

25 April 2020

The Executive Secretary
The Inspection Panel
1818 H Street NW, MSN 10-1007, Washington DC 20433, USA
Email: ipanel@worldbank.org
Submitted via electronic mail

Re: Complaint concerning the World Bank Project ID# P144335

1. We, the undersigned representatives of the [REDACTED], hereby submit this complaint to the Inspection Panel regarding violations of the World Bank's Social and Environmental Safeguard Policies resulting from the World Bank financed Nepal-India Regional Trade and Transport Project (P144335) (the Project)¹. The [REDACTED] is composed of mainly indigenous Newars as well as other locals who have been affected by the Project, specifically the Container Freight Station (CFS) or Inland Clearance/Container Depot (ICD) being constructed under the Project at Chobhar (the Chobhar dry port) in [REDACTED] of Kirtipur Municipality in the south of Kathmandu. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Background

2. After significant delays in the Project, particularly for the construction of the dry port², Nepal's Prime Minister laid the foundation stone for the dry port in January 2019 amid our protests and opposition. Fifty-two protestors were arrested for peacefully protesting at the inauguration where around 150 of us had gathered to oppose the government's forceful move to destroy the place of historical, cultural and environmental significance of Chobhar area without fair acquisition of our land.³

3. The site of the dry port had been previously occupied by Himal Cement Factory, which closed in 2002 due to our concerns about environmental pollution as well as the mismanagement of the company. In 2017, the government decided to acquire the Himal Cement Factory's land at Chobhar to build the port and an international exhibition venue over an area of more than 40 hectares. The Government plans to directly link the dry port to Indian and Chinese railway stations. It is expected to accommodate 350 trucks and 600 containers, and a 6-lane highway to access the dry port is also planned, linking it to Kathmandu's Ring Road at Balkhu. According to a 2013 agreement with the World Bank, the government would finish constructing the port by 2019, but the Project deadline has been recently extended to March 2022.⁴

¹ <https://projects.worldbank.org/en/projects-operations/project-detail/P144335>

² [REDACTED]

[REDACTED]

[REDACTED]

⁴ <http://documents.worldbank.org/curated/en/151071577163250969/Disclosable-Restructuring-Paper-Nepal-India-Regional-Trade-And-Transport-Project-P144335>

4. A meeting in November 2018 between Nepal's Ministry for Industry, Commerce and Supplies, the World Bank and the government agency constructing the dry port – the Nepal Intermodal Transport Development Board (NITDB) had decided to take our concerns into consideration. But the construction began without any concrete action to address them with the use of security force to quell our opposition to the dry port.

5. [REDACTED] 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.

- a) The dry port is being built on the land acquired for the Himal Cement Factory, which the government shut down in 2002 due to significant concerns of pollution. However, the construction of the dry port also has significant environmental concerns and is thus not in line with the earlier government decision.
- b) 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.
- c) 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).
- d) 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.⁵
- e) 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.

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.

⁵ We assert this as per international good practice from our research. In South Korea, the first ICD was constructed at Uiwang, 25 km southwest of Seoul over the period 1992-1996. In China, the largest inland port - Yiwu International Dry Port (YIDP) is located 300 km to the southwest of Ningbo Seaport and about 100 km south of the Zhejiang provincial capital of Hangzhou. In Thailand, since 1996, ICD at Lard Krabang is about 27 km east of Bangkok and 118km by rail from Laem Chabang Port, which handles 80% of Thailand's throughput of international containers. See UN ESCAP's report on trends in the development of inland ports and policies underlying their development in selected countries of the UNESCAP region titled "PLANNING, DEVELOPMENT AND OPERATION OF DRY PORTS OF INTERNATIONAL IMPORTANCE" (Nov, 2015) at the link https://www.unescap.org/sites/default/files/Study%20on%20Planning,%20Development%20and%20Operation%20of%20Dry%20Ports%20of%20International%20Importance_26-02-2016.pdf

Lack of Effective Consultations and Grievance Redressal

6. 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.

7. The locals led by the [REDACTED] 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 of Ministers and the NITDB, as 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 [REDACTED] by Kirtipur Municipality [REDACTED] 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.⁶ 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.⁷

8. 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. [REDACTED]

Mayor of the Kirtipur Municipality, Chair of Kirtipur Municipality [REDACTED] 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.

6

Government	Percentage
Current government	60%
Previous government	40%

anger, including by the Chairperson [REDACTED] 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 2019.¹⁴

12. Following this, the NITDB issued a public notice [REDACTED]. 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 [REDACTED] to have resolved our grievances and has allowed the project to go ahead.

Infringement of Indigenous Peoples' Rights

13. The construction site of the dry port is located in traditional homelands of the indigenous Newar people. They also form the majority of population living in Bhutkhel settlement located in direct impact area of the dry port. Newar (known as Newa in Nepal Bhasa/Newar language) is one of the 59 officially recognized indigenous nationalities (known as Adivasi Janajati in Nepal). They are native to Kathmandu valley and surrounding areas, which is considered their ancestral domain (Nepalmandal) and constitute at least 5% of total national population and their civilization plays an important role in Nepal's cultural heritage. Accordingly, they constitute majority of the population in the Bhutkhel settlement (73%) and 37% of the entire Kirtipur Municipality as per the EIA report of the dry port. With agriculture as their primary occupation, most of the Newars in Bhutkhel settlement have direct economic dependence to the lands as well as their historical, cultural and spiritual relationship.

14. 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 Project¹⁵ 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,¹⁶ and ignores the Newar indigenous people living in the project area.

15. Further, by ignoring the clearly expressed views of indigenous Newars, among other locals, against the construction of the dry port in the Chobhar area, the Bank and the borrower have failed to engage in a process of meaningful consultations with the Newars to ascertain their free, prior and informed

¹⁴ [REDACTED]

¹⁵ <http://documents.worldbank.org/curated/en/604231468334775415/pdf/E41460v20EA0Bo0MF000March0250020130.pdf>

¹⁶ EIA report, Pp 62

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.¹⁷ **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.**

Historical Land Claims Unaddressed

16. The dry port is being constructed on the lands of indigenous Newars and other locals that were 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 [REDACTED], 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.

17. Further, besides the land within the premises of or under the title of the Himal Cement Factory, additional land of approximately 216 ropanis¹⁸ 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.¹⁹ **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.

18. With regards to land disputes, the draft EIA report simply notes that the dry port "*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.*"²⁰ It also states that: "*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.*"²¹

¹⁷ <http://documents.worldbank.org/curated/en/808061468334776166/Nepal-and-India-Trade-and-Transport-Facilitation-Project-resettlement-action-plan>

¹⁸ 1 ropani = 508.74 sq.m.

¹⁹ [REDACTED]

²⁰ EIA report, Pp xv

²¹ EIA report, Pp 73

19. 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.

Long-standing Pollution and Labor Concerns Unresolved

20. 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 [REDACTED]

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.

21. 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 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.

22. Further, as quoted in our [REDACTED] 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.²² 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. 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).

23. In above context, the draft Environmental Impact Assessment (EIA) report²³ dated March 2018 notes some of our concerns. For example, it states that *"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."*²⁴ However, the EIA report is significantly inadequate to address our demands. 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

²² [REDACTED]

²³ http://nitdb.gov.np/wp-content/uploads/2018/06/To-MOPE_ICD_Draft-EIA-Report.pdf

²⁴ EIA report, Pp 71

the summary in Nepali contains little relevant information. Further, it is not even posted in the relevant Project page of the World Bank website.

24. 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 salaries of those employees at once.**

25. 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.

Violations of the World Bank Policies

A. Operational Policy 4.01 Environmental Assessment

26. According to World Bank's OP 4.01, the Project is a Category A project, meaning that it "it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented," and therefore requires the highest level of environmental assessment. However, various Category A requirements have not been fulfilled. As a Category A project, the Bank was required to ensure that the borrower "consult ... project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and take ... their views into account." 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.

27. 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 [REDACTED] 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 inauguration and construction activities.

28. 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 Newars, 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.

B. Operational Policy 4.10 Indigenous Peoples

29. World Bank OP 4.10 states: “‘Indigenous Peoples’ is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories (c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (d) an indigenous language, often different from the official language of the country or region.”

30. 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.

31. Instead, they have ignored the clearly expressed views of indigenous Newars 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. 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.

C. Operational Policy 4.11 Physical Cultural Resources

32. The OP 4.11 requires the World Bank to assist countries to avoid or mitigate adverse impacts on physical cultural resources from development projects that it finances. The impacts on physical cultural resources resulting from project activities, including mitigating measures, may not contravene either the borrower’s national legislation, or its obligations under relevant international environmental treaties and agreements. The borrower must address impacts on physical cultural resources in projects proposed for Bank financing, as an integral part of the environmental assessment (EA) process.

33. 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.

34. 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 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.

C. Operational Policy 4.12 Involuntary Resettlement

35. OP 4.12 covers direct economic and social impacts of the World Bank-assisted investment projects “caused by the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location.” As noted above, besides the lands within the premises of then Himal Cement Factory, the dry port is acquiring additional 216 ropanis of land, 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, besides the land under the Himal Cement Factory premises. Dependent on agriculture as their primary occupation, the construction of the dry port will cause forcible resettlement of the families who have their homes and farms on those lands or owned or used those lands otherwise. The [REDACTED] includes representation of those families that will have to be resettled if the dry port construction goes ahead.

36. As noted above, the 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.

37. A major policy objective of OP 4.12 is to avoid involuntary resettlement “where feasible” by “exploring all viable alternative project designs.” Where resettlement cannot feasibly be avoided, “displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs” and “should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels.” The construction of the dry port in the Chobhar area has breached all three policy objectives of OP 4.12.

Violations of Nepali Law

38. In Nepal, the rights of indigenous peoples are recognized constitutionally and under Nepali laws. The 2015 Interim Constitution guarantees indigenous peoples/nationalities and other excluded groups the fundamental right to social justice through participation in State structures on the basis of inclusive principle (Article 42). The Constitution, in Article 51(j)(8), also sets out the State policies relating to social justice and inclusion to make the indigenous nationalities participate in decisions concerning that community by making special provisions for opportunities and benefits in order to ensure the right of these nationalities to live with dignity, along with their identity, and protect and promote traditional knowledge, skill, culture, social tradition and experience of the indigenous nationalities and local communities.

39. 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 Newars 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.

40. 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 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.

41. 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.

42. 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.

Violations of International Law

43. 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.

44. 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 complaints submitted by the [REDACTED] to national authorities and letter to the World Bank, the affected indigenous Newars do not consent to the construction of the dry port in the area.

45. 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.²⁵

46. 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 Newars of the area, [REDACTED] 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 desires and proposals for the dry port should be considered.

47. 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

²⁵ CERD/C/NPL/CO/17-23

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/NPL/CO/17-23&Lang=En
E/C.12/NPL/CO/3

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NPL/CO/3&Lang=En

Park and study center, mountain biking cycling trail as well as educational and health institutions as needed in the area.

Prior Attempts to Resolve the Problems with the World Bank

48. 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.

49. Most notably, we have informed the World Bank personnel of our objections to the construction of the dry port in Chobhar area at the [REDACTED]. We also had a meeting with the World Bank officials when we served the country office a copy of our letter [REDACTED] to advise against the inauguration of the dry port by the Prime Minister without addressing our concerns.²⁶ However, that did not prevent the use of excessive police force when the Prime Minister laid the foundation stone on 17 January. 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 [REDACTED]. Further, we have also conveyed our complaints to the NITDB to the country office [REDACTED].

50. 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 report²⁸ 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 *“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.”*

51. 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 Himat Cement Factory and now transferred for the dry port are

²⁶ [REDACTED]

²⁸ <http://documents.worldbank.org/curated/en/151071577163250969/Disclosable-Restructuring-Paper-Nepal-India-Regional-Trade-And-Transport-Project-P144335>

effectively settled. At the same 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.

52. 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. We thus present this complaint to get our demands addressed and our grievances redressed.

Requested Next Steps

53. We, the [REDACTED] request that the Inspection Panel investigate that affirms the violations of Bank policy described above. We trust that the Panel process will result in the Bank taking steps to remedy the issues raised in this Request. The World Bank must immediately stop disbursement of budget for the Project and all construction activity on the Chobhar dry port, until such time that our concerns are effectively addressed in full compliance with the social and environmental safeguard standards of the World Bank as well as Nepali and international laws.

54. 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 families, to participate in the analysis and decision-making process.

55. 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.

56. Please do not hesitate to contact us with any questions you may have. Please send correspondence [REDACTED] and [REDACTED] – an advisor to us. We look forward to hearing from you.

Sincerely,

[REDACTED]

List of attachments

1. 5-point agreement made with the [REDACTED]
2. Order of the Appellate Court, Patan dated 4 January 2006 (13 Poush 2062 BS) (in Nepali)
3. Judgement of the Supreme Court of Nepal dated 23 February 2007 (11 Falgun 2063 BS) (in Nepali)

4. Press release of the [REDACTED]
[REDACTED]
5. Press release of the [REDACTED]
[REDACTED]
6. Memorandum of the [REDACTED]
[REDACTED]
7. Memorandum of the [REDACTED]
[REDACTED]
8. Memorandum of the [REDACTED]
[REDACTED]
9. News report on the Kantipur daily dated [REDACTED]
10. Letter of the [REDACTED]
[REDACTED]
11. News report on the Jwojalapa Weekly [REDACTED]
12. Letter of the [REDACTED]
[REDACTED]
13. Complaint of the [REDACTED]
[REDACTED]
14. Copy of email response by a World Bank personnel to the complaint [REDACTED]
[REDACTED]
15. Complaint of [REDACTED]
[REDACTED]
16. Public Notice of the NITDB dated [REDACTED]
17. Minute of the [REDACTED]
[REDACTED]

Additional Signature

I, [REDACTED], a member of the [REDACTED] would like to sign on to the Request for Inspection relating to the Nepal: Nepal-India Regional Trade and Transport Project (P144335), submitted to the Panel on April 25, 2020. Please keep my identity confidential.

Signature:

[REDACTED]

Date: 19 May 2020

Letter authorizing representation during the Inspection Panel process

We authorize [REDACTED] to represent us during the World Bank Inspection Panel process relating to the Request for Inspection we submitted to the Panel on April 25, 2020 regarding the Nepal: Nepal-India Regional Trade and Transport Project (P144335) for the [REDACTED]. Please keep the Requesters' and representatives' names confidential.

Name

Signature

Date: 19 May 2020