

Eimi Watanabe
Chairperson

IPN REQUEST RQ 13/05

July 24, 2013

NOTICE OF REGISTRATION

Request for Inspection

Nepal: Power Development Project (P043311)

Receipt of Request

On July 10, 2013, the Inspection Panel received a Request for Inspection (hereafter “the Request”) related to the Nepal: Power Development Project (PDP, “the Project”), and specifically its 220 kV Khimti-Dhalkebar Transmission Line (KDTL) under its Component C.

The Requesters

The Request was submitted by 103 families who state they are indigenous and non-indigenous people from three villages of Sindhuli District in Nepal (hereafter “the Requesters”). The Requesters have authorized the Secretary of the Lawyers’ Association for the Human Rights of Nepalese Indigenous Peoples (LAHURNIP) to represent them during the Inspection Panel process. The Requesters state that the Project “*has resulted in violations of World Bank policy, Nepali and international law*” and “*was designed without informing or consulting with affected communities in Sindhuli District; its planned route over schools, homes, and historical sites is likely to result in involuntary displacement and damage to cultural property; and its 30-meter right of way (“RoW”) threatens to make the already poverty-stricken communities more vulnerable by harming agricultural production and dividing communities.*”¹ The Requesters have not requested confidentiality.

The Project

The PDP was approved by the Board on May 22, 2003 for SDR 36.8 million IDA credit (US\$50.4 million equivalent) and SDR 18.4 million IDA Grant (US\$25.2 million equivalent)

¹ Request for Inspection, Nepal Power Development Project, dated July 10, 2013.

with a closing date of June 30, 2009.² It consisted of three components, namely: (a) establishment of a Power Development Fund (PDF) to finance private development of small and medium-sized hydro schemes; (b) community-based village electrification through construction of micro-hydro systems (MHVEP, sizes of up to 100 kW); and (c) grid transmission and distribution improvements.³ The borrower is the Kingdom of Nepal and the Project implementing agency is the Ministry of Water Resources (MOWR). Other government agencies involved in implementation of the Project are the Nepal Electricity Agency (NEA) and the Alternative Energy Promotion Center (AEPC).

The Project Development Objectives (PDO) are to “(a) develop Nepal’s hydropower potential in an environmentally and socially sustainable manner so as to help meet electricity demand; (b) improve access of rural areas to electricity services; and (c) promote private participation in the power sector as a way to improve sector efficiency and to mobilize financing for the sector’s investment requirements.”⁴

The PDP was restructured in February 2008 due to “lack of off-take under the PDF component which was aimed at financing the development of private sector small hydropower projects” and funds were reallocated to the village micro hydro schemes and institutional strengthening activities. The Project closing date was moved from June 30, 2009 to December 31, 2010.⁵

On May 26, 2009, additional financing of SDR 60.1 million (US\$ 91.66 million equivalent) was provided to further enhance the MHVEP (component B) and the NEA-led transmission and distribution activities (component C), taking the total Project amount to SDR 115.3 million (US\$ 175.77 million equivalent) and the Project closing date was revised to December 31, 2012. The additional funds were provided to address the prevailing power crisis in Nepal through rehabilitation of generation capacity, strengthening of the transmission system and expansion of distribution access.

A second restructuring was done in December, 2012; this led to the extension of the Project closing date to December 31, 2013 so as to allow for the ongoing implementation of three transmission lines (Khimti-Dhalkebar, Hetauda-Bharatpur and Bharatpur-Bardaghat) and the cancellation of some Project activities.

The Khimti-Dhalkebar Transmission Line (KDTL), a part of the Project’s grid transmission and distribution improvements component C which is implemented by the NEA, is the specific focus of the Request for Inspection. This involves the construction of a 75 km, 220

² Development Financing Agreement (Power Development Project) between Kingdom of Nepal and International Development Association, dated July 9, 2003.

³ Project Appraisal Document (PAD) on a Proposed IDA Credit SDR 36.80 million in the amount of (US\$50.40 million equivalent) and Proposed IDA Grant of SDR 18.40 million in the amount of (US \$25.20 million equivalent) to Kingdom of Nepal for a Nepal Power Development Project, April 25, 2003, p. 5.

⁴ PAD, p. 1.

⁵ Restructuring Paper on a Proposed Project Restructuring of Nepal Power Development Project Loan and Grant to Nepal, December 21, 2012.

kV double circuit transmission line (with one circuit strung initially) from Khimti Power station to the existing 132 kV Dhalkebar substation, and extension of associated substations.⁶

At the time of the receipt of the Request, the original IDA Credit 3776-NEP was 67.6 % disbursed and IDA Grant H390-NEP was 100% disbursed. The IDA additional financing credit 4637-NP was 92.73% disbursed and additional financing IDA Grant H506-NP was 97.44% disbursed. The Project is now expected to close on December 31, 2013.

The Project's environmental categorization is "A" and according to the PAD, safeguard policies triggered include the Environmental Assessment (OP/BP 4.01), Natural Habitats (Natural Habitats OP/BP 4.04, GP 4.04), Involuntary Resettlement (OP/BP 4.12), Indigenous Peoples (OD 4.20), Forestry (OP 4.36, GP 4.36), Cultural Property (OPN 11.03), Safety of Dams (OP 4.37, BP 4.37), and Projects on International Waterways (OP 7.50, BP 7.50, GP 7.50).⁷

Concerns raised in the Request

The Request refers to "*the violations of the World Bank's Social and Environmental Safeguards Policies*" caused by the PDP, and specifically as regards the Khimti-Dhalkebar Transmission Line. The Request notes that several wards and municipalities in the Sindhuli District, encompassing urban centers, schools, sacred sites, pastures and agricultural land will be affected. They state that the Project was developed without adequate community participation or consultation and peaceful demonstrations opposing the Project have been violently repressed by security forces. The Requesters concerns, as mentioned in the Request for Inspection, are summarized below.

Impact of Right of Way (RoW) on Local Livelihoods

The Requesters state that the Khimti-Dhalkebar Transmission Line will span 75 kms across 5 districts in central Nepal; 218 towers, each 60 meters high, will be constructed at intervals of 700 meters. According to the Request, 12 towers remain to be built of which 10 are in Sindhuli District. Each tower will require acquisition of land for construction of the foundation, and the transmission line will require a 30 meter right of way (i.e. 15 meters on either side). According to the Requesters, they oppose the selected alignment of the transmission line based on what they perceive to be its impacts on community life and the local economy. They believe the line will pass through villages and other populated areas, over four schools, near various historical, cultural, religious and sacred sites, and will cause a devaluation of land and a loss in agriculture production.⁸ The Requesters also state they have been told by Project

⁶ Development Financing Agreement, Schedule 2, p. 20.

⁷ PAD, p.36.

⁸ Footnote 22 of the Request states "*Of particular concern are Project impacts on the following urban areas in Sindhuli District: Kamalamai Municipality Ward No. 6 (Andheri Jasedmar, Panityanki, Baira Bhawan); Kamalamai Municipality Ward No.7 (Bardeutar, Danda Tole, Tallo Bardeutar, Mitra Chowk, Majhitar, Thulitar, Bukka Danda); Belganchi Ward No. 4 (Sano Karkare, Ranichuri); VDC Ward No. 1, (Fiting Bhutiya Danda, Maisthan Karkare under Falchuri); Kamalamai Municipality Ward No. 10 (Bhadrakali VDC Dhunge Bhanjyang, Pipal Bhanjyang) as well as historical Sindhuli Gadhi base in Ward No. 1 of Jalkanya VDC and cable car ferrying people to Sidhababa Temple under Kamalamai Municipality Ward No. 9. See Memorandum submitted by the*

authorities that no activity, or even entry, is permitted within the 30 meter RoW whereas elsewhere Project documents suggest *“the land within RoW will be utilized as usual by the respective landowners.”* They, therefore, express confusion about this aspect of the Project and request clarification on the matter.

Involuntary Displacement

The Request states that a *“large number of indigenous and local people are at the risk of displacement”* from land acquisition caused by construction of towers long the RoW, and that 16 households in villages where the transmission line has been constructed have already been displaced. The Requesters state such land acquisition will force people to *“seek livelihood opportunities outside of Sindhuli District”* as many complainants’ homes, schools and farm land are within the RoW. Citing the Executive Summary of the Environmental Impact Assessment (EIA), they believe construction of the transmission line will lead to a *“devaluation of their land, a loss of agricultural production, withdrawal of economic opportunity and farming hindrance.”*

The Request suggests that the Abbreviated Resettlement Action Plan (ARAP) misrepresents the complainants’ wishes by suggesting that *“76% of the relocates prefer cash compensation.”* According to the Request, complainants want the transmission line to be realigned or that they be offered substitute land or *“fair and adequate compensation.”* Moreover, the Request states that land-based resettlement options should be preferred for persons whose livelihoods are land-based, and cash compensation may not be an appropriate compensation strategy in such cases.

Inadequate Study of Alternatives

The Request states that complainants have repeatedly requested that the transmission line go along an alternative route, and have proposed potential alternative routes. They state that the Bank was required under its policy to *“explore all viable alternative project designs,”* and to avoid or minimize population displacement where feasible. They state that while the EIA Executive Summary has a two paragraph analysis of alternatives, the ARAP and the Social Impact Assessment (SIA) do not contain any analysis of alternative design or routing.

The Requesters state that in February, 2012 an expert commission was formed by the Prime Minister to investigate alternative routing options and, according to media reports, the commission opted not to change the alignment citing technical and economic reasons. The Requesters also state that *“the commission’s report and the criteria for selection of the current location of towers and transmission lines were never made public.”*

Impact on Indigenous People

The Request states that 95% of the affected population in the area is indigenous (*adivasi*) and some community members are *dalit* (the Request describes *dalits* as a group *“considered to be low caste Hindu”*). The Request notes that *adivasi* and *dalit* groups are *“highly marginalized, whose vulnerability is further exacerbated by the high rate of poverty in the region”* and expresses concern that the Project may worsen their already difficult economic conditions. The

Sindhuli Protest Committee to the Rt. Honorable Prime Minister, Prime Minister’s Office, Singh Durbar, Kathmandu (January 17, 2012) (Annex D)”.

Request states that these communities depend on subsistence agriculture and their farming activities will be affected by the RoW and that they face possible displacement.

Moreover, the Request states that the Project did not “*appropriately*” identify Project-affected indigenous people and that only a single plan, the Vulnerable Communities Development Plan (VCDP), was prepared to address “*vulnerable communities*” without analyzing the specific conditions, concerns and needs of the indigenous people. The Requesters believe an Indigenous Peoples Development Plan (IPDP), as required by the Bank’s Indigenous Peoples policy, should have been prepared. According to the Requesters, an IPDP also requires the preparation of appropriate mitigation measures and plans when adverse impacts are unavoidable but such a plan, according to the Request, was not prepared. Moreover, according to the Requesters, the VCDP “*misidentifies*” some indigenous groups thereby not taking into account their precise needs and preferences as required by Bank policy.

The Requesters further state that SIA “*shows particular insensitivity to and prejudice*” against indigenous communities and makes “*discriminatory generalizations*” about ethnic and caste identity and reinforces “*the lack of understanding and attention to affected indigenous communities.*”

Finally, the Request states that the “*implementation of the Project violates Nepal’s international obligations*” related to the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) concerning free, prior and informed consent (“FPIC”) and Article 6 of ILO 169. Moreover, the Requesters state that Indigenous People have the “*explicit right to determine their own development priorities and to make unhindered and informed choices about the use of their lands*” under both UNDRIP and ILO 169. They also state that “*international law has a special status in Nepal insofar as it is enforceable in domestic courts and takes precedent over national law should a conflict arise between the provisions of domestic and international law.*”

Inadequate consultations and transparency

The Requesters state that project-affected indigenous people in Sindhuli District “*were never consulted*” on the design, location and alignment of the transmission line, or about the resettlement options or resettlement action plan. They state that Project documents, like the ARAP and the SIA, “*show that Sindhuli has a much higher number of ‘seriously project affected people’*” than other impacted districts but neither mentions a consultation being held in Sindhuli. The Requesters note that they “*have not received any information about the project, nor have they given permission for the transmission line to go over their land or for the towers to be built on their land.*” Moreover, they state that an ARAP dated 2006 and an SIA with no date were uploaded to the NEA website in March, 2013.

With regards to the Environmental Impact Assessment (EIA), the Requesters claim that at the time they submitted their Request, a full version of the EIA had yet to be made available to them. Further, they observe that the EIA Executive Summary reports that “*only two consultations or public hearings were held about the Project,*” both of which took place in 2004. They emphasize that these consultations took place “*approximately 40-60 kilometers*” away from the affected areas in Sindhuli District and no prior notice of these consultations was provided to the parties in question. The Requesters claim that they were not informed of the public hearings

until 2012 and that also after they had expressed concerns about the Project. Finally, the Requesters suggest that though the EIA “*references three indigenous groups located in the project area*”, consultations were not held with members of these groups at any stage during Project preparation. The Requesters believe consultations carried out under the Project should be regarded as “*inadequate*” to fulfill the requirements of the Bank’s Indigenous Peoples policy.

Impact on Health

The Request states that the affected communities are deeply concerned about the potential health impacts from the electric and magnetic fields of the transmission line’s high voltage power lines, especially with regards to children, as they believe these lines will run near and above human settlements and schools. The Requesters believe communities should not have to face any health risk and should be provided adequate information about potential health impacts.

Impact on Cultural and Sacred Sites

The Requesters state that the Project “*was not designed to prevent significant damage to cultural property.*” They express concern about whether the transmission line will impact various historical, cultural, religious and sacred sites as, according to them, the proposed alignment “*approaches various monasteries, temples, cremation sites, and other sites of cultural significance*” including Sindhuli Gadhi, a Bhimsen shrine, and the Kamalamai Temple.

Prior Contact and Attempts to Resolve Concerns with World Bank

The Request states that “*on at least two occasions, the Complaints have raised their Project-related issues and concerns with the World Bank.*” The Request mentions a letter sent to the World Bank on February 18, 2013 in which a request was made to consider alternatives to the alignment for the transmission line in Sindhuli district. Following a response from the World Bank on February 27, 2013, a meeting between the two parties took place on March 15, 2013 where the Requesters state they raised concerns regarding the Project related to information disclosure, consultation with local and indigenous people, impact on human settlements, cultural heritage sites, schools, and the “*use of excessive violence against local people.*” Despite these efforts, the Requesters claim “*no change*” has been made to Project plans, the requested consultations have not occurred, nor has the requested information been provided.

Next Steps Proposed by Requesters

The Requesters ask that the “*World Bank immediately stop disbursement of the loan and Project construction until such time that all affected people have been fully informed and consulted about the Project plans, impacts, rehabilitation, and mitigation measures. Following suspension, Complainants request the release of all relevant Project-related documents from the World Bank and the Government of Nepal, including a Nepali translation of those documents.*” They also ask “*for an independent analysis of alternative designs and routes through areas without human settlement, prioritizing the rights and needs of affected communities*”, that “*all Project baseline studies and future monitoring reports must be conducted with full transparency*”

and participation of affected communities and civil society, and the results made public” and that “the Project must be carried out in full compliance with Nepali law, international law, and World Bank policy.”

Furthermore, the Requesters ask for retroactive compensation for lost agricultural produce for persons already affected by Project related activities. Moreover, they ask that “*comparable substitute land*” should be provided to those who have lost land to the Project, or “*fair and adequate*” compensation be paid to them.

The Requesters state that they would like the Inspection Panel to conduct an investigation of the allegations of Bank policy violations described in the Request.

Registration of the Request

The Panel notes that it has verified that the Request meets the basic requirements for registration. The Panel confirms that the Request was submitted by at least two people, in relation to a project supported by the World Bank. The Bank’s financing for the Project has not yet reached 95% disbursement. The Requesters assert that they are affected by activities supported by the Bank, and the Request raises issues of harm which may plausibly result from Bank supported activities and from alleged actions or omissions by the Bank. The Request is not related to procurement issues, and it deals with a subject matter on which the Panel has not made a previous recommendation.

Furthermore, the Panel confirms that the Requesters have indicated that the issues related to their concerns were brought to the Bank’s attention on different occasions. The Requesters further state that they do not believe adequate steps have been taken to address their concerns.

The Panel met with World Bank Management after the receipt of the Request to be briefed on the background of the Project and Management’s efforts to resolve concerns raised by Project stakeholders. The Panel welcomes further elaboration of steps Management has already taken to address the concerns raised in this Request, and any steps Management intends to take in the future.

As provided in paragraph 17 of the IDA Resolution (the “Resolution”) that established the Panel, the Chairperson of the Panel “*shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection*”. With this notice, I am notifying you that I have, on July 24, 2013 which is also the date of this notice, registered this Request in the Inspection Panel Register. The Panel’s registration implies no judgment whatsoever concerning the merits of a Request for Inspection.

As provided in paragraph 18 of the Resolution, and paragraphs 2 and 8 of the “*Conclusions of the Board’s Second Review of the Inspection Panel*” (the “1999 Clarification”), Bank Management must provide the Panel, by August 22, 2013, a Response to the issues raised in the Request for Inspection. The subject matter that Management must deal with in the response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarification.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, “*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.*”

All communications in connection with the Request will be sent to Shankar Limbu, Secretary of the Lawyers’ Association for the Human Rights of Nepalese Indigenous Peoples as the representative of the Requesters.

The Request has been assigned IPN Request Number RQ 13/05.

A handwritten signature in black ink, appearing to read "Jim Yong Kim".

Mr. Jim Yong Kim, President
International Development Association

The Executive Directors and Alternates
International Development Association

Mr. Shankar Limbu
Lawyers’ Association for the Human
Rights of Nepalese Indigenous Peoples (LAHURNIP)