FINAL REVIEW AND ASSESSMENT REPORT

OF THE

SPECIAL PROJECT FACILITATOR

ON

Case No. SPF-2020-02-02-0094

Complaint on Loan Nos. 2990/2991-NEP: Tanahu Hydropower Project

November 2020
This report was translated by the Office of the Special Project Facilitator into Nepali and Magar. In case of discrepancy, the English version will prevail.

This document is being disclosed to the public in accordance with ADB’s Access to Information Policy.
**ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>AH</td>
<td>affected household</td>
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<tr>
<td>AIH</td>
<td>affected indigenous household</td>
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<tr>
<td>AIP</td>
<td>affected Indigenous Peoples</td>
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<tr>
<td>AP</td>
<td>affected people</td>
</tr>
<tr>
<td>CDC</td>
<td>Compensation Determination Committee</td>
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<tr>
<td>CEMSOJ</td>
<td>Community Empowerment and Social Justice Network</td>
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<tr>
<td>CM</td>
<td>Complaints Mechanism</td>
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<td>EIB</td>
<td>European Investment Bank</td>
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<tr>
<td>ESMSP</td>
<td>Environmental and Social Management Service Provider</td>
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<tr>
<td>IP</td>
<td>Indigenous Peoples</td>
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<tr>
<td>INWOLAG</td>
<td>Indigenous Women’s Legal Awareness Group</td>
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<tr>
<td>LCF</td>
<td>Local Consultative Forum</td>
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<tr>
<td>MOE</td>
<td>Ministry of Energy</td>
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<tr>
<td>NEA</td>
<td>Nepal Electricity Authority</td>
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<tr>
<td>NGO</td>
<td>nongovernment organization</td>
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<td>OSPF</td>
<td>Office of the Special Project Facilitator</td>
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<td>POE</td>
<td>panel of experts</td>
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<tr>
<td>RIPP</td>
<td>Resettlement and Indigenous Peoples Plan</td>
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<tr>
<td>SARD</td>
<td>South Asia Department</td>
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<tr>
<td>THL</td>
<td>Tanahu Hydropower Limited</td>
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<tr>
<td>UpRIPP</td>
<td>Updated Resettlement and Indigenous Peoples Plan</td>
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I. BACKGROUND

A. The Project

1. Tanahu Hydropower Limited (THL) was established in 2012 as a subsidiary company of Nepal Electricity Authority (NEA) to develop the 140 megawatts (MW) Tanahu Hydropower Project (the project) (formerly Upper Seti Hydropower Project). The project site is situated about 150 kilometers (km) west of Kathmandu on Seti River near Damauli of Tanahu District. The project has three main components: (i) a medium-sized hydropower plant with significant water storage facilities and associated transmission lines to evacuate the generated power; (ii) rural electrification and community development in the project area, and (iii) a reform and restructuring plan for the national utility, NEA.

2. The storage type hydropower plant component will have an installed capacity of 140 MW and an estimated average annual energy generation of 587.7 gigawatt-hours (GWh) (years 1 to 10) and 489.9 GWh (year 11 onwards). The reservoir area to supply the hydropower plant is 18 km long and covers Vyas and Bhimad municipalities and Rising and Myagde rural municipalities of the district. Two permanent and primary access roads and several temporary and secondary access roads provide access to the project area. The main features of this project component are as follows:
   - Reservoir area: 7.26 sq.km, reservoir length 18 km;
   - Full supply level: 415 m;
   - Minimum operating level 378 m;
   - Diversion tunnel: No.1-556.mb No.2 -622 m;
   - Dam: concrete gravity of height 140 m;
   - Spillway chute type: gated spillway with roller bucket type energy dissipater;
   - Intake: single tower type intake;
   - Headrace tunnel: 1162 m;
   - Tailrace tunnel: 117 m; and
   - Powerhouse: underground.

3. The project’s rural electrification component involves construction of new 220 kilovolt (kV) double circuit transmission line to evacuate generated power to the new Bharatpur substation. The length of the transmission line corridor is 34 km. This component also benefit households in the project area and its neighboring districts.

4. The project is co-funded by the Asian Development Bank (ADB), the Japan International Cooperation Agency (JICA), and the European Investment Bank (EIB). The ADB loan is being used for package 1 (headworks), package 3 (220 kV transmission line) and Rural Electrification Program; the EIB loan is being used for package 1 (headworks); and the JICA loan is allocated for package 2 (waterways, powerhouse, and related equipment). NEA will finance other project-related expenses.

5. The project was approved on 21 February 2013. The safeguard categories are A for involuntary resettlement, environment, and Indigenous Peoples. The table below outlines the safeguard related documentation prepared for the project.
Table 1: Safeguards Category and Related Documentation

<table>
<thead>
<tr>
<th>Environment: A</th>
<th>Involuntary Resettlement: A</th>
<th>Indigenous Peoples: A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanahu (Upper Seti) Hydropower Project Upper Seti (Damauli)-Bharatpur 220 kilovolt Transmission Line Project</td>
<td>Resettlement framework for the project Resettlement plan that applies to Tanahu (Upper Seti) Hydropower Project only; separate resettlement plan for the transmission line.</td>
<td>Indigenous Peoples planning framework for the project</td>
</tr>
</tbody>
</table>

Source: ADB.

6. According to the Updated Resettlement and Indigenous Peoples Plan (UpRIPP) prepared in November 2018, the socioeconomic survey of households affected by the construction of the dam and power scheme (including the inundation area) confirmed a total of 547 affected households (AH) with 3,919 affected people (AP). From the surveyed 475 AHs, there are 396 vulnerable AHs and 346 Adivasi Janajati AHs meaning affected indigenous households (AIHs). Of the total vulnerable AHs, 87% are AIHs.

5 https://www.adb.org/projects/documents/tanahu-hydropower-project-rf
6 https://www.adb.org/projects/documents/tanahu-hydropower-project-remdp
8 https://www.adb.org/sites/default/files/project-documents/tanahu-hydropower-project-ippf
Table below presents the project’s funding source:  

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>AMOUNT ($ million)</th>
<th>SHARE OF TOTAL (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian Development Bank</td>
<td>150.0</td>
<td>30</td>
</tr>
<tr>
<td>Asian Development Fund (regular-term loan)</td>
<td>120.0</td>
<td>24</td>
</tr>
<tr>
<td>Asian Development Fund (hard-term loan)</td>
<td>30.0</td>
<td>6</td>
</tr>
<tr>
<td>European Investment Bank</td>
<td>85.0</td>
<td>17</td>
</tr>
<tr>
<td>Japan International Cooperation Agency</td>
<td>184.0</td>
<td>36</td>
</tr>
<tr>
<td>Government and/or Nepal Electricity Authority</td>
<td>86.0</td>
<td>17</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>505.0</strong></td>
<td><strong>100</strong></td>
</tr>
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</table>

B. The Complaint

8. A group of 32 project-affected people representing 31 indigenous households and a group of six indigenous persons with collective ownership of a land plot, organized as “the Directly Inundation Affected Peoples Collective Rights Protection Committee” (the complainants) supported by the Indigenous Women’s Legal Awareness Group (INWOLAG) and the Community Empowerment and Social Justice Network (CEMSOJ) submitted the complaint (Appendix 1) to ADB. The complaint, received by the Office of the Special Project Facilitator (OSPF) on 12 February 2020, requested problem-solving under the ADB’s Accountability Mechanism Policy. OSPF acknowledged receipt and registered the complaint on 18 February 2020 (Appendix 2).

9. The complainants alleged negative impacts from the land acquisition and valuation, concerns about information sharing, meaningful consultation and participation, and negative impacts on their access to natural resources and livelihoods as well as on ancestral lands, cultural sites, and traditional practices (as Magar Indigenous Peoples) — all of which they allege were not sufficiently considered. They allege that they were not informed nor consulted for the socioeconomic survey (para. 6). The complainants requested to resolve the following issues:

   a) The right to free, prior, and informed consent of Indigenous Peoples should be implemented in each process and phase of the project and a necessary mechanism should be created and our representative shall be included in such mechanism;

   b) All notices about the project should be continuously provided in a language understood by the affected community, including by hiring local interpreters/ translators;

   c) An environmental impact assessment should fully and adequately capture the impacts of the project on our lives. As currently drafted, the environmental impact assessment report has not effectively included the impacts of the project on us, Indigenous Peoples. Several issues should be reassessed, clarified, and addressed with the participation of our community, including:

      • impacts on our grazing lands, and
      • impacts on fodder, firewood, herbs, and vegetables from the forest;

   d) The sociocultural impacts of the project on our cremation sites, rest house, temples, and water sources should be assessed and addressed with the participation of our community. (Pahyang residents have been using six cremation sites in the inundation area);

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10 https://www.adb.org/projects/43281-013/main#project-pds
e) Impacts on our farmlands and grazing lands should be prevented or minimized to ensure the livelihoods of the affected community based on agriculture and animal husbandry;

f) Effective representation of our community (the Committee) should be immediately implemented in the Local Consultative Forum (LCF);

g) Land left out during the detailed measurement survey should be re-surveyed. The methodologies to carry out the survey should be created and implemented in consultation with us;

h) Free electricity distribution and free shares of THL to affected families as well as one employment per household should be provided for the affected families;

i) Indigenous Peoples’ representative organizations (Nepal Magar Sangh, Tanahu and Nepal Federation of Indigenous Nationalities, Tanahu) should be included in the project consultations; and

j) Compensation and redress in the form of land for land and house for house of the same nature and value should be provided to our affected families.

10. The same complaint was lodged with the Complaints Mechanism (CM) of the EIB, a project cofinancier.

C. Determination of Eligibility

11. This section provides a brief history of this complaint. A complaint from this community with similar issues was submitted to the OSPF on 23 August 2018. As part of determining the eligibility of the complaint, OSPF held a teleconference with the community representatives and the ADB project team to understand the issues. It was highlighted in the teleconference that the complainants have submitted the issues to THL and were working with them in parallel to address the issues. OSPF decided to field a fact-finding mission to better understand the concerns of both the complainants and THL, and their willingness to resolve the issue through a dialogue process. It was advised by the stakeholders that OSPF delays its mission until October as travel to the project site at that time would have been challenging due to monsoon season. Hence, the eligibility of the complaint was put on hold and a fact-finding mission was fielded from 1 to 5 October 2018 to conduct focus group discussions with the complainants and THL to better understand issues and their willingness to work together through a problem-solving function. During the discussions, both the complainants and THL confirmed their willingness to attempt to work and resolve the issues amongst themselves. The ADB project team from the South Asia Department (SARD) and OSPF jointly prepared a draft course of action to address the issues of the complaint. With these developments and demonstrated commitment of both stakeholders, OSPF declared the complaint ineligible and informed the complainants that they could reengage OSPF if their issues remain unresolved.

12. On 12 February 2020, OSPF received a complaint from 32 signatories represented by a group ‘the Directly Inundation Affected Peoples Collective Rights Protection Committee.” To determine the eligibility of the complaint, OSPF did a desk review of the project documents, and held teleconferences with the complainants; nongovernment organizations (NGO) representatives; ADB project team from SARD and Nepal Resident Mission; and THL to understand the progress that was made on the issues that were submitted as part of the complaint submitted in August 2018. It was confirmed that a mutually satisfactory resolution could not be reached between the complainants and THL, and both parties expressed willingness to resolve the issues through OSPF’s facilitation. On this basis, the complaint was made eligible for problem-solving and OSPF immediately mobilized its staff and a local consultant to initiate consultations with the complainants, THL, and other stakeholders. The complaint met OSPF’s eligibility requirements and was declared eligible for problem-solving on 20 February 2020.
II. REVIEW AND ASSESSMENT

A. Objective of the Review and Assessment

13. The first phase of the review and assessment mission was undertaken by OSPF team in Nepal from 27 February to 6 March 2020. A local mediation facilitator was officially on board before the mission and joined the OSPF team for all stakeholder consultations during the mission including site visits. The objectives of the review and assessment are (i) to explore the history of the complaint and better understand the issues, (ii) confirm the key stakeholders and facilitate a dialogue with and between them as needed, (iii) map out perspectives and explore stakeholders’ readiness in joint problem-solving, and (iv) recommend next steps and agreed course of actions. A draft Review and Assessment Report was shared with key stakeholders. This final Review and Assessment Report incorporates or at least notes the comments of the stakeholders.

B. Identification of Stakeholders

1. The Complainants

14. The formal complainants are the 32 signatories to the complaint letter who are project-affected people from Rising Paltyang community representing themselves as “the Directly Inundation Affected Peoples Collective Rights Protection Committee”. The complainants have requested that they be referred to as Affected Indigenous Peoples (AIPs), to which the Special Project Facilitator has agreed to.

15. Representation. In the letter to OSPF, the complainants stated that their complaint was prepared with the support of two NGOs, INWOLAG and CEMSOJ, with support from NGO Forum on ADB and the International Accountability Project.


2. The Complainants’ Advisors

17. INWOLAG and CEMSOJ are the complainant’s advisors and have participated in several meetings during the review and assessment mission by OSPF and joined the site visit during the mission. The complaint stated that the advisors do not make decisions for the complainants but will facilitate communications and keep them informed of the progress.

3. Government Agencies

18. Agencies involved in making decisions are the (i) oversight body: Steering Committee Secretary, Ministry of Energy (MOE) (chair); Joint secretary, Ministry of Finance; managing directors, THL and NEA; general managers (engineering services, grid development, distribution and consumer services), NEA (members); (ii) executing agencies: THL and NEA; and (iv) implementation unit: THL and NEA project implementation units. THL is supported during project implementation and the initial years of operation by a project support consultant. Since May 2019, THL is further assisted by an environmental and social management service provider (ESMSP).12 A panel of experts (POE) was recruited in December 2018 to provide review and guidance on the treatment of environmental and social safeguards. Moreover, since November 2017, a local NGO is helping the government and THL with verification of compensation package of the land

12 In September 2019, the ESMSP issued its inception report.
acquisition and resettlement process. Recruitment of external social and environment monitoring experts is in process.

4. South Asia Department and Nepal Resident Mission

19. SARD and the Nepal Resident Mission are responsible for the administration of the project. The project officer based in the ADB headquarters with a team supports implementation and administers the project including providing advice and guidance to THL periodically.

C. Methodology

20. The first phase of the review and assessment mission from 27 February to 6 March 2020 by the OSPF team included (i) project related documentation review, (ii) one-on-one and group interviews with the complainants and their NGO advisors in Rising Paltyang and Kathmandu, (iii) a visit to the project site, (iv) initial consultations with MOE and THL in Kathmandu, and (v) consultations with ADB and resident mission project team in Kathmandu.

21. Due to the CoVID-19 health crisis and global travel restrictions, OSPF was unable to return to Nepal to complete the remaining initial stakeholder consultations planned in mid-March. After monitoring the situation in the past months with the continuing crisis and travel restrictions in the foreseeable future, the OSPF team held meetings with the Complaints Mechanism of EIB to discuss the best possible way to move ahead with an adaptive complaint resolution process. It was decided to go virtual with the remaining consultations. These included one-on-one consultations with panel of experts, project supervision consultants (Lahmeyer International GmbH), ESMSP ELC Electro Consult, compensation verification consultant (Rural Empowerment Society Demailu Tanahu Nepal), external social monitor and external environment monitor. Initial consultations have been conducted between late May and early June 2020 with the above stakeholders and OSPF will continue to engage with them as needed in this problem-solving process. A list of stakeholders met during the review and assessment consultations is in Appendix 3.

D. Assessment of Issues

22. The complainants and their representatives expressed dissatisfaction with the valuation process for measurement of land and assets, which they claim resulted in unfair determination of compensation rates, lack of meaningful consultation, inadequate compensation to purchase new land, and in some cases affected land was either not included or was only partially included in the survey/compensation process. Further, the AIPs expressed that plots that lack title or ownership documentation but have been used by some AIPs for generations had not been assessed. Complainants expressed that there was little or no information provided to AIPs on how compensation was being calculated, including the methodology for valuation. When OSPF discussed with MOE and THL, they expressed that compensation determination is a complex process determined by the Compensation Determination Committee (CDC) chaired by the Chief District Office. Further, they expressed that project authorities complied with that process as per the prevailing Land Acquisition Act, 2034 of Nepal. However, they also expressed that if the AIPs of the community collectively purchase land to establish their own community, THL would assist in developing infrastructures such as road, electricity, drinking water, health, post, etc. THL reiterated that while this option was presented to the complainants, this was not acceptable to the latter. The AIPs consider that the responsibility for identifying land-for-land or any other solution should be with THL, and not with the AIPs since they do not have the resources needed to do so.

13 Rising Patan, Sankhad, Bandar Kuna, Phedi Khola, Bandar Kuna Dalit Basti (Dalit Community).
14 The recruitment of the external social monitor and external environment monitor is in the process and OSPF consulted with the confirmed candidates for these positions.
and the project should be responsible for addressing its adverse impacts and not the impacted households.

23. Consultations with social expert from project supervision consultant team and POE, confirmed that more than 80% of the AHs have been compensated successfully. They also stated that they were aware of the concerns from this group of complainants and THL was engaged in a dialogue process to resolve the issues. The July-December 2019 environment and social safeguards monitoring report further states that “out of a total of 547 affected households, 501 HHs have been compensated with a compensation success rate of 91.60%. Similarly, all 80 actually displaced households (after exclusion of one cowshed) have been compensated. The total compensation paid to date to affected households for their land (including those who are being physically displaced) is Nepalese rupee 1,217,808,107.85 equivalent to US dollar 10.81 million”. A local community-based NGO, Rural Empowerment Society, was engaged by THL to verify the progress on the APs entitlements on compensation and allowances with agreed procedures in the resettlement plan. Consultations with the Rural Empowerment Society representative confirmed that the compensation rates were adequate and were compliant with the UpRIPP. OSPF could not yet establish whether the valuation process and the compensation were adequate and met the replacement value. The complainants noted that they are not familiar with the Rural Empowerment Society and proposed that the OSPF problem-solving process should include interviews with several of the households that did accept the compensation but that the complainants believe will clarify that they were compelled to accept the compensation. The interviews will be carried out during the next phase of the problem-solving process (when travel restrictions are lifted).

24. The complainants allege that there was no early consultation with them on the project impacts and a lack of information dissemination in their ethnic language (Magar). The draft Resettlement and Indigenous Peoples Plan (RIPP) 2012 and UpRIPP 2018 mention that the documents have been made available in Nepali. The first report of the POE (December 2018) also states that a public information brochure that presents a summary of the project, the land acquisition and involuntary resettlement impacts, and the provisions of the UpRIPP is available in Nepali. However, the complainants expressed frustration that AIPs did not have ready access to such information. Regarding the complainant’s concern about lack of information in their Magar dialect, OSPF was informed that the community recommended a translator as agreed during the action plan preparation between the community, OSPF, and SARD in October 2018. However, when THL contacted the translator and provided documents for translation, the latter failed to provide translations. THL officials continued with their efforts and found a local translator who supported in the translation of the entitlement matrix including summary of the UpRIPP in April 2019. However, the complainants pointed out that it was not the right dialect understood by the complainants. OSPF learnt during its March 2020 mission that there are three dialects in Magar language. OSPF has identified a Magar language expert who will support in providing translation and interpretation support throughout the problem-solving process in the complainants’ dialect. Documents will be translated into Nepali and the AIPs dialect and verbal translations will be provided through meetings and workshops in the AIP Magar dialect.

25. The AIPs also expressed that they have been communicating their concerns on the lack of free, prior, and informed consultations with THL. THL informed that they have organized public consultation meetings since project inception and the following information was distributed to the attendees: (i) project description and its progress; (ii) general information on ADB’s Safeguard Policy Statement 2009 and its principles, resettlement framework, entitlements, eligibility, compensation valuation (full replacement value), grievance redress mechanism, land acquisition and resettlement implementation procedures, cut-off date, Nepal legislation, etc.; and (iii) scope of land acquisition and resettlements. However, the complainants and their representatives do
not agree that there was adequate consultation and that they had not consented to the land acquisition required for the project that directly affects them.

26. The complainants self-identify as indigenous Magar. The Magar, also spelled as Mangar and Mongar, are the third largest ethnolinguistic group of Nepal representing 7.1% of Nepal’s total population according to the Nepal census of 2011. The National Foundation for Development of Indigenous Nationalities has classified the Magar as a disadvantaged indigenous group. Large numbers of Magars live in Palpa, Tanahu, Myagdi, Pyuthan, and Rolpa. Magars have their own language which belongs to the Tibeto-Burman family and has three divisions called Kham, Kake, and Magarat. Magars have their own separate costumes and cultures. Even the rituals of Bara Magarat, Athara Magarat, and Dolpa are slightly different. The AIPs note that their local culture differs from Bara Magarat, Athara Magarat, and Dolpa. These differences will be documented and their relevance to the resolution of the complaint assessed during the next phase of the problem-solving process.

27. According to the UpRIPP, the Magar represent the biggest group of affected indigenous households. The UpRIPP further states “The socio-economic survey of affected households confirmed that the cultivated lands that will be affected as a result of the Project do not comprise of traditional land or ancestral domains of any Janajati\(^\text{15}\) community. The socio-economic survey of affected households also confirmed that in the Project’s corridors of impacts, no shrines, temples or other religious structures or locations, regarded as traditionally sacred by the Janajatis will be affected as a result of the Project. In addition, no specific forestland or water body is linked with Magars’ rituals, ancestries or their spiritual realms.” However, it is stated in the environmental management plan that there will be disruption of cremation sites and impact on religious historical and archaeological sites during the construction phase. Indeed, as pointed out by the complainants, it appears that there are inconsistencies between the social and environmental assessments regarding project impacts on AIPs. Further, the complainants expressed that they were not aware of the 2017/2018 survey and that they strongly disagree with the conclusion of the UpRIPP that the “cultivated lands that will be affected as a result of the Project do not comprise of traditional land or ancestral domains....” The land valuation study described in para. 33 below and in Appendix 4 will document and reassess this issue.

28. During OSPF’s initial consultations, the complainants and their representatives raised issues related to lack of recognition of untitled customary land, ancestral properties, and impact on religious sites. THL during the initial consultations committed that they would comply with the relevant national regulations including ADB’s Safeguard Policy Statement 2009. Discussions with POE social expert and project supervision consultant social expert informed OSPF that there has been no special consideration and/or additional assessments conducted for the Magar community on cultural sites, and the impacts were assessed and measures proposed as with other affected groups. The first report of POE in December 2018, including consultations with the social expert of ESMSP, revealed that there is a data gap in the socioeconomic baseline and census as location information is limited to municipality and not to a particular village. It also stated that a particular indigenous group is dominant in a village which may affect them directly and differentially compared to other affected groups.\(^\text{16}\) OSPF could not yet establish whether the complainants’ village was part of the 2017/2018 survey on which the UpRIPP is based. This will be clarified and documented in the next phase of the problem-solving process.

\(^{15}\) The complainants and their advisers informed that Janajati should be referred to as Adivasi Janajati.

29. The LCF, equivalent of a grievance redress mechanism, was designed to provide an effective and systematic response to queries, feedback, and complaints from project-affected people and other stakeholders. complainants and NGOs expressed disappointment with the lack of representation of the community (the Committee) in the LCF. According to the 2018 POE report and OSPF/CM’s consultations with them, it is to be noted that there has been a concern on low rate of women’s participation in consultation activities. It also further stated that grievances are being addressed and resolved in a timely way and tracking system improvements are in place. OSPF could not conduct a full review of consultation and grievance activities during the first phase of the mission but will be an important aspect to be considered.

30. According to the UpRIPP and Environmental and Social Safeguards Monitoring Report (July-December 2019), four LCFs have been established in four municipalities and each LCF includes two persons from AHs. The UpRIPP also mentions two committees representing project-affected people, namely the “Hydropower Direct Affected Area Concerned Committee” and the “Direct Concerned Reservoir Area Conservation Committee.” It is highlighted in the UpRIPP that both committees had in the past expressed concerns about the compensation rates for the land. According to the UpRIPP, an agreement was reached with both committees. OSPF conducted individual consultations with representatives of three out of the four LCF units to understand the composition, formation, and functionality of LCFs. The representatives stated that the selection criteria for LCF members was guided by the process outlined in the RIPP with villagers identifying two AP representatives for each LCF. The Rising LCF representative confirmed that two community members from ward no. 8 (Paltyang village falls in ward no. 8) are included in the LCF - a male representative from a school and a female community member identified by the community members in a public meeting. However, these two community members from ward no. 8 are not from the complainants’ community. Hence, the complainants feel that they are not well represented in the LCF. It is noted that when OSPF interviewed them, the three LCF representatives had differing views on adequacy of participation of APs in all LCF meetings. Regarding the complaint issues, all three LCFs reported around 30 to 50 complaints currently recorded in each of the LCF related to livelihood support, job/employment support, and other income restoration. Bhimad LCF representative mentioned additional complaint issues such as miscalculation of compensation on crops and trees including missed trees, crops, and structures. He also mentioned that there was a delay in the formation of LCF and was only established retroactively after the community demanded for it after compensation payments to APs were completed. He noted that the pricing of vacant land close to Damauli town was higher compared to fertile land (three crops a year) further from town. When concerns were submitted to LCF, they held meetings with the APs and provided additional compensation calculated for an additional 5-year crop loss which resulted in a satisfactory resolution for APs. The Myagdi LCF representative also expressed similar views on selection process of the LCF members. She mentioned that she is aware of the community concerns and differential impacts on the complainants’ community due to their location/geography compared to other communities, and expressed keen interest to resolve the issues with them. She also expressed that the two LCF members from the project are junior staff and not qualified enough to support the functions of the LCF compared to other municipalities. She further emphasized the need for more resources. The complainants expressed serious concerns and reservations regarding the membership of the LCFs, lack of information on the LCFs, and lack of AIP participation in the LCFs.

III. PROPOSED COURSE OF ACTIONS AND NEXT STEPS

31. Based on initial discussions with the stakeholders and project documentation review, OSPF concludes that the complaint could be resolved through the problem-solving process by conducting independent studies to fill information gaps and/or clarify differences of positions of stakeholders, more consultations and joint meetings as needed, and continued dialogue among stakeholders. There was a broad acknowledgment from all stakeholders that the complaint issues
should be addressed. All stakeholders interviewed for the review and assessment were willing to participate in meetings or other forums with the complainants to address issues and solve problems. OSPF recommends all the stakeholders to keep the process participatory, fair, and consultative.

32. It is noted by OSPF that the ADB project team is closely engaged with THL on overall project implementation including how to address data gaps and identify actions to resolve the issues. THL has also made efforts in strengthening the Environment and Social Management Unit in the past year by engaging a dedicated communication specialist to improve participation and communication with the project APs.

33. Based on initial assessment of the issues, OSPF proposes to conduct two independent studies designed to fill information gaps and clarify the facts relating to differences of opinions of stakeholders on some key issues: (i) Indigenous Peoples (IP) socio-cultural-economic study and (ii) land valuation study. The studies and subsequent consultations during the problem-solving process will respect the request of the complainants to use collective methods of research such as focus group discussions and/or community consultations as opposed to individual household questionnaire. However, the Special Project Facilitator notes that eventually household level discussions will be necessary to confirm assets and impacts on each individual household. If household surveys need to be undertaken, these will be carried out at a community gathering if so desired by the affected households. In reviewing the draft Review and Assessment Report, THL concurred with the focus of the two studies, and expressed that the key issues that should be given priority attention are (i) income and livelihood restoration strategies and (ii) community participation in the development works since these are issues which THL has sole authority. THL noted that the CDC is solely responsible for the determination of the compensation rate and that THL is not authorized to make revisions in the compensation rates for land. See Appendix 4 and 5 for the terms of reference.

- The IP and socio-cultural-economic study will (a) thoroughly review relevant national legislations recognizing the rights of IP communities (focusing on complainants) and do a comparative analysis with the ADB’s Safeguard Policy Statement 2009 IP requirements and EIB’s requirements; (b) review land tenure system and claims (ancestral, traditional, individual titles, and common property resources); (c) conduct a comprehensive sociocultural-economic survey to gather information on the demographic, social, economic, geographical, educational, cultural, and political characteristics of the complainant IP community, including relevant knowledge-attitudes-practices, local and traditional/customary laws and practices, and a poverty profile (and including assessment of the likely impact of land acquisition on the income and economic interdependence among households); and (d) identify direct and differential impact (if any) due to their ethnicity. Throughout the study, the expert will conduct consultations with the community members to better understand the impact on each household and community as a whole including engaging with all relevant stakeholders, project officials, LCF representatives, CDC, and NGO representatives.

- The land valuation study will focus on complainants affected area to (a) carefully identify lands missed out from the detailed measurement survey in consultation with the communities; (b) verify documents to confirm the ownership; (c) reevaluate complainants’ land, assets, and communal properties; (d) confirm the adequacy of CDC’s proposed compensation rates including recommendations on any differential compensation rates that arise out of this replacement cost study; and (e) identify land replacement options for the AIPs in consultation with them depending on the availability of lands of the same nature and value as those of the AIPs impacted by the project.
34. The complainants stressed the importance that the work by independent experts includes social, cultural, and economic aspects. They requested that the land valuation study looks into untitled lands being used by AIPs (for example plot #35 being cultivated by AIPs). In addition, the complainants recommended that the study verify ownership not only by formal land registration documents but other forms of evidence consistent with the RIPP eligibility and entitlement provisions for APs who do not have formal legal documentation. The complainants also requested that the study look beyond rates of compensation but include assessment of replacement costs and options for the AIPs.

35. The independent experts throughout the study will work as a team guided by the Special Project Facilitator while OSPF and CM team will continue to collaborate on the overall problem-solving process. The experts will consult with all stakeholders as needed. These two independent reports will provide a better understanding to OSPF and CM team on the issues submitted by the complainants and will be used as a basis for facilitating a mutually satisfactory resolution of issues between complainants and THL.

36. The reports will be translated into Nepali and Magar (the complainants’ dialect) and will be submitted as soon as possible to the complainants and their NGO advisers and a verbal briefing in Magar will be given to the AIPs. Once that briefing is completed, a round table discussion will be conducted by OSPF and CM with participants from THL, ADB and EIB project teams, complainants and their NGO representatives, and relevant government ministries and agencies such as MOE, NEA, and Ministry of Home to (a) help stakeholders make informed decisions on problem-solving with the purpose of clarifying issues of concern, and (b) explore potential agreeable actions to move forward in the problem-solving process.

37. OSPF and CM will continue to cooperate closely and pursue discussions with the complainants, their representatives, ADB and EIB project teams, and THL to maintain the momentum and is committed to provide support to resolve the problem.
COMPLAINT LETTER

February 11, 2020

Complaint Receiving Officer
Accountability Mechanism, Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550, Metro Manila
Philippines
Via Email

Re: Complaint and request for problem-solving function regarding the Tanahu Hydropower Project

Dear Complaint Receiving Officer,

We, community members affected by the Tanahu Hydropower Project (ADB project number 43281-013 or the “Project”) being implemented in Tanahu, Nepal, organized as the “Directly Inundation Affected Peoples Collective Rights Protection Committee,” hereby submit a complaint to the Office of Special Project Facilitator, requesting dispute resolution to resolve problems caused by the Project. We have attached information about each of our households in Annex 1.

As indigenous Magars, our lives depend on land and natural resources. The Project has and will cause direct and material harm to our ancestral land, our livelihoods, and traditional practices. Our agricultural land, structures in the farms, cremation sites, bridges, roads and trails and our water resources will be directly affected by the Project. We will be displaced once the farming land is full of water. Our income from farming and raising animals will be decreased and we will not be able to sustain our lives. We did not receive adequate information and opportunity for meaningful participation and proper consultation in the Project. The Project did not include our land in their survey. The form and rates of compensation were determined without our participation and as a result, are unfair, inadequate, and discriminatory against our families and thus are being imposed on us.

We seek the following results through the independent problem-solving process:

1. The right to Free, Prior and Informed Consent (FPIC) of indigenous peoples should be implemented in each process and phase of the project and a necessary mechanism should be created and our representative shall be included in such mechanism.
2. All notices about the Project should be continuously provided in a language understood by the affected community, including by hiring local interpreters/translation.
3. An Environmental Impact Assessment (EIA) should fully and adequately capture the impacts of the Project on our lives. As currently drafted, the EIA report has not effectively included the impacts of the project on us, the indigenous peoples. Several issues should be re-assessed, clarified, and addressed with the participation of our community, including:
   a. Impacts on our grazing lands,
   b. Impacts on fodder, firewood, herbs, and vegetables from forest.
4. The socio-cultural impacts of the Project on our cremation sites, rest house, temples and water sources should be assessed and addressed with the participation of our community. (Paltyang residents have been using 6 cremation sites in the inundation area.)

5. Impacts on our farmlands and grazing lands should be prevented or minimized to ensure the livelihoods of the affected community based on agriculture and animal husbandry.

6. Effective representation of our community (the Committee) should be immediately implemented in the Local Consultation Forum (LCF).

7. Land left out during the Detailed Measurement Survey should be re-surveyed. The methodologies to carry out the survey should be created and implemented in consultation with us.

8. Free electricity distribution and free shares of Tanahu Hydropower Limited to affected families as well as one employment per household should be provided for the affected families.

9. Indigenous peoples’ representative organizations (Nepal Magar Sangh, Tanahu, Nepal Federation of Indigenous Nationalities, Tanahu) should be included in the consultations of the project.

10. Compensation and redress in the form of land for land and house for house of the same nature and value should be provided to our affected families.

As set out below, we have attempted to resolve these problems in good faith through our continued engagement with the ADB and its Operation Department and Resident Mission, as well as with the Tanahu Hydropower Limited and through different levels of government:

1. In May 2018, we submitted the 12 point demands to the Chief Minister of Gandaki Province as well as District Headquarter, District Development Office, Vyas Municipality, Bhimad Municipality, and Rising Rural Municipality.¹

2. On October 2 and 4, 2018, we met with the representatives of the Office of the Special Project Facilitator (OSPF) and the ADB representatives, whereby we submitted our 12-point demand and letter of appointment of our advisors as part of an earlier complaint to the ADB AM, dated August 6, 2018 process. Unfortunately, that complaint was later deemed ineligible because it was found not to have engaged ADB’s Operations Department. Afterward, we received a framework agreement initiated by the OSPF and the Tanahu Hydropower Limited, which we were not part of the drafting and did not fully agree with.

3. On January 24, 2019, we met in person with ADB staff to discuss issues on Resettlement and Indigenous Peoples Plan (“RIPP”) and Local Consultation Forum. We submitted another letter to

¹ We have also engaged with Tanahu Hydropower Limited and ADB in previous communications. In 2016, former committee, which some of us were part of, submitted a 26 point demand letter to Tanahu Hydropower Limit. Ultimately, we did not get an opportunity to meaningfully participate in previous efforts and ultimately our demands were unmet. The updated ADB RIPP (November 2018) states in paragraph 103:

The ‘Hydropower Direct Affected Area Concerned Committee’ and ‘Direct Concerned Reservoir Area Conservation Committee’ submitted a 26 Point demand letter to THL on 20 November 2016. In response, THL wrote a letter to Chief District Officer (CDO), which included THL responses to each of the 26 Point, on 11 January 2017. The two committees issued a press release on 10 February 2017. Their major concerns are the lack of participation of the affected persons in Compensation Determination Committee (CDC) and non-satisfactory compensation rate for land. THL sent written responses on the 26 Points status directly to both concerned committees on 12 March 2017 to provide more details. THL continued close discussions with the two concerned committees, reached consensus and made agreement with concerned committees on 21 Points as of 28 October 2017. The 21-Points Agreement covers this item.
ADB staff and the Tanahu Hydropower Limited company representatives that we do not agree with the individual consultation of each household as suggested by the Special Project Facilitator, we want the collective consultation.

4. On March 9, 2019, an ADB representative gave an English version of the RIPP to the Committee at the ward office in Paltyang.

5. On March 31, 2019, following the March 9, 2019 meeting, the Committee sent a letter to Tanahu Hydropower Limited, the ADB South Asia Department, and the ADB Nepal Resident Mission, reiterating our unmet demands for meaningful consultation and adequate compensation. Based on the absence of these conditions, we did not give consent to advance the household survey process. We attach a copy of this letter in Annex 2.

6. On April 2, 2019, representatives from the ADB and the Tanahu Hydropower Limited gave copies of the RIPP in Magar language to the Committee, but the translation was not in our dialect.

7. On November 30, 2019, representatives from the Tanahu Hydropower Limited visited us in our village (Paltyang) and informed about additional assistance for resettlement compensation, including for loss of trees/plants and social development such as health, education and road facilities in the village or other resettlement area that we choose from the financial compensation of our land to be acquired. However, they did not provide the information in writing and clearly stated that the compensation of our agricultural and other lands that will be submerged will not be increased and it was beyond the authority and scope of the Company to negotiate these terms and therefore under the purview of the government authorities. This is unsatisfactory for us.

8. Most recently, in December 2019, we visited the Ministry of Energy, Water Resources and Irrigation and the Ministry of Home Affairs with representatives of Indigenous Women’s Legal Awareness Group (INWOLAG) and Nepal Magar Sangh central committee. We conveyed our concerns with the project, particularly the lack of fair and adequate compensation, and informed the officials of the Ministries of significant discrepancies in compensation determination and distribution. During the meeting on 25 December, the Minister of Energy, Water Resources and Irrigation immediately called the Director of the Tanahu Hydropower Limited and discussed our issues. Considering the particular vulnerability of the affected families associated in the Committee, the Ministry also responded positively about increasing compensation for them but stated that the Ministry of Home Affairs should decide on it while we have reiterated our demand for land for land compensation. On the same day, we also registered a complaint on our concerns with the project with the National Human Rights Commission of Nepal.

9. On December 27, 2019, we also met the Secretary of the Ministry of Home Affairs, who immediately called the Chief District Officer (CDO) of Tanahu - the main official responsible for determination of compensation. The Secretary followed up on the decision of February 2017, when they Committees had submitted complaints about lack of fair and adequate compensation. However, the CDO expressed ignorance about the decision and could not find the relevant communication but has not written to the Ministry informing the same.

Despite our ongoing engagement and efforts, including recent meetings with the relevant Ministries and CDO, there has not been sufficient and timely progress from the Ministry or ADB on the issues and concerns we have raised. While there have been some efforts towards addressing our demands including provision of the RIPP in Magar language (though not in local dialect) and further consultations,
our key demands, including land for land compensation, remain unresolved. We are hence not satisfied with the responses received and therefore we file this present complaint to your office, requesting the use of independent mediation to find a solution.

We have authorized the Indigenous Women’s Legal Awareness Group (INWOLAG) and Community Empowerment and Social Justice Network (CEMSOJ) to act as our advisors in this process, with support from NGO Forum on ADB and the International Accountability Project. We attach evidence of authorization to represent us in Annex 3. The advisors do not make decisions for us, but will facilitate the communication and keep us informed of the progress. Formal communication should be provided in Nepali and English and when possible in our native Magar language. We would also request to receive the information in-person in our community Paltyang. For communication to coordinate the process, please contact us at tanahucommittee@gmail.com.

We reserve the right to amend this complaint with additional information should we decide to trigger the Compliance Review in the future. We seek remedy through the accountability mechanisms of other financiers of this project and ask your mechanism to coordinate with them, in consultation with us.

Sincerely,

Til Bahadur Thapa
Chairperson
Directly Inundation Affected Peoples Collective Rights Protection Committee

Sher Bahadur Thapa
Vice-Chair
Directly Inundation Affected Peoples Collective Rights Protection Committee

Tej Bahadur Thapa
Secretary
Directly Inundation Affected Peoples Collective Rights Protection Committee

Our advisors:
Advocate Indira Kumari Shreesh &
Advocate Ritu Thapa Magar
Indigenous Women’s Legal Awareness Group
Kumaripati, Lalitpur
inwolag@yahoo.com
## Annex 1

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Dear Tanehu Hydropower Limited, ADB Nepal Resident Mission, and ADB South Asia Department,

We, Directly Inundation Affected Peoples Collective Rights Protection Committee would like to reiterate our understanding and demands based on the consultation meeting with the Committee composed of representatives of families affected by the Tanehu Hydropower Project on the 9th March 2019, held at Pallayang Rural Development Committee office, Tanehu.

1. The consultation on 9th March 2019 was not adequate and meaningful. There was no document provided into the language and form we understand. In addition, the contents regarding Resettlement and Indigenous Peoples Plan (RIPP) presented at the meeting were not comprehensive and did not address our demands on the clarity of compensation or the grievance mechanism.

2. The agreement made on compensation by previous Committee(s) cannot be a basis for our 22 households as informed to us in the consultation meeting. We do not recognize the agreement made with other Committee you presented to us at the meeting. We contest this agreement because our community representatives should be included in the determination of the compensation based on ADB operational policy.

3. As we have requested previously, the full RIPP should be translated in the Magar language and provided to us in understandable form so that our Committee can make informed decisions. In addition, the community should receive a detailed consultation so that we can understand the impacts to our Indigenous peoples’ rights caused by the project. Please note that we have provided the name of the Magar translator that we know. Due to circumstances, the company should find and work with any translators to translate the document and send the draft translation to us. We will read the draft and send our comments. The burden of translation should not be on the community.

4. For these reasons, we do not give our consent to further the household survey process while we reiterate our demand for collective consultation. Only when the points above have been resolved will we consider our collective consent to start the household survey.

Sincerely,

Til Bahadur Thapa
Chair
Directly Inundation Affected Peoples Collective Rights Protection Committee
31st March 2019
Appendix 1

OSPF
Accountability Mechanism
Asian Development Bank.

[Handwritten text not legible]
OSPF’S ACKNOWLEDGMENT LETTER

From: Sushma Kotagiri
Sent: Tuesday, February 18, 2020 5:15 PM
To: jnwalog@gmail.com; shakya.prbn@gmail.com; cemsoj@gmail.com; tanahucommittee@gmail.com
Cc: Wilfredo R. Aglam; Warren Evans; Mary Jane V. David; basnet.shobha@gmail.com
Subject: Meetings regarding Tanahu hydropower project

Dear Indira Kumari Shreesh, Ritu Thapa Magar and Prabindra Shakya,

Namaste!!

I am Sushma Kotagiri, Principal Facilitation Specialist from the Office of the Special Project Facilitator (OSPF), Asian Development Bank, Manila. We have received a complaint from the community members organised as “Directly Inundation Affected People’s Collective Rights Protection Committee” supported by two NGOs (Indigenous Women’s Legal Awareness Group and CEMSOJ, represented by three of you) in the advisory capacity and noted the request for re-consideration of the complaint for problem-solving.

In this regard, we are proposing an initial mission to Nepal to meet with all the relevant stakeholders and conduct a field visit. During this mission, we plan to meet the project executing and implementing agency, the community who submitted the complaint including three of you. We had a teleconference this morning with the community representatives - Mr. Til Bahadur Thapa, Mr. Sher Bhadur Thapa and Tej Bahadur Thapa. Our national consultant, Shobha Basnet supported us on translation during the call and will continue to work with us on this complaint moving forward. We discussed with them the timeline and schedule for our proposed mission and they confirmed their availability to meet with us on Feb 29th; March 1st and 2nd.

I would like to get your confirmation on the below at the earliest in order for us to make necessary arrangements.

   a) OSPF’s (Warren Evans- Special Project Facilitator, myself and our national consultant) meeting with all of you on the 27th February (Thursday) in Kathmandu.
   b) We are offering to conduct a workshop in Pokhara on 1st March (Sunday) to review and assess the complaint in detail together with the Complainants after OSPF team have visited the site and met with the community on the 29th February (Saturday). We highly suggest you are all present for the workshop on the 1st March. We will revert with the venue and the timings once we have confirmation on the proposal on workshop from the Complainant representatives and yourselves.

Look forward to meeting you and working collaboratively on this issue.

Best,
Sushma

Sushma Kotagiri
Principal Facilitation Specialist (Accountability Mechanism)
Office of the Special Project Facilitator (OSPF)
# LIST OF STAKEHOLDERS MET

<table>
<thead>
<tr>
<th>No.</th>
<th>Stakeholders</th>
<th>Names of People Met</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Project Supervision Consultants (Lahmeyer International GmbH)</td>
<td>Social Safeguards Expert: Franz-Dieter Wahl</td>
</tr>
<tr>
<td>2.</td>
<td>Environmental and Social Management Service Provider, Electro Consult</td>
<td>Social Expert: Paola Chiodi Team Leader: Ettoire</td>
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<td>3.</td>
<td>Rural Empowerment Society Demauli Tanahu, Nepal</td>
<td>NGO compensation verification consultant: Sachin Upadhyay</td>
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<td>5.</td>
<td>Panel of Experts</td>
<td>Social Expert: Susan Novak</td>
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<td>6.</td>
<td>Local Consultative Forum (LCF)</td>
<td>Gunjaman Singh Gurung Maya Devi Rana Mr. Rajendra Krishna Shrestha</td>
</tr>
<tr>
<td>7.</td>
<td>NGO Advisors</td>
<td>Indira Shreeesh, Ritu Thapa, Shardaa Subba, Prabindra Shakya</td>
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<tr>
<td>8.</td>
<td>Supporting NGOs</td>
<td>Jocelyn Medallo and Tom Weerachat (International Accountability Project), Rayyan Hassan (NGO Forum on ADB)</td>
</tr>
<tr>
<td>9.</td>
<td>complainants</td>
<td>Til Bahadur Thapa, Sheer Bahadur Thapa, Tej Bahadur Thapa, Shardaa Subba</td>
</tr>
<tr>
<td>10.</td>
<td>ADB Project Team</td>
<td>Jiwan Acharya, Aaron Dennis, Ricardo Carlos Barba, Emma Marsden, Laxmi Subedi</td>
</tr>
<tr>
<td>11.</td>
<td>THL Project Authorities</td>
<td>Pradeep Kumar Thike</td>
</tr>
</tbody>
</table>

*ADB = Asian Development Bank, NGO = nongovernment organization, THL = Tanahu Hydropower Limited.*

*Source: ADB.*
TERMS OF REFERENCE - SOCIAL/INDIGENOUS PEOPLES EXPERT

I. Objective and Purpose of the Assignment

The expert will undertake meaningful consultations with and conduct a comprehensive socio-cultural-economic survey (SCES) of the “Directly Inundation Affected People’s Collective Rights Committee” (Magar) herein referred to as complainant Indigenous Peoples (IP) community affected by the Tanahu Hydropower Project, to determine and establish the direct, indirect, and differential impacts, if any, which result from their ethnicity and geography/location. The Office of the Special Project Facilitator (OSPF) of the Asian Development Bank (ADB) and the Complaint Mechanism (CM) of the European Investment Bank (EIB) are collaborating on this complaint and will continue to work closely with all relevant stakeholders in this problem-solving process.

II. Scope of Work

Under the overall guidance of the Special Project Facilitator, the expert will consult extensively with the complainant IP community affected by the Tanahu Hydropower Project in Nepal and prepare an action plan elaborating on (i) project impacts as individuals and as community; (ii) their entitlements; (iii) required income/livelihood restoration strategies; (iv) time-bound implementation schedule and budget for IP-related aspects; and (v) measures recommended for ensuring culturally appropriate benefits in order to facilitate resolution of the complaint issues submitted by the complainant IP community to OSPF and CM. The study methodology will include collective methods of research such as focus group discussions and/or community consultations as a priority over individual household questionnaire.

III. Detailed Tasks and/or Expected Output

In accordance with all the relevant laws, policies, and decrees of the Government of Nepal with regard to IPs, and the IP safeguard policy and/or principles of ADB and the EIB, the tasks of the expert will include, but not be limited to the following:

- Review and analyze the legal and institutional framework, laws and regulations at national and local levels applicable to IP complainants (here, primarily Magar) in the project area, to verify adequacy and consistency with ADB’s and EIB’s IP principles, and, if gaps are found, recommend measures to bridge such gaps;
- Review existing literature, data, and project documentation to establish direct negative impacts of the project on the complainant IP community;
- Conduct a comprehensive baseline SCES to gather information on the demographic, social, economic, geographical, educational, cultural, and political characteristics of the complainant IP community, including relevant knowledge-attitudes-practices (KAP), local and traditional/customary laws and practices, and a poverty profile, including assessment of the likely impact of land acquisition on the income and economic interdependence among households;
- Carry out the SCES through a household questionnaire, using appropriate sampling techniques. The SCES should also contain data on the likely impact of land acquisition on the income of and economic interdependence among households;
- Collect information on affected customary land and other natural resources on which the complainants depend for their livelihoods, both as members of individual households and of the community;
- Conduct meaningful, culturally appropriate, and gender sensitive consultations with each of the complainant households to verify and assess a full range of project impacts on them,
including impacts that are potential and actual, direct and indirect, short- and long-term, and positive and negative;

- Thoroughly review any competing land tenure systems and claims (ancestral, traditional and contemporary, individual title and community resources) by working closely with the relevant stakeholders and the land valuation expert, to determine the prevailing tenure relations, and confirm direct and differential impacts on both individuals and the IP community as a whole;
- Review and analyze any newspaper articles on civil unrest or conflicts between the Magar and other ethnic groups (including the dominant Nepali community), if any;
- Analyze gender relations within the affected IP community;
- Conduct a due diligence study on the affected people whose land has already been acquired, and to whom compensation has already been paid by the executing agency, to understand the differences between them and the complainant IP community with regard to factors like ethnicity, cultural practices, lifestyles, and livelihoods including indirect impacts that may result in religious/cultural loss due to the geography/location of their village if resettled;
- Conduct consultations with relevant stakeholders, including Tanahu Hydropower Limited project authorities, local government officials, local consultative forum officials, agencies working on IP-related issues and development, project's Panel of Experts, environment and social management service provider, project supervision consultant team, external monitoring experts; and
- Review all existing resettlement plans and social monitoring reports and advise about any issues or matters to reconsider for ensuring compliance with ADB's and EIB's requirements.

IV. Output/Reporting Requirements

The timeline for completing the above tasks will be 45 days, intermittent over a two-month period from the start of the work. Throughout the study, the expert will work with relevant stakeholders and the land valuation expert as a team and be guided by the Special Project Facilitator. The IP expert will work closely with the OSPF national consultant and Magar translator/facilitator and all reports will be produced in English, Nepali, and the complainant’s Magar dialect. Based on the activities carried out, the expert will submit a comprehensive report presenting the:

i. methodology adopted;
ii. comprehensive socio-cultural-economic questionnaire, followed by data analysis;
iii. impacts on and entitlements of IP households and communities;
iv. income/livelihood restoration strategies;
v. time-bound implementation schedule and budget;
vi. guided questions for consultation, including a detailed summary of the consultation process; and
vii. recommended measures for ensuring culturally appropriate benefits under the project, identified through the consultation process, to facilitate effective resolution of the complaint issues submitted by the complainant community.

V. Minimum Qualification Requirements

The expert will have a higher degree in sociology, anthropology, or other relevant field. He/She will have at least 10 years experience in dealing with IPs, land, and resettlement issues, working with affected persons and communities, and conducting consultations. The expert will have familiarity with the Government of Nepal’s policies and procedures, and ADB’s and/or EIB’s safeguards requirements. He/She must also have excellent written and oral communication skills.
I. **Objective and Purpose of the Assignment**

The independent expert shall verify and establish compensation rates for land, common property resources, grazing land, crops, trees, structures, and other non-land based income of the “Directly Inundation Affected People’s Collective Rights Committee” (Magar) herein referred to as complainant Indigenous Peoples (IP) community affected by the Tanahu Hydropower Project, to determine and establish the direct, indirect, and differential impacts, if any, which result from their ethnicity and geography/location. This will include an independent study on land registration system recognizing the rights of IP communities (focusing on complainants), land tenure system, and claims on individual titles, ancestral, traditional, and common property resources. The Office of the Special Project Facilitator (OSPF) of the Asian Development Bank (ADB) and the Complaint Mechanism (CM) of the European Investment Bank (EIB) are collaborating on this complaint and will continue to work closely with all relevant stakeholders in this problem-solving process.

II. **Scope of the Work**

Under the overall guidance of the Special Project Facilitator, the expert will consult extensively with the complainant IP community affected by the Tanahu Hydropower Project in Nepal and prepare an action plan elaborating on (i) project impacts as individuals and as community; (ii) their entitlements; (iii) required income/livelihood restoration strategies; (iv) time-bound implementation schedule and budget for IP-related aspects; and (v) measures recommended for ensuring culturally appropriate benefits in order to facilitate resolution of the complaint issues submitted by the complainants IP community to OSPF and CM.

**Approach.** Interviews will be conducted based on a predeveloped interview guide. The study methodology will include collective methods of research such as focus group discussions and/or community consultations as a priority over individual household questionnaire. The establishment of replacement costs will be carried out based on information collected from desk research, direct interviews with those persons who are complainants, those that are affected and have accepted the compensation provided by the Tanahu Hydropower Limited, and those not affected. Desk research will focus on relevant publications/documents, materials of government authorities, both at central and local levels, as needed, to help inform analysis and comparison. However, as the work is aimed at obtaining reasonable replacement costs for different types of affected assets, this will focus on collecting verifiable market evidence and utilize these to establish fair replacement values. The study will also look at land replacement options for the affected IPs in consultation with them depending on the availability of lands of the same nature and value as those of the affected IPs impacted by the project.

**Basis for Valuation.** The basis for valuation assessment of both land and real estate should be (i) research and market investigations, (ii) the results of any valuation surveys carried out by any other organization that is available; and (iii) survey maps of the land to be valued and surrounding land. Valuation of land must be undertaken by a licensed land appraiser/valuer.

III. **Methodology**

Methodologies to verify the replacement costs for land and each type of affected assets should be based on the national legislations recognizing the rights of IP community (focusing on Magar complainants) and ADB’s Safeguard Policy Statement 2009.
3.1 **Data collection**

The methodology, data to be collected, and sample size as presented below can be modified, as necessary.

3.1.1 **Land**

The objective of this establishment is to determine whether the district prices are sufficient or not to purchase the same quality and quantity of land. The establishment of compensation for the loss of land is based on its market value. The best way to obtain this market value is to gather data of some sales of land, which have just taken place. The expert will make their best effort to collect those sales evidence to support the verification of district prices. In addition, information to base the establishment will be collected from direct interviews with owners of land in project-affected area, including those whose land is affected and those whose land is not. The interviews will cover the following issues:

- the recent land use rights transfer in the area, and
- the price at which owners (affected and not affected persons) are willing to sell their land.

Price of land will be differentiated based on the use of land, including:

- garden land,
- agricultural land,
- forest land,
- grazing land,
- traditional land,
- ancestral land,
- individual titles, and
- common property resources.

The price of agricultural and forest land will also be differentiated by quality of land and its capacity to produce income for the households.

**SAMPLE SIZE:**

- Owners of affected land (complainants): ___ households
- Owners of affected land: ___ households
- Owners of not-affected land (adjacent to affected land or within the village): ___ households

3.1.2 **Crops and trees**

The objective of this establishment is to determine whether the district prices established are equivalent, lower, or higher than the average market price. The basis of the establishment is to determine the average market price for each type of crops and trees affected. The information to base the establishment will be collected from:

- Secondary sources
  - Publications of respective departments (environment, agriculture, forestry)
  - Publications of Compensation Determination Committee chaired by the Chief District Office (if available)
• Primary source
  o interviews with people who own the same crops and trees in the locality. The interviews will cover price at which owners are willing to sell each type of their crops and trees. The prices for perennial trees will be differentiated by the age of the trees.
  o The expert will investigate the sales price of outputs of different types of crops and trees in the market.

SAMPLE SIZE:
• Owners of crops and trees affected by the project : ___ households
• Owners of crops and trees not affected by the project : ___ households
• Seedling suppliers : ___ persons
• Market vendors : ___ persons
• Others : ___

3.1.3 Common property resources

The objective of this is to determine the common property resources and whether the district prices will enable affected peoples to replace their lost assets. The information to base the establishment will mainly be collected from direct interviews with complainants.

3.1.4 Other community-based facilities (electric posts, water supply system, water pipes)

For those facilities, the establishment will be based on the replacement costs. Similarly, in the case of structure, cost to construct those facilities will be determined to see whether the compensation is enough to reconstruct them. Information to base the evaluation will be conducted with officials in charge of constructing such facilities to determine material cost and labor cost.

3.1.5 Structures

Assessment of construction cost for different types of structures would be, in addition to others, based on: (a) interviews with owners of structures (type of main materials they used for their current structures, origin of the materials (local or transported from elsewhere), costs of various materials and labor, and (b) interviews with construction contractors (main materials which are most used by the local people to build their structures), costs of those main materials and labor, average construction cost (cost per sqm floor) for different types of structures according to different categories, and (c) validation of government construction prices (cost per square meter floor for each category), if available.

IV. Establishment of Project Unit Rates to be Applied

Based on the activities carried out, (i) present the methodology used and (ii) prepare a table with the unit rates to be applied for the project.

V. Output/Reporting Requirements

The timeline for completing the above tasks will be 45 days, intermittent over a two-month period from the start of the work. The tasks for the land valuation study is expected to be undertaken between July - August 2020. Throughout the study, the expert will work with relevant stakeholders and the social/IP expert as a team and be guided by the Special Project Facilitator. The land valuation expert will work closely with the OSPF national consultant and Magar translator/facilitator and all reports will be produced in English, Nepali, and the complainants' Magar dialect. Based on the activities carried out, the expert will submit:
Appendix 5

a. inception report with methodology to be adopted;
b. detailed report with the unit rates to be applied for different types/categories of land types/crops, trees, structures, common property resources together with supporting documentation from interviews and publication materials used; and
c. a breakdown of total budget for each of the categories.

VI. Minimum Qualification Requirements

A licensed/professional land appraiser/valuer must be engaged to prepare land valuations that are (i) prepared using internationally accepted methodologies, (ii) reflect market values and clear transaction costs, and (iii) are independent. The expert must hold all required licenses and registrations to practice as a land appraiser/valuer in Nepal with at least five years working in a similar field and have experience in replacement cost survey for projects funded by international agencies such as ADB and/or EIB. Preferably the expert will have strong knowledge on or significant experience in dealing with indigenous land and resettlement issues in Nepal and, specific understanding on land tenure/use and system of Magar people. He/she must be fluent in both written and spoken English.