

**MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
NEPAL: NEPAL-INDIA REGIONAL TRADE AND TRANSPORT (P144335)**

Management has reviewed the Request for Inspection of the Nepal: Nepal-India Regional Trade and Transport Project (P144335), received by the Inspection Panel on April 25, 2020 and registered on May 27, 2020 (RQ20/01). Management has prepared the following response.

June 26, 2020

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ABBREVIATIONS AND ACRONYMS

EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESMF	Environmental and Social Management Framework
GoN	Government of Nepal
GRM	Grievance Redress Mechanism
HCCL	Himal Cement Company Limited
ICD	Inland Container Depot
IDA	International Development Association
IEV	International Event Venue
IPN	Inspection Panel
IPP	Indigenous Peoples Plan
Km	Kilometer
MoFE	Ministry of Forest and Environment
MoICS	Ministry of Industry, Commerce and Supplies
NEFIN	Nepal Federation of Indigenous Nationalities
NIDC	NIDC Development Bank Ltd.
NITDB	Nepal Intermodal Transport Development Board
OP	Operational Policy
TOR	Terms of Reference

EXECUTIVE SUMMARY

The Project

- i. The Nepal-India Regional Trade and Transport Project is a US\$99 million project approved by the Board on June 28, 2013. The Project's objectives are to decrease transport time and logistics costs for bilateral trade between Nepal and India and transit trade along the Kathmandu-Kolkata corridor for the benefit of traders, by reducing key infrastructure bottlenecks in Nepal and by supporting the adoption of modern approaches to border management.
- ii. Component C.2 of the Project supports the construction of a US\$15.5 million Inland Container Depot (ICD, also referred to as a dry port) at Chobhar in the Kathmandu Valley. It is this component that is the subject of the Request for Inspection. The ICD would facilitate loading and distribution of imported and exported goods, and ease customs clearances. The implementing agency is the Nepal Intermodal Transport Development Board (NITDB) under the Ministry of Industry, Commerce, and Supplies (MoICS).

The Request for Inspection

- iii. The Request for Inspection was submitted to the Inspection Panel on April 25, 2020 by nine community members, and on May 21, 2020 by an additional Requester (hereafter referred to as the "Requesters").
- iv. The Requesters claim that the dry port to be constructed under Component C.2 of the Project will cause significant harms to the indigenous and local communities in the area and therefore call for an immediate halt to the construction and urge that the dry port be designed and built at another suitable location. The Requesters allege harms concerning the environment, physical cultural resources, and land acquisition and other social impacts.
- v. They also raise a variety of concerns about: (i) historic grievances related to the HCCL but unrelated to the Project or the Bank; (ii) the Government's use of security forces during a public event with the Prime Minister; (iii) inter-governmental decision making; and (iv) compliance with Nepali law and international conventions.
- vi. Finally, the Requesters allege that the Bank and Borrower did not identify the Newar as Indigenous Peoples and therefore failed to engage them as appropriate under Bank policy.

Management's Response

- vii. ***Management notes that several of the allegations of harm in the Request are historical grievances related to activities that took place five decades ago and stemmed from past impacts of the construction and operation of the Himal Cement Company Limited (HCCL), which previously occupied the site on which the ICD will be built. These alleged harms have no relation to the Bank or the Project.***
- viii. Management understands the concerns of the Requesters regarding potential environmental, health and safety impacts and their concerns regarding physical cultural

resources, in particular the Jal Binayak Temple near the Project site. Management considers that all impacts have been carefully studied in the Project's Environmental Impact Assessment (EIA), that the mitigation measures have been adopted in the Project's Environmental Management Plan (EMP), and that these mitigation measures are being implemented during construction and will continue to address the impacts identified in the EIA as the ICD becomes operational.¹

- ix. ***There are no historical, cultural or environmentally sensitive areas within the direct physical footprint of the Project.*** With regard to the historical and cultural heritage sites that are outside of the Project footprint but happen to be in proximity to the ICD, the EIA considered the inputs and requests from stakeholders and incorporated measures to also preserve, protect and enhance those sites in the EMP. In response to stakeholder feedback, the Project is supporting dedicated infrastructure works through a Jal Binayak Temple Area Improvement Plan, that will improve the area around the temple, increase pedestrian safety and help to protect the banks of the Bagmati River, among others.
- x. ***Management notes that the Requesters wish to see the Project moved to a different location.*** Management notes that the Project is lawfully sited and does not conflict with zoning or land use planning requirements. The area in which the Project is located is of mixed use, with residential, commercial and agricultural activities. Moreover, no land acquisition or resettlement was needed for the selected ICD site because it is already government-owned. Alternative sites considered would have been sub-optimal with regard to connectivity and logistics and also would have required land acquisition and displacement of private households and economic activities.
- xi. Management also notes that the Borrower undertook an extensive consultation process about the Project over a period of nearly two years. The Project's EIA, including an Executive Summary in Nepali, was disclosed in accordance with local and Bank policy requirements.
- xii. ***The Project documents clearly identified the Newar as Indigenous Peoples and engaged them as required by Bank policy.*** The Newar constitute about 73 percent of the population in the Project's direct area of influence. They are the largest ethnic group in the Kathmandu Valley. Based on social assessments prepared for the EIA process, the Newar in the area do not have culturally distinct governance and political institutions. Newar community members from the area participated in the consultation process. Through these consultations, the MoICS determined that there was broad community support for the Project.
- xiii. Given the composition of the affected community, hosting both Newar and other ethnic groups, a Local Area Development Plan was prepared for the Project. The Local Area Development Plan includes infrastructure works, social enhancement programs, including employment opportunities, and community sensitization programs culturally appropriate for the Newar. The Local Area Development Plan was developed in consultation with the affected people, including the Newar community which will benefit from the above-cites measures.

¹ Both the EIA and EMP also cover social impacts.

- xiv. *Management believes that the Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the context of the Project. In Management's view, the Bank has followed policies and procedures applicable to the matters raised by the Request. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.*

I. INTRODUCTION

1. On May 27, 2020, the Inspection Panel registered a Request for Inspection, IPN Request RQ 20/01 (hereafter referred to as “the Request”), concerning the Nepal: Nepal-India Regional Trade and Transport Project (P144335) (the Project) financed by the International Development Association (IDA).
2. ***Structure of the Text.*** The document contains the following sections: Section II presents the Request; Section III provides background on the Project; Section IV discusses special issues related to the Request; and Section V presents Management’s response. Annex 1 contains the Requesters’ claims, together with Management’s detailed responses, in table format.

II. THE REQUEST

3. The Request for Inspection was submitted to the Inspection Panel on April 25, 2020 by nine community members, and on May 21, 2020 by an additional Requester (hereafter referred to as the “Requesters”). The Requesters claim that the Inland Container Depot (ICD) or “dry port” to be constructed under Component C.2 of the Project will cause significant harms to the indigenous and local communities in the area and therefore call for an immediate halt to the construction and urge that the dry port be designed and built at another suitable location. The Requesters allege harms concerning the environment, physical cultural resources, and land acquisition and other social impacts.

III. PROJECT BACKGROUND

4. ***The Project.*** The Nepal-India Regional Trade and Transport Project is a US\$99 million project which was approved by the Board on June 28, 2013. The Project’s objectives are to decrease transport time and logistics costs for bilateral trade between Nepal and India and transit trade along the Kathmandu-Kolkata corridor for the benefit of traders, by reducing key infrastructure bottlenecks in Nepal and by supporting the adoption of modern approaches to border management.

5. ***Project Components.***

- *Component A: Modernize Transport and Transit Arrangements between Nepal and India:* The component supports measures to improve the efficiency of the systems to manage and control the movement of Nepal’s and India’s international trade. This includes technical assistance to introduce an effective transit regime and enhance the capacity of the Government of Nepal (GoN) to negotiate trade and transit treaties; simplify and harmonize customs and border management procedures, processes and systems; and strengthen and modernize the regulation of trucking services, including axle load control and road safety from a transport management perspective.
- *Component B: Strengthen Trade-Related Institutional Capacity in Nepal:* The component supports the development of a Nepal Trade Portal and Single Window

System; and improvement of trade-related laboratories, including the construction of a Sanitary and Phyto-Sanitary Laboratory facility in Kathmandu; and

- *Component C: Improve Select Trade-Related Infrastructure:* The component supports the expansion and upgrading of the Narayanghat-Mugling road section (33km) to Asian Highway standard; the construction of an ICD in the Kathmandu Valley;² and upgrading of the infrastructure at Birgunj and Bhairahawa ICDs.

6. Component C.2's support for the construction of a US\$15.5 million ICD in the Kathmandu Valley is the subject of the Request for Inspection. The ICD would facilitate loading and distribution of imported and exported goods, and ease customs clearances. This component is implemented by the Nepal Intermodal Transport Development Board (NITDB) under the Ministry of Industry, Commerce, and Supplies (MoICS).

7. **Project Status.** The Project closing date has been extended to November 30, 2021, and overall Project disbursement, as of June 2, 2020, is at 66 percent. The *Project Development Objective, Implementation Progress, and Component C.2 (construction of ICD)* are rated as "Moderately Satisfactory" in the Aide Memoire of the latest Implementation Review and Support Mission that took place from February 7 to 18, 2020. As of April 2020, construction progress for Component C.2 was at 40 percent; due to disruptions related to COVID-19, completion of construction is tentatively expected by July 2021.

8. The Project Financing Agreement required a formal acceptance by the Bank that the Project site was satisfactory in order for disbursements for Component C.2 (construction of ICD) to be authorized.³ This requirement was introduced in the Financing Agreement because, at the time of Board approval, pre-feasibility studies had been undertaken in five locations for the ICD, but the final selection had not been made by the Government. See Annex 2 for a timeline of Component C.2.

9. The Bank only agreed to authorize disbursements⁴ after it had received appropriate assurances from the GoN that there were no outstanding claims that would fall within the scope of Bank policy which pertained to the land in Chobhar that had been allocated for the ICD. As described in detail below, information provided by the GoN confirmed that grievances regarding land acquisition that had been raised through the GRM were not relevant to the Project. The Bank agreed to authorize disbursements for the ICD on February 26, 2020, based on the MoICS letter to the Bank of November 27, 2019, and the February 2020 Implementation Review and Support Mission.

² The final location of the ICD was not yet decided at the time of approval.

³ Section IV.B.1.b of the Financing Agreement states that: "...no withdrawal shall be made...under Category 3(b), unless the Recipient has allocated the necessary land required for works for the CFS or ICD in Kathmandu under Part C.2 of the Project, in form, substance and in a manner acceptable to the Association, and in compliance with the provision of the ESMF."

⁴ This authorization of disbursements, once a formal condition is met, is not to be confused with a *suspension* of disbursements, which is a legal remedy the Bank applies after disbursements have commenced when a project is not in compliance with Bank policy.

IV. SPECIAL ISSUES

Historic Grievances Unrelated to the Project

10. *Management recognizes that there are historical grievances related to activities that took place five decades ago and stemming from past impacts of the construction and operation of the Himal Cement Company Limited (HCCL), however, these have no relation to the Bank or the Project.* The Bank has no affiliation to or involvement in the construction or operation of the HCCL and the Project is not required by Bank policy to address these issues. It is nonetheless important to describe these historic grievances in order to understand the context of the Request for Inspection. It is also important to underscore that these grievances do not interfere with the Project achieving its development objectives, as described elsewhere in this Response.

1967 – 1977 land acquisition

11. Between 1967 and 1977, the GoN acquired a total of 1,050 *ropanis* (about 53.4 hectares)⁵ of land at and close to Chobhar for the use of the HCCL, a state-owned enterprise. The HCCL production line was delivered in 1967 but did not go into operation until 1975. Management understands that the HCCL factory operated from 1975 to 2001. Reportedly, its business declined due to management issues and in 2001, it was no longer able to pay suppliers and bills and suspended its debt service. At the end of 2001, HCCL's operations at Chobhar were stopped by government decree and the staff was laid off as of January 18, 2002. The factory was shut down completely on May 1, 2002.⁶



⁵ The exact size of the land is 1049-15-3-0 Ropani, i.e., 1049 *Ropani*, 15 *Anna*, 3 *Paisa* and 0 *Daam* (1 Ropani = 16 Anna = 64 Paisa = 256 Daam). One Ropani is about 41.5 ha.

⁶ KfW - Final inspection and ex-post evaluation: *Nepal - Rehabilitation of Chobhar Cement Factory* (2004).

Picture 1: The defunct Himal Cement Factory (2016)

12. HCCL had taken out loans from the NIDC Development Bank Ltd. (NIDC) well before the cement factory's closure, using a portion of its land (including 816 ropanis (about 41.5 ha), of the land at Chobhar) as collateral. When the factory closed in 2002, NIDC still held this land as collateral. The Council of Ministers decided on November 20, 2014, to repurchase all the land from NIDC and assign it to the MoICS. The land at Chobhar was assigned to the NITDB under the MoICS for the construction of the ICD and an International Event Venue (IEV).

13. Management understands that the Requesters claim that landowners were not fairly compensated when the land was originally acquired for HCCL between 1967 and 1977. Management is not in a position to comment on this since the Bank was not involved with this acquisition, which predated the current Project by more than 40 years.

14. The Request further indicates that former landowners filed a court action in 2005 to regain the land. The landowners cited the Land Acquisition Act of 1977 which states that in certain situations, if land acquired under the Act is found unnecessary for the purpose for which it was acquired, the expropriated landowner may be entitled to have the land returned on refund of the compensation and an additional amount, unless the GoN elects to use the land for another purpose.



Picture 2: The defunct Himal Cement Factory (2016)

15. The GoN has advised Management that the Supreme Court of Nepal has heard the landowners' case and issued a judgement in 2007. Management has reviewed the Supreme Court order, and has confirmed with the GoN that the Supreme Court order in 2007 did not order that the land be returned to the original owners nor did it direct the Government on how and on what basis to make the determination, but it did require that relevant government actors complete the process of determining whether the land would be returned or retained by Government for some

other use. The GoN has indicated that this requirement was fulfilled by the Government, in the form of two Council of Ministers Decisions made in November 2014 and October 2017. Under these decisions, the Government has “settled” the issue, as required by the Supreme Court, by deciding not to return the land and instead to use it for other public purposes (including the construction of the ICD).



Picture 3: Demolition of the Himal cement factory (2016)

16. During the transfer process of the HCCL land from NIDC to the GoN, it became clear that 215 ropanis of land that had been acquired on behalf of HCCL during the 1967–1977 period, in line with the Land Acquisition Act of 1961,⁷ had not been formally registered in the name of HCCL. Referred to as “additional” land by the Requesters, these plots were in fact part of the 1,050 ropanis of land at and close to Chobhar that were acquired for the use of HCCL. To correct this oversight, the Council of Ministers instructed on October 13, 2017 that the registration of all land formerly held by HCCL should be consolidated under the name of the GoN. It is important to note that the 2017 Council of Ministers Decision did not concern a new acquisition of land, as the instruments for the acquisition of the plots covered by the 2017 Council of Ministers Decision were issued and executed between 1967 and 1977. Instead, the objective of the 2017 Council of Ministers Decision was to ensure that all plots originally acquired on behalf of HCCL were properly registered in the name of the GoN.

⁷ The 1961 Land Acquisition Act was the relevant law in effect at the time of the land acquisition at Chobhar. It should be noted that in response to the landowners’ court action, the GoN argued that the 1977 Land Acquisition Act was not applicable to the land acquisition at Chobhar, since the land was acquired under the 1961 Land Acquisition Act, before the adoption of the 1977 Act. The Supreme Court did not address this issue in its decision but instead focused its attention on instructing the GoN to take the necessary administrative steps to address the landowners’ petition.

Allegedly outstanding salaries and compensation

17. The Requesters claim that salaries for a period of 19 months are still outstanding for 416 former employees of HCCL. Management understands that the Project's GRM representatives have communicated with HCCL on this issue, that the latter has confirmed that these employees took voluntary retirement and were provided with all appropriate salaries and benefits upon ending employment, and that a public notice was issued to this effect on November 27, 2019. Furthermore, there are claims against HCCL for compensation to local residents for the environmental damage caused by HCCL's operation.

V. MANAGEMENT'S RESPONSE

18. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

19. Management has carefully reviewed the Request for Inspection. The Request raises a variety of concerns about: (i) potential impacts stemming from the Project itself; (ii) historic grievances related to the HCCL but unrelated to the Project or the Bank; (iii) the Government's use of security forces during a public event with the Prime Minister; (iv) inter-governmental decision making; and (v) compliance with Nepali law and international conventions. Management addresses each of these concerns below.

20. ***Management understands the concerns of the Requesters regarding potential environmental, health and safety impacts that relate to the Project.*** Management is committed to ensuring that the Project complies with all relevant environmental, health and safety requirements of Bank policy. As discussed in more detail below, Management considers that all impacts have been carefully studied in the Project's Environmental Impact Assessment (EIA) and that the mitigation measures in the Project's Environmental Management Plan (EMP),⁸ which are under implementation, will continue to address the impacts identified in the EIA as the ICD becomes operational.

21. ***Management notes that the Requesters wish to see the Project moved to a different location.*** Management notes that the Project site does not conflict with zoning or land use planning requirements. The area in which the Project is located is of mixed use, with residential, commercial and agricultural activities. Moreover, no land acquisition or resettlement was needed for the selected ICD site because it is already government-owned. Alternative sites considered would have been sub-optimal with regard to connectivity and logistics and also would have required land acquisition and displacement of private households and economic activities.

22. ***A substantial part of the Request, however, pertains to historic grievances about past impacts from the construction and operation of the HCCL, a government-owned enterprise, which has no relation to the Bank or to the Project.*** The land now used for the Project is located on land originally acquired by the GoN between 1967 and 1977 for the cement factory, which closed in 2002. The Request erroneously assumes that the Project would be required to address past impacts of the cement factory, specifically: (i) settling allegedly outstanding compensation claims for the 1967-1977 land acquisition; (ii) settling allegedly unpaid salaries to factory workers; and (iii) addressing health impacts from pollution stemming from the cement factory's operation. The Bank has no affiliation with or involvement in the construction and operation of the HCCL. ***The Project is neither expected nor required by Bank Policy to address these issues, which are completely unrelated to the Project or the Bank.*** It is also important to underscore that these grievances do not interfere with the Project achieving its development objectives, as described elsewhere in this Response.

23. ***Management engaged with the complainants on several occasions to better understand and discuss their Project-related concerns.*** In that context, Management committed to further examine potential environmental issues from the cement factory which could be relevant for the Project, such as possible soil and water contamination that could be stirred up or activated through the Project's civil works. However, additional environmental probing and assessments of

⁸ Both the EIA and EMP also cover social impacts.

soil and water have not found such historical environmental issues relevant for the Project. As a result, it has been determined by the EIA that there are no historical environmental issues (as cited in the Request) which could pose an environmental risk or impact to the community.

24. ***Management is not in a position to respond to the allegations regarding the Government's use of security forces.*** Management understands that the police intervention described in the Request was a one-time only incident related to the heightened security protocol which applies for events that involve the physical presence of the Prime Minister, who attended the event. The police intervention was not related to Project implementation or consultations. Management has communicated to the Government that project-affected persons need to be able to freely engage in consultations and express their grievances, which is the case for the Project.

25. ***Management is not aware of the allegedly conflicting development goals of the different levels of government cited in the Request.*** The GoN requested Bank support for this Project and levels of local government were involved through consultations and have expressed their support for the Project. Management is not in a position to comment on the GoN's projects that are outside the Bank's country program. However, Management understands that the development of the IEV, a hospital, and further tourism in the area, is not incompatible with the development of the ICD since these projects could in fact be implemented without interfering with each other, as they are in different parts of the overall area owned by the GoN and there is sufficient distance between them (see Map 1).

26. ***With regard to compliance with Nepali law and international conventions, Management notes that the Bank's obligation is to seek to ensure that projects comply with Board-mandated policies.*** Issues regarding compliance with these policies in the context of the Project are addressed below in this Response. Allegations that the Government of Nepal has failed to comply with its obligations under international human rights declarations and treaties and national law go beyond the Bank's institutional mandate to ensure Project compliance with Bank safeguard policies, and are not relevant for reviewing such compliance.

Specific Issues Raised in the Request

Project site selection

27. ***Five potential project sites, including Chobhar, were assessed and evaluated in the selection process for the Project site.*** The Chobhar site was selected by the GoN because of its geographic location and connectivity, and the fact that it was already publicly-owned land and no land acquisition or resettlement was required. An assessment of the potential environmental and social impacts was conducted for the five potential project sites for the ICD. As noted above, all four of the other sites would have been sub-optimal with regard to connectivity and logistics, and also would have required land acquisition and displacement of private households and economic activities. The Bank evaluated the site selection and found the outcome acceptable from a technical, environmental and social perspective.

28. The land at Chobhar provided for the ICD is located about 10 km outside Kathmandu in a peri-urban area. The land use of the Project area is mixed and includes low-volume residential, agricultural and commercial areas. The land use and land cover plan prepared under the Kathmandu Urban Development Project (KUUDP, 1998) report captures the Project area as an "Industry Area." Construction of offices and barracks for the Nepali Army is ongoing about 2 km from the ICD area.

29. Representatives⁹ of the local government (Municipality and Wards) participated in the consultations that were held during the EIA process. On August 2, 2018, the Chief Executive Office of Kirtipur Municipality wrote to the NITDB in support of the Project, recommending *“implementation of the Project at an early date.”*



Picture 4: Ongoing construction works of the ICD (May 2020)

⁹ This included the Mayor, Deputy Mayor, Ward Chairpersons, Ward Secretary, and Ward Members.



Picture 5: Ongoing construction works of the ICD (November 2019)

Potential environmental impacts

30. The EIA analyzed potential impacts, and the Project has applied mitigation measures as needed. The EIA comprehensively assessed the environmental and social impacts of the Chobhar ICD during construction and operation, including potential impacts on water, air, noise, dust, traffic, and historical and cultural sites.

- *Water:* The EIA found significant pre-existing pollution in the Bagmati River, mostly from domestic discharges. To avoid adding to the pollution of the river, a wastewater treatment system for the ICD will be constructed as part of the Project. The Bank requested additional analysis of groundwater and soil samples based on comprehensive parameters, including for heavy metals and hazardous materials, to determine whether or not the ICD site had pollution issues from the time of the HCCL that could be activated by the construction of the ICD. The results of the analysis, carried out on June 14, 2019, noted that all potential soil and groundwater contaminants on the ICD site were within permissible levels as per applicable national standards, the United States Environmental Protection Agency Standards, and World Bank Environmental Health and Safety Guidelines.
- *Air:* The EIA carried out air quality modelling to understand how truck exhaust could affect local settlements. The modelling indicated that the prevailing southeasterly winds would blow the majority of the truck exhaust away from the Bhutkhel settlement and the Jal Binayak Temple, towards uninhabited areas.

- *Noise:* To mitigate noise impacts during construction and operation, the Project includes: a traffic management plan, construction of a three-meter high perimeter wall around the entire ICD, and installation of an additional two-meter high noise barrier on top of the perimeter wall for the whole length facing the Bhutkhel settlement (about 700 meters) and the Jal Binayak Temple. Planned landscaping and planting of trees will further reduce noise.
- *Dust:* To reduce dust during construction and operation, the Project will pave the entire ICD area. The access road that passes between the site and the residential area has already been paved by the Project. Good construction and site management plans are in place, including frequent spraying of the construction site to reduce dust generation.
- *Traffic:* A traffic management plan has been put in place. To ease the entry and exit traffic and to avoid congestion, the site plan includes three gates and one dedicated additional lane for trucks to wait in line. The traffic will not pass through the Jal Binayak Temple area. Work by the GoN on a fast-track road is ongoing, and once it is completed, the access to the ICD will completely avoid the Bhutkhel settlement. Over the longer term, the planned outer ring road will be connected to the ICD and used to direct freight vehicle traffic directly to the ICD.
- *Historical and cultural sites:* See paragraph 34 below.

Alleged land acquisition

31. ***No land has been or is being acquired for this Project.*** The Project uses a portion (about 23 percent) of the land previously used for the HCCL. This land was acquired by the Government between 1967 and 1977 for a different purpose and clearly not in anticipation of this Project. Regarding compensation claims, see Section IV above on Special Issues.

32. ***The “additional” land cited in the Request is part of the land that had been acquired between 1967 and 1977 for HCCL.*** As noted above in Section IV, part of this land had not been properly registered in the name of HCCL at the time of acquisition. This administrative defect was rectified by a 2017 Council of Ministers Decision, which confirmed that the land should be registered in the name of the Government.

33. During consultations on the EIA, the local community expressed concerns about its ability to continue to use land it is currently using. However, no land inside the Project footprint is currently being used by the community, and there are no restrictions on the continued use of land outside that footprint.¹⁰

Alleged impacts on physical cultural resources

34. ***There are no historical, cultural or environmentally sensitive areas within the direct physical footprint of the Project.*** These areas were avoided based on the analysis undertaken in

¹⁰ Soon after the April 2015 earthquake, about two dozen families erected temporary structures on the site of what is to be the additional parking lot for the ICD. The GoN provided a translocation allowance to these families, which enabled them to return to their previous homes. By February 18, 2019, there were no private structures or encroachers on the land to be used for the ICD.

the EIA and feedback and inputs from the various stakeholders consulted during EIA preparation. The assessments undertaken for the Project to meet the requirement of OP 4.01 and OP 4.11 do not indicate any direct physical impacts from the Project on Chobhar's historical, religious or cultural heritage. There is no risk of damage to or loss of such physical cultural resources due to the Project. With regard to the historical and cultural heritage sites that are outside of the Project footprint but happen to be in proximity – mainly the Jal Binayak Temple – the EIA considered the inputs and requests from stakeholders and incorporated measures to also preserve, protect and enhance those sites in the EMP (as noted in paragraph 57 below).

35. During the consultations on the EIA, stakeholders requested that the NITDB assist them by allocating some resources for the overall conservation and improvement of the Jal Binayak Temple and the vicinity of the ICD. Through a Jal Binayak Temple Area Improvement Plan that is part of the Local Area Development Plan, the Project is supporting dedicated infrastructure works including: construction of a pedestrian crossing bridge, improvement of the Chobhar-Jal Binayak intersection, parking area development, street lighting, riverbank protection, walkway improvement, improvement of the access road to the cremation site, and visitor toilet construction. (See more details below, paragraph 57.)

Document disclosure and consultations

36. The Project was placed in Category A and an Environmental and Social Management Framework (ESMF) was prepared because not all sub-project sites were known at the time of Project approval.¹¹ The Chobhar ICD sub-project was screened as a Category B sub-project per the ESMF and an EIA was prepared according to the requirements of the ESMF.

37. The draft EIA was disclosed by the NITDB on its website on May 15, 2018 and the final EIA on January 7, 2019. The draft EIA was further disclosed by the Ministry of Forest and Environment (MoFE) on May 10, 2018 at nine locations, and a notice was placed in the newspaper giving 30 days for comment. The MoFE approved the final EIA on December 30, 2018 and the NITDB disclosed it on its website on January 7, 2019,¹² and the Bank disclosed it on its website on February 28, 2019.¹³

38. In both the draft EIA and final EIA, an Executive Summary in Nepali, the official language of Nepal, presented key information on the component and activities of the ICD and the conclusions of the EIA. It summarized key impacts and mitigation measures and provided cost estimates for the mitigation measures.

39. These consultations were conducted in Nepali, which is widely spoken among the local population (including the Newar) in the ICD area, and was adopted by consensus at public consultation sessions. At public hearing events, the Borrower offered to translate Nepali into the Newar language (Nepal Bhasa) but participants deemed such translation unnecessary.¹⁴

40. ***The EIA documented the consultations that were held.*** Over a 22-month period, there were four formal consultations, six informal consultations and focus group discussions, and one public hearing:

¹¹ For pre-identified sub-projects an EIA was prepared.

¹² <http://nitdb.gov.np/News-Notices/final-eia-report-of-kathmandu-icd-chovar/>

¹³ <http://pubdocs.worldbank.org/en/198371551334212728/Final-EIA-report-of-Kathmandu-ICD-at-Chovar>

¹⁴ The consultant who led the EIA consultations is from the Newar community and speaks the Newar language.

- There was a 15-day public notice and comment period on the draft EIA Terms of Reference (TOR) in July 2016, as per MoFE requirements under national laws. The MoFE approved the EIA TOR.
- During the preparation of the EIA (which spanned the feasibility and design process of the ICD), from March 1, 2016 to January 7, 2018, there were four formal consultations, two focus group discussions, four informal consultations, two public notices and one public hearing carried out to solicit views and opinions of a wide array of stakeholders, including the local community, the majority of which is Newar. The consultations and discussions included presentation of the Project to the community, scoping of key issues and provision of feedback from stakeholders.
- A public notice was published two weeks in advance of the public hearing on the draft EIA. The public hearing on January 7, 2018, was chaired by the Deputy Mayor of Kirtipur Municipality, and was attended by 40 individual stakeholders. The key findings and recommendations of the EIA report and the EMP (which is part of the EIA report) were presented and consulted upon during the public hearing.
- The MoFE published on May 10, 2018 a public notice in a daily newspaper, indicating the availability for viewing of the revised draft EIA report in nine locations, including the offices of the Nepal Federation of Indigenous Nationalities (NEFIN),¹⁵ and giving 30 days for comments and suggestions.

Project-level Grievance Redress Mechanism

41. A GRM has been established for the Project and is accessible and functional. This two-tier GRM was established on February 11, 2019 to manage project-related complaints, and consists of: (i) a Field Level Committee with representatives of the NITDB, the Supervision Consultant, the construction companies, and the Municipality; and (ii) a Ministry Level Committee with representatives of the MoICS, the Ministry of Finance, the Ministry of Land Management, and the Municipality. After initial processing, review, and categorization, the Field Level Committee submits reports on the grievances to the Ministry Level Committee. The Ministry Level Committee uses sub-committees to support it in addressing grievances.

42. The GRM issued a public notice on February 18, 2019 in a daily newspaper once it became operational. It subsequently received a total of 778 grievances, of which about 28 had supporting documentation. In investigating these complaints, the MoICS issued a second public notice in the national newspaper, and distributed it locally on April 22, 2019. This second notice was intended to give the community members an opportunity to provide additional documentation supporting their grievances.

¹⁵ The *Nepal Federation of Indigenous Nationalities*, is a national level umbrella organization of indigenous peoples/nationalities in Nepal. It was founded in 1991 as the Nepal Federation of Nationalities, and renamed in 2003 as the Nepal Federation of Indigenous Nationalities.

43. The GRM reported that it received grievances related to land, salaries, requests to relocate the ICD, implementation of the “5-Point Plan,”¹⁶ and environmental and social concerns. Most of the grievances are related to historical claims as described above.

44. On November 27, 2019, the MoICS issued a public notice on its findings on its website and various other community and work site locations, including the local Ward office of Kirtipur Municipality. The notice conveyed the Government’s findings that: (i) HCCL employees had taken voluntary retirement and had been provided with all salaries and benefits upon ending employment; (ii) grievances related to shares would be addressed by HCCL; (iii) issues related to environment protection and socio-cultural promotion were already incorporated into the Project EIA and would be addressed through its implementation; (iv) the land for the ICD had been acquired originally for the HCCL and was now in the name of the Government; and (v) the grievances regarding land outside the ICD footprint had been raised since the time of the acquisition of the land for HCCL, and further examination was underway.

45. The Bank received written communications from the Chobhar Protection Committee, a local NGO, on August 29, 2018; January 14, 2019; February 22, 2019; and two on April 30, 2019. (The Bank, however, did not receive the 700 individual complaints cited in the Request.) The Bank promptly forwarded these communications to the MoICS for appropriate action, and registered the complaints with the Bank’s Grievance Redress Service for action.

Police deployment

46. At the foundation-laying ceremony for the ICD on January 17, 2019 attended by the Prime Minister of Nepal, two members of the Bank team attended as observers. They became aware only later and through the media that 52 demonstrators were detained by the police outside the venue during this event. Reportedly, of these, 51 persons were released on the same day, but one was kept overnight in custody due to threats the individual had made.

47. Management has no independent information regarding this incident. The Country Manager and the Task Team Leader met with the Secretary and Joint Secretary of the MoICS on January 30, 2019 to inquire about the media reports and to express their concern regarding the use of enforcement personnel at the Project site. The GoN advised Management that a heightened security protocol is applied for public events when the Prime Minister is physically present, such as the foundation-laying ceremony, and that concerns for the safety of the Prime Minister had triggered the police actions.

48. For the first few days after the incident, security personnel were kept on site. Since then, as per the usual practice, the contractors have placed their guards at the construction site to protect equipment, assets, and staff. The Bank is not aware of any further incidents since January 17, 2019.

Indigenous Peoples

49. ***The Project documents clearly identified the Newar as Indigenous Peoples and engaged them accordingly.*** Based on the National Foundation for Upliftment of Adivasi/Janjati Act, 2058 (2002) of Nepal and on the Bank’s Operational Policy (OP) 4.10, Indigenous Peoples,

¹⁶ The “5-Point Plan” was agreed on August 31, 2000 between HCCL, the Environment Protection Struggle Committee and representatives of local government.

the Bank and the Borrower identified and recognized the Newar as Indigenous Peoples in the Project area.

50. The Project's appraisal stage Integrated Safeguards Data Sheet noted the presence of Indigenous Peoples in the Project area, highlighted the potential environmental and social impacts that Project activities might impose on such groups, and triggered OP 4.10 as the guiding framework for assessing and mitigating adverse Project impacts on Indigenous Peoples.

51. The EIA recognized the Newar as Indigenous Peoples living in the ICD area. The Newar constitute about 73 percent of the population in the Project's direct area of influence. In October 2017, when the Bank reviewed the draft EIA report, the Bank team reiterated the need for the Borrower to ensure that it assessed the potential impacts of the Project on the Newar and provide culturally appropriate benefits.

52. Indigenous Peoples of Nepal are officially described as Indigenous Nationalities. They represent about 36 percent of the country's total population, or approximately 8.5 million people. As per the 2011 census, Nepal has 126 castes and ethnic groups. Kathmandu is a very ethnically and culturally diverse city. The Newar are the largest ethnic group in the Kathmandu Valley (about 30 percent of the population). NEFIN classifies the Newar as one of the two "advanced" Indigenous Nationalities in Nepal.¹⁷ The Newar in the Kathmandu Valley rank consistently among the most economically¹⁸ and socially advanced communities of Nepal.¹⁹ Newar are one of the few indigenous nationalities who have been urban-oriented and have been successful in politics and administration.²⁰

53. Based on social assessments prepared for the EIA process, the Newar in the area do not have culturally distinct governance and political institutions. The Kirtipur municipality is primarily responsible for governance and development in the area. In the absence of a distinct Newar administrative and political structure, the MoICS consulted the leadership of the municipality during Project conception and the EIA process, and continues to consult them about the progress in construction activities and emerging complaints and grievances related to the site. Management notes that municipal and ward representatives in Nepal are democratically elected by the local community.

54. Newar community members from the area participated in the consultation process. Through these consultations, the MoICS determined that there was broad community support for the Project, albeit with concerns for adverse environmental impacts and expected project benefits. The Bank team reviewed and accepted the EIA, and concurred with the assessment, including the determination that broad community support for the Project had been established. The EMP includes adequate measures to mitigate adverse impacts and a Local Area Development Plan is in place and dedicated to extending culturally appropriate benefits to the local community.

¹⁷ NEFIN has categorized ethnic groups as (i) Endangered Groups, (ii) Highly Marginalized Groups, (iii) Marginalized Groups, (iv) Disadvantaged Groups, and (v) Advanced Groups. (<http://www.nefin.org.np/indigenounationalities/categorization.html>)

¹⁸ Bennett, Lynn, Dilli Ram Dahal and Pav Govindasamy, 2008. *Caste, Ethnic and Regional Identity in Nepal: Further Analysis of the 2006 Nepal Demographic and Health Survey*. Calverton, Maryland, USA: Macro International Inc.

¹⁹ See UNDP Nepal Human Development Report 2014.

²⁰ *Country Technical Note on Indigenous People's Issues*, IFAD, 2012; *A study on the socio-economic status of Indigenous People*, Lawyers Association for Human Rights of Nepalese Indigenous People (LAHURNIP) and the International Work Group for Indigenous Affairs, 2014.

55. Given the composition of the affected community, hosting both Newar and other ethnic groups, the Project sought to avoid the risk of creating inequalities. As provided for in OP 4.10,²¹ the Borrower adopted an approach to address the requirements of Bank policy in a manner that provides equitable access to benefits to all affected members of the community, that at the same time, would also be culturally appropriate. Hence, a separate Indigenous Peoples Plan (IPP), as stipulated in OP 4.10, was not prepared. Instead, the requirements of OP 4.10 were addressed in the Project's safeguard instruments and the Local Area Development Plan, which were disclosed and consulted upon among the potentially affected members of the community. In Management's view the ICD component of the Project is not a complex activity. Moreover, the impacts on the local community are primarily construction impacts on a site that has for several decades already been used for industrial purposes.

56. Management considers that the selected approach is consistent with the provisions of the Policy concerning plan preparation, which requires the level of detail to be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples.

57. The EIA, EMP and the Local Area Development Plan address the culturally appropriate benefits which the Project provides to the community. These benefits have been developed based on the feedback obtained from the consultations and in discussion with the focus groups. Specifically, the Local Area Development Plan will help to preserve and enhance the cultural value of the Jal Binayak Temple, as well as offering additional social enhancement programs. The infrastructure improvements that the Project supports as part of the Local Area Development Plan are not required for the Project, nor will the Project use them for the construction or operation of the ICD. Cumulatively, the plan and the social enhancement activities extend culturally appropriate benefits to the local community as would normally be recorded in an IPP. These benefits specifically include the following:

Infrastructure measures

- Risk mitigation measures that include construction of a pedestrian crossing bridge over the main road at Chobhar by the Bhutkhel settlement and intersection improvements with the main road at Chobhar, including signage and street markings;
- Paving the access road to the Jal Binayak Temple (not to be used for ICD-related traffic);
- Developing the parking area, including visitor toilets, for the Jal Binayak Temple;
- Providing streetlights for the road and foot path to the Jal Binayak Temple;
- Improving the pedestrian walkway around the Jal Binayak Temple periphery;
- Riverbank protection measures (gabion walls) to stabilize the area adjacent to the Jal Binayak Temple;

²¹ OP 4.10, Footnote 12: "When non-Indigenous Peoples live in the same area with Indigenous Peoples, the IPP should attempt to avoid creating unnecessary inequities for other poor and marginal social groups."

- Paving the pedestrian road to the cremation site;
- Sanitation / drainage improvement works in Bhutkhel settlement areas.

Social enhancement programs

- Provision of vocational training for local community members (tailoring, plumbing, electrician, vehicle repair);
- Employment of local community members for ICD construction and operation;

Community sensitization programs

- Awareness raising for environmental conservation targeting students;
- Youth awareness raising for conservation of heritage and culture;
- Health camps for monitoring public health of local residents; and
- Awareness raising for local area improvements.

58. Management will also reiterate to the Borrower the need to ensure that continued and frequent informed consultations with the local community take place to provide information on and seek inputs on implementation progress, timeline, and updates. This will specifically include careful monitoring of the implementation of Project benefits.

Historical grievances related to the HCCL

59. ***Management recognizes that there are historical grievances stemming from past impacts of the construction and operation of the HCCL, which have no relation to the Bank or the Project.*** These historic grievances cover the following issues: (i) outstanding compensation claims for the 1967 land acquisition; (ii) unpaid salaries to factory workers; and (iii) health impacts from pollution resulting from the factory's operation.

60. The Bank has no affiliation to or involvement in the construction or operation of the HCCL cement factory. The Project is neither expected nor required by Bank policy to address these issues, which are unrelated to the Project or the Bank.

61. The "5-Point Plan" referred to in the Request was made between HCCL, the local Environmental Protection Struggle Committee, and representatives of local government on August 31, 2000, to address some of the historical grievances. It is unrelated to the Project and the Bank is not a party to this agreement, nor do Bank safeguard policies apply to it.

62. More details about the historical issues can be found in Section IV (Special Issues) above.

Conclusion

63. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the context of the Project. In Management's view, the Bank has followed the policies and procedures applicable to the matters raised by the Request. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.

Annex 1.
Claims and Responses

No.	Claim	Response
<u>Operational Policy 4.01 Environmental Assessment</u>		
1.	...the construction of the dry port also has significant environmental concerns and is thus not in line with the earlier government decision.	<p><i>The EIA appropriately assesses and addresses the Project's environmental and social impacts.</i></p> <p>The EIA, prepared on behalf of the NITDB, was approved by the MoFE on December 30, 2018 and conveyed to MoICS through a letter dated January 4, 2019. The EIA was reviewed by the Bank and approved, subject to the inclusion of the Bank's comments, on June 21, 2018. Subsequently, after MoFE approval on December 30, 2018, the approved EIA was disclosed by the NITDB on January 7, 2019 and published on the Bank's website on February 28, 2019. The Project's Environmental Management Plan (EMP), which includes social measures, is robust and the two contractors contracted by the NITDB to build the ICD have prepared their Contractor's EMPs, which were reviewed and approved by the NITDB and the Bank.</p> <p><i>The EIA analyzed potential impacts and the Project has applied mitigation measures as needed.</i></p> <p>The EIA comprehensively assessed the environmental and social impacts of the Chobhar ICD during construction and operation, including: water pollution, air pollution, noise pollution, dust, traffic, and impacts on historical and cultural sites.</p> <ul style="list-style-type: none"> • <i>Water pollution:</i> The EIA conducted basic water quality analysis of the Bagmati River, which is heavily polluted from domestic discharge, and found high values for total suspended solids, chemical and biological oxygen demand and fecal coliform. To avoid adding to the pre-existing pollution of the river, a wastewater treatment system for the ICD will be constructed as part of the Project. Groundwater quality was normal and within ambient Nepali standards; however, the Bank requested additional analysis of groundwater and soil samples

No.	Claim	Response
		<p>based on comprehensive parameters, including for heavy metals and hazardous materials, to determine whether or not the ICD site had pollution issues from the time of the HCCL that could be activated by the construction of the ICD. The results of the analysis carried out on June 14, 2019, noted that all potential soil and groundwater contaminants on the ICD site were within permissible levels as per applicable national standards, the United States Environmental Protection Agency Standards, and World Bank Environmental Health and Safety Guidelines. The analysis found that if the well water were to be used for drinking or construction, it would need to be filtered to reduce iron levels and turbidity.</p> <ul style="list-style-type: none"> • <i>Air pollution:</i> The EIA carried out air quality modelling to understand how truck exhaust could affect local settlements. The modelling indicated that the prevailing southeasterly winds would blow the majority of the truck exhaust away from the Bhutkhel settlement and the Jal Binayak Temple. • <i>Noise pollution:</i> To mitigate noise impacts during construction and operation, the Project includes: a traffic management plan, construction of a three-meter high perimeter wall around the entire ICD, and installation of an additional two-meter high noise barrier on top of the perimeter wall for the whole length facing the Bhutkhel settlement (about 700 meters) and the Jal Binayak Temple. Planned landscaping and planting of trees will further reduce noise. • <i>Dust:</i> To reduce dust during construction and operation, the Project will pave the entire ICD area. The access road that passes between the site and the residential area has already been paved. Good construction and site management plans are in place, including frequent spraying of the construction site to reduce dust generation.

No.	Claim	Response
		<ul style="list-style-type: none"> • <i>Traffic:</i> A traffic management plan has been put in place. To ease the entry and exit traffic and to avoid congestion, there are three gates proposed and one dedicated additional lane for trucks to wait in line. The traffic will not pass through the Jal Binayak Temple area. Work by the GoN on a fast-track road is ongoing, and once it is completed, the access to the ICD will completely avoid the Bhutkhel settlement. Over the longer term, the planned outer ring road will be connected to the ICD and used to direct freight vehicle traffic directly to the ICD. <p><i>Stakeholders requested additional enhancement measures during the EIA consultations, which were adopted and supported by the Project.</i></p> <p>The Jal Binayak Temple, the cremation site, and the Bagmati River are outside the direct physical footprint of the Project. No civil works related to the construction of the ICD are taking place there, only works related to the agreed enhancement measures supported by the Project.</p> <p>During the consultations on the EIA, stakeholders requested that the NITDB assist them by allocating some resources for the overall improvement of the Jal Binayak Temple and the vicinity of the ICD.</p> <p>Through a Jal Binayak Temple Area Improvement Plan that is part of the Local Area Development Plan, the Project is supporting infrastructure works including: construction of a pedestrian crossing bridge, improvement of the Chobhar-Jal Binayak intersection, parking area development, street lighting, riverbank protection, walkway improvement, improvement of the access road to the cremation site, and visitor toilet construction.</p> <p><i>Stakeholders also requested that the Project prioritize local hires, which is being done.</i></p> <p>During the consultations on the EIA, stakeholders requested that the Project support jobs for local community members. In</p>

No.	Claim	Response
		<p>response, the Project is supporting:</p> <ul style="list-style-type: none"> • Employment of local community members for ICD construction and operation. • Provision of vocational training to enhance the skills of local workers on tailoring, plumbing, electricity, and vehicle repair. • Awareness training on environment, safety, and cultural heritage targeting local school students, youth clubs, and local NGOs.
2.	<p><u>Long-standing Pollution Concerns Unresolved.</u> For decades, we, the local communities, have been affected for decades due to the pollution from the earlier Himal Cement Factory. However, the government's commitment for compensation from cement dust never materialized despite the 5-point agreement (attached) signed in August 2000 with then Environment Protection Struggle Committee (many of us were also directly involved in the body). We thus call for the implementation of the 5-point agreement made in presence of the local elected representatives, including for provision of fair compensation for the human and physical harms caused by the Factory during its operation.</p>	<p><i>The agreements reached with HCCL are not related to the Project or the Bank.</i></p> <p>The "5-Point Plan" was made between HCCL, the local Environmental Protection Struggle Committee, and representatives of local government on August 31, 2000. The Bank is not a party to this agreement, nor do the Bank safeguard policies apply.</p>
3.	<p>In our current opposition to the dry port, besides submission of memoranda to the concerned government authorities, we had earlier disseminated our concerns and demands through press releases (attached) and conferences and raised them with the elected representatives of Chobhar area through memoranda. As reported in various news media (attached), our elected representatives to the federal parliament and local governments had committed to addressing our concerns or shown solidarity on them. They have criticized the central government ignoring local priorities for development of the area as a tourism site and shoving its dry port plan in the area against the will of the locals, which they said would</p>	<p><i>Representatives of Local Government participated in the consultations, and the Municipality gave its formal support for the Project.</i></p> <p>Representatives of the Municipality and Ward, including the Mayor, Deputy Mayor, Ward Chairpersons, Ward Secretary, and Ward Members, attended four formal consultations and several informal consultations during the EIA consultation process.</p> <p>On August 2, 2018, the Chief Executive Office of Kirtipur Municipality wrote to the NITDB that "...we recommend implementation of the Project at an early date."</p>

No.	Claim	Response
	not succeed. Earlier, the government had also failed in its plans to construct residence for squatters and landfill site in the area due to local opposition.	Regarding inter-governmental decision making, these issues are outside the Project and the Bank's remit. <i>For more information on the consultation process for the Project, please refer to #12.</i>
4.	Further, as quoted in our press release dated 25 August 2018 and various news reports, environmental and local experts have also criticized the construction of the dry port in Chobhar, which is a fragile point as the only outlet for the Bagmati river from Kathmandu Valley as well as major entry point for air in the valley. Pollution in Chobhar due to construction of the dry port as well as future urban growth around the dry port will be disastrous for the already high pollution levels of the entire valley, which is the largest and the fastest growing urban area of Nepal.	<i>Please refer to #1 on Project-related pollution issues.</i>
5.	The experts have thus suggested relocating the dry port to another entry point to Kathmandu (such as at Naubise in connection to the Naubise-Nagdhunga tunnel road currently being constructed).	<i>Five potential project sites, including Chobhar, were assessed and evaluated by the Government.</i> A pre-feasibility study was undertaken on five sites, including Chobhar. The Chobhar site was selected because of its geographical location and connectivity and the fact that it was already publicly-owned land and no land acquisition or resettlement was required. All four of the other sites would have been sub-optimal with regard to connectivity and logistics, and would have required land acquisition and displacement of private households and economic activities. The Bank evaluated the site selection and found the outcome acceptable from a technical, environmental and social perspective.
6.	In above context, the draft Environmental Impact Assessment (EIA) report dated March 2018 notes some of our concerns. For example, it states that “ <i>the whole [dry port] area had greatly suffered from the severe dust and noise pollution during the period of cement factory operation during the 1990s. Older people are still found to have chronic respiratory problem due to dust pollution.</i> ” However, the EIA report is significantly inadequate to address our demands.	<i>The EIA reported on the historical issues related to HCCL to provide context. These issues are outside the Project and Bank safeguard policies do not apply.</i> <i>The Project's EIA, however, only addresses such historical impacts that could have been relevant for the Project (e.g., existing contamination that could be activated by Project civil works). The Project's EIA is not required to provide resolution to the demands related to the historical impacts</i>

No.	Claim	Response
		<p><i>cited in the Request.</i></p> <p><i>Please refer to #1 on Project-related pollution issues.</i></p>
7.	<p>It should also be noted that the EIA report is only available in draft version to date on the NITDB website, which is very lengthy and technical while the summary in Nepali contains little relevant information. Further, it is not even posted in the relevant Project page of the World Bank website.</p>	<p><i>The EIA was disclosed in an appropriate and timely manner.</i></p> <p>On May 10, 2018, as per Nepali regulations, the MoFE published a public notice in a daily newspaper, indicating the availability for viewing of the draft EIA report in nine locations, as shown below, and giving 30 days for comments and suggestions prior to the Public Hearing:</p> <ol style="list-style-type: none"> 1. Library of the Ministry of Forest and Environment, Singhadurbar, Kathmandu 2. Ministry of Industry, Commerce and Supplies (MoICS), Singhadurbar, Kathmandu 3. Central library of the Tribhuvan University, Kirtipur, Kathmandu 4. Library, Federal Parliament Secretariat, Singhadurbar, Kathmandu 5. Nepal National Library, Hariharbhawan, Lalitpur 6. Nepal Federation of Indigenous Nationalities, Ekantakuna, Lalitpur, which is the agency with the mandate for Indigenous Peoples 7. Office of the District Coordination Committee, Kathmandu 8. Kirtipur municipality office 9. Kirtipur Municipality, Ward No. 6 Office, Kathmandu. <p>The draft EIA report was prepared in line with OP 4.01 and was first posted on the NITDB website on May 15, 2018 at http://nitdb.gov.np/publications/eia-report-of-construction-of-kathmandu-icd-cfs/</p> <p>The final EIA was posted on the NITDB website on January 7, 2019 at http://nitdb.gov.np/News-Notices/final-eia-report-of-kathmandu-icd-chovar/</p> <p>The final EIA report was publicly disclosed on the World Bank's website on February 28, 2019 at http://pubdocs.worldbank.org/en/1983715513</p>

No.	Claim	Response
		<p>34212728/Final-EIA-report-of-Kathmandu-ICD-at-Chovar</p> <p>In both the draft EIA and final EIA, an Executive Summary in Nepali, the official language of Nepal, presented key information on the component and activities of the ICD and the conclusions of the EIA. It summarized key impacts and mitigation measures and provided cost estimates for the mitigation measures.</p>
8.	<p>The site is very close to human settlement with the closest Bhutkhel settlement lying within meters across the road and will cause more harms than benefits and excessive increase in social ills and problems in the area. Dry ports should generally be located at 15 to 16 kms from human settlement.</p>	<p><i>The site is on publicly-owned land in a mixed-use peri-urban area.</i></p> <p>The land at Chobhar provided for the ICD is publicly-owned land located about 10 km outside Kathmandu in a peri-urban area. The area in which the Project is located is of mixed use and includes low-volume residential, agricultural, and commercial areas. A police camp is located in the area and construction of offices and barracks for the Nepali Army is ongoing about 2 km from the ICD area.</p> <p><i>Please refer to #1 on measures to protect the Bhutkhel settlement and Jal Binayak Temple from Project-related impacts.</i></p>
9.	<p>The construction site is very inappropriate in tactical terms as well as long-term planning and even contradictory to the government's own plans to build international convention and conference center in the area.</p>	<p><i>A joint concept plan for the ICD and IEV was prepared. More detailed plans for the IEV are under preparation by the Government, without Bank support.</i></p> <p>The IEV and ICD were developed under a joint concept plan to ensure that the IEV would not interfere with or be affected by the operation of the ICD.</p> <p>The ICD and IEV both underwent an initial feasibility study at the same time, including environmental and social screening and an initial joint stakeholder consultation (March 31, 2016), specifically to ensure they would be congruous in the event that the IEV was developed. As such, the basic concept design for the two facilities was proposed specifically to minimize potential cumulative impacts, e.g., to develop them in different parts of the former HCCL land parcel that are as far away from each other as possible, separated by a large hill, and in the case of the</p>

No.	Claim	Response
		<p>IEV, positioned in a way to shelter it from potential noise, dust, and visual impacts of the ICD's operation. No formal cumulative assessment was carried out in the EIA of the ICD to specifically assess cumulative impacts of the IEV since at the time of the ICD EIA, the IEV remained at a very early conceptual stage, with no specific government plans to complete the detailed planning and no certainty on financing and implementation timelines.</p> <p>In terms of cumulative impacts, the ICD EIA included potential cumulative impacts on traffic in the ICD area resulting from the ICD together with a fruit and vegetable market proposed for a location across from the ICD site (the only other larger project concretely planned for the vicinity), and a traffic management plan as part of the EMP. It also assessed other routing alternatives to decongest the ICD during operation, including using the proposed outer ring and fast-track roads as direct entry and exit points to the ICD, which would bypass the Bhutkhel settlement, and would also further reduce potential cumulative traffic effects of the ICD's operation together with IEV if it is developed, as it would enable vehicles to access the ICD site from the other direction, away from the IEV area.</p> <p><i>Please refer to #5 on the selection of Chobhar as the site for the ICD.</i></p>
10.	<p>Because the dry port will cause significant harms to the indigenous and local communities in the area and consequently the wider society and the country, we hence call for immediate halt to the construction and urge that the dry port be designed and built at another suitable location.</p>	<p><i>The EIA did not identify any of the alleged "significant harms" to indigenous and local communities.</i></p> <p><i>Please refer to #5 on the selection of Chobhar as the site for the ICD.</i></p>
11.	<p><u>Long-standing Labor Concerns Unresolved.</u></p> <p>Furthermore, even after the closure of the Himal Cement Factory for 18 years now, 416 employees of the Factory have not yet received their salaries for 19 months. We urge for the payment of the outstanding</p>	<p><i>These issues stemming from the cement factory's operation and closure are not related to the Project or the Bank. They are not covered by Bank policy.</i></p> <p>The issue of compensation of the 416 employees by HCCL is a historical issue between HCCL and the concerned employees. This issue is not related to the Project, nor is it</p>

No.	Claim	Response
	<p>salaries of those employees at once.</p> <p>The NITDB public notice dated 27 November 2019 (attached) conveying the government's decision on the complaints regarding the Chobhar dry port declares that no further action was needed in relation to the outstanding salaries of former employees of the Himal Cement Factory while the complaints regarding environmental and socio-cultural issues would be addressed in course of implementation of the Environment and Social Management Action Plan (ESMP) of the Project. While the draft EIA report of the dry port only includes an Environmental Management Plan (EMP), it also does not adequately address, if at all, our socio-cultural concerns. We thus are discontent with the decision as informed in the NITDB notice and have even not been involved in little further actions committed therein or taken thereafter, if any, regarding the EMP.</p>	<p>covered by Bank policies.</p> <p><i>Please refer to #19 on Government's response to the grievances related to compensation.</i></p>
12.	<p><u>Adequacy of Consultations.</u> [V]arious Category A requirements have not been fulfilled. ...As stated above, although consultations, meetings and public hearings were held for the EIA of the dry port, they were not adequate because the affected communities were not provided enough information regarding the dry port beforehand. They were also barely meaningful as our concerns were simply ignored or shelved in the draft EIA report. Conversely, the clearly expressed views of the affected indigenous Newar and local communities have been effectively ignored.</p>	<p><i>The EIA consultation process was extensive and substantive, and met both Nepali and Bank safeguard policy requirements.</i></p> <p>The Project was placed in Category A and an Environmental and Social Management Framework (ESMF) was prepared because not all sub-project sites were known at the time of Project approval. The Chobhar ICD sub-project was screened as a Category B sub-project per the ESMF and an EIA was prepared according to the requirements of the ESMF.</p> <p>The EIA consultations met the requirements of both the Nepal Environment Protection Act and Regulation and the Bank's OP 4.01.</p> <ul style="list-style-type: none"> • There was a 15-day public notice and comment period on the draft EIA TOR in July 2016, as per MoFE requirements under national laws. The MoFE also approved the EIA TOR. • During the preparation of the EIA (which spanned the feasibility and design process of the ICD), from March 1, 2016 to January 7, 2018, there were 4 formal consultations, 2 focus group discussions,

No.	Claim	Response
		<p>4 informal consultations, and 1 public hearing carried out (Table 3.1, page 17 of the EIA) to solicit views and opinions of a wide array of stakeholders, including the local community, the majority of which is Newar. The consultations and discussions included presentation of the Project to the community, scoping of key issues and provision of feedback from stakeholders.</p> <ul style="list-style-type: none"> • A public notice was published two weeks in advance of the public hearing on the draft EIA. The EMP, which is part of the EIA report, was presented and disclosed during the public hearing. The public hearing was the culmination of the consultation process; it was chaired by the Deputy Mayor of Kirtipur Municipality and presented the key findings and recommendations of the draft EIA. • As described above, the MoFE published a public notice in a daily newspaper, indicating the availability for viewing of the draft EIA report in nine locations and giving 30 days for comments and suggestions.
13.	<p>The OP 4.01 further requires the Bank to ensure that “the borrower consults with [project-affected groups and local NGOs] ... throughout project implementation as necessary to address environmental assessment-related issues that affect them.” The NITDB in construction of the dry port has failed to consult the affected communities led by the Chobhar Protection Committee with regards to the implementation of the Environmental Management Plan (EMP) in the draft EIA report. In fact, far from consulting the Project-affected communities to address the socio-environmental issues that affect them, the government has actively worked to silence their complaints. As described above, the government has deployed armed police forces in the construction site to ensure that opposition to the dry port did not obstruct</p>	<p><i>The GRM is accessible to local communities who may wish to raise concerns about the progress in the implementation of the EMP.</i></p> <p><i>The consultation process will continue during implementation through the Project’s GRM, disclosure of information, awareness raising and public notices/posting of Project status.</i></p> <p><i>Please refer to #12 regarding the consultation process.</i></p> <p><i>Please refer to #18 regarding the use of security forces.</i></p>

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	inauguration and construction activities.	
14.	For meaningful consultation to take place between the government and the Project-affected groups, as required under OP 4.01, the government was required to provide “relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.” For Category A projects, the Bank is also charged with ensuring that the borrower provides “a summary of the proposed project’s objectives, description, and potential impacts” for the initial consultation. As noted above, the dry port affected communities have only been able to access a draft EIA report regarding the port – that too from the NITDB website, which is not accessible to all the affected persons. It is very lengthy and technical and thus not understandable while the summary in Nepali contains little relevant information and the native language of majority of the affected people, who are Newar, is Nepalbhasa that is very different from Nepali. Further, it is not even posted in the relevant Project page of the World Bank website. Thus, failure to provide relevant materials in a timely manner and in a form and language understandable and accessible to the affected communities constitutes a violation World Bank policy.	<p><i>The Project site is on the outskirts of Kathmandu where Nepali is spoken and understood. While Nepal Bhasa is native to the Newar, Nepali is also widely spoken among the Newar.¹ During the two-year consultation period no requests for translation or interpretation into Nepal Bhasa were made.</i></p> <p>The EIA report was written in English and has an Executive Summary in Nepali that is more accessible to non-technical audiences, and that presents the objectives of the ICD, its components, activities, impacts and mitigation measures. On the technical content of the EIA, the EIA follows the guidelines of the Government of Nepal and the Bank’s OP 4.01.</p> <p>Regarding translation into Nepal Bhasa, Management notes that over the two years of consultation, this issue was never raised by any stakeholders. Management recognizes that the native language of the Newar is Nepal Bhasa. At the same time, Management is aware that the Newar in this area speak and understand Nepali. This is evidenced in both official notes and academic research. Nepali and English are the mediums of teaching and learning in the area; the local Kirtipur Municipality conducts official business in Nepali; local NGOs (i.e., the Chobhar Protection Committee and the local Community Forest User Group) conduct their engagements in Nepali. NEFIN, which is the agency in Nepal with a mandate on Indigenous Peoples/Ethnic minorities did not raise the issue of translation even when the EIA was publicly disclosed and made available to the stakeholders in their office in Kathmandu.</p> <p>The consultations were conducted in Nepali, which is widely spoken among the local</p>

¹ Shrestha, B. G. (2007). *Ethnic nationalism in Nepal and the Newars*. In Lowoti, M. (ed.) *Contentious politics and democratization in Nepal*; SAGE Publications, India.

Eagle, S. (2010). *The language situation in Nepal*. Journal of Multilingual and Multicultural Development; Vol. 20.

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		<p>population (including the Newar) in the ICD area, and was adopted by consensus at public consultation sessions. At public hearing events, the Borrower offered to translate Nepali into the Newar language (Nepal Bhasa) but participants deemed such translation unnecessary.²</p> <p><i>Please refer to #12 regarding the consultation process.</i></p>
15.	<p>We have long expressed our objections to the dry port through several press releases, memoranda and complaints as well as in various meetings and public hearings. Representatives of the affected communities, including the elected local officials who attended public consultations and hearings during the Environmental Impact Assessment (EIA) stage of the dry port since 2016, had repeatedly raised the issues of return of land acquired for then Himal Cement Factory as well as outstanding liabilities of then Factory to its employees and its pollution impacts – that are noted in the draft EIA report. While the affected locals and communities’ representatives were not provided adequate information regarding the dry port prior to the EIA consultations and hearings, we affirm that those were also barely meaningful as our concerns were simply ignored or shelved in the draft EIA report. Further, we are yet to receive an official copy of the final EIA report and we have only been able to access, after much difficulties, a draft report dated March 2018 from the NITDB website, which is very lengthy and technical and hardly understandable to all the affected persons.</p>	<p>On land and compensation issues, see #3 above.</p> <p>On pollution issues, see #1 above.</p> <p>On consultations, see #12, and on disclosure, #5 above.</p> <p>For more details of how the Bank and the Government followed up on the complaints and the underpinning issues, including those related to Labor, please see #17 below.</p>
16.	<p>The locals led by the Chobhar Protection Committee have submitted various memoranda and complaints (attached) on different dates to the concerned local and national authorities, including the Kirtipur Municipality, the Office of the Prime Minister and the Cabinet and the NITDB, as</p>	<p><i>The Bank did not attend the meetings mentioned, and has no knowledge of the conclusions reached.</i></p> <p>The Bank met with the Chobhar Protection Committee on January 14, 2019 and April 30, 2019. It received the Committee’s first</p>

² The consultant who led the EIA consultations is from the Newar community and speaks the Newar language.

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	<p>well as the World Bank country office stating our concerns and demands. We have been demanding that the government should, without further delay, respect the opinion expressed by 100 percent of the attendees of a public gathering organized on 22 August 2018 by Kirtipur Municipality Ward No. 6 in presence of local intellectuals and renowned personalities regarding the suitability of the construction of the dry port in Chobhar that it is not appropriate to build the dry port in the area. Such broad consensus was also expressed in various community meetings we organized in different settlements across the dry project impact area. In response to our demands, the local government officials had expressed their commitment to decide to request the Government of Nepal to resolve our concerns before initiating any plan and to issue halt order to the NITDB to stop the construction of the dry port.</p>	<p>grievance letter on August 29, 2018 and two emails dated February 22, 2018 and April 30, 2018 which it immediately forwarded to the Government for redress.</p> <p><i>Please see #3 on the support provided by the Kirtipur Municipality for the ICD.</i></p>
17.	<p>Further, we held meetings at secretarial and ministerial levels calling for construction of the dry port in another appropriate location than Chobhar, during which a verbal understanding was formed accordingly. In our most recent meeting with then Minister for Industry, Commerce and Supplies on 20 November 2018 in presence of the representatives of the central and provincial governments, Mayor of the Kirtipur Municipality, Chair of Kirtipur Municipality Ward No. 6 as well as representatives of the World Bank and the NITDB, the Minister had heard the views regarding the unsuitability of construction of the dry port in Chobhar. The Minister had thus committed to decide on the plan for the dry port in Chobhar after his field visit and inspection.</p>	<p><i>The Bank did not attend the meeting on November 20, 2018, and has no knowledge of the conclusions reached.</i></p>
18.	<p>However, in contrary to such understanding and despite our meeting with the Ministry of Home Affairs and the World Bank country office officials on 14 January 2019 to suggest against the initiation of the dry port without addressing our concerns, Nepal's</p>	<p><i>The Bank has communicated relevant concerns to the Government.</i></p> <p>Representatives from the Chobhar Protection Committee came to the World Bank office in Kathmandu and met with the Bank team on January 14, 2019. The Committee presented a</p>

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	<p>Prime Minister laid the foundation stone for the dry port on 17 January 2019 (after postponing the earlier scheduled date in August 2018 due to local opposition). That took place amidst an undeclared curfew in the construction area and brutal suppression of the locals by the police against peaceful sit-in and demonstration by the affected locals. Thereby, fifty-two locals were arbitrarily detained from the streets and their houses while locally elected officials, including to the federal parliament, had boycotted the event. Such police actions are condemnable while the construction has been ongoing since within the guards of Armed Police Force. We have strongly called for resolving the situation through dialogue at the earliest to halt the dry port construction in Chobhar and implement plans more suitable for the historical, religious and cultural legacy of the area and move the dry port to more appropriate location.</p>	<p>copy of a letter addressed to the Prime Minister and its press release, asking that the re-scheduled foundation-laying ceremony be postponed until the Committee's concerns had been addressed. The Bank team informed the group that its earlier correspondence had been sent to the NITDB and MoICS for resolution, and that this letter would be sent as well. The representatives of the Chobhar Protection Committee acknowledged the Bank's response and the meeting ended amicably. On January 16, 2019, the Bank sent a letter to the Secretary of MoICS forwarding the documents it had received from the Chobhar Protection Committee and bringing to his attention "an urgent issue related to the unresolved complaints."</p> <p>At the foundation-laying ceremony on January 17, 2019, two members of the Bank team attended as observers. They became aware only later and through media coverage of the event that 52 demonstrators were detained by the police outside the venue during this event. Reportedly, of these, 51 persons were released on the same day, but one was kept overnight in custody due to threats the individual had made.</p> <p>Management has no independent information regarding this incident. The Country Manager and the Task Team Leader met with the Secretary and Joint Secretary of MoICS on January 30, 2019 to inquire about the media reports and express their concern regarding the use of enforcement personnel at the Project site. The GoN advised Management that a heightened security protocol is applied for public events when the Prime Minister is physically present, such as the foundation-laying ceremony, and that concerns for the safety of the Prime Minister had triggered the police actions.</p> <p>For the first few days after the incident, security personnel were kept on site. Since then, as per the usual practice, the contractors have placed their guards at the construction site to protect the equipment, assets, and staff. The Bank is not aware of any further incidents</p>

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		<p>since January 17, 2019.</p> <p>At the Bank's request, MoICS committed to establishing a two-tier Grievance Redress Mechanism (GRM) to address the issues raised by the community members. This GRM was established on February 11, 2019. <i>Please refer to #19.</i></p> <p><i>Please refer to #5 regarding the selection of the Chobhar site.</i></p>
19.	<p>As noted in the latest World Bank report on the Project dated 22 December 2019, “[t]he two works contracts ... for the ICD were awarded in July 2018. While construction activities were initiated, local groups voiced grievances related to historical land issues, salary claims of erstwhile employees of Himal Cement Company Limited, and environmental and socio-cultural conservation demands, and stopped the works from August 2018 to January 2019, resulting in significant delays in the construction. The Bank informed the government that no disbursement would be made against this component until grievances of the communities were addressed and the process of grievance redressal documented. The Government constituted a 2-Tier Grievance Redressal Mechanism comprising two Committees – one at the Field (project site) Level and the other at the Ministry Level – and these committees have collected and examined the grievances in a structured manner.”</p> <p>Accordingly, following the NITDB's notices calling for submission of grievances, we, as the Chobhar Protection Committee had submitted our complaints in February and April 2019 conveying our concerns and demands as described above and in this complaint. The grievances were also registered through Jal Binayak Community Forest Users' Group and bodies of the affected communities by environmental pollutions created by then Himal Cement Factory and erstwhile employees of the Factory as well as at individual levels by more than 700 affected persons. Copies of</p>	<p><i>A functioning GRM has been established and is addressing grievances. Resolution of grievances related to the ICD through this GRM was a condition for authorizing disbursements.</i></p> <p>In accordance with OP 4.01, the Bank has taken the grievance redress process very seriously, including by conditioning disbursement on its satisfaction that the grievances had been addressed.</p> <p>The Bank received written communications from the Chobhar Protection Committee on August 29, 2018; January 14, 2019; February 22, 2019; and two on April 30, 2019. (The Bank, however, did not receive the 700 individual complaints cited in the Request.) The Bank promptly forwarded these communications to MoICS for action and registered the complaints with the Bank's Grievance Redress Service for action.</p> <p>As noted in #16, a two-tier GRM was established on February 11, 2019, and consists of: (i) a Field Level Committee with representatives of the NITDB, the Supervision Consultant, the construction companies, and the Municipality; and (ii) a Ministry Level Committee with representatives of MoICS, the Ministry of Finance, the Ministry of Land Management, and the Municipality. After initial processing, review, and categorization, the Field Level committee submits a report on the grievances to the Ministry Level Committee. The Ministry Level Committee uses sub-committees to support it in addressing grievances.</p> <p>The GRM issued a public notice on February 18, 2019 in a daily newspaper once it became</p>

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	<p>the complaints were also submitted to the concerned national and local authorities as well as the World Bank country office. However, there was no concrete discussion or other effort to address our grievances that resulted in outpour of public anger, including by the Chairperson of Ward No. 6, at an interaction program on the Environmental and Social Management Action Plan of the dry port organized by the NITDB and also attended by the World Bank officials on 2 October 2019.</p>	<p>operational. It subsequently received a total of 778 grievances, of which about 28 had supporting documentation. In order to give the community members an opportunity to provide additional documentation for their grievances, a second public notice was issued in the national newspaper, and distributed it locally on April 22, 2019.</p> <p>The GRM reported that it received grievances related to: land, salaries, requests to relocate the ICD, implementation of the “5-Point Plan,” and environmental and social concerns. Most of the grievances are related to historical claims from long before the ICD was conceived.</p> <p>On October 2, 2019, the NITDB organized a meeting for consultation on the EMP. At the meeting, representatives of the Chobhar Protection Committee demanded that their grievances be resolved, including on the return of land (<i>please refer to #3</i>). As a result of these protests, the consultation process was halted.</p> <p>On November 27, 2019, the MoICS issued a public notice on its findings on its website and various other community and work site locations, including the local Ward office of Kirtipur Municipality.</p> <p>The notice conveyed the Government’s findings that: (i) employees had taken voluntary retirement and had been provided with all salaries and benefits upon ending employment; (ii) grievances related to shares would be addressed by HCCL; (iii) issues related to environment protection and socio-cultural promotion were already incorporated into the EIA and would be addressed through its implementation; (iv) the land for the ICD had been acquired originally for the HCCL and was now in the name of the Government; and (v) the grievances regarding land outside the ICD footprint had been raised since the time of the acquisition of the land for HCCL and further examination was underway in this</p>

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		<p>regard.</p> <p>The Bank did not agree to authorize disbursements³ until it had received appropriate assurances from the GoN that there were no outstanding claims that would fall within the scope of Bank policy to the land in Chobhar that had been allocated for the ICD, and that an appropriate grievance redress mechanism (GRM) was in place that was able to address all project-related grievances. In regard to the GRM requirement under the disbursement condition, information provided by the GoN confirmed that grievances regarding land acquisition that had been raised through the GRM were not relevant to the Project. The Bank agreed to authorize disbursements for the ICD on February 26, 2020, based on the MoICS letter to the Bank of November 27, 2019, and the February 2020 Implementation Review and Support Mission.</p>
20.	<p>Following this, the NITDB issued a public notice on 27 November 2019 (attached) to convey the decision of the government on complaints submitted regarding the Chobhar dry port. Regrettably, the notice ignores our concerns. For example, the notice states that the lands within the construction site of the dry port as well as those outside the constructions site had been acquired for the Himal Cement Factory while further investigation was ongoing in relation to complaints regarding lands. However, there has not been any concrete action regarding our demands for the return of those lands. Similarly, our other demands have also been effectively addressed and we are thus not satisfied with the decision as informed in the notice. The World Bank however considers the NITDB public notice of 27 November 2019 to have resolved our grievances and has allowed the project to go ahead.</p>	<p><i>Please refer to #17.</i></p>

³ This authorization of disbursements, once a formal condition is met, is not to be confused with a *suspension* of disbursements, which is a legal remedy the Bank applies after disbursements have commenced when a project is not in compliance with Bank policy.

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<u>Operational Policy 4.10 Indigenous Peoples</u>		
21.	<p>Newar is officially recognized as an indigenous nationality by Nepal's government. However, as the Bank and the Borrower did not identify the Newar as an indigenous people, they subsequently failed to engage them in a process of free, prior, and informed consultation, with the affected indigenous Newar communities and their representative institutions, including both elective and traditional institutions, to fully identify their views and to ascertain their broad community support for the project as required by the OP 4.10.</p>	<p><i>The Project documents clearly identified the Newar as Indigenous Peoples and engaged them as required by Bank policy.</i></p> <p>Based on the National Foundation for Upliftment of Adivasi/Janjati Act, 2058 (2002) of Nepal and on the Bank's Operational Policy (OP) 4.10, Indigenous Peoples, the Bank and the Borrower identified and recognized the Newar as Indigenous Peoples in the Project area.</p> <p>The appraisal stage Integrated Safeguards Data Sheet (ISDS - Report# ISDSA3102)⁴ of the Project noted the presence of Indigenous Peoples in the Project area, highlighted the potential environmental and social impacts that Project activities might impose on such groups, and triggered the Bank's policy on Indigenous Peoples (OP 4.10) as the guiding framework for assessing and mitigating adverse Project impacts on Indigenous Peoples.</p> <p>The EIA recognized the Newar as Indigenous Peoples living in the ICD area. The Newar constitute about 73 percent of the population in the Project's direct area of influence. In October 2017, when the Bank reviewed the draft EIA report, the Bank team reiterated the need for the Borrower to ensure that it assessed the potential impacts of the ICD Project on the Newar and provide culturally appropriate benefits.</p> <p><i>The Borrower carried out a free, prior and informed consultation process with relevant stakeholders including the Newar.</i></p> <ul style="list-style-type: none"> • Over a 22-month period, four formal consultations, two focus group discussions and several informal consultations were held which were attended by community members; approximately 52 percent of the participants in these consultation

⁴ <http://documents.worldbank.org/curated/en/519431468294065339/pdf/AppraisalISDS-Print-P144335-04-09-2013-1365513857714.pdf>

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		<p>sessions were Newar. (<i>please refer to #1</i>). The consultation sessions were announced in advance and conducted at locations that were convenient to the local community and groups and open to participation.</p> <ul style="list-style-type: none"> • Information was disclosed on a timely basis (<i>please refer to #7</i>) • Diverse views were expressed, as documented in the EIA. • The EIA assessed the environmental and social impacts and identified specific mitigation and enhancement measures that built broad community support for the Project (<i>please see #22</i>). • Based on the social assessments prepared for the EIA process, the Newar in the area do not have culturally distinct governance and political institutions. The Kirtipur municipality is primarily responsible for governance and development in the area. In the absence of a distinct administrative and political structure, the MoICS consulted the leadership of the municipality during Project conception and the EIA process, and continues to consult them about the progress in construction activities and emerging complaints and grievances related to the site. Management notes that municipal and ward representatives in Nepal are democratically elected by the local community. • Newar community members from the area participated in the consultation process. Through these consultations, the MoICS determined that there was broad community support for the Project, albeit with concerns for adverse environmental impacts and expected project benefits. The Bank team reviewed and accepted the EIA, and concurred with the assessment, including the determination that broad community support for the Project had been established. The EMP includes adequate measures to mitigate

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		adverse impacts and a Local Area Development Plan is in place and dedicated to extending culturally appropriate benefits to the local community.
22.	<p>Instead, they have ignored the clearly expressed views of indigenous Newar against the construction of the dry port in the Chobhar area and been unable to avoid potentially adverse effects on the communities or minimize or mitigate such effects when avoidance is not feasible.</p> <p>Further, the Project has failed to assess and address within the construction of the dry port, such as land and resource rights, culturally appropriate and gender and inter-generationally sensitive, sacred sites and cultural impacts, where these are clearly relevant while there is also a systemic failure to prepare indigenous peoples-appropriate planning documents in consultation with the concerned peoples, as required under the policy.</p>	<p><i>The requirements of OP 4.10 were addressed through Bank-approved safeguard instruments.</i></p> <p>As noted above, Newar constitute about 73 percent of the population in the Project's direct area of influence. Given the composition of the affected community, hosting both Newar and other ethnic groups, the Project sought to avoid the risk of creating inequalities. As provided for in OP 4.10,⁵ the Borrower adopted an approach to address the requirements of Bank policy in a manner that provides equitable access to benefits. Hence, a separate Indigenous Peoples Plan (IPP), as required by OP 4.10, was not prepared. Instead, the requirements of OP 4.10 were addressed in the Project's safeguard instruments and the Local Area Development Plan, which were disclosed and consulted upon among the potentially affected members of the community.</p> <p>Management considers that the elected approach is consistent with the provisions of the Policy concerning plan preparation, which requires the level of detail to be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples. In Management's view the ICD component of the Project is not a complex activity. Moreover, the impacts on the local community are primarily construction impacts on a site that has for several decades already been used for industrial purposes.</p> <p>The EIA, EMP and the Local Area Development Plan address the culturally appropriate benefits which the Project</p>

⁵ OP 4.10, Footnote 12: "When non-Indigenous Peoples live in the same area with Indigenous Peoples, the IPP should attempt to avoid creating unnecessary inequities for other poor and marginal social groups."

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		<p>provides to the community. These benefits have been developed based on the feedback obtained from the consultations and focus group discussions. Specifically, the Local Area Development Plan will help to preserve and enhance the cultural value of the Jal Binayak Temple, as well as offering additional social enhancement programs. The infrastructure improvements that the Project supports as part of the Local Area Development Plan are not required for the Project, nor will the Project use them for the construction or operation of the ICD.</p> <p>Cumulatively, the Local Area Development Plan and other social enhancement measures extend social and cultural benefits to the local community as would be recorded in an IPP. These benefits specifically include the following:</p> <p><i>Infrastructure measures</i></p> <ul style="list-style-type: none"> • Paving the access road to the Jal Binayak Temple (not to be used for ICD-related traffic), and intersection improvements with the main road at Chobhar including signage and street markings; • Construction of a pedestrian crossing bridge over the main road at Chobhar by the Bhutkhel Settlement; • Developing the parking area, including visitor toilets, for the Jal Binayak Temple; • Providing streetlights for the road and foot path to the Jal Binayak Temple; • Improving the pedestrian walkway around the Jal Binayak Temple periphery; • Riverbank protection measures (gabion walls) to stabilize the area adjacent to the Jal Binayak Temple; • Paving pedestrian road to the cremation site; • Sanitation / drainage improvement works in Bhutkhel settlement areas. <p><i>Social enhancement programs</i></p> <ul style="list-style-type: none"> • Provision of vocational training for local community members (tailoring, plumbing, electrician, vehicle repair);

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		<ul style="list-style-type: none"> • Employment of local community members for ICD construction and operation; <p><i>Community sensitization programs</i></p> <ul style="list-style-type: none"> • Awareness raising for environmental conservation targeting students; • Youth awareness raising for conservation of heritage and culture; • Health camps for monitoring public health of local residents; and • Awareness raising for local area improvements.
23.	<p><u>Infringement of Indigenous Peoples' Rights.</u> The World Bank and the borrower, however, have failed to effectively identify the Newar as indigenous people in the Environmental and Social Management Framework of the Project as well as the draft EIA report of the dry port. The draft EIA report, while adopting the definition of vulnerable community as landless, marginal farmer living below subsistence level nearby project, states that the term indigenous people (Adibasi) equates with ethnic groups (Janajati) in Nepal. Accordingly, the report recognizes some of the Magars and Tamang families residing in Bhutkhel settlement as vulnerable groups who are categorized under marginalized and disadvantaged groups respectively. On the other hand, the report simply classifies Newar as an advanced group (based on their socio-economic development status) according to Nepal Federation of Indigenous Nationalities (NEFIN) that is also applied by the government. Accordingly, the report categorizes 25% of the people (71 families) in Bhutkhel settlement as vulnerable groups based on socio-economic and income status, and ignores the Newar indigenous people living in the project area.</p>	<p><i>Please refer to #21.</i></p>
24.	<p>Further, by ignoring the clearly expressed views of indigenous Newar, among other locals, against the construction of the dry port in the Chobhar area, the Bank and the</p>	<p><i>Please refer to #21 and #22.</i></p>

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	<p>borrower have failed to engage in a process of meaningful consultations with the Newar to ascertain their free, prior and informed consent for the Project. While the Project has prepared a Vulnerable Community Development Plan (as Indigenous Peoples Plan) for another component of the Project (Narayanghat – Mugling Road), no such plan has been prepared for the construction of the dry port. We hence call the World Bank and the government for effective recognition and protection of indigenous Newar communities and their rights in the context of the Project, particularly for the construction of the dry port.</p>	
Operational Policy 4.12 Involuntary Resettlement		
25.	<p>As noted in one of our recent complaints (attached) to the NITDB dated 24 February 2019, we affirm that it is not appropriate to construct the dry port at Chobhar due to the following reasons in line with the historical, cultural and environmental characteristics of the area.</p> <p>The dry port will be built on the lands of more than 200 people that were acquired for Himal Cement Factory. The disputes related to the land acquisition for the Factory are still unresolved while the liabilities of the Factory have not been addressed yet (including outstanding salaries of its former employees).</p>	<p><i>The historical claims regarding the Government's land acquisition from 1967 to 1977 are not related to the Project and Bank safeguard policies do not apply.</i></p> <p>The Land Acquisition Act (1977) states that in certain situations, if land acquired under the Act is found unnecessary for the purpose for which it was acquired, the expropriated landowner may be entitled to have the land returned on refund of the compensation and an additional amount, unless the GoN elects to use the land for another purpose.</p> <p>In this case, 1,050 ropanis of land were acquired by the Government in various tranches from 1967 to 1977 for the construction and operation of a cement factory by HCCL, a state-owned enterprise. HCCL used 994.13 ropanis of this land as collateral for a loan it secured from NIDC. HCCL subsequently closed factory operations in 2001. On November 20, 2014, a Council of Ministers Decision was taken to re-purchase the collateralized land from NIDC and assign it to the MoICS for various purposes, which included the construction of the ICD. On October 13, 2017, the Council of Ministers decided that all the land formerly held by HCCL should be registered under the name of the GoN.</p> <p>The complaints of the Chobhar Protection</p>

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		<p>Committee, received on August 29, 2018 and in the meeting in Kathmandu on January 14, 2019, cited a Court Order, reportedly directing the Government to “settle the demand for return of the land.” The MoICS has confirmed to the Bank that the Council of Ministers Decisions taken respectively in November 2014 and October 2017 “settled” this demand by deciding not to return the land and instead use it for other public purposes (including the construction of the ICD) as per the law cited above.</p> <p>The ICD uses about 23 percent of the total 1050 ropanis of land that was acquired by the Government in various tranches from 1967 to 1973 for the construction and operation of the cement factory by HCCL.</p> <p><i>Please refer to #19 regarding salary claims.</i></p>
26.	<p>[T]he draft EIA report states that there is no issues of land acquisition, resettlement and compensation for the dry port as that it will use the land acquired by the former Himal Cement Factory, which is under the ownership of Nepal Government as reverified by the decision made by the Ministerial Cabinet meeting dated 13 Oct. 2017 and no further acquisition of land is required. That is also reiterated in the NITDB public notice in response to our complaints, which states stating that the lands within the construction site of the dry port as well as those outside the construction site had been acquired for the Himal Cement Factory while further investigation was ongoing in relation to complaints regarding lands. The Bank considers the notice to have resolved the grievances and allowed the project to go ahead despite valid claims of landowners supported by official ownership documents or titles as well as relevant judgements of Nepal’s courts.</p> <p>[...]The construction of the dry port in the Chobhar area has breached all three policy objectives of OP 4.12.</p>	<p><i>The Project does not require land to be acquired since it uses land that the Government acquired between 1967 and 1977 for a different purpose and clearly not in anticipation of this Project. Any outstanding compensation claims with regard to this land acquisition are not related to the Project or the Bank and need to be resolved by the Government.</i></p>
27.	<p><u>Historical Land Claims Unaddressed.</u> The dry port is being constructed on the lands of indigenous Newar and other locals that were</p>	<p><i>Please refer to #25.</i></p>

No.	Claim	Response
	<p>acquired for the Himal Cement Factory that has already shut down. The landowners have long been demanding return of their lands since the closure of the Factory and do not agree with the construction of the dry port on their lands. In its 2006 judgement on a case filed by representatives of those landowners, who are also involved in the Chobhar Protection Committee, the Appellate Court issued an order to the District Administration Office of Kathmandu to conclude the process of a petition filed at the District Administration for the return of lands acquired for the Himal Cement Factory in line with the provision of the Land Acquisition Act 1977. The Act states that if any land acquired is found unnecessary for the purpose for which it has been acquired, or there remains surplus land upon using for such purpose, it shall be returned to the expropriated landowner. Further, in 2007, Nepal's Supreme Court issued a judgment endorsing the Appellate Court's order when the government appealed against the order. We have been calling for the immediate implementation of the Supreme Court judgment and the Appellate Court order for the return of our lands (both attached). There are also a number of people whose houses were destroyed without compensation when the Himal Cement Factory was built in 1974 as a gift from the German government.</p>	
28.	<p>Further, besides the land within the premises of or under the title of the Himal Cement Factory, additional land of approximately 216 ropanis in area, which have so far been owned or used by the locals, including for sale, transfer, collateral and construction of houses with official approval of design, has now been acquired for the dry port construction. We demand that those land should also be immediately returned the original landowners. Most of the families living on or off those lands, who are dependent on agriculture as their primary occupation, will have to be resettled if their lands are used for the dry port. [T]he construction of the dry port will cause forcible resettlement of the families who</p>	<p><i>The Project does not require any additional land to be purchased.</i></p> <p>The “additional land” cited in the Request consists of many small parcels of non-contiguous land that were intermingled with the other land that makes up the 1,050 ropanis of land at and close to Chobhar that was acquired for the use of HCCL, but which had not been properly registered in the name of HCCL at the time of acquisition. This land has been registered in the name of the GoN, per the Council of Ministers Decision of October 13, 2017. Some of these small parcels are within the boundaries of the land that is being used by the MoICS for the construction of the ICD.</p>

No.	Claim	Response
	have their homes and farms on those lands or owned or used those lands otherwise. The Chobhar Protection Committee includes representation of those families that will have to be resettled if the dry port construction goes ahead.	
29.	<p>With regards to land disputes, the draft EIA report simply notes that the dry port "<i>will use the land acquired by the former Himal Cement Factory. All land is under the ownership of Nepal Government. No further acquisition of land is required for this particular project, thus there is no issues of land acquisition, resettlement and compensation for this project.</i>" It also states that: "<i>The Chovar ICD Project does not need to acquire any additional land for construction of any of its facilities and all infrastructure and facilities are constructed within the land owned by the Government of Nepal, which has been reverified by the decision made by the Ministerial Cabinet meeting dated 13 Oct. 2017.</i>"</p> <p>The NITDB notice responding to complaints on the dry port similarly nullifies any land dispute while stating that the lands within the construction site of the dry port as well as those outside the construction site had been acquired for the Himal Cement Factory while further investigation was ongoing in relation to complaints regarding lands. Thus, the draft EIA report and accordingly the NITDB public notice with decisions on our complaints completely ignore our historical claims for return of lands. As a result, any plans for compensation of the lands in any form and any resettlement of the affected families have not been provided.</p>	<i>Please refer to #23.</i>
<u>Operational Policy 4.11 Physical Cultural Resources</u>		
30.	As noted in one of our recent complaints (attached) to the NITDB dated 24 February 2019, we affirm that it is not appropriate to construct the dry port at Chobhar due to the following reasons in line with the historical, cultural and environmental characteristics of the area.	<p><i>There are no historical, cultural or environmentally sensitive areas within the direct physical footprint of the Project.</i></p> <p>These were avoided based on the analysis undertaken in the EIA and feedback and inputs from the various stakeholders consulted during its preparation.</p>

No.	Claim	Response
	<p>The Chobhar area is directly linked to the origin of Kathmandu valley and renowned for its historical and religious significance. Myths and legends about the birth of Kathmandu Valley speak of the deity Manjushree cutting the hill at Chobhar into half with a mighty sword to drain out the water from a huge lake that once covered the valley. The area is filled with historical, religious, cultural and archaeological heritage sites such as the mythical Manjushree gorge, the centuries old Adinath, Jal Binayak, Jalpadevi and Bishnudevi temples and ancient suspension bridge, the longest cave in South Asia, the world's tallest statues of Maha Manjushree, Taudaha pond. The dry port will affect those heritage sites and disrupt the legacy of the area as well as ruin the traditional social structure of communities in Chobhar and wider Kirtipur. The construction of the dry port is averse to the plans of the Kirtipur Municipality and the aspirations of the local communities to develop the area and entire Kirtipur as tourism city.</p>	<p>With regard to the historical and cultural heritage sites that are outside of the Project footprint but happen to be in proximity to the ICD – mainly the Jal Binayak Temple – the EIA considered the inputs from the stakeholders and incorporated measures to also preserve, protect and enhance those sites in the EMP.</p> <p><i>Please refer to #1.</i></p>
31.	<p>The dry port will damage Chobhar's historical, religious and cultural heritages. Among other heritage sites in Chobhar mentioned above, the facility will particularly affect, to a great extent, the Jal Binayak Temple, one of the Valley's most important religious Ganesh shrines, as well as the historical Manjushree gorge and caves as well as a cremation site, which are sites in very close proximity to the dry port. The draft EIA report comprises a Jal Binayak Temple Area Improvement Plan, which notes that those "cultural areas do not fall directly within the footprints of the ICD Project's activities" that we do not agree with and assert that the Bank and the borrower have failed to avoid impacts on those cultural resources by constructing the dry port in their vicinity.</p>	<p><i>The assessments undertaken for the Project do not cite any physical impacts of the Project on Chobhar's historical, religious or cultural heritage.</i></p> <p><i>Please refer to #1.</i></p>
32.	<p>Nonetheless, in response to requests from locals, the plan proposes that the Project assist by allocating some resources, including a cost estimate, for activities such</p>	<p><i>Please refer to #1.</i></p>

No.	Claim	Response
	<p>as construction of pedestrian crossing bridge, intersection improvement, black topping of the road, parking area development, solar street lighting, stream bank protection, road to cremation site, walkway and cremation site improvement and toilet construction. While we reiterate that any impact on the historical, religious and cultural resources in Chobhar area should be avoided by relocating the dry port to more appropriate location, we also affirm that the plan is inadequate to resolve our concerns of socio-cultural impacts on such resources in the wider impact area of the dry port and does not address our demand for developing the Chobhar area as a tourism site.</p>	
<u>Prior Attempts to Resolve the Problems with the World Bank</u>		
33.	<p>As noted above, we have informed of our concerns to the World Bank country office by serving copies of various memoranda and complaints submitted to the concerned national and local authorities, including the project implementing agency – the NITDB, on different dates. Those copies were served via email as well as in person. We have also raised them at various meetings with the Bank representatives, including during local public interactions and meetings with the concerned government authorities.</p> <p>Most notably, we have informed the World Bank personnel of our objections to the construction of the dry port in Chobhar area at the meeting with the Minister for Industry, Commerce and Supplies in 20 November 2018.</p> <p>We also had a meeting with the World Bank officials when we served the country office a copy of our letter to the Office of the Prime Minister and the Cabinet of Minister amidst a sit-in at the country office on 14 January 2019 to advise against the inauguration of the dry port by the Prime Minister without addressing our concerns. However, that did not prevent the use of excessive police force when the Prime Minister laid the foundation stone on 17 January.</p>	<p><i>Management confirms that representatives of the Chobhar Protection Committee have conveyed their concerns to the Bank – via emails and meetings – at various times since August 2018. The Bank team has (i) received and acknowledged all such communications; and (ii) forwarded the same to the MoICS, underscoring the imperative of addressing them.</i></p> <p><i>The Bank did not attend these meetings cited in the Request.</i></p>

No.	Claim	Response
	<p>More recently, we had formally informed the country office of our demands in the context of the situation created due to police suppression at the inauguration event through a letter dated 11 February 2019.</p> <p>Further, we have also conveyed our complaints to the NITDB to the country office on 22 February via email and in person as recently as in May 2019. The Bank personnel have acknowledged and responded to stating that our concerns have “been forwarded to the Project Coordination office, Ministry of Commerce, Industry and Supplies for review and respond” (email response attached).</p>	
34.	<p>Following the latest public interaction organized on 2 October 2019 by the NITDB on the Environmental and Social Management Action Plan, which was also attended by the World Bank officials and led to outpour of public anger, the Bank issued its latest report for proposed restructuring of the Project dated 22 December 2019. In the report, the Bank as noted above considers the NITDB notice to have resolved the grievances and allowed the project to go ahead. In line with the notice, the Bank has reiterated that the issues were addressed. The report states that <i>“The Public Notice is a significant step in clearly stating that none of the grievances are related to the Bank-financed project/work sites and communicating the same to the wider audience. With this, the original risk presumed regarding the grievances that mounted since August 2018 and remained unaddressed until recently, can be seen to be mostly mitigated.”</i></p> <p>We do not agree that none of our grievances are related to the Bank financed project/work sites or that the risk regarding the grievances have been mitigated. The dry port construction site is the main source of our grievances. Thus, the construction should only be moved forward once the historical claims on lands acquired for then Himal Cement Factory and now transferred for the dry port are effectively settled. At the same</p>	Please refer to #17.

No.	Claim	Response
	time, the outstanding liabilities of the Factory to its employees and its affected communities for environmental and other harms should be resolved as the lands acquired for the Factory might be its only asset left to account for its liabilities.	
35.	Further, as our grievances concerning the land disputes, outstanding salaries of erstwhile employees of Himal Cement Factory, and environmental and socio-cultural conservation have only been ignored or shelved, we affirm that the risks regarding our grievances are still high and that might affect the Project.	<i>Please refer to #23.</i>
<u>Violations of International Law</u>		
36.	Nepal has agreed to or ratified several international human rights declarations and treaties, which are infringed in relation to the construction of the Chobhar dry port. Those include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Indigenous and Tribal Peoples Convention (C169) of the International Labour Organization (ILO) (ILO Convention 169), as well as to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Collectively, these international instruments guarantee the rights of the dry port affected communities to their traditional lands and resources as well as to determine their own development priorities.	<p><i>Management's obligation is to seek to ensure that projects comply with Board-mandated policies.</i></p> <p>Issues regarding compliance with these policies in the context of the Project have been addressed above.</p> <p>Allegations that Nepal has failed to comply with its obligations under international human rights declarations and treaties go beyond the Bank's institutional mandate to ensure Project compliance with Bank policies, and are not relevant for reviewing such compliance.</p>
37.	Article 29 of the UNDRIP requires obtaining free, prior and informed consent ("FPIC") of the concerned indigenous peoples in relation to development projects undertaken on their lands; which entails that indigenous peoples who are affected by a development project are consulted in good faith, before the project is undertaken, and that they are provided with full information on the proposed project so that they can make a free choice to provide or withhold their consent. As indicated in various memoranda and	<p><i>Management's obligation is to seek to ensure that projects comply with Board-mandated policies.</i></p> <p>For reasons referred to in #36, above, Nepal's compliance with international treaties is not relevant to the question of Management compliance with Bank policy. While OP 4.10, which applies to this Project, does not use the term FPIC, it requires "free prior and informed consultation leading to broad community support." Management's views on</p>

No.	Claim	Response
	complaints submitted by the Chobhar Protection Committee to national authorities and letter to the World Bank, the affected indigenous Newar do not consent to the construction of the dry port in the area.	the application of this Bank policy requirement in the context of the Project are set forth in #21 above.
38.	ILO Convention 169, in Article 6, also requires that indigenous peoples be consulted in relation to any decision which will affect their rights; even more pertinently, if a project will require forced relocation of community members, a higher standard for consultation is triggered under Article 16(2). This higher standard mirrors the requirements of UNDRIP insofar as it requires that consultations with indigenous peoples be “free and informed.” While certain members of the affected indigenous Newar community in Chobhar will be forcibly removed from their lands and houses to construct the dry port for which their consent is required, the entire community will face cultural displacement. The Committee on the Elimination of Racial Discrimination (CERD) and the Committee on Economic, Social and Cultural Rights, among other UN mechanisms, have recommended Nepal to adopt appropriate measures to ensure that the concerned indigenous communities are meaningfully consulted, through their own representative institutions, and to obtain their Free, Prior and Informed Consent (FPIC) before launching any development project as well as in the planning and undertaking of such project that affects their traditional land or resources.	<i>Allegations that Nepal has failed to comply with its obligations under international human rights declarations and treaties go beyond the Bank’s institutional mandate to ensure Project compliance with Bank policies, and are not relevant for reviewing such compliance. As explained above, the Project’s construction of the ICD has not and will not cause any physical displacement.</i>
39.	Under both the UNDRIP and the ILO Convention 169, indigenous peoples have the explicit right to determine their own development priorities and to make unhindered and informed choices about the use of their lands. In the case of the dry port, indigenous Newar of the area, through the Chobhar Protection Committee, have repeatedly stated that they do not want the construction of the dry port in the area. This statement should be respected as an expression of the will of the people and their	<i>Please refer to #36 on physical displacement, and to paragraph 54 on broad community support.</i>

No.	Claim	Response
	desires and proposals for the dry port should be considered.	
40.	It should also be noted that the government, in the past, had been unable to proceed with its earlier plans formulated at various times to construct landfill site or squatters' settlement in the lands acquired for the Himal Cement Factory due to opposition to the locals. Instead, we believe it would be appropriate to proceed with the former government proposals for construction of international-level convention center, exhibition area, Mt. Everest viewpoint and study center (as Chobhar is the site within Kathmandu valley from where Mt. Everest is visible with naked eyes) or the community-led Manjushree Park and study center, mountain biking cycling trail as well as educational and health institutions as needed in the area.	<i>Bank Management is not in a position to comment on the Government's plans for the use of the land in question.</i>
<u>Violations of Nepali Law</u>		
41.	Newar, as noted above, is one of the officially recognized indigenous nationalities as per the National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2002. However, the government and the World Bank have not prioritized indigenous Newar and other locals and their valid concerns and conversely ignored them despite repeated calls from the indigenous and local communities, including for protection and promotion of their identity and cultures, in the design or implementation of the dry port in violation of their constitutional rights.	<i>Please refer to paragraph 54.</i>
42.	Further, the Land Acquisition Act 1977 states that if any land acquired is found unnecessary for the purpose for which it has been acquired, or there remains surplus land upon using for such purpose, it shall be returned to the expropriated landowner (Section 34). The lands on which the dry port is being built were acquired for then Himal Cement Factory, which was closed down in 2002. Accordingly, as noted above, Nepal's Appellate Court in 2006 and Supreme Court in 2007 had ordered the District	<i>Please refer to #25.</i>

No.	Claim	Response
	Administration of Kathmandu to conclude the petition calling for return of the lands under the title of Himal Cement Factory as per the Land Acquisition Act. Instead, the Government of Nepal through a Cabinet decision in 2017 transferred the lands for the construction of the dry port, which the locals do not agree to, amidst longstanding unresolved grievances of the locals with the earlier Factory.	
43.	Furthermore, the Local Self-Governance Act, 1999 requires the process of development enhance the participation of indigenous peoples and local communities in project identification, formulation, planning, and implementation through local councils. The Project has not been included in any development plan of the Kirtipur municipality and locally elected representatives who did not attend the inauguration of the dry port, showing that it is not a priority of the local people who have had no say in its planning and implementation.	<i>Please refer to #3.</i>
44.	Finally, the Constitution also guarantees the right to property (Article 25), right to clean environment (Article 30) and right to culture (Article 32), which are infringed in the construction of the dry port. The dry port requires acquisition of private properties already under legal ownership or use of the locals against their will as well as threatens the healthy environment not only for the local communities but the wider Kathmandu valley. Further, it also encroaches on cultural, historical, and religious sites of the Chobhar area as described above.	<i>Please refer to #25 on acquisition of property, #1 on environmental impacts, and #30 on cultural, historical and religious sites.</i>
<u>Requested Next Steps</u>		
45.	We request that the Project adopt an alternative plan for the dry port that will not cause detrimental impacts on our lands, livelihoods, cultural and historical heritage, environment and lives and the lives of our children. This may be achieved through the appointment of an independent expert panel to assess viable alternatives that do not affect our lands while allowing us, as affected	<i>Please refer to #1 on environmental and social impacts and their mitigation and enhancement measures.</i>

No.	Claim	Response
	families, to participate in the analysis and decision -making process.	
46.	Those who have been already been affected by the dry port construction and loss of land should be provided fair and adequate compensation, including in the form of comparable substitute land.	<i>Please refer to #25 on historical land claims.</i>

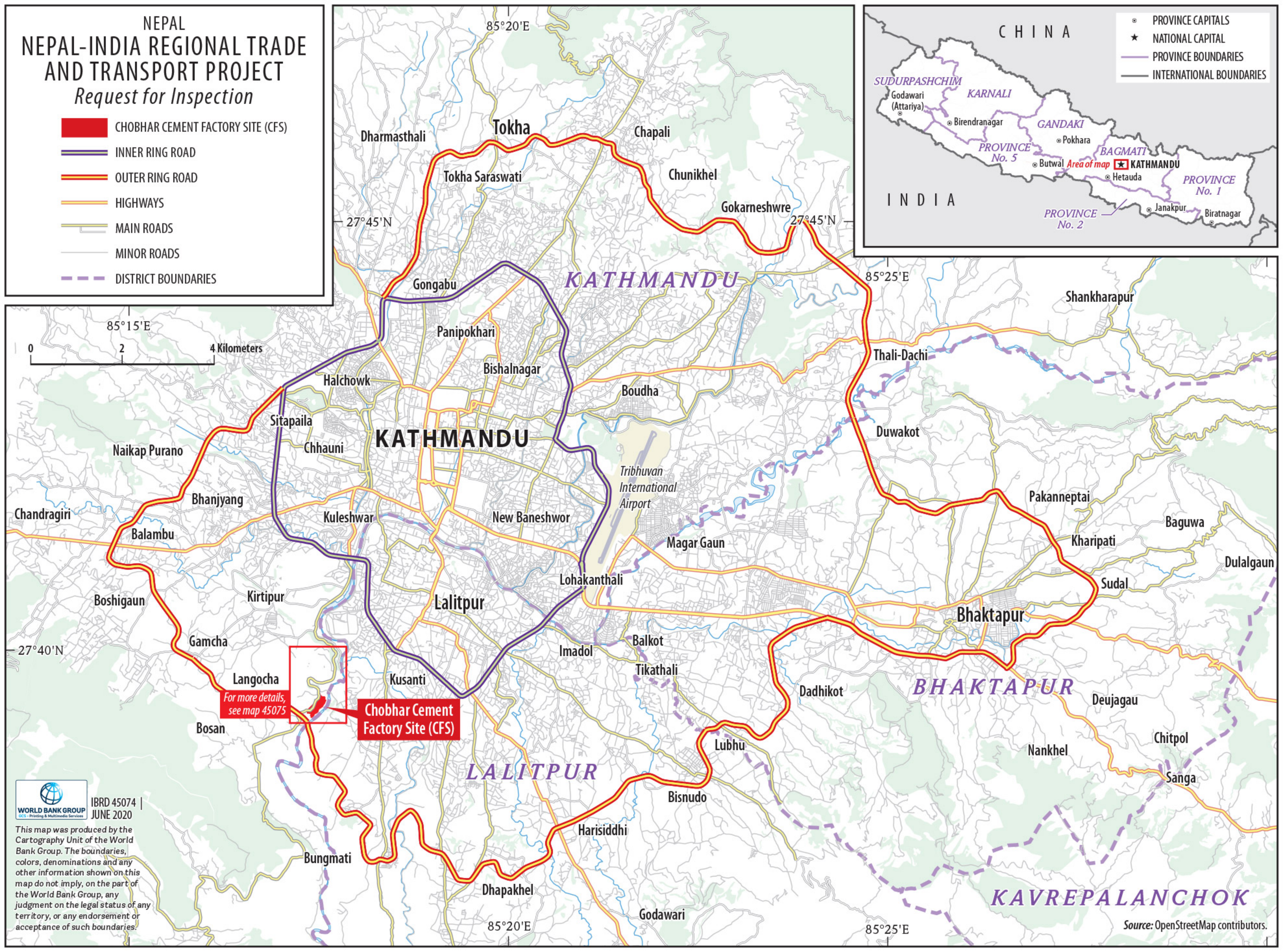
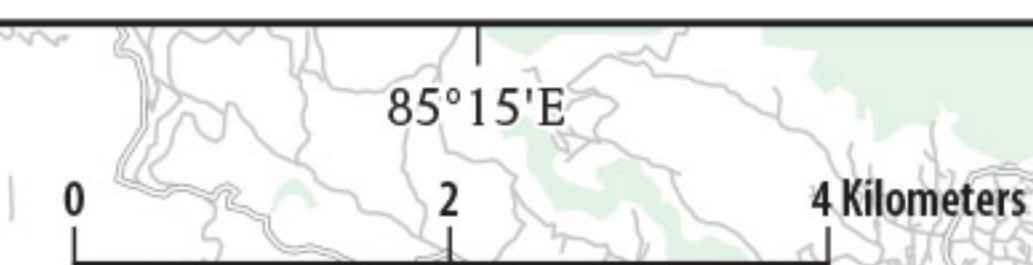
Annex 2. Timeline of Component C.2

Dates	Action
December 2012 to January 2014	Prefeasibility study of five sites for an ICD in the Kathmandu Valley undertaken under the Nepal Trade Facilitation and Logistics Improvement Study
June 28, 2013	Board approval of the Project
July 11, 2013	Financing agreement signed between Bank and Government
July 2013	A preliminary Environmental Assessment Report of the Proposed 5 ICD sites in Kathmandu
November 20, 2014	First Cabinet decision for land ownership transfer from HCCL to GoN
February 24, 2016	Consultant contract signed for survey, environmental study, and detail design for Chobhar ICD
March 1, 2016 to January 7, 2018	Consultations on EIA: 4 formal, 2 focus group discussions, 4 informal consultations, 2 public notices, 1 public hearing
October 13, 2017	Second Council of Ministers decision for land ownership transfer from HCCL to GoN
Feb 11, 2018	Bank sends detailed comments on draft EIA report
May 10, 2018	MoFE issues public notice for viewing of EIA in nine public places and 30-day review period
May 15, 2018	Disclosure of draft EIA on NITDB's website
May 21, 2018	Bank receives draft Final EIA report submitted to MoFE incorporating comments provided earlier
June 20, 2018	Bank gives No Objection to the Evaluation Report for Bidders on the construction of the Chobhar ICD
June 21, 2018	Draft Final EIA approved by Bank, subject to approval from MoFE
July 5 and 11, 2018	Two contracts signed i) Construction of Chobhar ICD/CFS (Part-A: Main Block) under International Competitive Bidding; and ii) Construction of Chobhar ICD/CFS (Part-B: Office and Quarters) under National Competitive Bidding
August 1, 2018	Date of start of work for both the contracts
August 5, 2018	Works stopped for construction of Chobhar ICD/CFS (Part-B: Office and Quarter) due to local protests
October 27, 2018	Works stopped for Construction of Chobhar ICD/CFS (Part-A: Main Block) due to local protests
December 30, 2018	Final EIA approved by MOFE
January 4, 2019	EIA approval conveyed by MOFE to NITDB
January 7, 2019	Disclosure of Final EIA on NITDB Website
January 17, 2019	Foundation-laying ceremony for the ICD by the Prime Minister
	Works for both Part-A: Main Block and Part B: Office and Quarters started after the foundation-laying ceremony
January 7 to 31, 2019 review mission	Aide memoire notes that disbursements are subject to compliance with Section IV B 1(b) of Financing Agreement with respect to provision of the ESMF, i.e., the Recipient having allocated the necessary land for the ICD in a manner acceptable to IDA and in compliance with the ESMF.
February 11, 2019	Two-tier GRM established
February 28, 2019	Disclosure of Final EIA on the Bank's website

Dates	Action
November 27, 2019	MoICS gives written assurances to the Bank that project-related grievances of the communities and local people have been addressed
February 7 to 18, 2020	Implementation Review and Support Mission by Bank
February 26, 2020	Bank authorizes Disbursements on Component C.2.

NEPAL NEPAL-INDIA REGIONAL TRADE AND TRANSPORT PROJECT *Request for Inspection*

- CHOBHAR CEMENT FACTORY SITE (CFS)
- INNER RING ROAD
- OUTER RING ROAD
- HIGHWAYS
- MAIN ROADS
- MINOR ROADS
- DISTRICT BOUNDARIES

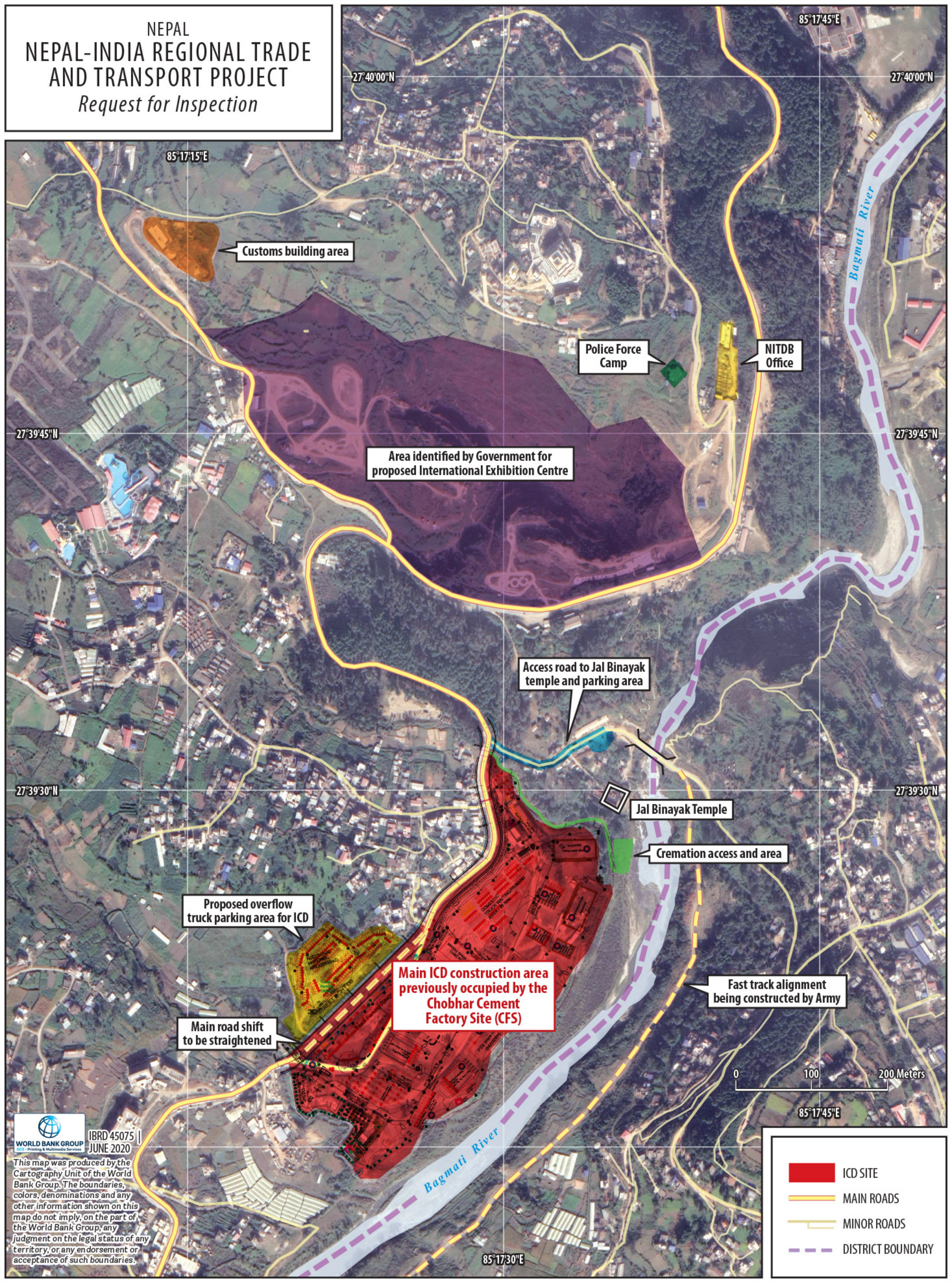


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NEPAL
NEPAL-INDIA REGIONAL TRADE
AND TRANSPORT PROJECT
Request for Inspection



- ICD SITE
- MAIN ROADS
- MINOR ROADS
- DISTRICT BOUNDARY