitigated or compensated for; (iii) alleged lack of FPIC; and (iv) alleged issues relating to land acquisition and land use restrictions, and compensation. The allegations are further outlined in Table 1 below. The full text of the complaint is available online.[2]

1.3 The Complainant is a grouping of local indigenous and non-indigenous peoples in Lamjung district in Nepal that is advocating for a rights-based approach to hydropower sector development in their region. The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)[3] and Accountability Counsel[4] supported the drafting of the complaint and are advising the Complainant. In the meantime (September 2019), the Complainant also submitted a complaint with the same claims to the National Human Rights Commission in Nepal and the Nepal Electricity Authority (NEA).

[2] https://www.eib.org/attachments/complaints/10-8-18-final-complaint-eng.pdf; https://www.eib.org/attachments/complaints/10-8-18-final-complaint-nep.pdf
[3] https://www.lahurnip.org/
[4] https://www.accountabilitycounsel.org/

Table 1: Overview of the allegations made in the complaint

No.	Main allegations	Sub-allegations
1	**Significant gaps in environmental and social due diligence for the Power System Expansion Project (PSEP, the "Project"), especially the 220 kV Marsyangdi Corridor**	1.1 Failure to apply the higher Environmental Impact Assessment (EIA) standard[5] for the environmental and social impacts assessment(s) for the PSEP, or at least for the 220 kV Marsyangdi Corridor and associated hydropower sector development
		1.2 Salami slicing of the PSEP when evaluating environmental and social impacts/Lack of Cumulative Impact Analysis (CIA)
		1.3 Lack of Strategic Environmental Assessment (SEA)
2	**Failure to comply with EIB requirements on consultation and information disclosure and violation of the rights to information, language and dignity**	2.1 Lack of adequate and meaningful consultations with project-affected people (PAP), especially in Lamjung district and with people affected by the right of way (RoW)
		2.2 Inadequate participation and agreement seeking from affected communities in decision-making about the Project
		2.3 Lack of adequate disclosure of information about the Project and its impacts in a manner that is accessible to affected local people, including indigenous peoples
3	**Lack of FPIC for the Project from affected communities, especially indigenous peoples**	
4	**Failure of the Project in Lamjung to adhere to special protections for involuntary resettlement and land acquisition (EIB standards and national law and policy)**	4.1 Failure to comply with requirements for physical and economic displacement and land acquisition in terms of process and procedures (lack of adequate notice, information and consultation; absence of plans; lack of transparency in calculation of compensation)
		4.2 Inadequate compensation, especially for landholders under the RoW
5	**Insufficient consideration for a series of environmental and social impacts and the need for appropriate mitigation measures** - Negative impacts on community resources in Lamjung district and inadequate community-level benefits - Public safety risks (electrocution by wires and increased lightning risk) - Negative impacts on ecological resources - Visual impacts, which in turn could have a negative impact on tourism - Sound impacts (humming sound of the transmission lines) - Potential health impacts on humans, livestock and crops through long-term exposure to electromagnetic fields - Negative impacts during the construction phase, such as increases in noise levels and waste, and social impacts of employing outside labour for the construction - Gender-differentiated impacts of the Project (with greater negative impacts on women), especially in Lamjung (beyond the gender impacts due to employment of outside workers)	

2 BACKGROUND INFORMATION

2.1 The Complainant makes reference to multiple hydropower projects and transmission lines in the Lamjung district, including the 220 kV Marsyangdi Corridor transmission lines, which are financed by the EIB as part of the PSEP (or the "Project"). The EIB-CM notes that the other projects mentioned in the complaint are not financed by the EIB. For example, the complaint

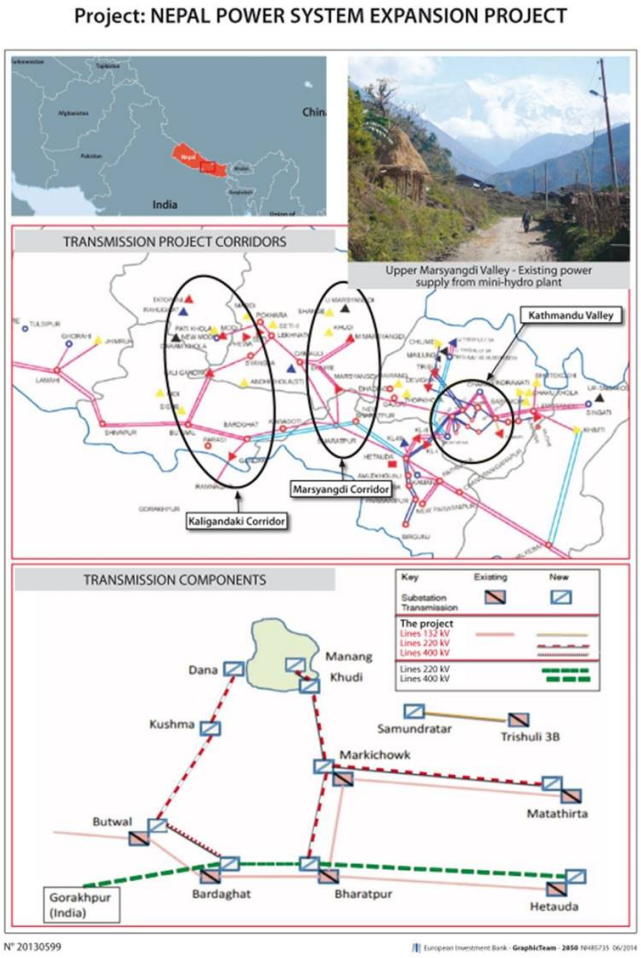
[5] It is understood from the complaint that "higher EIA standard" refers to a full EIA. The complainant uses the terminology "higher EIA standard" in contrast to "less stringent IEE standard" or "rather than the IEE standard".

makes reference to several issues and poor experiences of local communities with the completed 132 kV Bhulbhule Mid-Marsyangdi transmission line, which is not an EIB-financed transmission line.

2.2 The Project comprises priority investments in the national power transmission grid, including the construction of seven new high-voltage transmission lines, associated substations and the expansion and upgrade of several existing substations. It is intended to help meet domestic demand by connecting new hydroelectric schemes to the national grid. The Project includes the design, supply, installation, testing, commissioning and operation of several components. The EIB is financing two separate components of the Project, notably Component 2: *Transmission system expansion along the Marsyangdi Corridor* and Component 4: *Transmission system expansion between Samundratar and Trishuli 3B*.[6]

2.3 More specifically, the complaint concerns Component 2 of the Project. Component 2 consists of the following transmission system expansion along the Marsyangdi Corridor:

1. Khudi-Udipur-Marki Chowk-Bharatpur 220 kV transmission line (approximately 110 km), 220 kV substation in Khudi, 220 kV switchyard in Udipur and 220 kV bay extension in Bharatpur;
2. Manang-Khudi 220 kV transmission line (approximately 25 km), 220 kV substation in Manang and 220 kV bay extension in Khudi.[7]



[6] Other components of the Project are covered by other funding sources.

[7] As per the technical description of the Project contained in the finance contract (Schedule A). Please note that the actual split for the environmental and social impact assessments is different as indicated in paragraph 5.1.21 and Table 3.

2.4 The EIB is providing an investment loan for the Project of up to €95 million (initial financing amount). The loan was approved by the EIB's Board of Directors on 16 September 2014. The finance contract was signed in 2015. The borrower is the Federal Democratic Republic of Nepal, represented by the Ministry of Finance, while the final beneficiary and project-implementing agency is the NEA, a fully state-owned power utility (the "Promoter"). The Project is co-financed by the Asian Development Bank (ADB) and the Norwegian Agency for Development Cooperation. As of end 2020, the Bank has made three disbursements for a total amount of €15.3 million (16% of the initial financing amount).

3 REGULATORY FRAMEWORK

3.1 The EIB-CM mandate

3.1.1 The EIB-CM Policy and Operational Procedures apply to complaints of maladministration lodged against the EIB Group (Article 4.1 of Section II, "Principles" of the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure – CMPTR).[8] Complaints may concern any alleged maladministration by the EIB Group in its actions and/or omissions (Article 4.1 of Section IV, "Rules of Procedure" of the CMPTR). Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB (Article 1.2 of Section II, "Principles" of the CMPTR).

3.1.2 Pursuant to Article 4.2 of Section III, the EIB-CM gathers and reviews existing information on the subject under complaint, makes appropriate enquiries with a view to assessing whether the EIB Group's policies and procedures have been followed and fosters adherence to the EIB Group's policies, in particular those regarding good administration, disclosure and transparency. The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with according to the highest standards of objectiveness whilst safeguarding the interests of all the internal and external stakeholders of the EIB Group according to Article 2.1 of Section III, "Terms of Reference" of the CMPTR.

3.2 Project applicable standards

3.2.1 The project applicable standards include the following:

- Standards set in relevant national legislation and regulations such as the Constitution of Nepal, the National Foundation for Development of Indigenous Nationalities Act (2002), the Environment Protection Act (1997), and the Land Acquisition Act (1977);
- Commitments of Nepal under relevant international instruments ratified/adopted by the country;
- EIB environmental and social (E&S) standards: The EIB Statement of Environmental and Social Principles and Standards (ESPS) (2009)[9] and the EIB's Environmental and Social Handbook (the "Handbook") (2013 version);
- E&S conditions and related requirements in the finance contract.

3.2.2 Section 5 of the report presents in detail the project applicable standards that are relevant to the different allegations made in the complaint. In terms of project applicable standards, the EIB-CM's compliance review mainly focused on compliance of the Project with EIB E&S standards, EU standards where relevant, relevant international commitments of Nepal, and

[8] Since the complaint was received on 8 October 2018, the EIB CMPTR in its revised version as of 31 October 2012 applies. Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_principles_2012_en.pdf
[9] Available at: https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

fulfilment of E&S conditions/undertakings/requirements under the finance contract. It did not intend to cover compliance with national legislation. It should be noted that there are gaps between the national legislation and EIB E&S standards, for example in the areas of the requirement for an EIA, and involuntary resettlement.[10]

4 WORK PERFORMED BY THE EIB-CM

4.1 The EIB-CM carried out an initial assessment of the complaint and issued its initial assessment report (IAR) in July 2019[11]. As part of the initial assessment, the EIB-CM went on mission to Nepal in March 2019 to meet with communities affected by the Project (in five villages) as well as the Promoter and other key stakeholders, such as representatives of the Complainant's advisors and relevant authorities.[12] The main objective of the initial assessment and the EIB-CM's mission to Nepal was to assess the possibility of mediation as requested by the Complainant.

4.2 From the information gathered during the initial assessment, the EIB-CM found that most of the concerns raised derive from what the Complainant perceives as insufficient and inappropriate communication and consultation. In its IAR, the EIB-CM proposed to facilitate a collaborative resolution process as the way forward, focusing in particular on strengthening the consultation process. Given the absence of an agreement on the proposed way forward communicated by the Promoter in August 2019, the complaint became subject to a compliance review, in line with EIB-CM policy.

4.3 Since then, the EIB-CM has held several meetings with the EIB services involved in the Project's implementation in order to obtain further information and clarification on certain aspects. In October 2019, the EIB-CM shared a list with the services requesting additional information and documentation (available to them and/or for them to request from the Promoter). The EIB-CM received some of the information and documents requested at the end of January 2020.

4.4 The EIB-CM was envisaging a fact-finding mission to Nepal during the spring of 2020 in order to supplement the information gathered up to then and to consult further with the Complainant, affected communities, the Promoter and other key stakeholders. Due to the COVID-19 outbreak, the EIB-CM was not able to travel to Nepal. This represents a major limitation in the handling of this complaint. Hence, the EIB-CM's compliance review is mainly based on a desk review of existing information and available documents, as well as calls, online meetings and email exchanges with the Complainant and representatives of its advisors, and with the services (between September 2019 and October 2020). The EIB-CM regrets that it did not have the opportunity to undertake a field visit during its investigation phase.

4.5 The Complainant informed the EIB-CM about incidents of intimidation/retaliation during a call in November 2019, on which the EIB-CM received further details in January 2020. The EIB-CM liaised with the services in this respect requesting them to inform the Promoter accordingly and take the necessary steps as soon as possible. The services communicated with the Promoter on this matter via telephone calls and emails prior to sending an official letter by the Bank to the Promoter on 1 July 2020. The Promoter responded in a letter of 30 July 2020

[10] As documented for example in the RAP for Manang-Udipur (Table 6.1). For the full title of the report, see Annex 3 (footnote 157).

[11] Available at: https://www.eib.org/attachments/complaints/2019-07-30-complaint-sg-e-2018-39-nepal-power-system-expansion-project-initial-assessment-report.pdf; https://www.eib.org/attachments/complaints/2019-07-30-complaint-sg-e-2018-39-nepal-power-system-expansion-project-initial-assessment-report-np.pdf

[12] For more details about the EIB-CM mission, see the IAR.

that following thorough investigation: "…none of the project staffs in any capacity have been involved in exercising any kind of force/pressure in order to put PAPs in situation so that they will accept the compensation. … till date, the Project has not mobilized any kind of security forces in order to pressurize any land title holders for accepting compensation amount forcefully".

5 FINDINGS AND CONCLUSIONS

5.1 Significant gaps in environmental and social due diligence for the PSEP, especially the 220 kV Marsyangdi Corridor (Allegation No. 1)[13]

Table 2: Sub-allegations

Sub-allegation 1.1	Failure to apply the higher EIA standard[14] for the environmental and social impacts assessment(s) for the PSEP, or at least for the 220 kV Marsyangdi Corridor and associated hydropower sector development
Sub-allegation 1.2	Salami slicing of the PSEP when evaluating environmental and social impacts/Lack of CIA
Sub-allegation 1.3	Lack of SEA

A. Project applicable standards relevant to the allegations

EIB E&S standards

Requirements for an EIA

5.1.1 As per §11 of Standard 1, Volume I of the Handbook, "Projects outside of the EU will also be subject of an environmental and social impact assessment (ESIA) procedure if they are likely to have significant and material impacts and risks on the environment, human health and well-being and interfere with human rights. The ESIA must be consistent with the principles contained in the EU EIA Directive and best international practice. Specific attention should be given to integrating the impacts on human rights, biodiversity, climate change, cultural heritage, and disaster risks into the overall ESIA as provided by the above mentioned international treaties inparagraph 7. If deemed necessary by the EIB, based on the nature of the project and country context, the promoter may be required to carry out a stand-alone human rights impact assessment and/or other supplementary assessments."

5.1.2 Paragraph 19 confirms that the Promoter shall carry out an E&S assessment for any project that is likely to have significant E&S impacts and risks. Paragraph 21 further specifies that for projects outside of the EU, the Promoter shall be consistent with the classification provided by EU legislation (i.e. Annexes I and II of the EU EIA Directive or relevant EU legislation), as well as the national E&S legislation and applicable international best practice. Paragraph 28 states that, "A comprehensive environmental and/or social assessment is carried out for projects classified under Annex I of the EU EIA Directive, and/or where an ESIA is required by national legislation or for projects where likely significant impacts and risks on the environment, population, human health and well-being have been determined. These projects require specific formalised and participatory assessment processes."

5.1.3 In line with the above, §109 and 110, B.2 Appraisal Stage, Volume II of the Handbook provide details about EIA project screening by the project team at appraisal stage. For projects

[13] Please note that the allegations relating to resettlement and the grievance redress mechanism will be analysed in Section 5.4.

[14] See footnote 5.

outside the EU, the EIB refers to EU law as the benchmark of its ESIA requirements. Projects listed in Annex I of the EU EIA Directive fall under the category of full E(S)IA for EIA project screening.

5.1.4 According to the EIB Statement of ESPS, "For a project that requires an EIA, the Bank or its authority will not finance the project before the EIA has been completed according to the requirements of the Bank. More details are contained in the Handbook."[15]

Assessment of cumulative impacts

5.1.5 The EIB E&S standards refer numerous times to the need to consider cumulative impacts of the project (and its different components) with other existing and/or planned projects, be it in relation to assessing the effects on the environment, biodiversity and/or regarding social aspects.[16]

5.1.6 Standard 1 makes explicit reference to assessing cumulative effects as part of the assessment process (under the objectives of this standard) and to the need of including a description of cumulative effects of the project in a comprehensive E&S assessment study (§5 and 32 of Standard 1, Volume I of the Handbook).

Strategic Environmental Assessment

5.1.7 Furthermore, Standard 1 states that the EIB is committed to developing a holistic approach to impact assessment and risk management by promoting the application of SEA as an "upstream" tool for identifying and evaluating the potential impacts of plans and programmes (§4 of Standard 1, Volume I of the Handbook).

5.1.8 Paragraph 92, Volume II of the Handbook clarifies in which cases an SEA is to be considered relevant: "An SEA is therefore relevant for policies, plans and programmes that have the potential to significantly influence a geographic region or area, a particular sector, and/or particular biodiversity or ecosystem services within a region/area. In addition, where there is a major risk of cumulative impacts in a sector or a region/area arising from repeated projects of similar nature, it is appropriate to take a broader view and carry out a strategic level assessment." Paragraph 102 provides concrete examples of circumstances outside the EU where an SEA would be considered useful, such as sectoral investment programmes (e.g. sector-wide approach in energy) and cumulative or in-combination impacts of existing and proposed/planned development activities in the same sector, region or catchment.

5.1.9 When the plan or programme is located outside the EU, the Promoter is encouraged to apply the principles of the SEA as an important planning and decision-making tool (§18 of Standard 1, Volume I of the Handbook). According to the same paragraph, the EIB and the Promoter will agree on the need for carrying out an SEA for certain plans and programmes, based on a case-by-case analysis.

EIA Directive 92/2011/EU (amended by Directive 2014/52/EU)[17]

5.1.10 All projects listed in Annex I of EIA Directive 92/2011/EU are considered as having significant effects on the environment. The construction of overhead electrical power lines with a voltage

[15] Paragraph 18 of the EIB Statement of ESPS.

[16] See definition of area of influence; §5, 27, and 32 of Standard 1; §32, 57, 68 and 69 of Standard 3; §13 of Standard 5; §30 of Standard 6; Volume I of the Handbook. See also §40, 42, 172, and 211, Volume II of the Handbook. See also §19 of the EIB Statement of ESPS.

[17] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014.

of 220 kV or more and a length of more than 15 km is included in the list of such projects that are subject to Article 4(1) of the EIA Directive and that require an EIA.

5.1.11 The EIA Directive describes the process of an EIA. Consultation with the public is a key feature of the EIA process. To ensure effective public participation, **the EIA report and other information** must be provided as early as possible. Annex IV provides details on the information that should be provided on the environmental impacts. The description of the likely significant effects of the proposed project on the environment should include the cumulative effects of the project.

Finance contract

5.1.12 The finance contract contains the following definitions for EIAs and IEEs:

- "Environmental and Social Impact Assessment" or "EIA" means each environmental and social impact assessment carried out in relation to any Project Component, identifying and assessing the potential environmental and social impacts associated with such Project Component and recommending measures to avoid, minimise and/or remedy any impacts. Each EIA shall be in compliance with Environmental and Social Standards and any other requirements as may be specified by the Bank, from time to time. For the avoidance of doubt, each EIA shall include an Environmental and Social Management Plan and the related EIA procedures shall include assessment of the **potential cumulative impact** of all existing projects and other project-related developments within the Project's area of influence that can realistically be expected at the time that the EIA assessment is undertaken.
- "Initial Environmental Examination" or "lEE" means the Initial Environmental Examination carried out in connection with any Project Component in accordance with the laws and regulations of Nepal.

5.1.13 Article 1.04B of the finance contract stipulates that the disbursement of each Tranche under Article 1.02, including the first, is subject to a number of conditions. One of them reads as follows: "(iii) in relation to each Project Component to be covered by the Tranche to be disbursed by the Bank: (A) **completion of EIA procedures**, and (B) confirmation of environmental approval(s) by the competent national authority in Nepal."

5.1.14 As part of the continuing Project undertakings (under Article 6.05), the Borrower commits that NEA shall:

"(e) Environment and Social:
(i) implement and operate the Project in compliance with the Environmental and Social Standards, the updated Environmental and Social Management Plan and the RIPP [Resettlement and Indigenous Peoples Plan], and
(ii) obtain, maintain and comply with the requisite Environmental or Social Approvals for the Project;
(f) Environmental Law: execute and operate the Project in accordance with applicable Environmental Law."

5.1.15 As part of the Project information to be sent to the Bank (Article 8.01 and Schedule A.2), the Borrower shall deliver a **final EIA/IEE report (as applicable)** and Environmental and Social Management Plans that complies with the framework set out in the draft EIA for the Project and with the Bank's Environmental and Social Practices, including confirmation of environmental approval by the competent national authority. These documents need to be delivered **prior to the start of any construction activity** related to transmission lines or associated substations.

B. **Findings**

5.1.16 There is a discrepancy between the requirements set out in the EIB E&S standards and finance contract and the references made to the completion of EIA procedures that include an assessment of potential cumulative impacts in the Bank's appraisal documents on one hand, and the actual E&S impacts assessments that were carried out and are available for the transmission lines concerned on the other hand.

Requirements in the EIB E&S standards and finance contract and references in appraisal documents

5.1.17 The EIB E&S standards are clear about the application of the principles of the EU EIA Directive to projects financed by the EIB in all countries. The two EIB-financed transmission lines in the Marsyangdi Corridor (Manang-Udipur and Udipur-Bharatpur) – both 220 kV and longer than 15 km – fall in the category of projects that require an EIA as per Annex I of the EU EIA Directive.

5.1.18 The Bank's appraisal documents confirm this requirement as they refer clearly to the **completion of EIA procedures for all components to be funded by the EIB that fall under Annex I of the EIA Directive**. For example, the Environmental and Social Data Sheet (ESDS)[18] mentions the following: "The Project includes a 25 km 220 kV transmission line from Manang to Khudi in the Upper Marsyangdi Valley, part of which, including the substations at either end, lies within the Annapurna Conservation Area (ACA), and an EIA will be required by the Nepalese authorities for this component. The other transmission lines are not expected to require an EIA according to Nepalese legislation and would normally follow IEE procedures; however, **in this specific case all components to be funded by the EIB that fall under Annex I of the EIA Directive will also be required to undergo a full EIA, including public consultation and publication on the EIB website.** Completion of the EIA procedures for each of the lines to be funded by the EIB, including **update and finalisation of the EIA report, the RIPP and the EMP** [Environmental Management Plan], will be required **prior to the start of construction** and will be a **condition of disbursement**."

5.1.19 Regarding the need for an assessment of potential cumulative impacts as part of the EIA procedures: the Bank's appraisal documents make an explicit mention of this requirement as well. Annex 1 provides more details about the references made to the requirements in terms of EIA and assessment of cumulative impacts in the Bank's appraisal documents. The EIB-CM notes that overall, the finance contract is aligned with the appraisal documents in terms of disbursement conditions and requirements related to E&S matters (see paragraphs 5.1.12 to 5.1.15).[19]

5.1.20 Regarding the SEA: the ESDS states that "Nepalese environmental legislation does not include any requirement for Strategic Environmental Assessment (SEA) and no SEA is planned to be undertaken in the context of this project."

E&S impact assessments actually carried out and formal documents available so far

5.1.21 Four E&S impact assessments have been carried out and reports prepared for the Project so far: a draft IEE report and a draft EIA report for the PSEP (2014), a (draft) EIA report for Manang-Udipur (2018)[20] and a final IEE report for Udipur-Bharatpur (2017)[21].

5.1.22 The Complainant raised the issue of salami-slicing of the Project or the fact that E&S impact assessments are being carried out at sub-project level rather than in a more holistic manner

[18] Available as of 22 October 2020 at: https://www01.eib.org/attachments/registers/55531964.pdf

[19] It deviates slightly in terms of Project documentation required: the finance contract refers to "a final EIA/IEE report (as applicable)." Note that some components of the Project, such as the Samundratar-Trishuli 3B 132 kV transmission line, do not fall under Annex I of the EIA Directive.

[20] Total line length of approximately 45.25 km.

[21] Total line length of 64.45 km.

at the PSEP level or at least the level of the Marsyangdi Corridor component. Salami-slicing refers to "the practice of splitting an initial project into a number of separate projects, which individually do not exceed the threshold set or do not have significant effects on a case by case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects."

5.1.23 Approaches to address the issue of salami-slicing include the obligation to perform an EIA if several projects are closely related and together reach or exceed the specified threshold, or the consideration of cumulative impacts. As mentioned above, both of the transmission lines in the Marsyangdi Corridor are subject to an EIA as per EIB requirements, which addresses the issue of salami-slicing. The EIB requirements also include the need to assess potential cumulative impacts as indicated in paragraphs 5.1.5, 5.1.6, 5.1.12, and 5.1.19. Table 3 presents the EIB-CM's observations regarding fulfilment of the requirements in terms of EIA and assessment of potential cumulative impacts in relation to these four assessments/reports.

5.1.24 Regarding the SEA: no SEA has been carried out in the context of the Project. During their monitoring mission in June 2019[22], the EIB services conducted a knowledge-sharing event on E&S matters for NEA project staff. The EIB-CM acknowledges that as part of their workshop, the services emphasised the importance of an SEA as an upstream tool used to identify the best available planning options early in the decision-making process.

[22] The services' monitoring mission of June 2019 covered several projects: the Tanahu Hydropower Project, the Nepal Power System Expansion Project and the Nepal Grid Development Project.

Table 3: E&S impact assessments (relevant to the Marsyangdi Corridor component of the Project) and the EIB-CM's observations regarding requirements in terms of EIA and assessment of cumulative impacts

Assessments carried out/available	Available on EIB website	Observations by the EIB-CM regarding:	
		EIA requirement	**requirement of assessment of cumulative impacts**
Environmental Impact Assessment, NEP: South Asia Subregional Economic Cooperation (SASEC) Power System Expansion Project (SPEP), DRAFT, February 2014 Initial Environmental Examination, NEP: South Asia Subregional Economic Cooperation Power System Expansion Project – Transmission and Distribution, Revised DRAFT, April 2014	Yes[23]	The EIB-CM notes that both documents are in a draft form. They cover the on-grid components of the SASEC PSEP. They were prepared with the support of ADB's technical assistance in accordance with ADB's *Environmental Assessment Guidelines 2003* and *Safeguard Policy Statement 2009*. The EIB was expected to carry out a gap analysis against its E&S standards during the appraisal stage.[24] This is in accordance with §12 of Standard 1, Volume I of the Handbook, and §90, Volume II of the Handbook. The EIB-CM was not provided with written evidence of EIB's analysis/review of these two documents for ensuring compliance and identifying any existing gaps with the EIB E&S standards.[25]	The two draft reports contain one section[26] called "Cumulative and Induced Impacts". The EIB-CM notes that this section is rather limited in terms of substance. It mainly presents information about impacts in relation to climate change, and more specifically in terms of greenhouse gas emissions. In EIB-CM's view, this section cannot be considered as describing the major findings of a proper assessment of potential cumulative impacts carried out as part of the E&S impact assessments for the SASEC PSEP.
Environmental Impact Assessment (EIA) report of Marsyangdi Corridor (Manang-Udipur) 220 kV	No[27]	The EIB services do not consider the EIA process and report as completed and finalised. The services provided a number of comments on the draft EIA report, on which they followed up in May 2019.[28] These include comments related to cumulative impacts and stakeholder engagement. The EIB's comments have	The (draft) EIA report does not contain a description of cumulative effects. This observation is even more important given that it concerns a transmission line that passes a legally protected area, namely the Annapurna Conservation

[23] Available as of 22 October 2020 at: https://www01.eib.org/attachments/registers/51924029.pdf; https://www01.eib.org/attachments/registers/53846571.pdf

[24] This was mentioned in a press release on the EIB's website in April 2014. Moreover, this step (EIB gap analysis) is also clearly reflected in Figure 2.1 included in the draft IEE (page 19). The draft IEE states the following: "The European Investment Bank (EIB) is considering cofinancing the Project. EIB has its own environmental and social safeguards, and will review the environmental and social assessments prepared on behalf of NEA. EIB may commission supplemental safeguards analyses prior to preparation of the IEEs and EIA required under the Nepali framework. Figure 2.1 illustrates the overall safeguards activities which will be conducted."

[25] A request to EIB services for providing such evidence was made on 22 October 2019.

[26] Section 5.5 in the draft EIA, Section 5.6 in the draft IEE.

[27] As of 22 October 2020.

[28] EIB comments related to EIA of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line – May 2019. Shared internally.

Assessments carried out/available	Available on EIB website	Observations by the EIB-CM regarding:	
		EIA requirement	**requirement of assessment of cumulative impacts**
Transmission Line Project, September 2018		not been fully addressed and integrated in the EIA report to date (as of end 2020). The fact that the EIA report does not fully meet the EIB E&S standards is also the reason given by the services as to why the EIB has not made this report available to the public yet. The services developed an Environmental and Social Action Plan following their monitoring mission in June 2019 (hereinafter referred to as the "corrective Environmental and Social Action Plan").[29] The EIB-CM supports this as a positive step that was taken by the services to address the shortcomings identified up to that point. The EIB-CM notes that the plan includes a number of actions related to the EIA process and report for this transmission line. However, it appears that the services have not yet been able to reach an agreement with the Promoter regarding implementation of the plan.	Area (see §68 and 69 of Standard 3, Volume I of the Handbook in this respect). As part of their comments on the EIA report[30], the EIB services requested to update the report with information on the cumulative effects of the Project with other planned developments (requirement as part of the EIA). The Promoter (more specifically, its Environment and Social Studies Department – ESSD) responded that this would require a separate assessment. When reviewing the draft terms of reference for the EIA, the services had already commented back in October 2016 about the need for the terms of reference and subsequent EIA report to address the cumulative impacts of the Project with other planned developments.[31] The EIB-CM takes note of the fact that the Promoter has not addressed this comment to date (as of end 2020). Nevertheless, the services informed the EIB-CM that the Promoter decided to address this issue through the production of an Addendum.
Initial Environmental Examination, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double	Yes[32]	According to Nepalese legislation, this transmission line (Udipur-New Bharatpur) is required to undergo an IEE (not an EIA). An IEE report was prepared and concludes that the proposed transmission line will not have significant impacts and that no further study is required regarding environmental assessment.[33]	The IEE report contains a sub-section, titled "Cumulative effects of the Project with other planned developments". This sub-section consists of one paragraph that acknowledges that there are several development activities going on within the zone of influence of the proposed

[29] For more details about the corrective Environmental and Social Action Plan, see Annex 2.
[30] EIB comments related to EIA of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line – May 2019. Shared internally.
[31] Email of 27 October 2016 sent by the services to the Promoter. The EIB-CM notes that the final version of the terms of reference (March 2017) does not address the EIB's comment regarding the need to address cumulative impacts.
[32] Available as of 22 October 2020 at: https://www01.eib.org/attachments/registers/80938653.pdf
[33] Pages 13 and 167 of the report.

Assessments carried out/available	Available on EIB website	Observations by the EIB-CM regarding:	
		EIA requirement	**requirement of assessment of cumulative impacts**
Circuit Transmission Line, September 2017		As presented above, according to the EIB E&S standards, this transmission line is subject to an EIA. The appraisal documents and the finance contract further refer to completion of EIA procedures, including public consultation, update and finalisation of the EIA report and Environmental and Social Management Programme (ESMP), publication on the EIB website, and the need for an assessment of potential cumulative impacts. The EIB services reviewed the draft IEE report. Being aware of the discrepancy between the requirements in the national legislation and the EIB E&S standards, the services applied the EIA lens while reviewing the draft IEE report. They provided comments with a view to close the gaps and upgrade the report towards meeting the EIB E&S standards and EIA related requirements. Their comments included for example the need to address cumulative effects of the Project with other planned developments, provide further information on the mitigation measures of various impacts, develop several plans as part of the ESMP, as well as comments related to stakeholder engagement and grievance redress mechanism. The EIB-CM notes however that some issues remain to be addressed for the E&S impacts assessment process and study to be considered as meeting the requirements of a full EIA as per EIB E&S standards, and as defined in the finance contract. These include (i) the final IEE report contains limited information on cumulative impacts (see next column for more details); and (ii)	transmission line alignment (including the construction of transmission lines and hydropower projects, and roads[35]). It concludes that *"Construction of this 220kV transmission line may cause to shift in site location or variation in planning and implementation of above-mentioned development activities. The impact will be long term in duration, site specific in extent and medium in significance"*.[36] The combined rating given for cumulative effects of the Project with other planned developments (under impact analysis) is of potential "significant impact'', based on a rating system of insignificant impact, significant impact, very significant and highly significant impact.[37] The services shared with the EIB-CM their views about the difficulty in conducting a proper assessment of cumulative impacts. While they agree that there is scope for improvement, they consider that cumulative impacts have been assessed, and the existing paragraph and ratings contained in the final IEE report provide sufficient information in this respect (as a summary for decision-making). They consider that the residual risks are not considerable. The EIB-CM raises the question about the quality of assessment of potential cumulative impacts (required as part of the E&S impacts assessment) and of its documentation, given the limited documentary evidence available in this respect. The EIB-CM finds the information contained in the paragraph about cumulative effects of the Project with other planned developments limited and not

[35] Please note that the formulation about the other development activities is generic with no reference to/specifics about particular projects.
[36] Pages 93 and 94 of the report. This is a sub-section under adverse impacts, socio-economic and cultural environment (operation phase).
[37] Page 99 of the report.

Assessments carried out/available	Available on EIB website	Observations by the EIB-CM regarding:	
		EIA requirement	**requirement of assessment of cumulative impacts**
		there are some shortcomings with regard to the public participation process[34].	sufficiently substantiated. Moreover, it is not clear to the EIB-CM how the findings of the assessment of cumulative impacts (if one was properly carried out) have further translated into the inclusion of concrete measures in the ESMP, and in terms of stakeholder engagement, resettlement and livelihood restoration, to address key cumulative impacts.

[34] Refer to Section 5.2 for more details in this respect.

C. Conclusions

Regarding the alleged failure to apply the "higher EIA standard":

5.1.25 Based on the EIB E&S standards and taking into account the Bank's appraisal documents for the Project, the two transmission lines from Manang to Udipur and from Udipur to Bharatpur are both subject to a full EIA.

- There is a draft EIA report for the SASEC PSEP dating back to February 2014 that has not been updated or finalised.
- There is an EIA report for the Manang-Udipur transmission line, but the EIB services do not consider the report as finalised given that it fails to address their comments for meeting the EIB E&S standards and EIA related requirements.
- An IEE was carried out and an IEE report was finalised for the Udipur-Bharatpur transmission line. The EIB services reviewed and commented on the draft IEE report with a view to upgrade it towards meeting the EIB E&S standards and EIA related requirements. The EIB-CM notes however that some issues remain to be addressed for the E&S impacts assessment process and study to be considered as meeting the requirements of a full EIA (see Table 3 for details).

5.1.26 Therefore, the EIB-CM concludes that the EIB applied the same requirements for both transmission lines in the Marsyangdi Corridor (i.e. for both, the requirement of a full EIA, including an assessment of potential cumulative impacts). The Bank used the EIA lens when reviewing and commenting on the draft reports. Nevertheless, some issues remain to be addressed. For both of the EIB-financed transmission lines in the Marsyangdi Corridor, the EIA process and formal documents are not fully in line yet with the EIB requirements based on its E&S standards, the finance contract, and as indicated in the Bank's appraisal documents (including the publicly available ESDS).

Regarding the alleged lack of CIA:

5.1.27 The EIB-CM concludes that at the moment the information regarding potential cumulative impacts is either missing (EIA report for Manang-Udipur) or not sufficiently substantiated (final IEE report for Udipur-Bharatpur). None of the various reports that are currently available provide sufficient documentary evidence that an assessment of cumulative impacts (meeting quality standards) was carried out as part of the E&S impacts assessments. This is not in line with the requirement for an "assessment of the potential cumulative impact of all existing projects and other project-related developments within the project's area of influence that can realistically be expected at the time that the assessment is undertaken," as was clearly spelt out in the appraisal documents, and underlined in the EIA's definition provided in the finance contract.

Regarding the alleged lack of SEA:

5.1.28 The EIB-CM concludes that the requirement for an SEA falls outside the scope of the Project. In the EIB-CM's view, it could be conducive for the success of future investments if major lenders and development partners in the energy sector coordinate efforts to promote and support the use of the principles of an SEA at the levels of policy making, plan and program formulation. This could help the country in supporting sustainable development in the sector and in the geographical regions/areas most concerned by hydropower development (such as Lamjung district). Going forward and with a view to potential future investments of the Bank with public promoters in the sector in Nepal, EIB could consider playing a role in this respect.

5.2 Failure to comply with EIB requirements on consultation and information disclosure and violation of the rights to information, language and dignity (Allegation No. 2)

Table 4: Sub-allegations

Sub-allegation 2.1	Lack of adequate and meaningful consultations with PAP, especially in Lamjung district and with people affected by the RoW
Sub-allegation 2.2	Inadequate participation and agreement seeking from affected communities in decision-making about the Project
Sub-allegation 2.3	Lack of adequate disclosure of information about the Project and its impacts in a manner that is accessible to affected local people, including indigenous peoples

A. Project applicable standards relevant to the allegations

EIB E&S standards[38]

5.2.1 The EIB actively promotes the right to access to information, as well as public consultation and participation, and the right to access to remedy, including through grievance resolution at the project level.

5.2.2 Standard 10 requires promoters to build and maintain a constructive dialogue between the promoter, project-affected communities and other relevant stakeholders (that need to be properly identified and engaged). This standard stresses the value of public participation in the decision-making process throughout the project life cycle. "The purpose of public consultation and stakeholder engagement in the EIA process, and more generally throughout the lifecycle of the project, is to allow the promoter to identify and address public concerns and issues, and to provide the public with an opportunity to receive information and contribute meaningful input into the project assessment, development and implementation" (§160, B.2 Appraisal Stage, Volume II of the Handbook).

5.2.3 Effective and meaningful engagement and consultation is an ongoing two-way process to be guided by the following principles: be initiated by the promoter early and continued throughout the entire project life cycle, be inclusive, and be adequately documented both in substance and process. In order to be inclusive and effective, §20 further specifies that "Factors such as literacy, unequal gender relations and access to dissemination media constitute factors to be carefully considered by the promoter when pursuing an effective disclosure and information dissemination campaign" (Standard 10, Volume I of the Handbook).

5.2.4 Furthermore, Standard 10 describes in detail the procedural requirements regarding key steps involved in the stakeholder engagement process, such as stakeholder analysis, engagement planning, timely disclosure of information, and public consultations.

5.2.5 Requirements in relation to stakeholder engagement, including for public consultation and participation, the establishment of a grievance mechanism, information dissemination, and engagement with vulnerable groups and indigenous peoples are also included in other standards such as Standard 1, Standard 6 and Standard 7.[39] The requirements contained in these standards are to be applied in cross-reference with Standard 10 on stakeholder engagement.

5.2.6 Stakeholder engagement is one of the key social aspects that needs to be assessed by the project team at appraisal and further monitored during project implementation.

[38] The EIB provisions relevant/specific to indigenous peoples will be presented in Section 5.3.
[39] Paragraphs 21 and 22.

Paragraph 164 of Volume II of the Handbook states that "For projects located outside the EU, […] a Stakeholder Engagement Plan, including a grievance mechanism, is mandatory as part of the ESIA process. In line with Standards 7 and 10, where the EIB operation and/or components thereof impact or threaten the customary rights and interests of indigenous communities, the Team is to ascertain that a satisfactory FPIC process has been carried out." As per §171, "The Team will review the results of the stakeholder identification and the Stakeholder Engagement Plan, assess the adequacy of the project grievance mechanism and assess the adequacy of the planned stakeholder engagement during project implementation. Continuous stakeholder engagement is expected throughout the lifecycle of the project, as laid out in the Stakeholder Engagement Plan" (Volume II of the Handbook).

EIA Directive 92/2011/EU (amended by Directive 2014/52/EU)[40]

5.2.7 Consultation with the public is considered an integral part of the assessment procedure, and key to effective EIA. The purpose of public consultation is for the public concerned[41] to participate effectively in the environmental decision-making procedures. The public concerned shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority(ies) before the decision on the request for development consent is taken.

5.2.8 To ensure effective public participation, the public shall be informed electronically and by public notices or by other appropriate means, of the project and EIA-related information as early as possible in the environmental decision-making procedures and within reasonable time frames. The time frames for consulting the public concerned on the EIA report shall not be shorter than 30 days. The **results of consultations** and the information gathered **shall be taken into consideration** in the development consent procedure. The public must be informed of the decision taken (its content, the conditions and the reasons and considerations on which the decision was based).

B. **Findings**

5.2.9 The EIB-CM gathered, compiled and analysed all the information available on public consultations and information disclosure activities that have taken place to date. This information was found in the various E&S assessment reports and Resettlement Action Plans (RAPs) that are available. In addition, some information about more recent activities (in 2019) was shared by the services.[42] The consolidated information is presented in Annex 3. In some cases, it also includes specific information for Lamjung district as well as specific information related to indigenous peoples.[43]

5.2.10 From the information gathered, it appears that public consultations and information disclosure activities took place as part of the E&S assessments and preparation of the RAPs, including in Lamjung district. A number of people in the Project-affected areas, including indigenous peoples[44], participated in public consultations, focus group discussions (FGDs),

[40] See footnote 17. For applicability of the EU EIA Directive, please refer to Section 5.1.

[41] The EU EIA Directive defines "public concerned" as the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures. Non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

[42] See Annex 1 of the EIB's letter to Accountability Counsel dated 30 April 2020. This letter was sent in the context of requests for access to information by LAHURNIP and Accountability Counsel – the Complainant's advisors (EIB's response to their letter of 17 June 2019).

[43] The EIB-CM requested a comprehensive list of all public consultation and information disclosure activities that have taken place to date within the context of the Project (preparation and implementation). The EIB-CM has not received such a list.

[44] For example, for the Manang-Udipur RAP, 37% of the participants in participatory rapid appraisals (PRAs) were indigenous peoples; an additional 62 indigenous peoples participated in FGDs (19 in women-only FGDs and 43 in indigenous peoples-

household surveys and interviews at various times. Moreover, information about the Project and its impacts was communicated through various formats and at different times. Feedback was solicited during public consultations (and a public hearing for the Manang-Udipur transmission line) and in writing through public notices.

5.2.11 Nevertheless, public consultation and participation and more generally the stakeholder engagement process may not have been optimal. The EIB-CM identified a number of shortcomings in relation to stakeholder engagement as is understood under EIB Standard 10, which are detailed below.

5.2.12 Preparation of a Stakeholder Engagement Plan:

- No **Stakeholder Engagement Plan** (SEP) was prepared for the Project as a whole or for the Marsyangdi Corridor component of the Project.[45] This is not in line with EIB E&S standards (§164, Volume II of the Handbook). In the EIB-CM's view, the development of a SEP should have been considered a must given the nature of the Project (considered as having significant effects on the environment) and the EIA requirements in terms of public participation, and given the presence of different groups of indigenous peoples living in the Project area. The EIB-CM acknowledges that the Bank shares this view[46] and included the development of a SEP in the corrective Environmental and Social Action Plan in 2019.

5.2.13 Levels of participation and inclusive participation:

- Based on available information, the **total number of people consulted** is rather limited compared to the total population in the Project-affected areas. For example, the total number of people who attended public consultations and the public hearing programme in the context of the EIA for the Manang-Udipur transmission line constitutes about 1% of the total population in the Project-affected area. The participants also included representatives of stakeholders other than the PAP (such as the Promoter, municipalities, Community Forest Users' Groups – CFUGs). The EIB-CM was told that the limited participation was due to the fact that people were absent or not available at the time of the consultations. During the EIB-CM's mission, various community members explained that they had not learned about the Project until they spotted red markings in their fields. The Complainant shared the results of a community-led survey conducted in Lamjung district in 2018 with the EIB-CM. The survey found that the vast majority of respondents learned about the Project from peer community leaders rather than from the government or Project authorities.[47]
- **Women's representation** among the participants in the public consultations was generally low: it varied between 19% and 34% (based on information where available). Some efforts were made to get more women involved in the consultation process as part of the preparation of the RAPs by conducting women-only FGDs.[48] Women's participation is also better documented in the RAPs (compared to the public consultations that took place as part of the E&S assessments).

only FGDs), and 88% of the Project-affected households that were surveyed are indigenous peoples. More details in relation to engagement with indigenous peoples in the context of the Project, and more specifically the FPIC process, can be found in Section 5.3.

[45] An SEP identifies key stakeholders and any vulnerable groups and includes a rigorous plan (with a schedule, dedicated resources and defined responsibilities) on how and when to engage and communicate with the different stakeholder groups.

[46] The need to develop a SEP was also highlighted by the EIB services in their comments on the EIA for Manang-Udipur.

[47] The FPIC and Rights Forum with support from Accountability Counsel and LAHURNIP (2019). *Results from Community-Led Survey, 220 kV Marsyangdi Corridor (Lamjung district, Nepal)*. Available as of 22 October 2020 at: https://www.accountabilitycounsel.org/wp-content/uploads/2019/05/5-7-19-nepal-lamjung-survey-report-final-with-survey-forms.pdf

[48] See Draft Combined RIPP SASEC PSEP, and RAP for Manang-Udipur.

- In addition to public consultations (and the public hearing programme for the Manang-Udipur transmission line), household surveys were conducted with Project-affected households/Project-affected families. It is not clear to what extent **people affected by the RoW** were consulted. In some documents, it is found that the household surveys did not include households affected by the suspension towers[49] or households that only have land falling in the RoW.[50] On the other hand, the draft EIA for the SASEC PSEP mentions that for the Manang-Khudi route, potentially affected people along the RoW were informally consulted twice. In general, the EIB-CM can reasonably assume that the public consultation process did not exclude as such the participation of this category of PAP. Furthermore, various documents refer to the fact that the issue of compensation for land falling in the RoW was brought up during the consultation process.[51] In its letter of 5 December 2018 to the Complainant's advisors, the Bank appears to agree with the lack of clarity on consultation with the people affected by the RoW in the IEE for Udipur-Bharatpur, and mentions that it asked the Promoter to: (i) clearly specify those people with land and assets in the RoW; (ii) provide information on the representativeness of the consultation event attendees, and on concrete outcomes and agreements; and (iii) consider redoing the consultation of people affected by the RoW at a time and in a manner convenient to them.[52] The EIB-CM was not provided with updated information in this respect due to the absence of clear answers from the Promoter to the services' questions.
- The EIB-CM found little information regarding **consultation with relevant national and/or local organisations** such as non-governmental organisations (NGOs) dealing with indigenous peoples, women or other vulnerable groups, even though these are considered key stakeholders to be engaged in such a process. Only the RAP for Manang-Udipur explicitly mentions consultation with representatives of women's organisations. The EIB's letter to Accountability Counsel dated 30 April 2020[53] mentions that requests for comments on the EIA for Manang-Udipur were officially transmitted to the Nepal Federation of Indigenous Nationalities (NEFIN) in 2018.
- There is limited information available regarding **consultations held more recently**.[54] The EIB-CM asked for a list of such consultations in October 2019; however, this was not provided.

5.2.14 Meaningful and effective participation and communication:

- The means of communication may not have always been the most effective to encourage **meaningful and effective participation and the active involvement of different groups of PAP in decision-making**.[55] For example, public notices were published in national newspapers

[49] See EIA for Manang-Udipur, pages vi and 5-15.

[50] See IEE for Udipur-Bharatpur: Household surveys were only conducted for Project-affected families impacted by angle towers and having structures falling under the RoW. A household survey of landowners impacted by the RoW was not conducted; it will be finalised during a detailed design and check survey of the transmission line route (page 18). See RAP for Manang-Udipur: Household surveys were conducted with Project-affected households whose land and house will be acquired for tower pads and houses/structures to be acquired in the RoW and substations (page 18). The household-level impacts of the Project due to land use restriction along the RoW, the project access road and suspension towers will be covered in the updated RAP to be prepared by the implementation consultant after completion of the final survey covering the missing households (page 39).

[51] See RAP for Manang-Udipur: Issues related to land use restriction and compensation were raised by local people. They requested the permanent acquisition of the land (100% compensation for land under the RoW) or support with the process to take out loans with banks using land under the RoW as collateral (page 76). See EIA for Manang-Udipur: Similar issues were raised during the public hearing programme. Compensation for land under the RoW should be given at 100% (page 10-6).

[52] This letter was sent by the Bank in the context of requests for access to information by LAHURNIP and Accountability Counsel (EIB's response to their letters of 9 August and 5 October 2018 and email of 12 November 2018).

[53] See footnote 42 regarding the letter.

[54] Except the information included in the EIB's letter dated 30 April 2020 and shown in Annex 3 of this report.

[55] The essence of public consultation is to achieve two-way communication whereby sufficient information is provided to those consulted in an accessible manner and they are given sufficient time to provide relevant feedback.

and feedback was solicited in writing.[56] Another example is the posting of draft and final reports on the Promoter and the Bank's websites. The approach to communicating and disclosing information may not sufficiently take into account the context and the differences that exist between different locations, such as the sometimes low levels of literacy of local affected people[57], the time available to farmers, especially women farmers who are also primarily responsible for taking care of their households, the preferred channels and formats of communication of female and male villagers[58], and the preferred language of different groups of PAP. This may partly explain why, according to the Complainant, some community members said they had not attended the public consultation because they were not informed about it.

- The Complainant claims that the technical documents are only available in English and that the consultation was not done in any of the local languages, but only in Nepali. The Promoter confirmed to the EIB-CM during its mission in 2019 that the meetings with the communities had been conducted in Nepali, specifying that local officers were on hand to translate into the local languages as needed. From the information available in the reports, it is not entirely clear what information about the Project and its impacts was communicated and/or made available in **Nepali and/or local languages** before and during the consultations. For example, the IEE for Udipur-Bharatpur mentions that a summary of the draft IEE report was distributed to the Village Development Committees (VDCs) and CFUGs concerned, and a copy of the IEE report provided to the District Development Committees (DDCs) and District Forest Officers (DFOs); it does not mention in what language(s). The EIA for Manang-Udipur mentions that a brochure with relevant information about the EIA findings was prepared in Nepali and distributed to the participants of the public hearing programme. Nevertheless, it is not clear whether the brochures in Nepali were made available in a timely manner before the consultations. Moreover, it is not clear in what language(s) the draft EIA and other materials were displayed and shared during the public hearing programme. The RAPs[59] refer to expected future disclosure activities, such as the translation of the Executive Summary of the RAP for Manang-Udipur into Nepali and making this accessible to affected people and other stakeholders at the project site.[60] The RAP for Manang-Udipur mentions later in the report that the summary in Nepali was distributed and discussed in the three rural municipalities/municipality concerned in July 2018, and that a social expert team was mobilised through the ESSD for this purpose.[61] It is not clear whether the summary in Nepali was made available in a timely manner before the consultations. Moreover, discrepancies were found between the English version of the entitlements matrix[62] and the Nepali version of the matrix reproduced in the summary in Nepali.[63] Furthermore, the EIB-CM was not able to verify to what extent the disclosure activities that were planned for the future have actually been carried out.

[56] For example, opinions and suggestions to be submitted in writing within 15 days (see IEE for Udipur-Bharatpur), or queries and suggestions from the public collected during the public hearings for the EIA for Manang-Udipur using written comment slips.

[57] See IEE for Udipur-Bharatpur: The literacy rate varies, with Bharatpur Municipality having a high literacy rate but Chhimkeshwori VDC, for example, having a low literacy rate of 55 %, with a lower rate for women in this VDC. In general, the women's literacy rate among indigenous peoples in the Project area is lower (85%) than that of men (95%).

[58] For example, considering the fact that PAP may not have ready access to the internet – see draft EIA SASEC PSEP.

[59] Draft RIPP SASEC PSEP and RAP for Manang-Udipur.

[60] Pages 57 and 77 of the RAP for Manang-Udipur.

[61] Page 82 of the RAP for Manang-Udipur.

[62] Table 6.3 of the RAP.

[63] Appendix XI of the RAP for Manang-Udipur.

5.2.15 Documentation:

- There are limitations in the documentation for the public consultations and stakeholder engagement process. The information is provided in a piecemeal manner (in the various E&S assessment reports and RAPs), and is not systematically presented in a **comprehensive and transparent manner**.[64]
- In general, there is a lack of transparency in the reports about the **representativeness of participants** in public consultations/meetings.[65] As mentioned earlier, the RAP for Manang-Udipur is more transparent and better at documenting female and indigenous peoples representation.
- There is no documentation on the **consultation process** that took place in relation to **resettlement for Udipur-Bharatpur**. As of 8 July 2020, the EIB had not received an updated or final RAP/RIPP for this transmission line. In the absence of such document, the EIB-CM raises the question of whether and to what extent public consultations and disclosure on resettlement impacts and measures for this transmission line took place (prior to implementation of the land acquisition and compensation process and the start of construction activities) in line with EIB standards (Standards 6[66], 7 and 10).

5.2.16 Disclosure of documents:

- Besides some issues related to disclosure already mentioned above, the EIB-CM notes that the EIB requires promoters to make any E&S studies, in local language, available to the public in a suitable form and place (§119, Volume II of the Handbook). This requirement for promoters is reinforced by the EIB's disclosure requirements. In this respect, it should be noted that the EIA report (as a draft, if not considered finalised by the EIB) and the RAP for Manang-Udipur are not available on the **EIB website** (as of 12 November 2020).[67]

5.2.17 The EIB-CM welcomes that the EIB services discussed the issue of consultation (especially regarding the people affected by the RoW) at length with the Promoter's project staff during their two monitoring visits in 2019, and are further monitoring activities as part of the ongoing consultation process.[68] Moreover, the EIB-CM acknowledges that the Bank recently published a Guidance Note on Stakeholder Engagement .[69] The purpose of this guidance note is to provide recommendations to promoters on how to meet the EIB's requirements regarding stakeholder engagement in EIB operations; it also summarises good practices for meaningful stakeholder engagement. The services informed the EIB-CM that they shared this guidance note with the Promoter in December 2020.

C. Conclusions

5.2.18 Based on the information available, it appears that public consultations and information disclosure activities took place as part of the E&S assessments and preparation of the RAPs, including in Lamjung district. A number of people in the Project-affected areas, including indigenous peoples, participated in public consultations, FGDs, household surveys and

[64] For example, the figures are not always presented in a consolidated manner. In some cases, the figures on the participants in public meetings are not added up. Information about the participants is not always clear (only local people/PAP or including other key stakeholders such as local administration officials, etc.).

[65] For example, there is no breakdown of the participants by particular indigenous peoples group or by sex and/or the proportions of different stakeholder groups are not presented. In some cases, the report does contain the raw information about the participants but does not present readily available information about participant representativeness, e.g. representation of women, indigenous peoples (F/M) or other vulnerable groups who attended the public consultations.

[66] Paragraphs 4, 50 to 52, and 62.

[67] This was supposed to be the case (see page 77 of the RAP for Manang-Udipur).

[68] EIB's letter dated 30 April 2020. See footnote 42 regarding this letter. The corrective Environmental and Social Action Plan for the Project includes actions related to stakeholder engagement.

[69] Available as of 22 January 2021 at: Guidance Note for EIB Standard on Stakeholder Engagement in EIB Operations.

interviews at various times. Moreover, information about the Project and its impacts was communicated through various formats and at different times. Feedback was solicited during public consultations (and a public hearing for the Manang-Udipur transmission line) and in writing through public notices.

5.2.19 Nevertheless, public consultations and participation, and more generally the stakeholder engagement process, may not have been optimal. The EIB-CM identified a number of shortcomings in view of EIB E&S standards. The absence of a SEP despite the EIA requirements for the Manang-Udipur and Udipur-Bharatpur transmission lines is not compliant with the EIB E&S standards (mainly §29 of Standard 10, Volume I of the Handbook, and §164 of Volume II of the Handbook). Other issues range from low levels of participation, especially of women, lack of clarity about the extent of consultation with people affected by the RoW, and in general about the representativeness of participants in public consultations, to the level of effectiveness and meaningfulness of the public consultation process.

5.3 Lack of FPIC for the Project from affected communities, especially indigenous peoples (Allegation No. 3)

A. Project applicable standards relevant to the allegation

EIB E&S standards

5.3.1 Standard 7 sets out to identify and avoid, or reduce, minimise, mitigate or effectively remedy adverse impacts of EIB-financed operations on vulnerable individuals and groups, including women and girls, minorities and indigenous peoples, whilst seeking that these populations duly benefit from such operations.

5.3.2 The standard outlines the requirements to be met for EIB operations involving indigenous peoples, and is to be applied in synergy and cross-reference with other standards as relevant (Standard 10, and relevant provisions in Standards 1, 3, 4, 5 and others).

5.3.3 Paragraph 24 of Standard 7 states the following: "Where EIB operations encounter, affect or threaten the customary rights and interests of indigenous peoples, and where specific actions and outputs are required from promoters, particular attention to social due diligence is mandated. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) [footnote] is the guiding document of reference in this respect for the EIB.[footnote] A gender-sensitive approach endeavouring to promote the rights and interests of women and girls in indigenous communities constitutes a further layer of due diligence required."

5.3.4 Paragraph 25 requires the preparation of an Indigenous Peoples Development Plan (IPDP) in all instances involving indigenous peoples, "abiding by the principle of free, prior and informed consent (FPIC) and accounting, amongst others, for the recognition awarded by the state to the indigenous groups or communities affected, the duty of the state to consult them, the safeguarding of both their tangible and intangible cultural heritage, their link to resources and territories, and considerations of benefit sharing arrangements with them."

5.3.5 Standard 7 provides details on the requirements regarding the IPDP and the principle of FPIC, which is further explained in Standard 10 (§39 to 44).[70]

5.3.6 As per §41 of Standard 10, the FPIC process should produce a **clear endorsement or rejection** of the proposed intervention and a statement of all accompanying mitigating measures and/or benefit-sharing agreements. Paragraph 42 states that "FPIC is expected to be established through good faith negotiation between the promoter and the participating indigenous communities and to be fully documented as a mutually accepted process between

[70] These standards also provide a definition of FPIC (§13 of Standard 7, §7 and 40 of Standard 10, Volume I of the Handbook).

the parties, carrying evidence of agreement between them as the outcome of the negotiations and clearly outlining benefit- and risk-sharing provisions. The EIB is not prescriptive on what constitutes consent and does not require that FPIC ascribes to unanimity, rather that **satisfactorily documented evidence of the meaningful engagement of the whole body of a participating community is provided**."

5.3.7 Paragraph 43 further specifies: "In the application of FPIC, the promoter should pay particular attention to the representativeness and legitimacy underpinning the process. The objective should be to reach a **collective decision** (involving 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; and any other local civil society organizations identified by the affected indigenous peoples' communities). Further consideration should be given to the following success factors: (i) the concerned communities' capacity to negotiate; (ii) verification of freedom from coercion and the cultural appropriateness of the engagement over an adequate period of time; and, (iii) information provided to the communities in a culturally appropriate format and in a timely manner."

5.3.8 Paragraphs 134 to 144 of Volume II of the Handbook cover the key issues to be addressed during appraisal by the EIB Project team in relation to the rights and interests of vulnerable groups, including indigenous peoples. Paragraph 142 states that "In line with both Standards 7 and 10, local priorities will be determined in direct informed consultation with minorities and/or their representatives. The development of appropriate consultation and participation mechanisms with vulnerable groups will be one feature that the Team will wish to see in place. **Assurances over the timely disclosure of the EMDP/IPDP, including outputs linked to the Free Prior Informed Consent process, should be provided**."

5.3.9 In relation to stakeholder engagement, §164 of Volume II of the Handbook confirms that for projects located outside the EU, a SEP, including a grievance mechanism, is mandatory as part of the ESIA process, and that in line with Standards 7 and 10, where the EIB operation and/or components thereof impact or threaten the customary rights and interests of indigenous communities, the Project team is to ascertain that a satisfactory FPIC process has been carried out.

International commitments of Nepal

5.3.10 The Government of Nepal has adopted/ratified a number of international instruments that promote and guarantee the human rights and fundamental freedoms of indigenous peoples: the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples (1989). Others that are also relevant to indigenous peoples' rights include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological Diversity.

UN Declaration on the Rights of Indigenous Peoples

5.3.11 The UNDRIP makes explicit reference to indigenous peoples' right to FPIC. It requires States to consult and cooperate **in good faith** with the indigenous peoples concerned **through their own representative institutions** in order to obtain their free and informed consent (i) before adopting and implementing legislative or administrative measures that may affect them; and (ii) prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources (Articles 19 and 32).

ILO Convention No. 169 on Indigenous and Tribal Peoples (1989)

5.3.12 The rights to be consulted and to participate in decision-making constitute the cornerstone of ILO Convention No. 169. The Convention also contains specific provisions regarding the lands that indigenous and tribal peoples occupy or otherwise use.

5.3.13 Article 6(1) stipulates that 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." 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 (Article 6(2)).

5.3.14 The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or use, and to exercise control over their own economic, social and cultural development. They shall participate in the formulation, implementation and evaluation of plans and programmes for development which may affect them directly. Governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. (Article 7(1) and (3))

5.3.15 The Convention particularly emphasises the need for consultation under certain circumstances, including prior to exploration or exploitation of mineral and sub-surface resources (Article 15(2)), and prior to relocation, which should take place only with the free and informed consent of the indigenous peoples concerned (Article 16).

B. **Findings**

Presence of indigenous peoples

5.3.16 The E&S reports and the RAPs for the SASEC PSEP, and more specifically for the two transmission lines in the Marsyangdi Corridor, confirm the presence of indigenous peoples among the Project-affected population. In Nepal, the rights of indigenous peoples (Adibasi Janajati) are recognised in the Constitution and under Nepalese laws. The Project-affected area is home to several groups of indigenous peoples, such as the Gurung, Tamang, Ghale, Magar, Bhujel, Newar and Chepang.[71] These groups are officially recognised as indigenous peoples in the National Foundation for Development of Indigenous Nationalities Act (2002).[72]

FPIC

FPIC requirement

5.3.17 As per §7 of EIB Standard 10, FPIC is triggered by specific circumstances and strictly defined project impacts, as laid down in Standard 7. The footnote explicitly refers to resettlement: "For projects that may lead to **physical displacement of Indigenous Peoples**, the Promoter is required to obtain their Free, Prior, and Informed Consent (FPIC)." Apart from that, Standard 7 mentions that the UNDRIP is the guiding document of reference for the EIB (see paragraph 5.3.3 above).

[71] See Combined RIPP SASEC PSEP; IEE for Udipur- Bharatpur; EIA for Manang-Udipur; RAP for Manang-Udipur.

[72] See the Schedule relating to clause (a) of Section 2 of the Act that lists 59 indigenous nationalities. As per the Act, "indigenous nationalities" means a tribe or community as mentioned in the schedule having its own mother language, and traditional rites and customs, distinct cultural identity, distinct social structure, and written or unwritten history.

5.3.18 Part II of ILO Convention No. 169[73] deals with indigenous peoples' rights in relation to the lands and territories they occupy or otherwise use. Article 16 states that the relocation of indigenous peoples from the lands they occupy should be avoided. Where it is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

5.3.19 The UNDRIP contains five specific references to FPIC, providing a non-exhaustive list of situations when such consent should apply. Article 10 of the Declaration regarding the relocation of indigenous peoples is relevant in this case.[74] Equally important is Article 32, which states: "1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

5.3.20 In several instances, the Declaration calls for FPIC regarding matters or projects that affect indigenous peoples. In assessing whether a project is considered to affect indigenous peoples, the following are important factors to take into consideration: the perspective and priorities of the indigenous peoples concerned; the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities, and historical inequities faced by the indigenous peoples concerned.[75] According to a study carried out by the Expert Mechanism on the Rights of Indigenous Peoples, the level of effective participation that must be guaranteed to indigenous peoples is essentially a function of the nature and content of the rights and activities in question (referred to as a "sliding scale approach").[76]

5.3.21 Taking into account the above, the EIB-CM considers that there is a need for a proper assessment and to clearly determine the requirements in terms of engagement with indigenous peoples/FPIC of indigenous peoples as per the project applicable standards (as presented in the paragraphs above and in Section 5.3, A) for the following reasons:

- **Involuntary resettlement/relocation:** as per the IEE for Udipur-Bharatpur[77], and the EIA[78] and RAP[79] for Manang-Udipur, a number of households with houses and/or other private structures and/or with land will be affected by the Project, which will thus lead to the physical

[73] Articles 13 to 19.

[74] "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

[75] This is referred to as the proportionality principle in the study on a human rights-based approach to FPIC carried out by the Expert Mechanism on the Rights of Indigenous Peoples (2018).

[76] Ibid.

[77] 34 houses and private structures fall in the RoW of the proposed transmission line alignment. Pages 87 and 88.

[78] 15 households will lose their structures, and 11 of them will be relocated, as these households do not have any other residential house. A total of 30 structures (16 houses, six cowsheds/sheds and eight toilets) will need to be relocated. Pages 5-17 and 7-18.

[79] A total of 20 households will be affected due to loss of structure and the need to be relocated. The construction of the Project will involve the removal of 14 residential structures (belonging to 13 households), four commercial structures (belonging to three households) and 16 non-residential structures. Page 43.

and economic displacement of these households. Moreover, as per the EIA for Manang-Udipur, the transmission line will affect one religious structure belonging to the Gurung community.[80]

- **Reference to ILO Convention No. 169:** both the IEE for Udipur-Bharatpur and the EIA for Manang-Udipur refer to ILO Convention No. 169 as being relevant for the Project, as there are indigenous and tribal families in the Project-affected area. Both documents further state that the Project "will acquire and utilize most of the natural resources belonging to those families. Hence, the project has obligation to have consultation and taking consensus from them before the implementation of the project."[81] The RAP for Manang-Udipur specifically refers to continuation of the dialogue with the affected indigenous peoples communities "as part of a FPIC process."
- **Perspective of indigenous peoples:** the Complainant affirms that affected communities are concerned about the Project and its impacts on their homes, communities, lands, forest and ecological resources (including cumulative impacts from other projects in the region). It claims that the transmission lines are being built on indigenous peoples' ancestral lands and territories without seeking their FPIC, and that the Project has impacts on indigenous peoples' socio-cultural heritage. The Complainant demands the application of FPIC, especially of indigenous peoples, and respect for their rights.[82] With the help of LAHURNIP, the Complainant recently developed and published an FPIC Protocol (October 2020).[83]
- **Potential impacts:** as per the EU EIA Directive, the Project is considered as having significant impacts on the environment because of its nature.[84] Moreover, the Manang-Udipur transmission line passes through the Annapurna Conservation Area and through the area of two districts (Manang and Lamjung) where several groups of indigenous peoples live.[85] The IEE for Udipur-Bharatpur and the EIA for Manang-Udipur refer to **significant impacts** in terms of land management and land use patterns, loss of forested land and biodiversity, as well as the cumulative effects of the Project with other planned developments. A **large proportion of the directly affected people are indigenous peoples**. As per the EIA for Manang-Udipur, the large majority of directly affected households are indigenous peoples.[86] For the Udipur-Bharatpur transmission line, almost half of the directly affected families are indigenous peoples.[87]
- **Cumulative impacts:** as mentioned in Section 5.1 (Table 3), there are several other ongoing development activities within the zone of influence of the proposed Udipur-Bharatpur transmission line, including the construction of other transmission lines and hydropower projects. As part of its mission in March 2019, the EIB-CM held meetings with five local communities and found that community members were mainly concerned about the impacts of the different lines and other infrastructure projects (highway) on their lands and livelihoods, and believed they had not been appropriately consulted. The community-led survey conducted in Lamjung district in 2018 found that 76% of respondents affected by the

[80] The RAP for Manang-Udipur confirms that a place of Natural Resource Worship (*Prakritik Pooja)*, which is an important worship area (i.e. a temple) of indigenous peoples, particularly for the Gurung communities, lies in the Dharapani substation located in Ghelang Chowk, Nasong Rural Municipality. Due to the construction of the substation, it needs to be relocated. Pages 44 and 93.

[81] Page 33 of the IEE for Udipur-Bharatpur, and page 8-11 of the EIA for Manang-Udipur.

[82] See complaint. See also article available at: https://www.accountabilitycounsel.org/2018/08/press-release-communities-in-lamjung-district-nepal-demand-free-prior-and-informed-consent-fpic-on-international-day-of-indigenous-peoples/

[83] Available at: https://www.lahurnip.org/uploads/publication/file/fpic-protocol-min.pdf

[84] See Section 5.1.

[85] Page 4-27 of the EIA report for Manang-Udipur.

[86] A total of 157 households will be affected by the transmission line concerned (excluding the households affected by the suspension towers). A survey of 116 of these directly affected households was conducted, and it appears that the large majority of directly affected households that were surveyed are indigenous peoples (87% indigenous peoples in total, 79% of indigenous peoples surveyed are Ghale/Gurung). Page 4-40.

[87] Page 67 of the IEE report for Udipur-Bharatpur.

220 kV Marsyangdi Corridor are also affected by another transmission line or hydropower project.[88]

- **Status of indigenous peoples:** some of the groups of indigenous peoples living in the Project-affected area are classified by NEFIN and the National Foundation for Development of Indigenous Nationalities (NFDIN) as "highly marginalised" (the Chepang), "marginalised" (e.g. the Bhujel and the Tamang), and "disadvantaged" (e.g. the Gurung and the Magar).[89] As part of the information about the population characteristics of the Project area, the IEE for Udipur-Bharatpur explicitly states that the Chepang people (556 in Project-affected areas of Chitwan district) are "one of most backward indigenous nationalities of Nepal," and that "they live in the wildest imaginable state of nature," with "many of them still lead[ing] a primitive life."[90]

5.3.22 The EIB-CM found that the Bank did not give focused attention to the indigenous peoples-related requirements, including assessment for the FPIC requirement, as part of social due diligence at appraisal stage (see §24, Standard 7, Volume I of the Handbook; §142 and 164 of Volume II of the Handbook). The initial E&S documentation for the Project (draft EIA for the SASEC PSEP and draft Combined RIPP for the SASEC PSEP) do not specifically refer to FPIC and the possibility of its application for the Project. These documents do not provide substantiated information about whether and to what extent the Project would affect indigenous peoples in terms of their traditional or customary rights and interests over lands and natural resources, physical relocation, and livelihoods (except for some broad statements[91]). As mentioned later, the draft Combined RIPP for the SASEC PSEP does not meet the requirements in terms of coverage and expectations of an IPDP either.

5.3.23 Moreover, these documents were prepared based on the ADB Safeguard Policy Statement, 2009. The EIB-CM was not provided with evidence of (i) a gap analysis conducted by the EIB against its own E&S standards for these two documents, or more specifically (ii) an assessment by the Bank's services about the EIB requirements in relation to indigenous peoples as part of the appraisal process, given their presence in the Project-affected area.[92]

FPIC process

5.3.24 The EIB-CM has not been provided with evidence that an FPIC process was conducted for the Project.

- **No evidence** and/or no proper documentation of **special efforts** that were made **to reach out specifically to indigenous peoples**, and to encourage and ensure their effective and meaningful participation (see §42, Standard 10).[93] The RAP for Manang-Udipur is an exception in this respect; it does document the organisation of indigenous peoples-only FGDs with a total of 43 participants, as well as indigenous peoples' representation among participants in PRAs, women-only FGDs and surveys of Project-affected households.
- **No evidence** and/or no proper documentation of **consultation with indigenous peoples' representative institutions**, such as NEFIN[94] (at national and local levels, or any of its member

[88] See footnote 47 regarding the survey.
[89] Classification of 59 Official Janajatis by NEFIN and NFDIN (2004).
[90] Page 62.
[91] According to the Complainant, many of the statements made in the Combined RIPP for the SASEC PSEP with regard to indigenous peoples are erroneous.
[92] Note that the ESDS states the following: "A draft combined resettlement and indigenous peoples plan (RIPP) has been prepared and is undergoing review by the Bank's services to verify compliance with the Bank's standards […] The potential impacts in terms of land acquisition, resettlement and indigenous people have been addressed in the draft combined Resettlement and Indigenous People Plan (RIPP), which will undergo review by the Bank's services to ensure compliance with EIB standards." The EIB-CM requested evidence of this from the Bank's services in October 2019.
[93] The EIB-CM requested evidence of this, especially for Lamjung, from the Bank's services in October 2019.
[94] NEFIN is the representative umbrella organisation of the 59 indigenous nationalities/peoples recognised by the Government of Nepal. It has national and international chapters and networks.

organisations), NFDIN, or other relevant national or local organisations[95] (see §43, Standard 10; UNDRIP; ILO Convention No. 169).

- **No evidence** of a **clear endorsement by the indigenous peoples** concerned[96] (see §32, Standard 7; §41 and 42, Standard 10).

5.3.25 It appears that much work remains for effective implementation of ILO Convention No. 169 in Nepal and, more specifically, that effective implementation of FPIC remains a major challenge (not only for the Project).[97] The National Human Rights Commission states that FPIC has not been properly implemented in infrastructure/development projects (such as transmission line and dam-related projects), and cites examples of the violation of indigenous peoples' rights, such as a lack of consultation or meaningful participation and sharing of information with indigenous peoples. The National Human Rights Commission recommends that the Government of Nepal endorses the National Action Plan for the implementation of ILO Convention No. 169 (which was prepared several years ago) as soon as possible, and "developing appropriate structures and mechanisms to implement the provisions of Convention no. 169, UNDRIP and the principle of FPIC in order to guarantee protection of the rights of indigenous nationalities by adopting a process suitable to the culture of local community while formulating plans to carry out development works and develop physical infrastructures."

5.3.26 A Technical Note on Indigenous Peoples' Issues in Nepal published by the International Fund for Agricultural Development and the Asia Indigenous Peoples Pact states that while international organisations are increasingly consulting with indigenous peoples, an FPIC mechanism needs to be established by all international organisations working in Nepal. EIB-CM considers that it would be useful if the major lenders and development partners in the energy sector coordinate efforts and -with the help of experts- work closely with the Promoter and other key project developers in the sector to develop a tailor-made approach for meeting FPIC requirements in energy projects in Nepal. The EIB could envisage such an approach in its lending operations in Nepal.

5.3.27 During the EIB-CM's initial assessment, the Promoter was found to agree that obtaining FPIC from indigenous peoples is an issue in the case of transmission lines, because no one will agree to have a transmission line above their property. Individual consent being impossible, the Promoter told the EIB-CM that it had sought consent from local leaders.[98]

5.3.28 Indigenous peoples constitute a large proportion of the population in the Project-affected area.[99] They live in mixed communities where different groups of indigenous peoples live together with other social groups such as the Dalits (vulnerable and marginal group), the Brahmins and the Chhetris (high caste groups). Where information on indigenous peoples was available, the EIB-CM observed that indigenous peoples, including the Gurungs, were among

[95] Note that the EIB's letter to Accountability Counsel dated 30 April 2020 mentions that requests for comments on the EIA Manang-Udipur were officially transmitted to NEFIN in 2018. This is the only reference the EIB-CM was able to find but no evidence of this was provided. The EIB-CM requested evidence of consultation with indigenous peoples' representative bodies or organisations from the Bank's services in October 2019.

[96] The EIB-CM requested evidence of this from the Bank's services in October 2019.

[97] Gurung, O., PhD (2009), *Major Challenges for Implementing ILO Convention 169 in Nepal.* Paper presented in a three-day seminar, "Should States Ratify Human Rights Conventions?", organised by the Centre of Advanced Studies, Oslo, Norway. Bhattachan, K. (2012), *Country Technical Notes on Indigenous Peoples' Issues, Federal Democratic Republic of Nepal*, International Fund for Agricultural Development/Asia Indigenous Peoples' Pact. National Human Rights Commission, Nepal (2019), *ILO Convention No. 169 Implementation Status Report*. Available at: http://www.nhrcnepal.org/nhrc_new/doc/newsletter/ILO_169_Implimentation_Report_English_NHRC_Jestha_2076.pdf

[98] EIB-CM's IAR, paragraph 5.5.3.

[99] 51,6% of inhabitants in the Project-affected area are indigenous peoples according to the EIA for Manang-Udipur. Page 4-32.

the people consulted and surveyed for the Project.[100] Nevertheless, as highlighted in Section 5.2, the EIB-CM found several shortcomings in relation to the stakeholder engagement and consultation process in general. Some of these are directly relevant to adequate representation and meaningful participation of indigenous peoples: (i) absence of a SEP (see §142 and 164, Volume II of the Handbook); (ii) lack of transparency on the representativeness of participants in public consultations (see §19, Standard 10, Volume I of the Handbook); (iii) lack of clarity about what information was communicated in Nepali and local languages before and during the consultations (see §22 of Standard 7 and §34 of Standard 10, Volume I of the Handbook); and (iv) low women's participation (see §24 of Standard 7 and §20 of Standard 10, Volume I of the Handbook).

5.3.29 Moreover, the fact that a grievance redress mechanism (GRM) at local level was established rather late during Project implementation does not reflect very well in terms of the Promoter's genuine and effective engagement with the local communities, including indigenous peoples.[101]

5.3.30 Nevertheless, the EIB-CM notes that following the requests for access to information and submission of the complaint in 2018, the Bank's services took action with regard to FPIC:

1) The Bank asked the Promoter for more details about the identification of and consultation with indigenous peoples. According to the services, the Promoter clarified that "during the consultation meetings organised in settlements of indigenous peoples, their participation was made compulsory and they were encouraged to share their views and concerns about the Project. Indigenous people who had moved away in search of job opportunities or for other reasons were not available during public consultation and could not be consulted." The EIB services also asked the Promoter to "(i) demonstrate how indigenous peoples have been consulted in the spirit of FPIC; (ii) provide facts and numbers on indigenous peoples consulted; (iii) clarify how and why participation of indigenous peoples was made compulsory; and, (iv) consider re-doing the consultation of absent indigenous peoples in a time and manner convenient for them."[102] The EIB-CM has not received any further information about this due to the absence of clear answers to the services' questions.
2) According to the services, the Bank's E&S specialists discussed FPIC with the Promoter during their two visits to Nepal in 2019. They further clarified the FPIC principle and requirements as part of the knowledge-sharing event that they organised on EIB E&S standards in June 2019 with the Promoter's E&S staff and project staff. The issue was raised again during a monitoring visit to Nepal in September 2019.
3) The corrective Environmental and Social Action Plan prepared by the services (see Annex 2 for more details) contains a series of actions related to stakeholder engagement as well as specific actions related to FPIC. These actions include the development of an FPIC strategy and the establishment of a dedicated Community Relations Team that would also include a Senior Indigenous Peoples Safeguard Officer.

[100] See for example 42% of participants in public consultations in Lamjung district were indigenous peoples (Combined RIPP for SASEC PSEP); about 20 of 48 Project-affected families that were surveyed are indigenous peoples (IEE for Udipur-Bharatpur); 87% of the affected households surveyed are indigenous peoples (including Gurung) (EIA for Manang-Udipur); 37% of participants in PRA were indigenous peoples, 76% indigenous peoples in three women-only FGDs, and five indigenous peoples-only FGDs (RAP for Manang-Udipur).

[101] Based on information available for Lamjung district, GRMs at local level were established in June and July 2019 only (with no or very low women's representation, and relatively low indigenous peoples' representation). See Section 5.4 for more details on the GRM.

[102] EIB's letter of 5 December 2018. See footnote 52 regarding this letter.

IPDP

5.3.31 No separate IPDP was prepared for the Project. An initial Combined RIPP was prepared in 2014.[103] However, this document does not meet the requirements in terms of coverage and expectations of an IPDP (§27 and 28 of Standard 7, Volume I of the Handbook).[104]

5.3.32 In terms of entitlements, indigenous peoples are included in the group of PAP who are considered vulnerable. The measures included for vulnerable PAP in the entitlements matrix are (i) the provision of additional resettlement assistance; and (ii) the fact that vulnerable PAP shall be "given priority in project construction employment where feasible."[105] The draft RIPP also states that consultations will be carried out to make indigenous peoples aware of the Project and obtain their endorsement for land acquisition. Apart from that, the draft RIPP does not contain specific measures for indigenous peoples.

5.3.33 The draft document has not been updated/finalised as far as the IPDP for the Marsyangdi Corridor is concerned. As a result, requirements in terms of timely disclosure of a final draft and final IPDP have not been met (see §30 of Standard 7, Volume I of the Handbook).

Benefit-sharing arrangements

5.3.34 As per §27 of Standard 7, a detailed social assessment must be undertaken for projects involving indigenous peoples, which includes the clear and detailed identification of benefit-sharing arrangements, aiming to promote the well-being of indigenous peoples.

5.3.35 As mentioned in paragraph 5.3.32, there is reference to few measures targeted at indigenous peoples, who are included in the group of vulnerable people, which can also be found in other documents (E&S assessment reports, and for example, an additional support allowance and one-time livelihood allowance in the RAP for Manang-Udipur). The various documents also refer to enhancement measures aimed at benefiting the local people and improving their socioeconomic situation, some of them with preferential treatment for indigenous peoples among the Project-affected households, such as for local employment during construction and operation or training and skills development programmes (e.g. agricultural-related training). The EIA for Manang-Udipur also contains a corporate social responsibility component that includes support for local schools and other community infrastructure, and rural electrification for specific communities. Similarly, the IEE for Udipur-Bharatpur refers to a community development programme to support community infrastructure facilities, such as irrigation and drinking water supply.

5.3.36 The EIB-CM notes that the corrective Environmental and Social Action Plan includes a community needs assessment for the two transmission lines in Marsyangdi Corridor and the development of a Community Benefit-Sharing Plan.

C. **Conclusions**

5.3.37 The Project calls for focused attention in terms of indigenous peoples-related requirements, including FPIC. It was found that the EIB services and the Promoter did not give timely and sufficient attention to determining the applicable indigenous peoples-related requirements

[103] The fact that there is no IPDP on its own is not an issue as such in this case (see §29, Standard 7, Volume I of the Handbook).
[104] The draft document was prepared taking into account the ADB Safeguard Policy Statement, 2009. It has a section on indigenous peoples as part of the socioeconomic information provided. This section presents the results of sample socioeconomic baseline surveys carried out in the sub-project areas among indigenous peoples (pages 21 to 32). It does contain brief statements about the expected impacts of the Project on indigenous peoples; however, it does not cover all the different components as outlined in §27 of Standard 7.
[105] Page 55. Priority to indigenous peoples among the directly impacted households for skills training, other enhancement programmes and project-related job opportunities is also included in the EIA for Manang-Udipur.

during Project preparation as well as to the process of engaging with indigenous peoples during Project implementation. The EIB-CM was not provided with satisfactorily documented evidence of meaningful engagement with affected indigenous peoples and their representatives, or of a clear endorsement by the indigenous peoples concerned or agreement with indigenous peoples. This, in addition to the absence of an updated/final IPDP, is not in line with the project applicable standards as presented in this section.

5.3.38 The EIB-CM acknowledges that implementation of FPIC remains problematic in Nepal (not only for the Project) and recommends hiring an indigenous peoples expert with experience in Nepal to help identify workable actions that can be implemented at this stage of the Project.

5.4 Failure of the Project in Lamjung to adhere to special protections for involuntary resettlement and land acquisition (EIB standards and national law and policy) (Allegation No. 4)

Table 5: Sub-allegations

Sub-allegation 4.1	Failure to comply with requirements for physical and economic displacement and land acquisition in terms of process and procedures (lack of adequate notice, information and consultation; absence of plans; lack of transparency in calculation of compensation)
Sub-allegation 4.2	Inadequate compensation, especially for landholders under the RoW

A. <u>Project applicable standards relevant to the allegations</u>

EIB E&S standards

Requirements in terms of process and procedures

5.4.1 Standard 6 defines land acquisition as follows: "the process whereby a person is compelled by a government agency to alienate all or part of the land that person owns or possesses to the ownership and possession of the government agency for public purpose in return for compensation. It includes purchases or leasing of land and purchases or leasing of access rights (way-leave)." (§15, Standard 6, Volume I of the Handbook)

5.4.2 Standard 6 applies to all components of operations financed by the EIB, including associated facilities, which result in involuntary resettlement. Resettlement is considered *involuntary* when affected individuals or communities do not have the right to refuse land acquisition resulting in (a) **physical displacement** (i.e. physical relocation of residence or loss of shelter), and/or (b) **economic displacement** (i.e. loss of assets or access to assets that leads to loss of income sources or means of livelihood). (§12 and 13, Standard 6, Volume I of the Handbook)

5.4.3 The objectives of this standard are, among others, to:

- "Respect right to property of all affected people and communities and mitigate any adverse impacts arising from their loss of assets, or access to assets and/or **restrictions of land use**, **whether temporary or permanent**, direct or indirect, partial or in their totality. Assist all displaced persons to **improve, or at least restore, their former livelihoods and living standards and adequately compensate for incurred losses**, regardless of the character of existing land tenure arrangements (including title holders and those without the title) or income-earning and subsistence strategies;
- Ensure that resettlement measures are designed and implemented through the **informed and meaningful consultation and participation** of the PAP throughout the resettlement process;

- Give particular attention to vulnerable groups, including women and minorities, who may require special assistance and whose participation should be vigilantly promoted." (§4, Standard 6, Volume I of the Handbook)

5.4.4 This standard is to be duly cross-referenced with other standards, such as Standard 7 and Standard 10, and implemented accordingly. It refers to the need for consultation with and participation of all relevant stakeholders, including PAP, in resettlement planning and during the implementation and monitoring of the resettlement process. Where necessary, the Promoter must adopt additional special measures/procedures to reach vulnerable groups in accordance with Standard 7. Moreover, the standard refers to the need to **set up and maintain a GRM** in line with the requirements set out in Standard 10 that will enable PAP's specific concerns about compensation and relocation to be addressed promptly. (§50 to 53, Standard 6, Volume I of the Handbook)

5.4.5 The procedural requirements include the need for the promoter to **develop a Resettlement Policy Framework (RPF) and/or RAPs**. As per §58, the promoter will provide the EIB with an acceptable RPF or RAP(s). This paragraph further states that "**No work activities shall commence** before the promoter has addressed the involuntary resettlement in a manner consistent with the principles and standards presented here and satisfactory to the EIB." As per §64, a RAP is required for all operations that entail involuntary resettlement unless otherwise specified. Paragraph 66 stipulates that "The promoter shall develop a RPF/RAP in line with the EIB requirements and will have to receive EIB's non-objection before implementation. Arrangements for the implementation of the plan(s) will be agreed with the EIB and will be incorporated into the RAP and the project finance contract." Finally, §67 and 68 outline what the RAP should do and what information it should contain as a minimum. (Standard 6, Volume I of the Handbook)

Requirements in terms of compensation

5.4.6 Paragraph 33 of Standard 6 states that "Any person negatively affected by the project is eligible for compensation, livelihood restoration and/or other resettlement assistance." Paragraph 39 specifies that "All affected persons will be paid **fair compensation** in good time for expropriated assets. Compensation should be provided for any loss of personal, real or other property, goods or assets, including rights or interests in property, for instance, land plots and house structures, contents, infrastructure, mortgage or other debt penalties."

5.4.7 As per the EIB E&S standards, in cases where an in-kind compensation is not possible, **monetary compensation** needs to be adequate and take into account **full replacement cost**. "Replacement cost" refers to "the value determined to be fair compensation for: (i) land, based on its productive potential; (ii) houses and structures, based on the current market price of building materials and labor without depreciation or deductions for salvaged building material, and (iii) residential land, crops, trees, and other commodities, based on their market value. Such cost needs to further account for any removal costs, utility connection costs, taxation costs imposed on new housing/re-established businesses etc. Where markets do not exist, surrogate values must be determined." (§17 and 41, Standard 6, Volume I of the Handbook).

5.4.8 Paragraph 42 specifies that: "The value of any improvements to the land, business losses, equipment, inventory, livestock, trees, crops and lost wages or income must also be compensated, along with economically assessable damage, including: property or interests in property, goods, assets, use-rights or rights of access to natural resources, loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and

psychological and social services; and costs of salvage and transport. To enable affected persons to make productive use of cash compensation, it should be paid in its entirety and in a timely manner."

Finance contract

5.4.9 Article 6.05 of the finance contract obliges the Borrower to procure that the Promoter shall "…implement and operate the Project in compliance with the Environmental and Social Standards, the updated Environmental and Social Management Plan and the RIPP…" (Article 6.05(e), Continuing Project undertakings).

5.4.10 The finance contract requires the submission of a Detailed Combined RIPP that complies with the draft RIPP[106] and with the Bank's E&S practices – **to be delivered prior to the start of any construction activity** related to transmission lines or associated substations (A.2, Information duties (under Article 8.01(a))). The submission of a relevant update of the RIPP, if any since the disbursement of the previous Tranche – in form and substance satisfactory to the Bank – is also a **condition of disbursement** for all Tranches, including the first Tranche (Article 1.04B(a)).

B. **Findings**

Requirements in terms of process and procedures

5.4.11 This report highlights limitations with regard to the consultation process and information disclosure activities that took place for the Project in general, and consultation with PAP whose land falls in the RoW and regarding the (draft) RAPs more specifically. For more details, please refer to Sections 5.2 and 5.3.

5.4.12 Two RAPs were prepared as far as the two transmission lines in the Marsyangdi Corridor are concerned:

1) The draft Combined RIPP was prepared for the entire Project (SASEC PSEP) in 2014, including the Marsyangdi Corridor – Component 2 financed by the EIB.[107]
2) The (updated) RAP for the Manang-Udipur transmission line was prepared in 2018.

Neither of these documents is final. More details are provided below.

5.4.13 Regarding the draft Combined RIPP: the draft Combined RIPP of 2014 for the SASEC PSEP clearly states that it will be updated and finalised during the detailed design and final check survey[108] prior to construction activities. Throughout the report, it refers to the need to compensate displaced persons before the start of construction activities. It states: "NEA will ensure that no physical/or economic displacement of affected households will occur until: (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; and (ii) other entitlements listed in the resettlement plan are provided to the DPs/APs. **All land acquisition, resettlement, and compensation will be completed before the start of civil works.**"[109]

[106] The RIPP is defined in the finance contract as the Resettlement and Indigenous Peoples Plan relating to the Project and as approved by the Bank.
[107] Not available on the EIB website; available on the ADB website at: https://www.adb.org/sites/default/files/project-document/80578/44219-014-remdp-01.pdf
[108] The services assume that the check survey for the Udipur-Bharatpur transmission line was finalised by the end of 2018.
[109] See page 63, paragraph 111; see also Executive summary, paragraph x; page 56, paragraph 100; page 60, paragraphs 107 and 108; page 64, table 11.1; and page 255.

5.4.14 An update of the draft Combined RIPP was prepared in 2018.[110] However, this updated RIPP of April 2018 does not cover the Udipur-Bharatpur transmission line financed by the EIB.[111] It concerns Components 1 and 3 of the Project (these transmission lines are financed by ADB).

5.4.15 The EIB-CM has not been provided with an (updated) RAP for the Udipur-Bharatpur transmission line. In July 2020, the services confirmed that the specifics in terms of resettlement measures were yet to be worked out for this transmission line.[112]

5.4.16 On the other hand, the CM was informed[113] that (i) construction activities had started on the Udipur-Bharatpur segment, at least as far as the construction of towers is concerned, and (ii) the land acquisition and compensation process on this segment was still ongoing and not completed.[114] As indicated in Section 5.2, this situation (considering the absence of an updated/final RAP for Udipur-Bharatpur and the lack of communication and proper consultation around land acquisition and resettlement measures for this segment) is a serious concern. A key principle in involuntary resettlement, which is reflected in the EIB E&S standards, is that no civil works should be undertaken before the land acquisition process is completed, and that compensation and/or assistance should be provided according to an agreed RAP. This is also adequately reflected in the finance contract (see paragraphs 5.4.9 and 5.4.10).[115]

5.4.17 Regarding the draft (updated) RAP for Manang-Udipur: the EIB provided comments in August 2018 on the draft (updated) RAP for Manang-Udipur[116] to be taken into account when finalising the document. Mid-2020, the services commenced a detailed updated revision of the draft RAP with the Promoter. The updated RAP is expected to be finalised by beginning 2021.

5.4.18 It is equally important to mention that the two draft RAPs available for the Marsyangdi Corridor component (draft Combined RIPP for the SASEC PSEP and updated RAP for Manang-

[110] Not available on the EIB website.

[111] This updated RIPP covers the following lines: *"This is an updated Resettlement and Indigenous Peoples Plan (RIPP) prepared for the transmission components of Dana-Kushma Transmission Line under Kaligandaki Corridor and Marsyangdi-Kathmandu Transmission Line of the project under "South Asia Sub-Regional Economic Cooperation (SASEC) Power System Expansion Project (SPEP)"."* (Page 1). The report also says that check surveys are under way and the updated RIPP for Udipur-Markichowk-Bharatpur will be done in the next stage (page 5).

[112] Note also that according to the Complainant's advisors, the EIB informed them in its email of 28 December 2017 that the RIPP for PAP impacted by the tower foundations is expected to be prepared and implemented after the contractor is mobilised and the final tower spotting is completed, but before the tower erection starts. Furthermore, the IEE for Udipur-Bharatpur (which contains limited information with regard to resettlement and entitlements) makes explicit reference to the preparation of a separate RAP prior to construction to address issues associated with the relocation and/or resettlement of houses under the RoW of the transmission line (page 117). A third disbursement (which was mostly expected to finance expenses for the Udipur-Bharatpur transmission line) was made without updated RIPP/final RAP based on the Borrower's confirmation in July 2018 that no physical displacement will occur before the EIB receives a RAP for the Udipur-Bharatpur section of transmission line, in a form and substance acceptable to the Bank. According to the Bank's services, most of the expenses were expected to be not relevant to site activities that may have required displacement such as: design, tower testing etc.

[113] In October 2019 (with further details provided in January 2020) by the Complainant. The services confirmed the information about the start of construction activities (that probably started from October 2018) and provided additional information about the status of the land acquisition process for tower construction in Lamjung.

[114] As of July 2020 in Lamjung district: foundation of about 30% of the towers completed (15 out of 45); about 40% of the persons affected by the 45 towers had not yet received compensation for various reasons (37 out of 93), including some of them having issues with the proposed compensation amount.

[115] See also the ESDS about contract award involving involuntary resettlement or impacts on indigenous peoples (page 2), and the IEE for Udipur-Bharatpur that states that the compensation issues and rehabilitation measures will be completed before civil works start and that civil works contracts will not be awarded unless the required compensation payment has been made (page 124). See also the RAP for Manang-Udipur (pages 59 and 60).

[116] Not available on the EIB website.

Udipur[117]) do not deal with land use restriction issues in the RoW, and do not contain information about how this category of PAP (affected people with land under the RoW) has been effectively consulted and what their entitlements are. The EIB-CM was informed that for electricity projects in Nepal, these issues are typically addressed at a later stage as construction progresses.

5.4.19 In accordance with the EIB E&S standards, the RAP should, among other things, (i) carry out a census to establish the **number** of people to be displaced, livelihoods affected, property to be compensated and the cut-off date for eligibility claims; (ii) describe the entitlements for **all** categories of displaced people and types of impacts suffered; and (iii) include **valuation of and compensation** for lost assets and loss of income and demonstrate that these rates are adequate, i.e. at least equal to the replacement cost of lost assets/income or meeting minimum average wage thresholds (§67 and 68 of Standard 6, Volume I of the Handbook).

5.4.20 The EIB-CM notes that at the end of 2018, the services asked the Promoter for further information about those PAP with land and assets under the RoW, and to consider redoing the consultation of people affected by the RoW at a time and in a manner convenient to them.[118] The EIB-CM was not provided with further information in this respect due to the absence of clear answers to the services' questions.

Adequacy of compensation

In general

5.4.21 Based on the available information, it was found that the need to receive adequate compensation, especially for land located in the RoW, was raised on several occasions during the consultation process (notwithstanding the limitations of the consultations as highlighted in Section 5.2). The adequacy of compensation (together with devaluation of land and difficulty in getting mortgages) was also identified as one of the top concerns about the Project by respondents to the community-led survey conducted in Lamjung district in 2018, especially by male respondents.[119]

5.4.22 According to the existing documents, the process based on the Nepalese Land Acquisition Act of 1977 includes the creation of Compensation Fixation Committees to determine the compensation rates.[120] The compensation amount to be provided for land acquisition should generally be in cash and based on the current market value. According to the RAP for Manang-Udipur, the Compensation Fixation Committee will take account of prevailing rates in the local market, transaction values and price information provided in the RAP to ensure compensation is determined at replacement value. For the valuation of structures, it mentions that due consultation will be made with the Department of Housing and Planning, while compensation rates will be established by the Compensation Fixation Committee. However, it should be noted that the IEE for Udipur-Bharatpur refers to the valuation of houses and other structures being carried out by Project authorities.[121]

[117] The RAP for Manang-Udipur states that the households affected by suspension towers and land parcels affected due to land use restrictions have not been identified yet. It further specifies that it will need to be updated after the final check survey to cover the household-level impacts due to land use restriction along the RoW, the Project access road and suspension towers (pages 4, 39 and 99).
[118] EIB letter dated 5 December 2018. See footnote 52 regarding this letter.
[119] See footnote 47 regarding this survey.
[120] No more than one year prior to property acquisition as per the IEE for Udipur-Bharatpur.
[121] Page 125.

5.4.23 The entitlements matrix included in the IEE for Udipur-Bharatpur[122] and the (updated) RAP for Manang-Udipur[123] present the different entitlements for different types of loss and different categories of Project-affected households. They refer to cash compensation at replacement cost for loss of house and land permanently acquired. Additional resettlement and rehabilitation measures include the following: several allowances for displaced households losing their house, such as a housing displacement allowance (and other allowances as per the RAP for Manang-Udipur), livelihood restoration measures (such as preferential access to employment opportunities for the construction of the transmission line, livelihood assistance, provision of different types of enhancement training), and support allowances for the affected vulnerable households.[124]

5.4.24 The EIB-CM was not able to verify or receive more details regarding the Compensation Fixation Committees. The EIB-CM observes that based on the available information, these committees do not necessarily contain representation of the PAP[125]; nevertheless, it seems the committees are expected to consult with PAP's representatives and other key stakeholders. The EIB-CM could not verify whether and to what extent dialogue and effective consultation took place with the different categories of PAP.

5.4.25 Moreover, it should be noted that a GRM at project level was established relatively late during Project implementation. According to the information received from the Bank's services, such GRMs at project level were established in Lamjung in June/July 2019. As per the EIB E&S standards, the Promoter is expected to introduce a GRM at project level **at the very outset of project design**. In terms of scope, it should possess a **lifespan similar to that of the operation**, and should be open to all interested parties with concerns that may arise out of the project's scope (§45 to 47 of Standard 10, Volume I of the Handbook).

5.4.26 The allegation regarding a lack of transparency in the calculation of compensation can probably be explained by the absence of: (i) representation for PAP in the Compensation Fixation Committees, or limited representation; (ii) GRMs at project level until mid-2019 for Lamjung; and (iii) finalised RAPs for the two Marsyangdi Corridor transmission lines (for which adequate consultation and public disclosure took place).

5.4.27 The EIB-CM was not able to verify whether the amount of compensation proposed and/or paid to PAP so far is fair and at full replacement cost as understood under EIB Standard 6. This is mainly due to the absence of field visit by the EIB-CM during the investigation because of COVID-19.

For landholders under the RoW (with no house and/or structure on the land)[126]

5.4.28 The landowners with land under the RoW retain title to their land. However, they will face restrictions on the use of their land. In line with the Promoter's practice, compensation for restricted land use (land with no house and/or structure falling in the RoW) is calculated as 10% of the total land value.[127] It is usually paid as a one-time upfront payment. The Promoter

[122] Pages 125-128.
[123] Table 6.3.
[124] See also the broad entitlements matrix in the draft Combined RIPP (pages 47-55).
[125] The Compensation Fixation Committee is established under the chairpersonship of the Chief District Officer (CDO) and comprises the Chief District Land Administration and Revenue Officer, the Project Chief or an officer designated by the CDO, and the representative of the DDC.
[126] This section deals specifically with compensation for landholders whose land falls under the RoW. Note that there are also affected landholders with both land and houses and/or structures in the RoW.
[127] In the IEE for Udipur-Bharatpur, a different rate per hectare for irrigated and non-irrigated land was applied to estimate the total compensation cost for RoW/restricted land use (page 117). As per the RAP for Manang-Udipur, the Compensation Fixation Committee will establish compensation rates for RoW (page 66). Note that the EIA for Manang-Udipur mentions

told the EIB-CM that the compensation for land under the RoW may be up to 20% for the Project.[128] Moreover, based on the E&S assessment reports available, the landowners with cultivated land falling under the RoW would receive additional cash compensation for the loss of crops during construction.[129]

5.4.29 As a result of the land use restrictions, the Complainant argues that there are numerous impacts for affected landowners with land under the RoW, including (i) the devaluation of the land (given the reduced interest from potential buyers in properties burdened by utility lines); (ii) the loss of potential future revenue streams; and (iii) challenges in securing mortgages from banks. According to the Complainant, the effects extend beyond the RoW, including to land adjacent or near the RoW. Moreover, the impacts are multiplied for communities that have multiple transmission lines passing through their land (losing more land for inadequate compensation). Given the land use restrictions and all the impacts, landholders in Lamjung believe that 10% compensation is too low. The Complainant's advisors prepared a report and a brochure presenting various experiences about investing in the RoW for high-voltage transmission lines.[130]

5.4.30 The land use restrictions and their impacts were also identified as part of the E&S assessments conducted for the transmission lines in the Marsyangdi Corridor and are reflected in the corresponding reports (see Box 1).

Box 1: Major impacts for PAP whose land (with no house/structure) falls in the RoW – as identified in the IEE for Udipur-Bharatpur and the EIA for Manang-Udipur.

Major impacts
Construction phase: - Adjoining areas of RoW may be disturbed due to movement of contractor's machine, labour force and stringing of the line, leading to reduced agricultural production. - Temporary loss of crops and thus loss of income.
Operation phase: - Land can be used for regular cultivation and dwarf trees. - Restrictions on land use under the RoW: Not possible to build any type of permanent structure (public or private, such as a house or cowshed) or to plant/have tall growing trees. Limitation on new economic ventures for landholders. No land development activities (other than cultivation) can be planned. - Impact on right to quiet and free enjoyment of land. - Loss of livelihood. - Land fragmentation. - Loss of original value of the land, especially for land located near settlements and roads.

5.4.31 According to EIB E&S standards, compensation needs to be fair, adequate and at full replacement cost (see paragraphs 5.4.6 and 5.4.7 above). Paragraph 42 of Standard 6 makes further reference to the need to compensate for business losses, trees, crops, and lost wages or income, along with economically assessable damage, including: property or interests in

that while compensation for RoW is 10% of the total land value, in recent practice, a maximum amount is provided for the land based on its use and the local market price (page 7-11).

[128] EIB-CM IAR, paragraph 5.4.3. Note that in general, it does not appear there is much scope for negotiation despite the reference made in the IEE for Udipur-Bharatpur to partial compensation for land under the RoW based on the mutual agreement between the landowners and the NEA (page 121).

[129] The total cost for compensation was estimated based on area, production for one year, and local market rate per type of crop. IEE for Udipur-Bharatpur, page 118. EIA for Manang-Udipur, page 7-13.

[130] As of 26 October 2020, available at https://www.accountabilitycounsel.org/wp-content/uploads/2019/11/final_investing-in-the-right-of-way.pdf and https://www.accountabilitycounsel.org/wp-content/uploads/2019/11/nepal-english-brochure.pdf

property, use-rights or rights of access to natural resources, lost opportunities, and loss of earnings, including loss of earning potential.

5.4.32 In the EIB-CM's view, it is difficult to ascertain whether a blanket approach of providing 10% or 20% of the total land value to compensate the landowners for the land use restrictions and their impacts would result in fair and adequate compensation for all. It appears to the EIB-CM that a more flexible approach is needed, whereby the actual impacts of the land use restrictions are assessed on a case-by-case basis (based on where and the extent to which these restrictions apply, and depending on other important elements such as the location of the land, and whether this land is already affected by another project or not). It is important to note that the compensation should be based on the valuation of the loss incurred by the landholder (loss in the value of their land after construction of the transmission line). For example, the situation of a landholder with a small plot of land where the RoW is in the middle of their property is different to that of a landholder with a big plot of land where the RoW is situated along the edge of their property. The application of a blanket approach may be particularly problematic for a landowner whose remaining land (part of their land not falling under the RoW) is very small. A case-by-case assessment will be very useful in general, and more specifically to ensure vulnerable households are identified and their needs are adequately addressed.

5.4.33 The usual approach for appraising and determining the value of compensation for land in the RoW is to compare the before (market value of the property before any consideration of the project) and after (market value of the property under the theoretical assumption that the transmission line is built on it) situation. The difference between the two is the value of the easement. The market value of the land will depend on several factors; the location of the land is an important factor that needs to be given due consideration. The fundamental principles include that (i) the appraisal of the land is based on its highest and best use as theoretically vacant and available for development at the date of valuation; and (ii) the compensation is based on what the owner has lost, rather than the value to the utility.

5.4.34 Best practices include the involvement of a qualified appraiser in the process, carrying out consultation from a very early stage on land use restrictions and compensation with the landholders concerned, and leaving scope for negotiations.[131]

5.4.35 The EIB-CM acknowledges that the calculation of compensation for the RoW can be complex, and that there is no one-size-fits-all solution to this issue. Hence, there is even more reason for being very transparent about the methodology used to calculate the compensation and about the process. In addition to the observations made above (need for a more flexible approach, appraisal principles and best practices), the EIB-CM thinks it would also be useful to consider alternative compensation schemes, such as an annual payment over a certain number of years or royalty payments. In the case of small landholdings, the entire plot may need to be acquired if the area of the remaining land is too small.

5.4.36 During the EIB-CM's mission as part of the initial assessment phase, the Promoter acknowledged the concerns raised about the value of the land and the challenges in securing mortgages. Nevertheless, the Promoter indicated that the discussion about compensation for

[131] https://eweb.irwaonline.org/eweb/upload/1101c.pdf; https://www.lincolninst.edu/sites/default/files/pubfiles/2335_1675_Berry_WP13AB1.pdf; https://www.researchgate.net/profile/Baruch_Fischhoff/publication/290490790_Electric_power_transmission_lines_property_values_and_compensation/links/56afbe0808ae9f0ff7b28589/Electric-power-transmission-lines-property-values-and-compensation.pdf; http://fieldpost.org/StarkEnergy/Studies/Valuation%20Guidelines%20for%20Properties%20with%20Electric%20Transmission%20Lines%201.pdf (accessible as of 26 October 2020).

land under the RoW would need to take place at policy level with the government.[132] The EIB-CM understands that a task force was set up by the Ministry of Energy of Nepal to identify suitable methods for acquiring RoW from private landowners.[133] The EIB-CM has not been provided with further information about the mandate and status of the discussions by this task force, despite its requests for such information.[134]

5.4.37 The EIB-CM encourages the Bank to participate in discussions (e.g. as part of knowledge-sharing events) on good practices/international standards on involuntary resettlement, land acquisition and compensation, including compensation for RoW, alongside other major donors/multilateral development banks that are active in the energy sector in Nepal.

5.4.38 In accordance with the EIB E&S standards, it is important to keep in mind when determining, discussing and assessing compensation that the overall aim is to ensure that with the compensation and any other resettlement measures, the livelihoods and living standards of the PAP are improved or at least restored to levels existing prior to the Project.

C. **Conclusions**

5.4.39 The EIB-CM identified a number of limitations in the consultation process, including with respect to adequate consultation and communication with local stakeholders (including PAP) on resettlement impacts and measures (see Sections 5.2 and 5.3).

5.4.40 The EIB-CM observes that two draft RAPs were prepared for the Marsyangdi Corridor (draft Combined RIPP for the SASEC PSEP 2014, and (updated) RAP for Manang-Udipur 2018), but that neither of these is final. For the Udipur-Bharatpur transmission line, the specifics in terms of resettlement measures and entitlements still need to be worked out; this is problematic since tower construction has already started and the land acquisition process and payment of compensation are on-going. Moreover, neither of the draft RAPs deals with land use restriction issues – information is still missing about the exact impacts and concrete resettlement measures for this category of PAP. The EIB-CM concludes that this is not (yet) satisfactory in terms of compliance with the EIB E&S standards, and fulfilment of contractual obligations as far as the Udipur-Bharatpur transmission line is concerned.

5.4.41 The EIB-CM was not in a position to conclude on the alleged inadequacy of the compensation. Nevertheless, it makes the following observations:

- In addition to the lack of final/updated RAPs for the two transmission lines for which adequate consultation and public disclosure took place, it appears that (i) PAP were not represented in the Compensation Fixation Committees, or only to a limited extent; and (ii) GRMs at project level were established relatively late during Project implementation (June/July 2019 in Lamjung).
- Regarding compensation for landholders under the RoW, a more flexible approach is needed whereby the actual impacts of the land use restrictions are assessed on a case-by-case basis. Alternative compensation schemes also need to be considered. The EIB-CM shared key appraisal principles and best practices with regard to compensation for land use restrictions/RoW, and underlined the importance of being very transparent about the methodology and process. According to the EIB E&S standards, compensation needs to be fair, adequate and at full replacement cost.

[132] EIB-CM IAR, paragraph 5.4.3.
[133] Confirmed in the EIB letter dated 30 April 2020. See footnote 42 regarding this letter.
[134] The EIB-CM encourages the Promoter to advocate with the government about the need to include legitimate representatives of people affected by the RoW of transmission lines in Lamjung and other districts mainly affected by energy projects in the RoW task force.

5.5 Insufficient consideration for a series of environmental and social impacts and the need for appropriate mitigation measures (Allegation No. 5)

Box 2: Details of Allegation No. 5

Insufficient consideration for a series of environmental and social impacts and the need for appropriate mitigation measures

- Negative impacts on community resources in Lamjung district and inadequate community-level benefits[135]
- Public safety risks (electrocution by wires and increased lightning risk)
- Negative impacts on ecological resources
- Visual impacts, which in turn could have a negative impact on tourism
- Sound impacts (humming sound of the transmission lines)
- Potential health impacts on humans, livestock and crops through long-term exposure to electromagnetic fields
- Negative impacts during the construction phase, such as increases in noise levels and waste, and social impacts of employing outside labour for the construction
- Gender-differentiated impacts of the Project (with greater negative impacts on women), especially in Lamjung (beyond the gender impacts due to employment of outside workers)

A. <u>Project applicable standards relevant to the allegation</u>

5.5.1 Some provisions referred to as part of the project applicable standards for Allegation No. 1 (Section 5.1) are also relevant for Allegation No. 5. Below are some additional provisions relevant to Allegation No. 5.

EIB E&S standards

5.5.2 Standard 1 describes the various steps involved in the E&S assessment process, including the identification of significant impacts and risks, the content of a comprehensive E&S assessment study, and the development and implementation of an ESMP and what it should document. The ESMP shall document key environmental and social impacts and risks, and the measures to be taken to address them adequately following the mitigation hierarchy. The ESMP is expected to: (i) prevent the negative impacts that could be avoided; (ii) mitigate the negative impacts that could not be avoided but could be reduced; (iii) compensate/remedy the negative impacts that could neither be avoided nor reduced; and (iv) enhance positive impacts.

5.5.3 **To guarantee the completeness and sufficient quality of the information** included in the E&S assessment study, the promoter should ensure that the information required is up to date, in particular with respect to the measures envisaged to prevent, reduce and, where necessary, compensate/remedy any significant adverse impacts. This **may entail providing an update of the E&S assessment study based on updated studies if necessary**.

5.5.4 Paragraph 36 specifies that as part of the assessment process, in order to ensure an adequate participatory process, the promoter will identify and **engage with stakeholders** in accordance with Standard 10.

5.5.5 The Project team is expected to pay particular attention to **impacts on biodiversity** and climate change, especially during pre-appraisal and appraisal. Volume II of the Handbook contains detailed guidance regarding biodiversity assessment (B.2.4.1). A project that requires an E&S impact assessment will de facto require a biodiversity assessment (§202).

[135] For benefit-sharing arrangements, see Section 5.3.

International commitments of Nepal – Convention on Biological Diversity

5.5.6 Nepal has ratified the Convention on Biological Diversity (CBD). The CBD specifically requires the EIA to consider impacts on biodiversity. The biodiversity assessment should take into account the views, roles and rights of groups, including groups of indigenous peoples, NGOs and local communities, affected by projects involving natural habitats. **Stakeholder involvement** plays an important role in ensuring that all relevant biodiversity concerns are considered.

B. **Findings**

5.5.7 The assessment of this allegation is related to the analysis made in Section 5.1, which concludes that for both of the EIB-financed transmission lines in the Marsyangdi Corridor, the EIA process and formal documents are not fully in line yet with the EIB requirements. Moreover, the EIB-CM observed that at the moment the information regarding potential cumulative impacts is either missing or not satisfactorily covered in the different reports currently available.

5.5.8 That being said, the EIB-CM looked at whether the various impacts referred to in the complaint had been considered and mitigation measures included in the IEE for Udipur-Bharatpur and the EIA for Manang-Udipur. Annex 4 provides a brief overview of the findings in this respect.

5.5.9 The two above-mentioned documents include a detailed assessment of the likely adverse impacts on the (i) physical; (ii) biological; and (iii) socioeconomic and cultural environments for the following phases of the Project: pre-construction, construction, and operation. They also include a separate chapter presenting the ESMP/outlining the mitigation and enhancement measures for the different impacts that were identified and assessed.

5.5.10 The EIB-CM found that almost all the negative impacts referred to in the complaint (see Box 2) were considered as part of the E&S assessments and are included in the reports. Measures to prevent, reduce and/or remedy those adverse impacts have also been identified and are described in the reports. In addition to the chapter on mitigation and enhancement measures, the EIA for Manang-Udipur includes a separate chapter with the ESMP outlining implementation, monitoring and audit arrangements (more detailed than the IEE for Udipur-Bharatpur).

5.5.11 While not taking a view here about the adequacy of the assessment and the measures identified, the EIB-CM observes that there is scope for improvement. For example, the analysis of the gender-differentiated impacts of the Project could be more comprehensive, with risks and opportunities for women identified in relation to several aspects (in terms of livelihoods, access to resources, participation in project activities, etc. – not only or mainly related to construction). The development of a gender action plan for the Project would be useful.[136] Another example is in the area of biodiversity. The Environmental Law Alliance Worldwide conducted an assessment on the adequacy of the IEE for Udipur-Bharatpur and found a number of deficiencies in the impact assessment, such as in relation to the baseline ecological information, and the analysis of ecological impacts and electrocution hazards for primates.[137]

[136] Similar to what is done in many ADB-financed projects – project gender action plan that includes a series of proactive gender measures mainstreamed in project implementation activities.

[137] See also Chernaik, M., PhD (2018), *Evaluation of the Initial Environmental Examination (IEE) for the Marsyangdi Corridor (Udipur – New Bharatpur) 220 kV Double Circuit Transmission Line*, Environmental Law Alliance Worldwide (ELAW), United States of America. Available at:

5.5.12 The EIB-CM is aware that the allegation is also very much related to the issues raised and the shortcomings found in terms of consultation and participation. Enhancement of the consultation and stakeholder engagement process would help to further improve the E&S assessment process and ESMPs.

5.5.13 It is important to note that the Bank has been coordinating with the Promoter with a view to further improving the E&S assessments and reports. The EIB provided comments on both the IEE for Udipur-Bharatpur and the EIA for Manang-Udipur. The EIB-CM understands that some of the Bank's comments on the EIA for Manang-Udipur are yet to be addressed by the Promoter. Moreover, the corrective Environmental and Social Action Plan (more details in Annex 2) includes a number of actions aimed at complementing these reports and improving the process, such as to produce a CIA addendum and a biodiversity impact assessment addendum to the EIA, and to develop site-specific ESMPs.

5.5.14 Moreover, the EIB confirmed to the Complainant's advisors that the Bank would pay particular attention to issues raised by the Complainant, such as public safety and health concerns, and gaps in the assessment of existing flora and fauna in the area. The Bank confirmed that it will work with the Promoter to elaborate on the proposed mitigation measures and monitor their implementation, including the deployment of knowledge-sharing activities on transmission line safety with the population.[138]

5.5.15 The ESMPs are not supposed to be static, but need to be reviewed and updated regularly based on additional relevant information. In this respect, the EIB-CM would like to underline the importance of an effective and well-functioning GRM at project level. Such GRMs provide women and men in the local communities with an opportunity to raise any concerns regarding the implementation of the Project, which can then be promptly and adequately addressed. It is equally important to ensure that PAP participate in monitoring the implementation of the ESMPs/mitigation and enhancement measures. This can provide another opportunity for affected women and men in the Project area to raise any (additional) concerns/issues.

C. **Conclusions**

5.5.16 The two E&S assessment reports include an assessment of most of the negative impacts referred to in the complaint and outline mitigation and enhancement measures. While not taking a view about the adequacy of the assessment and the measures identified, the EIB-CM observes that there is scope for improvement. Various avenues exist that would enable the ESMPs to be improved and updated, including by ensuring an effective and well-functioning GRM at project level and meaningful participation of the local communities and PAP in monitoring the implementation of the ESMPs/mitigation and enhancement measures.

5.5.17 The Bank demonstrated its willingness to work with the Promoter to further improve the E&S assessments and reports and ensure that appropriate mitigation measures are identified and implemented.

5.6 **Role of the Bank**

A. **Responsibilities of the EIB for projects**

5.6.1 In line with the EIB Statement of ESPS, the responsibility for compliance with the project applicable standards lies with the Promoter and local authorities. However, the EIB will not finance projects that do not meet project applicable standards.[139] Whether the projects meet

https://elaw.org/system/files/attachments/publicresource/Adequacy%20of%20IEE%20for%20Marsyangdi%20Corridor%20220%20kv%20TL%20.pdf

[138] EIB letters of 5 December 2018 and 30 April 2020. See footnotes 42 and 52 regarding these letters.

[139] Paragraphs 2 and 6 of the ESPS Statement.

the project applicable standards is established as part of the EIB's project appraisal and monitoring.

5.6.2 The ESPS Statement requires the EIB to appraise projects it finances. The appraisal is carried out prior to signature of the finance contract. Among other things, it aims to assess the project's impact and whether the project complies with the applicable standards. Sometimes the appraisal results in conditions for disbursement. The promoter needs to fulfil these conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing.[140]

5.6.3 Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. This monitoring aims to ensure that the project complies with the EIB's approval conditions. The EIB monitors projects on the basis of reports provided by the promoter, as well as EIB site visits and information provided by the local community, etc.[141]

5.6.4 For projects outside of the EU, the EIB needs to ensure that, as far as environmental standards are concerned, they comply with national legislation, international conventions ratified by the host country, as well as EU standards, which is the benchmark. Moreover, the EIB is committed to promoting the application of standards of relevant international conventions, such as the Aarhus Convention[142], and good international practices. As far as social standards are concerned, the EIB's approach is a rights-based approach that integrates the principles of human rights law into its practices.

5.6.5 Finally, the EIB's role includes disclosing information about its projects in accordance with the requirements of the Aarhus Regulation and the EIB Transparency Policy (TP) (§8, Volume II of the Handbook). For projects outside the EU, where an E&S impact assessment is required, the EIB makes the Non-Technical Summary as well as the EIA report available to the public (§334, Volume II of the Handbook; Article 4.9 of the TP). In accordance with the Aarhus Convention and Regulation[143], E&S information held by the Bank and related to projects is also made available on the EIB website through its Public Register (Article 4.12 of the TP).

B. **Findings and conclusions**

5.6.6 Where relevant, the report has already indicated some strengths and weaknesses about the Bank's role in relation to the Project's appraisal and monitoring. The aim of this section is to consolidate and complement this information (see Table 6).

5.6.7 One of the major shortcomings of the Bank is that it did not identify what resources and what technical support would be needed to close existing gaps between the national legislation and the EIB E&S standards, and ensure full compliance of the Project with the EIB requirements. This question about the need for resources and support should be raised at appraisal stage (see for example §212 of Volume II of the Handbook). The limitations in terms of allocation of E&S staff resources during appraisal and for joining the appraisal mission in particular may have played a role in this. Later on during Project implementation, the EIB-CM observes that the services may not have questioned in a timely manner the effectiveness of the Bank's approach to address issues related to E&S matters with the Promoter and remedy to the lack of specialised resources to support the Promoter.

[140] Paragraph 17 of the ESPS Statement. Paragraph 256, indent 2, Volume II of the Handbook.
[141] B.3 "Monitoring", Volume II of the Handbook. Paragraph 8 of the ESPS Statement.
[142] United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. See for example §27 of Standard 6 and §14 of Standard 10, Volume I of the Handbook.
[143] Regulation (EC) No 1367/2006.

5.6.8 On the other hand, the EIB-CM considers the development of a corrective Environmental and Social Action Plan by the services as a positive step taken to address significant issues identified until then (see Annex 2). It appears that the services have not yet been able to reach an agreement with the Promoter about implementation of the plan. In accordance with §9 of the ESPS Statement, this may have financial and legal consequences (e.g. a stop on disbursements) if the Promoter does not fulfil the Bank's requirements within a reasonable period of time. The EIB-CM views the recent inclusion of the Project in the Bank's Review and Resolution Mechanism list as another positive step, as it will result in increased monitoring efforts from the Bank.

5.6.9 Moreover, the EIB-CM was informed, at the time of finalisation of this report, that the services recently engaged a consultant based in Nepal with extensive background in social safeguards and E&S compliance monitoring. The consultant started the assignment in January 2021 and is mainly responsible for monitoring the compliance of the EIB-financed components of the Project (in particular the Marsyangdi Corridor component) with the EIB E&S standards, and report to EIB. The assignment is focused on monitoring the stakeholder engagement process (including with indigenous peoples), and the involuntary resettlement and compensation process. It includes the update of the corrective Environmental and Social Action Plan. The assignment also includes reporting on key environmental and biodiversity issues.[144]

5.6.10 Furthermore, the EIB-CM welcomes the Bank's recent publication of a Guidance Note for EIB Standard on Stakeholder Engagement in the EIB Operations for promoters (see paragraph 5.2.17), as well as a similar guidance note targeted at its staff. The Bank is rolling out an internal training programme on stakeholder engagement (online training), starting with its staff in the Projects Directorate. The EIB-CM considers that both guidance notes and the delivery of internal trainings will be conducive for creating a better understanding of promoters and EIB staff on the Bank's requirements and good practices regarding stakeholder engagement.

5.6.11 The EIB-CM is aware of the challenges brought by the COVID-19 crisis since March 2020 with respect to close monitoring by the Bank, including through site visits. The ongoing pandemic will have brought additional challenges on the ground. The EIB-CM notes that in May 2020, the Bank published a general guidance note for promoters on E&S performance in EIB-financed operations in response to COVID-19, together with guidance on specific topics such as social inclusion and stakeholder engagement.[145] The Bank also developed a guidance note for staff.

[144] The assignment is for approximately 180 working days over a period of two years from January 2021 until end of December 2022. Note that the consultant may be asked to perform activities related to other EIB-financed projects in Nepal if necessary.

[145] Available at: https://www.eib.org/en/publications/covid19-guidance-note-to-promoters

Table 6: Major strengths and weaknesses of the Bank

Major strengths	Major weaknesses
Project appraisal	
- Adequate reference to the need for completion of EIA procedures, including assessment of potential cumulative impacts, in the appraisal documents (see paragraphs 5.1.18 and 5.1.19 in Section 5.1, and Annex 1). - Inclusion of E&S conditions in the finance contract, including conditions for disbursement, in line with the appraisal documents (see paragraphs 5.1.12 to 5.1.15 and 5.1.19 in Section 5.1, and Annex 1). (§256, 258, 259 and 261, Volume II of the Handbook)	- The Bank did not identify the presence of various groups of indigenous peoples (including highly marginalised and marginalised groups) in the Project-affected area and among the PAP as a red flag, or further assess the indigenous peoples-related requirements, including FPIC, in line with the EIB E&S standards (see paragraphs 5.3.21 to 5.3.23 in Section 5.3). (see §24, Standard 7, Volume I of the Handbook; §142 and §164 of Volume II of the Handbook) - The Bank did not identify the need to develop a SEP (see paragraph 5.2.12 in Section 5.2). (§142 and 164 of Volume II of the Handbook) - Tendency to rely on ADB appraisal, specifically documents prepared on the basis of the ADB Safeguard Policy Statement, 2009 (see Table 3 in Section 5.1, and paragraph 5.3.23 in Section 5.3). (see §12, Standard 1, Volume I of the Handbook; §90, Volume II of the Handbook) - The Bank did not identify the need for or mobilise technical assistance resources to provide ongoing technical support to the Promoter, especially the ESSD, and other key agencies involved in the Project's implementation to ensure full compliance with the Bank's E&S standards. The need for technical assistance would probably have been identified through a proper assessment of the E&S institutional capacity. (§8 and §90, Volume II of the Handbook)
Project monitoring	
- The Bank reviewed and provided substantive comments on the draft E&S assessments and the RAP to ensure compliance with the EIB E&S standards (see Table 3 in Section 5.1, and paragraphs 5.4.17 and 5.5.13 in Sections 5.4 and 5.5, respectively). - Following the submission of access to information requests to the Bank and the complaint to the EIB-CM, the Bank has taken major steps to improve the E&S assessment process and the reports and ensure compliance with the EIB E&S standards:	- The Bank made a third disbursement (which was mostly expected to finance expenses for the Udipur-Bharatpur transmission line) despite the weaknesses found in/absence of the required project documentation to be submitted prior to the start of construction (see Table 3 and paragraph 5.1.26 in Section 5.1, and paragraphs 5.4.15 and 5.4.16 in Section 5.4).[146] - Insufficient follow-up in a consistent manner and on a regular basis with the Promoter to receive the additional information requested and obtain

[146] This last (as of January 2021) disbursement was made before submission of the complaint. Also refer to footnote 112 regarding the Borrower's confirmation with regard to the RAP.

○ Requested additional information on several aspects (see paragraphs 5.2.13, 5.3.30 and 5.4.20 in Sections 5.2, 5.3 and 5.4, respectively). ○ Undertook two site visits in June and September 2019 during which (i) major issues were discussed; and (ii) a knowledge-sharing event was organised. Further quarterly monitoring visits were scheduled to take place, which did not materialise in 2020 due to the COVID-19 travel restrictions (see paragraphs 5.1.24, 5.2.17 and 5.3.30 in Sections 5.1, 5.2 and 5.3, respectively). ○ Prepared a corrective Environmental and Social Action Plan that covers major issues raised in the complaint (see Table 3 in Section 5.1, and paragraphs 5.2.12, 5.3.30, 5.3.36 and 5.5.13 in Sections 5.2, 5.3 and 5.5, respectively). ○ Sent a letter to the Promoter regarding the incidents of retaliation/intimidation reported by the Complainant to the EIB-CM during the investigation process. - The Bank recently included the Project in its Review and Resolution Mechanism list because of issues flagged by the Project team. - The Bank recently engaged a local E&S monitoring consultant (see paragraph 5.6.9).	its agreement on the implementation of the corrective Environmental and Social Action Plan (see Table 3 in Section 5.1, and paragraphs 5.2.13, 5.3.30 and 5.4.20 in Sections 5.2, 5.3 and 5.4, respectively). (§274 and 275, Volume II of the Handbook) - Lack of dedicated E&S resources both within the Bank (E&S staff involved on a continuous basis) and mobilised through external consultants (including locally) to closely monitor Project compliance and provide technical support (e.g. to undertake the additional studies required).

6 RECOMMENDATIONS

6.1 The EIB-CM makes the following recommendations to the Bank:

1. **Update the corrective Environmental and Social Action Plan** that was prepared following the services' monitoring visit in June 2019. The update should be done **as soon as possible** (no later than six months) and take into account the findings of the compliance review.
2. **Engage closely with the Promoter the soonest possible with a view to strengthen its capacity** in order to ensure the implementation of the updated corrective Environmental and Social Action Plan, and compliance with the EIB E&S standards in general. **At the minimum, this implies the need for engaging expert(s) in stakeholder engagement, with specific expertise in indigenous peoples, (not later than six months)** to provide further guidance on key social requirements applicable to the Project, and identify workable actions to achieve meaningful and effective engagement with affected communities, including with indigenous groups in these communities, while explicitly taking into account the country context and the Project implementation stage.
3. **Continue to strengthen EIB monitoring of the Project,** follow up closely with the Promoter, provide technical guidance on E&S matters in view of EIB's requirements [147], and monitor the updated corrective Environmental and Social Action Plan's implementation on a bi-monthly basis.
4. **In line with the finance contract, ensure that the status of progress** made in the **implementation of the updated corrective Environmental and Social Action Plan** is a **major determinant in EIB proceeding with disbursements** for the Marsyangdi Corridor component of the Project.
5. **Organise a workshop** or information sessions (can be virtual) with the Promoter/the ESSD and other key stakeholders involved in Project implementation **as soon as possible** (no later than six months) to present the **Guidance Note on Stakeholder Engagement in the EIB Operations** and share good practices in this area.[148] Ensure the workshop also substantially covers the requirements and good practices in terms of meaningful engagement with indigenous peoples and FPIC. Actively involve the local E&S monitoring consultant and any other relevant consultant hired by the EIB for the Project in the workshop. Consider having the guidance note translated into Nepali for the Project (and other EIB-financed projects in Nepal).
6. **Develop an internal procedural checklist** to assist EIB staff in the **due diligence of the quality of the assessment of potential significant cumulative effects** of a concerned project as part of the EIA process and report.

   The EIB-CM will start monitoring implementation of the above recommendations within six months following issuance of the Conclusions Report.

6.2 The EIB-CM **fully supports** the actions included in the **corrective Environmental and Social Action Plan** that was prepared by the services in September 2019 (see major elements in Annex 2). The EIB-CM makes few **additional recommendations at project implementation level** , which can be considered when updating the plan.

[147] This may entail support with regard to carrying out proper monitoring of and reporting on implementation of the E&S impact management measures, as detailed in the ESMPs and the RAPs.

[148] Note that the publication of the guidance note and this recommendation are perfectly in line with the Complainant's request to the EIB to consider providing project developers with directives to manage their communications with communities.

Box 3: Additional recommendations at project level

It is critical to **enhance communication and meaningful engagement** in good faith on the Project, its impacts, resettlement and project activities **with the affected communities in general, and indigenous peoples in particular.**[149] In this respect, below are few additional recommendations (to complement actions already included in the corrective Environmental and Social Action Plan):

- **Ensure adequate representation of indigenous peoples (including female indigenous peoples)** in the local teams of Community Liaison Officers, and in the GRMs that are established at project level;
- **Ensure Community Liaison Officers' ability to communicate in local languages**;
- Ensure the **views of women and men in local communities in the Project-affected area, including indigenous peoples**, are **taken into account** in the upgrade/finalisation of the E&S impacts assessment reports, **especially for updating the ESMPs for Manang-Udipur and Udipur-Bharatpur**;
- **Ensure the participation** of local communities in the Project-affected area, including indigenous peoples, **in monitoring the implementation of the ESMPs, and RIPP/RAPs**;
- **Compensation Fixation Committees**: Moving forward, ensure **adequate representation of PAP and/or effective consultation with PAP**, and full transparency in the calculation of compensation (methodology and process).

With regard to **assessing the adequacy of compensation**:

- **Carry out an audit**[150] to assess the adequacy of the compensation proposed/received based on a representative sample of different categories of PAP in different locations, and formulate corrective actions if necessary.

Complaints Mechanism
16 March 2021

Complaints Handling & Reporting
16 March 2021

[149] This may require revisiting the way things are usually done, including the use of communication channels, the method of presenting/sharing information, and extra efforts to reach out and be inclusive. The EIB Guidance Note on stakeholder engagement in the EIB operations was recently published. Several other guidance documents are available on public participation, and effective engagement with indigenous peoples. For example, André, P., Enserink, B., Connor, D. and Croal, P. (2006), *Public Participation International Best Practice Principles. Special Publication Series No. 4*, Fargo, USA: International Association for Impact Assessment. Croal, P., Tetreault, C., and members of the IAIA indigenous peoples Section (2012), *Respecting Indigenous Peoples and Traditional Knowledge International Best Practice Principles. Special Publication Series No. 9*, Fargo, USA: International Association for Impact Assessment. International Association for Impact Assessment (2015), *Effective Stakeholder Engagement. Fastips No. 10*. See also "Checklists for quality of local and indigenous participation" in Sanne Vammen Larsen, Anne Merrild Hansen, Parnuna Egede Dahl and Alberto Huerta Morales (2019), *Guidance Note on Indigenous and Local Community. Participation in Environmental Impact Assessment in the European Artic,* EIB Publications. Expert Mechanism on the Rights of Indigenous Peoples (2018), Advice No. 11 on indigenous peoples and free, prior and informed consent.

[150] It can be part of a broader audit on implementation of the resettlement process and resettlement outcomes.

ANNEXES

Annex 1: References to the requirements in terms of EIA and assessment of potential cumulative impacts in appraisal documents

Document	References to EIA and assessment of potential cumulative impacts as part of EIA
PJ Appraisal Report (16 July 2014)	**Disbursement conditions** *General conditions for disbursement (to be verified prior to disbursing funds for each project component and sub-component):* 1. **Completion of EIA procedures**, including update and finalisation of the EIA report and Environmental and Social Management Programme, in form and substance acceptable to the Bank, and confirmation of environmental approval by the competent national authority. The EIA procedures shall **include assessment of the potential cumulative impact** of all existing projects and other project-related developments within the project's area of influence that can realistically be expected at the time that the assessment is undertaken. 2. Update and finalisation of the Resettlement and Indigenous Peoples Plan, in form and substance acceptable to the Bank. **Undertakings** 1. NEA shall ensure that the project is implemented in accordance with the **environmental and social safeguards** indicated in the EIB's **Statement of Environmental and Social Principles and Standards (2009)** as well as its **Environmental and Social Practices Handbook (2013)**. 2. NEA shall ensure that the project is implemented in accordance with the **final Environmental Management Programme** and Resettlement and Indigenous Peoples Plan, as approved by the Bank, **prior to authorising the start of any related construction activities**, and shall ensure that the project is implemented in accordance with these programmes and plans. **Documents/Information to be sent to the Bank** The Borrower shall deliver the following information to the Bank **prior to the start of any construction activity** related to transmission lines or associated substations: - **Final EIA report and Environmental and Social Management Programme** that complies with the framework set out in the draft EIA for the project and with the Bank's Environmental and Social Practices, including confirmation of environmental approval by the competent national authority. - Detailed Combined Resettlement and Indigenous Peoples Plan that complies with the draft RIPP and with the Bank's Environmental and Social Practices.
ESDS (16 September 2014)	The Project includes a 25 km 220 kV transmission line from Manang to Khudi in the Upper Marsyangdi Valley, part of which, including the substations at either end, lies within the Annapurna Conservation Area (ACA), and an EIA will be required by the Nepalese authorities for this component. The other transmission lines are not expected to require an EIA according to Nepalese legislation and would normally follow IEE procedures; however, **in this specific case all components to be funded by the EIB that fall under Annex I of the EIA Directive will also be required to undergo a full EIA, including public consultation and publication on the EIB website.** Completion of the EIA procedures for each of the lines to be funded by the EIB, including update and finalisation of the EIA report, the RIPP and the EMP, will be required **prior to the start of construction** and will be a condition of disbursement.

Annex 2: Major elements of the corrective Environmental and Social Action Plan (Nepal Power System Expansion Project) – version September 2019

Below are the major elements contained in the corrective Environmental and Social Action Plan that EIB services prepared for the Nepal Power System Expansion Project following their monitoring mission in June 2019. Please note that this is not the full and final version. The corrective Environmental and Social Action Plan is in the process of being/to be updated soon.

The corrective Environmental and Social Action Plan (version September 2019) contains a list of actions related to six areas:

1. Assessment and Management of Environmental and Social Impacts & Risks
2. Biodiversity and Ecosystems
3. Occupational Health & Safety
4. Labour rights
5. Public Health & Safety
6. Stakeholder Engagement and FPIC

The actions that relate more particularly to the allegations in the complaint include the following:

- Produce two addendum documents: Cumulative Impact Assessment Addendum and Biodiversity Impact Assessment Addendum[151];
- Establish a dedicated Community Relations Team consisting of a senior Community Relations Manager and local teams of Community Liaison Officers in the sub-projects, as well as a senior Indigenous Peoples Safeguard Officer;
- Develop a Stakeholder Engagement Plan and a FPIC Strategy for the Project;
- Clearly identify the PAP with land and assets in the RoW;
- Conduct additional consultation related activities;
- Develop and manage a community grievance redress mechanism;
- Develop a Community Benefit-Sharing Plan.

[151] At present, the plan is as follows: 1) Produce an addendum to the EIA report for Manang-Udipur that includes the assessment of potential cumulative impacts and biodiversity, and 2) Update the IEE report for Udipur-Bharatpur to improve the quality of the assessment of potential cumulative impacts.

Annex 3: Consultations and information disclosure activities as presented in the available E&S assessment reports and RAPs

Consultations and information disclosure activities	**EIA, SASEC SPEP On-grid Components – DRAFT. February 2014**[152]	**Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014**[153]	**IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014**[154]	**IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017**[155]	**EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018**[156]	**RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018**[157]
Public consultations	No information in the draft report on consultations, except for the following: for the Manang-Khudi route, potentially affected people along the RoW have been informally consulted twice. As required under the Nepalese regulatory framework, a detailed environmental assessment that includes public	Consultations with the government officials concerned (NEA), PAP in the Project area, and the local community. FGDs with the local community at 63 Project locations from January to March 2014; total of 1 014 participants (66% male; 34% female). Additionally, separate FGDs were conducted with women at 35	Information on consultations in the draft report is the same as that in the draft EIA for the SASEC SPEP and the draft Combined RIPP for the SASEC SPEP (pages 114-116; Appendix 5; pages 259-262).	268 participants (81% male; 19% female). 117 of them participated in public consultations in Lamjung (77% male) (Annex G).[160] 24 people consulted (10 of them from Lamjung) (Annex V).	- 21 PRAs. Total of 266 participants in consultation meetings conducted in the Project area from April to June 2017: Project-affected families, farmers, business persons, job holders, wage labourers and students. 177 of them participated in meetings in Lamjung.	- 92 participants (70% male, 30% female; 37% indigenous peoples) representing different groups, former VDC Chairperson, Executive Officer of the rural municipality/municipality, school teachers, businesspersons, farmers, students, social workers and representatives of women organisations, leaders

[152] Available as of 8 May 2020 at: https://www01.eib.org/attachments/registers/51924029.pdf

[153] Not available on the EIB website as of 12 November 2020; available on the ADB website (as of 2 June 2020) at: https://www.adb.org/sites/default/files/project-document/80578/44219-014-remdp-01.pdf

[154] Available as of 8 May 2020 at: https://www01.eib.org/attachments/registers/53846571.pdf

[155] Available as of 8 May 2020 at: https://www01.eib.org/attachments/registers/80938653.pdf

[156] Not available on the EIB website as of 12 November 2020.

[157] Full name of the report: Final report on Resettlement Action Plan *(For Dharapani and Khudi Substations, Towers and Structure Falls in RoW)* of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018. Not available on the EIB website as of 12 November 2020.

[160] The following is not clear from the report: in the body of the report, it is mentioned on several occasions that interaction, interviews, group discussions and informal meetings took place with local people, representatives and members of CFUGs, and other stakeholders such as key officials/agencies at district and local level. There is no indication of numbers. It is not clear who the participants are who have been recorded as participants in public consultations in Annex G, and in particular whether the number of participants in public consultations as reported in this annex includes only local people and/or other key stakeholders such as local officials.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
	consultations will be conducted for the Manang-Khudi section. The surveys being conducted for land acquisition and resettlement planning include consultation with directly affected people; they serve the purpose of consultation on potential environmental impacts. As most of the proposed transmission lines have been subject to two route surveys, a detailed social survey to develop land acquisition and resettlement plans, and a detailed environmental assessment, potentially affected	locations from January to March 2014, with a total of 447 women participants. The consultation process included groups of indigenous peoples living in the Project areas, such as Magar, Tamang, Rai and Gurung. As far as the **Marsyangdi Corridor** is concerned: - Public consultations were conducted in 15 locations, 10 of them in Lamjung district. - Total of 249 participants; 146 of them participated in public consultations in Lamjung district, including 61 indigenous peoples (50 Gurung; eight				of local political parties in a PRA carried out in March 2018. 85 of them participated in a PRA in Lamjung, including 31 indigenous peoples. - 68 participants in FGDs consisting of women (three FGDs; 25 women; 76% indigenous peoples) and indigenous peoples (five FGDs; 43 indigenous peoples; 79% male, 21% female) conducted in March 2018. 34 of them participated in FGDs in Lamjung (all indigenous peoples). No FGD with women's groups in Lamjung. (pages 73 and 74)[161]

[161] Please note that the figures are not consistent with what is presented on page 17 of the same report.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
	people will have been consulted three or four times prior to construction. (pages 112-114) Additional public consultation will be conducted as necessary during construction (page 125). The draft report mentions that additional work is required to complete the EIA and update the EMP, including incorporating information from public consultations led by the NEA, to be conducted in the second and third quarters of 2014 (page 126). The EIB-CM did not receive information on these	Tamang and three Bhujel; indigenous peoples comprised 42% of participants in Lamjung district)[159]. - In addition to the above, women-only FGDs were conducted in 10 locations, seven of them in Lamjung district. Total of 125 female participants. (page 33 and Annexure 4) As per the draft RIPP, continued consultation and participation is envisaged in the Project.				- Dialogue with the affected indigenous peoples communities as part of the FPIC process will be continued during project preparation and prior to commencement of activities (page 56). The consultation process will be continued during the entire project period. A Public Consultation and Disclosure Plan was developed mainly for the period from June 2018 to January 2019 (pages 79-82).

[159] Based on official list of 59 indigenous communities under the National Foundation for Development of Indigenous Nationalities Act 2002.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
	public consultations.[158]					
Public hearings					Public hearing programme in Manang and Lamjung in October 2017. Total of 317 participants (75% male; 25% female). Participants included representatives from stakeholders at central and local levels (such as the Promoter, municipalities and CFUGs), local communities and Project-affected families. <u>For Lamjung only:</u> total of 188 participants (74% male; 26% female). (Chapter 10)	
Household surveys				48 Project-affected families impacted by angle towers and	116 of the 157 affected households (excluding the	<u>For Project-affected area:</u>

[158] The EIB-CM requested such information from the services in October 2019.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
				structures falling in the RoW, including about 20 indigenous peoples[162]. (page 18)	households affected by the suspension towers). 87% of the households surveyed (101) are indigenous peoples (including 92 surveyed households that are Ghale/Gurung).	120 of the 150 Project-affected households whose land and house will be acquired for tower pads and whose houses/structures will be acquired in the RoW and substations. 88% of the 120 households surveyed are from indigenous communities (large majority of Gurung). (pages 18, 20 and 21) <u>For Lamjung:</u> 79 of the 102 Project-affected households were surveyed. (page 20) The household survey was carried out in March 2018.
Key informant interviews				14 key informant interviews (page 19).	11 key informant interviews.	Three key informant interviews (one from each rural

[162] Based on the information on page 67.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
						municipality/municipality) (page 74).
Public notice				Public notice published in newspaper on 20 January 2017[163] providing brief information about the project. The notice invites people to submit opinions and suggestions about the proposed project within 15 days (Annex B). Public notice pasted in 34 offices (municipality, VDC, CFUG and DFO) in January 2017 (Annex C).[164]	- Public notice published in national newspaper on 16 and 17 January 2017 providing brief information about the project and inviting people to submit comments and suggestions. - Public notice for participation in public hearing programme published in two newspapers and broadcasted through local FM radio.[165] Request letter for participation in public hearing programme sent to line and local	

[163] In the Arthik Abhiyan National Daily as per the EIB's letter dated 30 April 2020 to Accountability Counsel.

[164] As per the EIB's letter dated 30 April 2020: a team on behalf of NEA was mobilised in the field with a copy of the public notice along with a cover letter to the VDCs/municipalities, district level line agencies and local stakeholders concerned. A copy of the notice was displayed at the project sites and proof of deed (Muchulkas) was collected during the IEE process.

[165] As per the EIB's letter dated 30 April 2020: in the Lamjung Darpan and Antarang National weekly, and broadcasted by four local FM radios over five days.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
					agencies. (Chapter 10)[166]	
Brochure/leaflet					Brochure with relevant information about the EIA findings prepared in Nepali and distributed to the participants of the public hearing programme.	The distribution of information leaflets and booklets in the local language is included in the Public Consultation and Disclosure Plan (page 81). However, the EIB-CM was not provided with evidence on whether and to what extent this has actually been done.
Summary of the report				Summary of draft report distributed to the VDCs and CFUGs concerned (page 21). Information on disclosure of the report to 28 rural municipalities/municipalities and CFUGs (Annex C).		The Executive Summary of the RAP will be translated into Nepali and made accessible to Project-affected families, affected people and other stakeholders. A hard copy will be made available to all Project rural

[166] As per the EIB's letter dated 30 April 2020: the notices were also displayed at district level offices, rural municipality/municipality offices and at public places in the major settlement of the Project rural municipalities/municipality.

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
						municipalities/municipality, the Project Office, the ESSD Office, and the Environment and Social Management Unit office.(pages 57 and 77). However, the EIB-CM was not provided with evidence on whether and to what extent such activities have actually taken place. Nepali summary was distributed and discussed in the three concerned rural municipalities/municipality in July 2018 (page 82).
Copy of the report	The NEA/Project Coordination Office is in the process of updating its website to provide for public disclosure and public comments (page 125).	A copy of the draft RIPP will be disclosed on the ADB and NEA websites. The draft RIPP mentions other information	The initial draft of this IEE was disclosed on ADB's website in the last week of February 2014. Revised drafts will be posted as they become available.	Provided to DDCs and DFOs (page 21).		Will be disclosed on the NEA and EIB websites. A hard copy of the report will be kept at the CDO Office for the two project districts, the Project

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
		disclosure activities that will take place, such as dissemination of information through public meetings, brochures, leaflets or booklets, using local languages (Nepali was explicitly mentioned), at accessible locations such as VDC offices, NEA's site offices and PIU. It also mentions that for non-literate people, other communication methods, such as verbal communication about their entitlements at public gatherings at places such as village committees and schools, will be used. However, the EIB-CM was not provided with evidence on whether and to what	NEA will disclose IEEs and EIAs for the individual transmission lines in accordance with Nepalese and ADB requirements (page 114).			Office, the ESSD Office and the Environment and Social Management Unit Office. (pages 57 and 77) Again, this could not be verified by the EIB-CM. A Public Consultation and Disclosure Plan was developed mainly for the period from June 2018 to January 2019. (pages 79-82)

Consultations and information disclosure activities	EIA, SASEC SPEP On-grid Components – DRAFT. February 2014[152]	Combined RIPP (Transmission Components), SASEC SPEP – DRAFT. April 2014[153]	IEE, SASEC SPEP On-grid Components – Revised DRAFT. April 2014[154]	IEE, Marsyangdi Corridor (Udipur-New Bharatpur) 220 kV Double Circuit Transmission Line. September 2017[155]	EIA report of Marsyangdi Corridor (Manang-Udipur) 220 kV Transmission Line Project. September 2018[156]	RAP of Marsyangdi Corridor (Manang-Khudi-Udipur) 220 kV Transmission Line. September 2018[157]
		extent such activities have actually taken place.				
Consent/recommendation letters[167]				Recommendation letters from the affected VDCs and consent letters from the affected CFUGs[168] (Annex D).	Recommendation letters of affected rural municipalities/municipality were collected.[169] (Appendix F)	Consent letters provided by the rural municipality/municipality/ward in consultation with the indigenous communities and other people in the Project area. (page 71 and Appendix VII)

Additional information on consultations provided by the services in their letter of 30 April 2020 to Accountability Counsel:

According to the services, further consultation events took place in 2019. In total, 21 consultation meetings were held from January to June 2019 in several locations. The services provided details about some of them that were held in the Lamjung, Tanahu and Gorkha districts. The issues discussed during these meetings range from compensation to skills training, protection wall construction, and measures during construction.[170]

[167] Although these letters are called "consent" or "recommendation" letters, they mainly concern recommendations in relation to the Promoter's proposal to carry out the IEE and EIA. Only the EIA and RAP for Manang-Udipur contains 12 consent letters (the same ones in both documents) to start the Project from rural municipalities or Ward Offices.
[168] Page 21. This was confirmed in the EIB's letter dated 30 April 2020.
[169] Pages 3-12.
[170] Annex 1 of the letter.

Annex 4: Brief overview of findings in relation to consideration of specific negative impacts and identification of mitigation measures

Type of impacts	IEE for Udipur-Bharatpur	EIA for Manang-Udipur
Negative impacts on community resources in Lamjung district	**Impacts considered:** yes (mentions no direct impact on such resources and on cultural, historical and religious sites, except on (community) forest resources) **ESMP includes mitigation measures:** yes, for loss of trees and for (indirect) impacts on community infrastructure and resources during the construction period	**Impacts considered:** yes (including impact on one religious site) **ESMP includes mitigation measures:** yes, for loss of trees and for impacts during the construction period
Public safety risks (electrocution by wires and increased lightning risk)	**Impacts considered:** yes, for electrocution of birds and mammals, and health and safety hazards for humans. No mention of potential increase in lightning **ESMP includes mitigation measures:** yes, for birds and humans	**Impacts considered:** yes, for electrocution of primates, and electrical hazards and safety for humans. No mention of potential increase in lightning, but mention of fire hazard **ESMP includes mitigation measures:** yes – also includes enhancement measures
Negative impacts on ecological resources	**Impacts considered:** yes, for various impacts on the physical and biological environment, including impact on wildlife and natural habitat, and loss of forested land, vegetation and biodiversity **ESMP includes mitigation measures:** yes	**Impacts considered:** yes, for various impacts on the physical and biological environment, including impact on wildlife and avifauna, protected species of flora and fauna, and loss of trees, forest land and vegetation cover **ESMP includes mitigation measures:** yes (pollution abatement plan, terrestrial ecology management plan); also includes biological enhancement measures
Visual impacts, which in turn could have a negative impact on tourism	**Impacts considered:** yes, for visual impacts. Potential negative impact on tourism not considered **ESMP includes mitigation measures:** mentions no mitigation possible	**Impacts considered:** yes, for visual impacts. Potential negative impact on tourism not considered **ESMP includes mitigation measures:** mentions no mitigation possible
Sound impacts (humming sound of the transmission lines)	**Impacts considered:** not as such (brief mention of it as part of electric field) **ESMP includes mitigation measures:** no.	**Impacts considered:** yes **ESMP includes mitigation measures:** mentions no mitigation possible
Potential health impacts on humans, livestock and crops through long-term exposure to electromagnetic fields	**Impacts considered:** yes **ESMP includes mitigation measures:** yes	**Impacts considered:** yes **ESMP includes mitigation measures:** yes – also includes enhancement measures
Negative impacts during the construction phase, such as increases in noise levels and waste, and social impacts of	**Impacts considered:** yes, on the physical, biological and socioeconomic cultural environment. Among other things, the assessment looks at noise and waste impacts, and impacts due to conflicts of interest between the construction crew and locals, on	**Impacts considered:** yes, on the physical, biological and socioeconomic cultural environment. Among other things, the assessment looks at noise and waste impacts, impacts on local tradition and culture, possible deterioration in law

Type of impacts	IEE for Udipur-Bharatpur	EIA for Manang-Udipur
employing outside labour for the construction	the social and cultural lifestyle of local people due to interaction with outside construction workers, possible deterioration in law and order, and increased pressure on existing local health and sanitation facilities **ESMP includes mitigation measures:** yes	and order, and increased pressure on delivery of basic services **ESMP includes mitigation measures:** yes
Gender-differentiated impacts of the Project (with greater negative impacts on women), especially in Lamjung (beyond the gender impacts due to employment of outside workers)	**Impacts considered:** yes, during construction only **ESMP includes mitigation measures:** yes, in relation to jobs for locals and vulnerable groups	**Impacts considered:** yes **ESMP includes mitigation measures:** yes