

IMRANA JALAL
Chair
The Inspection Panel

May 27, 2020

IPN REQUEST 20/01

NOTICE OF REGISTRATION

Request for Inspection

Nepal: Nepal-India Regional Trade and Transport Project (P144335)

Summary

1. On April 25, 2020, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) of the Nepal-India Regional Trade and Transport Project (the “Project”) in Nepal. The Request was submitted by nine community members from the Kirtipur Municipality in Nepal. On May 21, 2020, the Panel received the signature of an additional Requester as well as a letter authorizing a representative to represent the Requesters during the Panel process. The Requesters and their representative asked the Panel to keep their identities confidential.
2. The Requesters claim to be adversely affected by the Chobhar dry port in the Kirtipur Municipality in southern Kathmandu. They allege non-compliance with the World Bank’s policies on Environmental Assessment, Indigenous Peoples, Physical Cultural Resources and Involuntary Resettlement. They argue that the Project failed to address historical land claims, pollution and labor concerns relating to a cement factory that used to be located at the site of the new dry port. According to the Request, the dry port will have environmental and social impact on neighboring communities, including Newars, who the Project did not identify as indigenous, thus infringing indigenous peoples’ rights in various ways. The Requesters argue the Project will also damage Chobhar’s historical, religious and cultural heritage. Furthermore, they allege a lack of effective consultation, disclosure of information and grievance redress. They also raise concerns about the deployment of armed police forces at the construction site against community members opposing the Project.
3. The Panel acknowledged receipt of the Request on its website on April 30, 2020. Following initial due diligence by the Panel and confirming that the Request meets the Panel’s admissibility criteria, I am notifying you that I have, on May 27, 2020, registered this Request.

The Project

4. The Nepal-India Regional Trade and Transport Project (P144335) was approved on June 28, 2013, for a total of US\$101 million equivalent, consisting of a US\$69 million equivalent IDA Credit, a US\$30 million equivalent IDA Grant and US\$2 million from the International Finance Corporation's South Asia Regional Trade and Integration Program. There are no other funders or counterpart funding. The expected closing date of the Project is November 30, 2021.¹ It is a Category A Project that triggered the following safeguard policies: Environmental Assessment (OP/BP 4.01), Natural Habitats (OP/BP 4.04), Forests (OP/BP 4.36), Indigenous Peoples (OP/BP 4.10), Physical Cultural Resources (OP/BP 4.11) and Involuntary Resettlement (OP/BP 4.12). The Project was 61 percent disbursed at the time of receipt of the Request.

5. The Project's development objective is 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.*”² The Project includes three components: A) Modernize Transport and Transit Arrangements between Nepal and India (US\$18 million); B) Strengthen Trade-Related Institutional Capacity in Nepal (US\$23 million); and C) Improve Select Trade-Related Infrastructure (US\$69 million).

6. The Chobhar dry port, which is the subject of this Request, is one of three subcomponents under Component C, subcomponent C2 (US\$15.5 million).³ The Project Appraisal Document (PAD) explains that currently there are no parking or warehouse facilities available for trucks carrying goods to or from Kathmandu, placing significant burdens on traders, freight forwarders and transporters, and increasing the time and cost of transport, as well as leading to congestion and safety issues on busy arterial roads.⁴ The PAD explains that the dry port will contain a parking lot and warehousing facilities, and possibly customs clearance.⁵

7. According to the PAD, the government will acquire the required land. Five potential sites were reviewed, with the ease of land acquisition and minimal environmental and social impact among the key criteria.⁶ The PAD also includes a condition, which states that “*Works for the CFS [Container Freight Station]/ICD [Inland Clearance Depot] in Kathmandu Valley will not begin unless the government has allocated the land required for Component C2, in form and substance acceptable to the World Bank, including having followed guidelines of the Project ESMF [Environmental and Social Management Framework].*”⁷

¹ The Project was restructured in December 2019 to extend the closing date by 23 months from December 31, 2019 to November 30, 2021.

² Project Appraisal Document (PAD) for the Project, p. viii.

³ The other two subcomponents under Component C are the expansion and upgrading of the Narayanghat-Mugling road section (C1) and improving the infrastructure at Birgunj and Bhairahawa Inland Clearance/Container Depots (C3).

⁴ PAD, p. 10.

⁵ PAD, p. 45.

⁶ PAD, p. 13.

⁷ PAD, p. x.

8. According to the December 2019 Bank Restructuring Paper for the Project, the tender process for construction of the dry port was initiated in 2018 after an extended period of identification of available land and a subsequent delay in land ownership transfer. Local groups then voiced grievances and works were stopped from August 2018 to January 2019, resulting in significant delays in the construction. The Restructuring Paper explains that the Bank informed the government that no disbursement would be made against this component of the Project until grievances of the communities were addressed, and the process of grievance redressal documented. The government constituted a two-tier Grievance Redress Mechanism comprising two committees, which collected and examined the grievances in a structured manner. The Restructuring Paper notes that the issues relating to the dry port have been resolved.⁸

The Request

9. The Requesters believe that the dry port should not be constructed at the Chobhar location because of: (i) significant environmental concerns, including pollution, regarding the cement factory, but also the dry port; (ii) the close proximity of the dry port to significant historical and religious sites, and government plans to develop the area for tourism; (iii) unresolved land disputes and outstanding payment to former employees of the cement factory; (iv) the close proximity of the site to human settlement; and (v) government plans to build an international convention and conference center in the area.

10. The Request states that Nepal's prime minister laid the foundation stone for the dry port in January 2019 amid protests and opposition, and that 52 of approximately 150 protesters were arrested. The Requesters explain that the site of the dry port had been previously occupied by the Himal Cement Factory, which was built in 1974 and closed in 2002 due to concerns about environmental pollution and mismanagement of the company.

11. **Consultations and Grievance Redress.** The Requesters claim that affected people were not provided adequate information in a timely manner and in a form and language understandable and accessible to them prior to consultations for the Environmental Impact Assessment (EIA), and that the consultations that did take place were not meaningful. They also claim that they have not received an official copy of the final EIA, only a draft which is lengthy and difficult to understand. They also raise concern about retaliation against people opposing the Project.

12. **Indigenous Peoples' Rights.** The Request states that the site of the dry port is in the traditional homelands of the indigenous Newar people, who form much of the population living in the Bhutkhel settlement located in close proximity to the Project site. They argue that the dry port has a direct impact on them. The Requesters explain that the Newar are one of 59 officially recognized indigenous nationalities in Nepal. The Request alleges that the Bank and borrower have failed to effectively identify the Newar as indigenous peoples in the ESMF and draft EIA. They explain that the EIA recognizes some affected people as vulnerable, landless and marginal farmers living below subsistence levels, but states that the

⁸ Restructuring Paper, December 2019, pp. 4 and 5.

Newar are an advanced group based on their socioeconomic status according to the Nepal Federation of Indigenous Nationalities. The Requesters argue that the Project should have engaged in meaningful consultations with the Newars and their representative institutions to ascertain their free, prior and informed consent for the Project. According to the Requesters, the Project has prepared an Indigenous Peoples Plan for another project component, but no such plan was prepared for the dry port.

13. **Historical Land Claims and Resettlement.** The Requesters claim that the dry port is being constructed on the land of indigenous Newars and other locals that was acquired for the cement factory. The landowners have long demanded the return of their land. The Request refers to several court decisions on the issue of returning the land. The Requesters claim that several houses were destroyed without compensation when the cement factory was built. They also explain that in addition to the land used for the cement factory, other land was recently acquired for the dry port, requiring the resettlement of farmers. The Requesters demand that the land be immediately returned to the original landowners. The Request refers to the draft EIA report that states 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.*"

14. **Pollution and Labor Concerns.** The Request argues that for decades the local communities have been affected by pollution from the cement factory. They claim that the government's commitment for compensation for dust never materialized despite an agreement in 2000. They call for the implementation of this agreement, including fair compensation for human and physical harms caused by the factory during its operation. The Requesters further claim that also the construction of the dry port raises significant environmental concerns. With regards to labor concerns, according to the Request, 416 employees of the factory have not received their salaries for work performed for 19 months. The Requesters refer to a November 2019 public notice by the government that states that no further action was needed on salary claims.

15. **Physical Cultural Resources.** The Request states that the dry port will damage Chobhar's historical, religious and cultural heritage, particularly the Jal Binayak Temple, one of the valley's most important religious Ganesh shrines, the historical Manjushree gorge and caves, as well as a cremation site in very close proximity to the port. The Request explains that although the EIA states that these cultural areas do not fall directly within the footprint of the Project activities, they will still be affected. The Requesters explain that in response to requests from locals there is a plan for the Project to assist with some measures relating to cultural sites, including a pedestrian bridge, parking area, solar street lighting and bathroom facility construction. The Requesters reiterate, however, that any impact on the historical, religious and cultural resources in Chobhar area should be avoided by relocating the dry port to a more appropriate location.

16. The Requesters ask the Panel to investigate their Request, call for an immediate halt to the construction and urge that the port be constructed in another location. They ask that the Project adopt an alternative plan for the dry port that will not cause detrimental impact on lands, livelihoods, cultural and historical heritage, environment and lives. They argue

that this may be achieved through the appointment of an independent expert panel to assess viable alternatives with the participation of project-affected persons in the analysis and decision-making process.

Initial Due Diligence

17. After receipt of the Request, the Panel conducted its initial due diligence and verified that the Request meets the admissibility criteria for registration. The Request is not frivolous, absurd or anonymous, and was submitted by nine community members from the Kirtipur Municipality in Nepal. On May 21, 2020, the Panel received the signature of an additional Requester as well as a letter authorizing a representative to represent the Requesters during the Panel process. The Request includes information about several interactions the Requesters had with the Bank and a 2019 letter to the Country Office showing that the Requesters' concerns have been brought to the attention of the Bank prior to submitting the Request for Inspection. The Panel also verified that the subject matter of the Request does not concern issues of procurement and, at the time of receipt of the Request, the Project was 61 percent disbursed. The Panel has not previously made a recommendation on the issues raised in this Request.

18. During its review of the Request, the Panel spoke with the Requesters on April 29 and May 18, 2020, to seek clarifications and to inform them about the Panel's process and mandate. As part of its due diligence, the Panel also spoke with Bank Management on May 15, 2020. Management explained to the Panel that until February 2020 disbursements for the dry port were withheld to address grievances, but that disbursements were now authorized as these grievances have been resolved. Management provided information about the Project's analysis of different locations for the dry port. According to Management, several complaints relate to actions that long predate the Bank's involvement, such as historical land claims going back to the 1960s. Management explained that these issues were outside the Bank policy's purview. The Panel was also told that the Project recognized the Newars as indigenous peoples, that they formed most of the population living in the Project area, and that Project documents were prepared accordingly. Management explained that the policy does not require a separate Indigenous Peoples Plan in this case. Management also informed the Panel as to the Project team's prior interactions with the complainants.

Registration of the Request

19. 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.*"⁹ With this notice, I am notifying you that I have, on May 27, 2020, registered the above-mentioned Request.

⁹ Resolution Establishing the Panel (September 22, 1993), Resolution No. IDA 93-6, <https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/Resolution1993.pdf>

20. 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")¹⁰, Bank Management must provide the Panel within 21 business days (by June 25, 2020) 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.

21. 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.*"¹¹ These Request has been assigned IPN Request Number 20/01.

Yours sincerely,



Imrana Jalal
Chair

Attachments

Mr. David Malpass, President
International Development Association

The Executive Directors and Alternates
International Development Association

Requesters (confidential)

¹⁰ 1999 Clarification of the Board's Second Review of the Inspection Panel,
<https://inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/ClarificationSecondReview.pdf>

¹¹ Resolution Establishing the Panel (September 22, 1993), Resolution No. IDA 93-6,
<https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/Resolution1993.pdf>