

# Hanging by a Thread: Indigenous Peoples Rights in Renewable Energy Transition

How Multilateral Development Banks and  
States Deny the Rights to Free Prior and  
Informed Consent (FPIC) in Hydropower  
Projects in Nepal



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*Front cover photo:*

*The Khimti-Dhalkebar transmission line in Sindhuli district, Bagmati Province*

*Back cover photo:*

*Community members discussed with representatives from the European Investment Bank's Complaint Mechanism on the 220 kV Marshyangdi Corridor transmission line in Lamjung district, Gandaki Province*

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## ***About Accountability Counsel***

Accountability Counsel amplifies the voices of communities around the world to protect their human rights and environment. As advocates for people harmed by internationally financed projects, we employ community-driven and policy level strategies to access justice.

For more see: [www.accountabilitycounsel.org](http://www.accountabilitycounsel.org)

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For more see: [www.lahurnip.org](http://www.lahurnip.org)

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A woman community representative raised her concern about the 200 kv Marshyangdi Corridor transmission line in Lamjung district, Gandaki Province

Credit: Accountability Counsel

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# ABBREVIATIONS

ADB	Asian Development Bank
AIPP	Asia Indigenous Peoples Pact
AIIB	Asian Infrastructure Investment Bank
BOOT	Build-Own-Operate-Transfer
CEMSOJ	Community Empowerment and Social Justice Network
DEG	German Investment Corporation
EIA	Environmental Impacts Assessment
EIB	European Investment Bank
EIB-CM	European Investment Bank – Complaints Mechanism
ESS	World Bank's Environmental and Social Standard
FMO	Development Bank of the Netherlands
FPIC	Free, Prior, and Informed Consent
GRM	Grievances Redress Mechanism
IAM	Independent Accountability Mechanism
IAP	International Accountability Project
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IEE	Initial Environmental Examination
IFC	International Finance Corporation
IHA	International Hydropower Association
ILO	International Labour Organisation
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
IWGIA	International Working Group for Indigenous Affairs
JICA	Japan International Cooperation Agency
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
MDB	Multilateral Development Bank
MIGA	Multilateral Investment Guarantee Agency
NEA	Nepal Electricity Authority
NFDIN	National Foundation for Development of Indigenous Nationalities
NWEDC	Nepal Water and Energy Development Co. Pvt. Ltd.
OPEC	Organization of Petroleum Exporting Countries
PAPs	Project Affected Peoples
PDA	Project Development Agreement
PPA	Power Purchase Agreement
RIPP	Resettlement and Indigenous Peoples Plan
SIA	Social Impacts Assessment
THL	Tanahu Hydropower Limited
UAHEL	Upper Arun Hydro-Electric Limited
UNGP	United Nations Guiding Principles on Business and Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UT-1	Upper Trishuli-1 Project

# EXECUTIVE SUMMARY

This report examines the implementation of ***Free, Prior, and Informed Consent (FPIC)*** in the context of hydropower development projects in Nepal, a right explicitly enshrined under international law and policy safeguards (akin to internal rules) of Multilateral Development Banks (MDBs). Focusing on four major projects—***Likhu Project, Tanahu Project, Upper Trishuli-1 (UT-1) Project, and Upper Arun Project***—the report evaluates whether FPIC was meaningfully conducted and respected during project planning, design, implementation, and operation (across “project cycle”). This also includes the evaluation, whether FPIC was carefully considered during the project proposal, appraisal, negotiation and approval phases within MDBs, where decisions regarding the financial aspects of the project were taken. Even if indirectly placed as due diligence, assistance, supervision, monitoring obligations, FPIC is as much an independent obligation of the MDBs, as of the state authorities and private actors implementing the project, and their internal rules oblige MDBs not to finance projects that do not comply with their safeguards policies. Where such non-compliance comes to knowledge subsequently, MDBs are required to undertake all efforts to pursue corrective actions, including suspension or termination of the project where need be.

The report finds ***frequent shortcomings***, including failures by the Nepal Electricity Authority (NEA) and other state authorities, private developers, and MDBs, to adhere to FPIC requirements, resulting in adverse social, cultural, and environmental impacts on indigenous peoples. It finds that even in projects where the responsible ‘project actors’ (in this report refer to state authorities, state-owned enterprises, MDBs, private companies, and consultants who are involved in hydropower projects’ initiation, planning, approval, implementation, and evaluation) claimed that FPIC was conducted, it did not reflect fully informed, timely, and meaningful consent, nor did it respect indigenous peoples’ rights to participatory decision making via their own systems of governance, or following community protocols. Instead, project actors repeatedly used or legitimised narratives, and acted or omitted to act in ways that had the effect of disentitling rights holders from fully and meaningfully participating in the process, or pre-deciding project outcomes. ***In other words, a lack of meaningful conduct of FPIC is inherent to all these hydropower projects.***

Project actors’ stances reflect either, a lack of understanding regarding the contents of FPIC as a right in international law— to which MDB’s internal rules and state parties’ regulatory frameworks commit to be aligned— or a willingness to overlook these standards, for instance, in working with a borrower, project implementer, or state regulator, that consistently fails to comply. This is even though MDB’s internal rules explicitly make the consideration of the borrower’s capacity and commitment to implement safeguards a material consideration as early as the project selection phase, and then throughout, in for example, in the determination of risk categorization – which further determines how frequent and detailed project monitoring should be – and finally, require them to terminate relationships where they are unable to exercise any leverage, or the exercise yields no corrective actions.

# KEY FINDINGS

## 1 Failure to conduct FPIC processes by responsible project actors

- ◆ Across all four projects, project actors either entirely avoided conducting FPIC, or implemented their obligation inadequately, often reducing it to mere consultations or information-sharing exercises.
- ◆ Project actors initiated FPIC processes after project approvals were already given or secured, or during implementation, contrary to international law and safeguards policies that require FPIC before the project's commencement.

## 2 Recurring patterns of non-compliance

- ◆ **State practices:** Non-recognition of customary land rights precluded FPIC obligations. Land was often reclassified as "government forest land", and those residing on the land termed as "encroachers" to facilitate expropriation.
- ◆ **Project implementers:** FPIC has been equated with consultations rather than consent, and indigenous governance structures were bypassed in favour of ad hoc councils or local-level government bodies.
- ◆ **MDBs:** Financing agreements often overly relied on borrower-client narratives and documents, without also conducting their own assessments. In some instances, they also imposed conditions that were lower than the MDB's own Safeguards, with compensation and benefits treated as substitutes for FPIC.

## 3 Harms caused to Indigenous Peoples

- ◆ Affected communities reported incomplete information disclosure, inadequate compensation, and retaliations against those resisting project activities.
- ◆ Projects financed by the MDBs caused physical displacement, environmental degradation, loss of livelihoods, cultural heritage, and traditional knowledge, social conflicts, risks to physical security and safety, amongst others.

# RECOMMENDATIONS TO MULTILATERAL DEVELOPMENT BANKS AND FINANCIERS

- 1** **Strengthen FPIC implementation** Ensure FPIC is conducted prior to the start of the project cycle, and before any construction works begin, with substantive engagement through legitimate indigenous governance systems.
- 2** **Consider FPIC as a dynamic process** Ensure that FPIC constitutes substantive engagement with indigenous peoples, throughout the process, and not simply a “yes” soliciting exercising.
- 3** **Expand the scope of affected communities** Identify all impacted groups, including those indirectly affected, and conduct inclusive consultations.
- 4** **Improve information disclosure** Provide culturally appropriate, comprehensive, and timely information about projects and their impacts.
- 5** **Adhere to mitigation hierarchies** Treat compensation and benefit-sharing as supplementary to FPIC rather than substitutes for FPIC.
- 6** **Hold borrowers accountable** MDBs should scrutinise borrowers’ track records and disengage from borrowers who repeatedly violate the safeguards.



A SinoHydro 50MW Upper Marsyangdi A dam in Lamjung district, Gandaki Province.

Credit: Accountability Counsel

# INTRODUCTION

This report examines whether Free, Prior, and Informed Consent (FPIC), a right held by Indigenous Peoples under international law, and explicitly mentioned under the Policy Safeguards of several Multilateral Development Banks (MDBs) has actually been undertaken in the course of development projects in Nepal. It specifically examines hydropower projects, whether implemented by the public sector, or the private sectors with support of the Nepal Electricity Authority (NEA) and the Government of Nepal. Hydropower plants and their ancillary infrastructure, such as sub-stations, towers, transmission lines, access roads, and construction quarters,<sup>1</sup> are indispensable to the main project, but they also hold the potential to collectively cause a range of harms, including destabilising entire ecosystems.<sup>2</sup>

The report was prepared in the context of two complaints raised against the NEA-implemented transmission line-projects<sup>3</sup> in Nepal, meant to evacuate electricity generated from hydropower plants on the Bhote Koshi and the Marshyangdi rivers. The transmission lines are called the 220 kV Khimti Dhalkebar and the 220 kV Marshyangdi transmission lines, respectively. Complaints against these two projects were raised with the World Bank's Inspection Panel and the European Investment Bank's (EIB) Complaints Mechanism (EIB-CM) by project affected communities represented by FPIC and Rights Forum, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and Accountability Counsel regarding violations of communities' rights to FPIC, meaningful participation and consultations, and the serious harms caused through physical and economic displacement, to their safety and security, to their environment, culture, spirituality and identity.

In both instances, the compliance reports produced by the accountability mechanisms of the two MDBs (the Inspection Panel and the EIB-CM), from 2015 and 2021, vindicated the similar concerns raised by the communities. The Marshyangdi Corridor Transmission Line Project complaint is currently at the monitoring stage before the EIB-CM. Yet, the issues from these projects remain unresolved till date. The NEA continues to violate its obligations, issuing land acquisition notices, tenders for contracts, signing regional power trade agreements to expand the project, while refusing to address legitimate concerns or engage in good-faith dialogue processes with the affected communities.

The authors of this report were struck by the inadequacies and similarities in the NEA's approach to FPIC and the flagrant violations of community rights in both projects with the problematic approval from the MDBs financiers. This led us to look into other hydropower and related infrastructure projects in Nepal, to explore how deep these problems go. The authors decided to focus on

1. A useful resource is the Business and Human Rights Resource Centre (BHRRC) published report that found over 265 human rights violations related complaints across 32 hydropower projects from Central Asia and the Caucasus between 2008 and 2021. See, "Drying Up: Tracking the Environmental and Human Rights Harms Caused by Hydropower in the Caucasus and Central Asia," Business & Human Rights Resource Centre, accessed March 5, 2025, <https://www.business-humanrights.org/en/from-us/briefings/drying-up-tracking-the-environmental-and-human-rights-harms-caused-by-hydropower-in-the-caucasus-and-central-asia/>

2. The authors of this report are not taking a position in favour of, or against hydropower projects, including in Nepal, as this position lies to the sole and independent discretion of the communities affected by such projects. We however recognize that large-scale hydropower projects might particularly impact and hold risks for communities at the basin-level, and suggest that all those concerned: project developers, state authorities, and project financiers uphold their international obligations, including the obligation to conduct FPIC in indigenous peoples territories.

3. Nepal Power System Expansion Project, Project Summary Sheet," European Investment Bank (EIB), accessed March 5, 2025, <https://www.eib.org/en/projects/all/20130599>.

hydropower and related infrastructure, considering how the “just transition” and “climate finance” narrative has seen increasing inflows from financiers, particularly into this sector in Nepal. Given the increasing tendency now amongst MDB financiers to expedite (“streamline”) project approvals and disbursements to combat climate change,<sup>4</sup> an assessment of whether the sector regularly violates and disregards the rights of its frontline communities, is necessary.

The report compares four hydropower projects developed or implemented by the NEA and private sectors with the approval of the Government of Nepal and the investment from the MDBs,<sup>5</sup> which were required to obtain FPIC under international law: (1) Likhu, (2) Tanahu, (3) Upper Trishuli-1 (UT-1), and (4) Upper Arun hydropower projects. It finds that those responsible for the projects have either completely avoided FPIC, or engaged in an FPIC process that falls short of internationally recognized standards. This is the case even where project implementers, expert consultants and international financiers claim it was “successfully” conducted. Some problematic practices, such as conducting FPIC only once the project has started, or watering down FPIC provisions to imply only consultations, are recurrent, and exhibit a pattern of disregarding the right to FPIC. These practices are all the more concerning in the case of a sector that has seen repeated assertions from communities that hydropower projects and their ancillary infrastructure have created insecurities for indigenous peoples over their rights to ownership, use and access over their traditional lands and natural resources. Communities reported that the projects not only physically displaced them, but also undermined their livelihoods, traditional knowledge and cultural heritage. In some cases, community members faced retaliations and threats for standing up to protect their lands and environment.

As more MDBs keep committing to increase their roles as climate banks<sup>6</sup> and investing in renewable energy projects—including hydropower and its ancillary structures—this report intends to provide recommendation to state apparatus and international financiers, who have a responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights (UNGPs) and other international laws. This includes the responsibility to conduct human rights due diligence, and to revise their practices where necessary, so as to meaningfully discharge their obligations towards indigenous peoples, including using leverage to prevent, mitigate, and remedy the harms caused as a result of their projects. To promote a “just transition”, financiers need to ensure long-term environmental and social sustainability of the project—which is not possible if their understanding and practices over what constitutes “FPIC” are fundamentally misaligned with international standards, and communities’ claims.

4. Lama Almoayed, “Climate Finance: Is It Doing More Harm than Good?” Accountability Console Newsletter, December 5, 2023, accessed March 5, 2025, <https://www.accountabilityconsole.com/newsletter/articles/climate-finance-is-it-doing-more-harm-than-good/>.

5. For instance, in the UT-1 Project, the private company entered into agreements, where the Government of Nepal, Ministry of Energy, NEA, were some of the counterparties, responsible for ensuring the project’s regulatory compliance, financial viability, operational standards, tariff-setting. Thus, while the NEA remains one of the major counterparties in such agreements to the private party, it continues to exercise its regulatory roles vis-a-vis third parties (consumers, local communities) with respect to such an agreement.

6. “2023 Joint Report on Multilateral Development Banks’ Climate Finance,” Inter-American Development Bank (IDB), September 2024, accessed March 5, 2025, <https://publications.iadb.org/en/2023-joint-report-multilateral-development-banks-climate-finance>.

# RESEARCH METHODOLOGY

Based on communities' complaints, fact-findings, and media reports, this report identified four hydropower projects with the NEA as the implementing authority, or the primary regulatory authority, in the case of private sector projects, where rights holders have alleged violations of FPIC and other indigenous peoples rights.<sup>7</sup> The authors intentionally selected a smaller sample size of projects so as to not be unwieldy, during analysis. Additionally, the projects selected were those where reports were ample, and could be used to corroborate onto each other. The authors used open-source secondary data, including project document, community or advocacy reports, media reports, to scope the projects and primary data including testimonies from affected community members to conclude the findings and support the recommendations.

## A. UNDERSTANDING FREE, PRIOR, AND INFORMED CONSENT (FPIC)

This section offers an overview of relevant international standards, and best practices on FPIC, drawing from international conventions, declarations, MDBs' environmental and social standards, and guidance and interpretative documents.

### 1. International law standards

The International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention, 1989 (C169), along with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) form the principal instruments concerning rights of indigenous peoples under international law, along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the C169 is a treaty that is legally binding on all ratifying member states, the UNDRIP is a non-binding political statement<sup>8</sup> that complements the C169, along with the outputs produced by the several advisory, monitoring, and supervisory mechanisms that guide their respective implementation.<sup>9</sup>

Under international law, Indigenous Peoples are entitled to positive and special measures, beyond the prohibition on discrimination and equal entitlement to all rights, because of their histories of marginalisation and dispossession. They are self-identified – hence, their rights and entitlements, including the right to FPIC, do not depend on the state's formal recognition of their status as indigenous. However, along with this subjective criteria, they must also meet objective criteria, such as: (1) historical association with their lands through their ancestors, (2) common histories of dispossession and political and/or legal marginalisation, (3) primary reliance on land for livelihoods, and collective rights over properties, (4) distinct socio-economic, cultural and

7. Not all of these projects triggered complaints before Independent Accountability Mechanisms (IAMs) of the MDBs. Some communities might have expressed their grievances through other mediums such as protests, domestic complaints, or even extensive documentation.

8. International Labour Organization (ILO), "Indigenous and Tribal Peoples' Rights in Practice: A Guide to Convention No. 169" (Geneva: ILO, 2009) page 25.

9. ILO, "Guide to Convention No. 169". These outputs can variously include: periodic reports, observations and recommendations on treaty compliance, formal reports and decisions concerning convention-breach related complaints, Special Rapporteur's recommendations, annual reports and recommendations from the Expert Forum on Indigenous Peoples to member states, etc.

possibly even political institutions including laws and traditions from the country.<sup>10</sup> Finally, they might be referred to by other nomenclature, including “hill people”, “tribals”, “adivasis”, “janjatis”, “pastoralists” within their respective countries,<sup>11</sup> but this does not deprive them of their statuses under international law as state identification is merely declaratory.

At the core of Indigenous Peoples rights, sits the Right to Self-Determination, whether in terms of determining their political statuses, pursuing their own social, economic, and cultural development,<sup>12</sup> or in exercising autonomy and self-governance.<sup>13</sup> Both C169 and the UNDRIP provide for provisions that allow for the operationalisation of this right, including, through the rights to participation and consultation. These rights are cross-cutting, and member states have an obligation to operationalise them through legislative, administrative and other institutional means, ***including in the course of development projects***.<sup>14</sup>

For instance, the C169 provides for indigenous peoples participation and consultation in the identification of the extent of their lands, as part of the obligation cast on governments to protect them.<sup>15</sup> States also have the obligation to give legal recognition to the lands customarily owned, occupied, or used by Indigenous Peoples, and to have in place appropriate mechanisms or processes for adjudication of their rights.<sup>16</sup> ***Thus, not only are Indigenous Peoples part of the process, but also they have rights over its substantive outcomes.***<sup>17</sup>

FPIC is a manifestation of these rights. While it is implicit in the C169, it is explicitly mentioned in the UNDRIP, and must be conducted in the course of: (a) relocation activities,<sup>18</sup> (b) legislative and administrative measures which may affect indigenous peoples,<sup>19</sup> (c) approval of projects which might affect the utilisation or exploitation of their lands, territories, and natural resources<sup>20</sup>. The provisions do not provide any exceptions to the right to FPIC, including where affected people have agreed to compensation, or other benefit-sharing measures. ***In other words, compensation and benefits cannot off-set the obligation to conduct FPIC which is mandatory in the three above-mentioned instances.***

The UNDRIP also clarifies when FPIC should be conducted—***prior to the approval*** of the project, affecting such lands and territories, and through their representative institutions.<sup>21</sup> At the very least, it ***should be conducted*** for projects which the UN Human Rights Council clarifies, “substantially compromise or interfere with economic activities of Indigenous Peoples”.<sup>22</sup> As a best practice

10. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), article 33, para. 1; ILO, “Guide to Convention No. 169” pages 9–10.

11. ILO, “Guide to Convention No. 169” page 14.

12. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), article 3. There is no explicit reference to this, in the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO C169).

13. UNDRIP, article 4. There is no explicit reference to this, in the ILO C169, but it is understood.

14. UNDRIP, article 3. The UNDRIP clearly links this act of deciding upon development priorities to the right to self-determination: “Indigenous Peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

15. See, ILO C169, articles 2, 33, read together, on the government’s obligation towards promotion, protection and respect through coordinated and systematic actions.

16. UNDRIP, articles 26 and 27.

17. ILO, “Guide to Convention No. 169” page 26.

18. UNDRIP, article 10.

19. UNDRIP, article 19.

20. UNDRIP, article 32.

21. UNDRIP, article 32.

22. Friends of the Earth, US, “Protecting Biodiversity from Harmful Financing: No Go Areas for the International Banking Sector,” Briefing Paper no. 7, August 2023, page 6, accessed March 5, 2025, [https://foe.org/wp-content/uploads/2023/08/08\\_07\\_FoE](https://foe.org/wp-content/uploads/2023/08/08_07_FoE)

measure, FPIC should be recurring and undertaken for each phase of the project, or when there are to be any changes to it.<sup>23</sup> Friends of the Earth, a non-profit organization, has also stated that best practice is for financiers to steer away from certain sectors or projects altogether which communities have long opposed, as it is unlikely dialogues can effect change in stance in such cases.<sup>24</sup>

FPIC clarifies that indigenous peoples are not just stakeholders, but rights holders in themselves – a recognition that would imply that consultation processes are not mere tools to effectuate consent, and one need not always turn to states, to make decisions on indigenous peoples' behalf on what is in their best interests.<sup>25</sup> In recognition of this interpretation, international best practice has seen the incidence of more Indigenous Protocols<sup>26</sup>, established by indigenous peoples and providing details on their preferred models of development, and clarifying who should be consulted, who represents the indigenous group, how, and through what engagement and consultations processes. In many instances, their conception of development could be fundamentally different to a state's national action plans.<sup>27</sup> In these cases, international law would require states to respect the indigenous group's conception, and accordingly cooperate.

## 2. Financier standards:

Amongst development financiers, the World Bank's Environmental and Social Standard 7 (ESS 7) generally provides for identification, consultation and participation of indigenous peoples in culturally appropriate projects, and follows a mitigation hierarchy, which first attempts to avoid harms altogether. Only when that is not possible, it seeks to prevent, and finally, mitigate and compensate. To clarify, we take the World Bank's standards as an example, since the World Bank has been the forerunner on establishing these safeguards and other MDBs have, since the former's first review in 2006, largely come to establish similar standards—whether for reputational and legal reasons, or policy harmonisation and coherence amongst lending institutions.<sup>28</sup>

In addition to the general provisions that require "consultation" and "engagement" for all projects that affect indigenous peoples in any way, **ESS 7 also lists three circumstances where Free Prior Informed Consent (FPIC) is a must.**<sup>29</sup> These include: (a) where there are any adverse impacts on land and natural resources, subject to traditional ownership or under customary use and occupation, (b) the project causes their relocation from such land and natural resources, or, (c) has significant impacts on their material cultural heritage, or cultural and spiritual identities.<sup>30</sup>

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23. Friends of the Earth, "Protecting Biodiversity Briefing Paper no. 7", page 5.

24. Friends of the Earth, "Protecting Biodiversity Briefing Paper no. 7", page 18.

25. "Indigenous Peoples' Territories, Resources Still Being Seized, Exploited, Despite International Standards Guaranteeing Their Rights, Speakers Tell Permanent Forum," United Nations Press Release HR 5468, April 26, 2022, accessed March 5, 2025, <https://press.un.org/en/2022/hr5468.doc.html>.

26. For an example of a community-led Indigenous Protocol, see "Free, Prior, and Informed Consent Protocol," by Communities Affected by the EIB-Funded 220 kV Marsyangdi Corridor in Nepal, FPIC and Rights Forum, October 8, 2020, accessed March 5, 2025, [https://www.accountabilitycounsel.org/wp-content/uploads/2020/10/fpic-protocol\\_final.pdf](https://www.accountabilitycounsel.org/wp-content/uploads/2020/10/fpic-protocol_final.pdf).

27. Permanent Forum on Indigenous Issues, "International Expert Group Meeting on the Theme 'Indigenous Peoples, Business, Autonomy and the Human Rights Principles of Due Diligence, Including Free, Prior and Informed Consent': Note by the Secretariat," April 25 – May 6, 2022, page 4, accessed March 5, 2025, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/247/93/PDF/N2224793.pdf?OpenElement>.

28. "Comparative Review of MDB Safeguard Systems," World Bank Consultations, May 2015, accessed March 5, 2025, [https://consultations.worldbank.org/content/dam/sites/consultations/doc/migration/mdb\\_safeguard\\_comparison\\_main\\_report\\_and\\_annexes\\_may\\_2015.pdf](https://consultations.worldbank.org/content/dam/sites/consultations/doc/migration/mdb_safeguard_comparison_main_report_and_annexes_may_2015.pdf).

29. See "Guidance Note for Borrowers: Environmental and Social Standard 7 (ESS7)," World Bank, June 2018, para. 25(b), accessed March 5, 2025, <https://pubdocs.worldbank.org/en/972151530217132480/ESF-GN7-June-2018.pdf>.

30. World Bank, "Guidance Note, ESS 7", para. 24.

The guidance note explains that FPIC is not contingent on whether the impact is positive or negative (no off-sets) or that it is not significant. The significance of impacts is only relevant for the development of mitigation measures and plans.<sup>31</sup>

Here, we acknowledge that the financier standards fall short of what is required under international law—where FPIC is applicable to all projects that affect indigenous peoples. Asian Development Bank's (ADB) standards for instance, currently require consent demonstrating broad based community support in certain circumstances where the project (1) involves physical relocation of the community, (2) proposes commercial developments of their cultural resources or knowledge, or (3) commercial development of natural resources within the community's lands that affects their livelihoods, cultural and spiritual uses that directly bears on their identities—without going so far as to refer to FPIC.<sup>32</sup> Although the environmental and social standards now proposed explicitly mention FPIC, the circumstances requiring so are similar to that of the World Bank's ESS7<sup>33</sup>—i.e. still not fully in alignment with international law.

Nevertheless, these standards establish clear consent as the norm for certain projects and separate it (as additional) from community consultation, participation, and disclosure.<sup>34</sup> Like the World Bank,<sup>35</sup> the ADB too commits to not finance a project, or a component of that project that requires FPIC (or consent) and where the borrower has failed to demonstrate it and the Bank is unable to ascertain the same.<sup>36</sup>

***Presence of other groups in the region, does not disentitle indigenous peoples from claiming their rights to FPIC.***<sup>37</sup> As the ESS 7 clearly states, the pretext to FPIC obligations, is collective attachment to the land/resources in question, and distinct identity of the group.<sup>38</sup>

As part of FPIC, actors responsible for executing or financing the project, must provide meaningful disclosure of project information, including details such as its nature, executing/implementing agencies, source of finance,<sup>39</sup> impacts and risks associated with it. The information should be disaggregated on gendered basis and how they affect different sub-groups, how they seek to prevent, mitigate or compensate Project Affected Peoples (PAPs), and the presence of Grievance Redress Mechanisms (GRMs) to redress any grievances at any stage in the project cycle.<sup>40</sup> Information must be in the language understandable by the affected peoples and provided in culturally appropriate ways.

The Guidance Note to the World Bank's ESS 7 clarifies that FPIC is not only procedural, but also substantive, and the borrower must engage in negotiations over the project design, implementation arrangements, and expected outcomes and risks. This includes the possibility

31. World Bank, "Guidance Note, ESS 7", pages 3 and 5, Guidance Note 12.1.

32. ADB, "Safeguard Policy Statement," June 2009, paras. 33 and 55.

33. ADB, "Revised Environmental and Social Framework," October 2023, ESS 7.

34. ADB, "Safeguard Policy Statement," June 2009, para 55.

35. World Bank, "Guidance Note ESS7", para. 27.

36. ADB, "Safeguard Policy Statement," June 2009, para. 55.

37. The Permanent Forum and the UN Special Rapporteur on the Rights of Indigenous Peoples has also clarified, that the term "Indigenous Peoples" should be avoided being used simultaneously with local communities, minorities, or other vulnerable groups, so as to undermine their status and entitlement to special protections. See, Friends of the Earth, "Protecting Biodiversity Briefing Paper no. 7", footnote 34.

38. World Bank, "Guidance Note, ESS 7", page 4.

39. Friends of the Earth, "Protecting Biodiversity Briefing Paper no. 7", page 10. These details could include for example, the track record of these financiers, whether and what legal actions and allegations have previously been brought / levelled against them, etc.

40. Friends of the Earth, "Protecting Biodiversity Briefing Paper no. 7", pages 9-10.

that FPIC may require change or modification of initial project plans.<sup>41</sup> It also addresses **who** the borrower should engage with, for FPIC purposes: those who are considered by the majority of that indigenous community, to be legitimate authorities to make decisions on their behalf. **This means, FPIC should not be obtained through government institutions or elected representatives where they do not legitimately represent indigenous peoples interests.**

### 3. National standards and Nepal country context:

Nepal ratified the C169 in 2007 and voted in favour of the UNDRIP, leading to its adoption in 2007 by the UN General Assembly. The state is also party to other relevant civil, political and socio-economic conventions, including the ICCPR, ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and so on. Nepal's indigenous population represents up to 36% of its total population,<sup>42</sup> but its history is one of discrimination, marginalisation, colonisation and dispossession of indigenous peoples' lands, forests, and natural resources.<sup>43</sup>

Nepal's Constitution, the state's supreme legal framework, is premised on principles of peoples' sovereignty, autonomy, proportional inclusion, and participation, towards achieving economic equality, prosperity, and social justice for all. Article 51(b)(3) of the Constitution commits the state to implementing international treaties and agreements to which Nepal is a party, including the C169 and the UNDRIP, that are directly relevant to indigenous peoples. Article 51(j)(8) commits the state to protecting the rights of indigenous peoples, including their dignity and identity, and ensuring their participation in decision-making processes that concern them. It also envisions special provisions for benefit-sharing and the protection and promotion of traditional knowledge and culture. However, Nepal has failed to enact laws that implement these constitutional commitments, including those pertaining to the implementation of C169 and UNDRIP.

Even though Nepal has relevant statutes that acknowledge the presence of Indigenous Peoples<sup>44</sup>, these are not adequate to address questions of their specific rights and entitlements, including their core Right to Self-Determination. This right, manifesting in the communities' exercise of customary rights over their land, territories, and natural resources, rights to consultation and participation, rights to representation - are either not explicitly provided, or not operationalised. Indigenous peoples' representation within governance structures has also long been through party lines,<sup>45</sup> compromising the ability to truly advocate for the peoples.

41. World Bank, "Guidance Note, ESS 7", paras. 25.3, 25.5

42. International Work Group for Indigenous Affairs (IWGIA), "Indigenous World 2023: Nepal," accessed March 5, 2025, <https://www.iwgia.org/en/nepal/5129-iw-2023-nepal.htm>.

43. For instance, The Private Forest Nationalization Act 1957 where administration of forests was handed over to the state, composed primarily of Brahmins and Chhetris. See, "Nepal," Minority Rights Group International, accessed March 5, 2025, <https://minorityrights.org/country/nepal/>. In 1964, Nepal's Janjatis were deprived of their collective rights to land and natural resources, and the Supreme Court also held the use of indigenous languages in local administration as unconstitutional, instead affirming the state policy of one dress, one religion, and one language, see James Anaya, "Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum on Report on the Situation of Indigenous Peoples in Nepal," July 20, 2009, accessed March 5, 2025, [https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add3\\_E.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add3_E.pdf).

44. Under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2002, Nepal identified 59 groups as being "indigenous" although several sub-groups claim to be distinct enough to be recognised as a separate group.

45. For example, NFDIN is a semi-autonomous body with its council having indigenous and government representatives. See, "National Foundation for Development of Indigenous Nationalities Ineffective Due to Politicization," Indigenous Voice, May 22, 2020, accessed March 5, 2025, <https://english.indigenousvoice.com/news/national-foundation-for-development-of-indigenous-nationalities-ineffective-due-to-politicization>. For a comprehensive history of the politics of indigenous participation and representation during constitutional drafting periods, see, "Constitutional Politics and Indigenous Peoples

Though there have been a few successful attempts by indigenous peoples to realise their rights to information, participation, representation, and benefit-sharing in projects through writ petitions and judicial reviews<sup>46</sup>, these cannot make up for the fact that national laws remain inadequate, which can further limit their rights to demand conduct of FPIC.

For instance, non-recognition of collective ownership or land titling remains an issue. Only the local government is granted the authority to document public, government and community property,<sup>47</sup> which leaves communities' rights at the discretion of the state. In the absence of such recognition, national governments can label those customarily occupying or using the land as "encroachers" and "squatters" and refuse to confer upon them the rights to FPIC. The other issue or rather, tactic that the state usually uses, could be the use of exceptional clauses to skirt the obligation to take communities' consent or to provide them with compensation<sup>48</sup>.

***In other words, financiers cannot rely simply on existing national laws and regulations, if they are to comply with their own safeguard commitments to observe FPIC in all cases of projects built on or affecting indigenous peoples' lands, territories and resources.***

In 2016 the Nepal Government also came up with an energy plan that would go back on several protections, including limiting the circumstances where developers are obliged to prepare Environment Impact Assessment (EIA) and Social Impact Assessment (SIA)s, or obligation to identify and provide land of equal measurement, in return for land acquired for a project, in an attempt to incentivise more private businesses. These could have repercussions for information disclosure, or entitlements of indigenous communities – all of which directly influence their consent.<sup>49</sup>

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in Nepal," International Work Group for Indigenous Affairs (IWGIA), accessed March 5, 2025, page 5, [https://www.iwgia.org/images/publications/0686\\_Constitutional\\_Politics\\_and\\_Indigenous\\_Peoples\\_in\\_Nepal.pdf](https://www.iwgia.org/images/publications/0686_Constitutional_Politics_and_Indigenous_Peoples_in_Nepal.pdf). These had direct implications on how Indigenous Peoples rights were diluted from traditional ownership, and customary use and occupation, to mere "access" rights. See also, James Anaya, "Letter on the Alleged Exclusion of Indigenous Peoples' Freely Chosen Representatives from the Process of Developing Nepal's New Constitution," A/HRC/15/37/Add.1, September 15, 2010.

46. There have been some successful cases of using constitutional guarantees on other fundamental rights, such as the right to property, or to information, in an instrumental manner, towards their rights claiming processes (for e.g. disclosure of financing agreements, or obligation to provide compensation for land acquisition). See, "As They Like It," The Record, accessed March 5, 2025, <https://www.recordnepal.com/as-they-like-it>.

47. Local Government Conduct Act, 2017 vests this "right" upon the local governments.

48. See, Constitution of Nepal, article 25(4) providing "reforms" to environment, urban development, or agricultural modernisation, as exceptions to additionally showing public interest in land acquisition.

49. These were directly influenced by the Ministry of Energy launched National Energy Crisis Reduction and Electricity Development Decade Concept Paper, 2016, followed by an Action Plan. See, "Hydro boom sparks violent conflicts in Nepal", Danwatch, October, 27 2016, <https://danwatch.dk/en/hydro-boom-sparks-violent-conflicts-in-nepal/>.

## B. FPIC IN IMPLEMENTATION:

*“Regarding FPIC: is it possible to have FPIC again? They [community] did not know this before....should the private companies do FPIC or the Banks?”*

*“Ami Bhumipatra, Ami Adibashi [I am the son of this land, I am an indigenous person]....Until and unless the project addresses the problems of the community, they can't ensure livelihoods and survival of the community members. We don't need any project there. Communities should have shares within the project, and company should distribute benefits. We need compensation as well as livelihood secured.”*

*-- Community Leader affected by the Upper Arun Project* <sup>50</sup>

This section identifies some recurring patterns across the four hydropower projects: Likhu Project, UT-1 Project, Tanahu Project, and Upper Arun Project<sup>51</sup> – all executed or regulated by the NEA. It divides these patterns by the actors to whom they are most attributable namely, state, project executing or implementing authorities, and financiers. Although the Likhu Project was not an MDB-financed project, it was being executed and regulated by the NEA – and reflects the same lack of respect towards FPIC and Indigenous Peoples rights, that it displays towards projects where it commits to higher standards, on account of the financing agreement with the MDBs concerned.

### 1. Problematic patterns exhibited by the State:

#### ***Denial of FPIC where indigenous land lacks legal recognition***

FPIC processes are jeopardised by the non-recognition of land that is customarily owned, held or used by indigenous peoples, even though international law and jurisprudence does not require land to be legally recognized or titled by the state to trigger FPIC. The right to FPIC applies to indigenous peoples' traditional lands, regardless of formal state recognition. For example, in the UT-1 Project, the private company responsible for implementing the project, relegated the FPIC process to the Government, which conveniently expropriated the community's lands as “government forest lands”.<sup>52</sup> Expropriation becomes even easier when the state characterizes the project as central to “development”.

### 2. Problematic patterns exhibited by the project implementers / contractors:

#### ***Reducing the right to FPIC to a mere consultation process***

FPIC is not understood by project implementers, or even by MDB-financiers as consent.<sup>53</sup> Instead, it is narrowed down to consultations, and sometimes, only sharing information. In the Likhu Project for example, project implementers simply carried out a limited information-sharing session.<sup>54</sup>

50. While the World Bank is leading the financial agreement, other banks have also come to a co-financing plan, including the EIB, ADB, OPEC Fund, and JICA.

51. See Annex for the projects' descriptions.

52. For example, in the Upper Trishuli-1 Project, the company relegated this work to the Government who appropriated “government forest lands”. Rai, “Free Prior Informed Consent of the Tamang Indigenous People”, pages 2 and 6.

53. Even the expert consultant engaged in the case of the UT-1 Project, for example the International Hydropower Alliance describes FPIC as “give and take”.

54. Sunuwar Welfare Society (SWS) and Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), “Hydropower Development and Right to Free, Prior and Informed Consent (FPIC) of Indigenous Peoples: Study

## **Failure to use existing indigenous representation for FPIC process**

When MDBs or their borrower-clients allege to have conducted FPIC processes, they are often done through state institutions or ad-hoc bodies, instead of the already existing indigenous representatives and governance institutions. For example, in the UT-1 Project financed by the International Finance Corporation (IFC), an ad-hoc Adivasi Janjati Council was formed.<sup>55</sup> In the Likhu Project “consent” was solicited from the Village Development Committee, a local government body acting between the central government and the village people.<sup>56</sup> Each of these scenarios undermines the authority of existing indigenous governance institutions and leaders, which are the legitimate authorities in consent giving and consultation procedures.

## ***Deliberately limiting or erring in the scope and outcomes of assessments and studies***

Often the scope of the “Project Affected Peoples (PAPs)” is limited or misrepresented to do away with consent obligations. For example, in the Upper Trishuli-1 Project, only those physically displaced by the hydropower project were considered as “affected” and the project implementers prided themselves over the project’s geographic impact compared to others. This ignores effects over those who were physically displaced through ancillary constructions such as workers’ camps, power stations, access roads, tunnelling, and transmission lines, etc. It also excludes peoples, whose livelihoods, or social and cultural rights are impacted by the project’s utilisation and appropriation of their collective resources such as waters, pastures, forestlands.<sup>57</sup>

*The physical impacts (from the Likhu Project) is nothing compared to the impacts on (our) heritage, identity, and originality. The number of victims from the physical impacts does not matter, but the River is the origin of all Sunuwar communities. It is the centre of our beliefs. It is our holy site. (Likhu River) is an ancestral river, our culture and society is dependent on it.”*

*-- Community leader of the peoples affected by the Likhu Project*

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Report on Likhu-4 Hydropower Project and Koits Indigenous Peoples’ Rights, Nepal,” accessed March 5, 2025, <https://data.opendvelopmentmekong.net/dataset/f5ab7d0e-e60d-4396-b2fd-c37d04d2768a/resource/c430b948-416f-434e-917c-9783d2722ef3/download/hydropower-development-and-right>. The only obligation that the project implementers appeared to have fulfilled in this case, on a thorough perusal of the report, is provision of information, which also was severely limited and wanting.

55. International Hydropower Association, “Achieving Indigenous Consent for Hydropower in Nepal,” May 7, 2020, accessed March 5, 2025, <https://www.hydronews.org/news/achieving-indigenous-people-e2-80-99s-consent-for-hydropower-in-nepal>.

56. Anonymous, community leader of Sunuwar Sewa Samaj affected in the Likhu Project; Study Report on Likhu-4 Hydropower Project, page 6; “Hydroelectric Development Violates Human Rights”, Cultural Survival, January 12, 2022, <https://www.culturalsurvival.org/news/hydroelectric-development-violates-human-rights-nepals-likhu-river>.

57. See, Kendyl Salcito, “FPIC at the IFC: How Performance Standard 7 Could Better Protect Indigenous Peoples and Uphold Human Rights” (Nomogaia, October 2020) page 10. “In Nepal, documentation for the Kabeli Dam identified four cultural resources that would be affected by the dam but never identified the cultural significance allocated to water bodies. Rather than consider the identified cultural resources relevant for FPIC determination, project documentation bypassed FPIC based solely on the resettlement criterion, arguing that too few indigenous peoples would be relocated to merit FPIC. To quote: “There are 13 households that will lose land as a result of the project. Of these households, only one is Limbu and it is expected to loss (sic) only 1.8 percent of its total land holdings. That cultural resources not belonging to a specific household would be impacted did not factor into this determination.” See also, Rai, “Free Prior Informed Consent of the Tamang Indigenous People”, pages 17-18; Study Report on Likhu-4 Hydropower Project, page 12.

Along the same line, project developers have outright refused to conduct FPIC in some cases, arguing that the project area has not only indigenous, but also non-indigenous groups, or that indigenous groups are already integrated with other groups because they have market access or are placed at the same levels of poverty as other groups in the area. For that reason which is untenable, the project developers have forfeited their rights to FPIC. That is, the developer argues that they are under no obligation to conduct FPIC.<sup>58</sup> For the Kabeli Hydropower Project, which is not part of the four case studies in this report, the project developer claimed that they were not obliged to conduct any cultural assessments, since the number of indigenous peoples-owned lands were too less. They also claimed for the same reason that they were not obliged to prepare any Indigenous Peoples Plan (IPP) or Indigenous Peoples Planning Framework (IPPF).<sup>59</sup> Put simply, although in this case the project developers did not explicitly refuse to conduct FPIC, they failed to conduct the socio-cultural impact assessments that precede FPIC, or to establish measures to mitigate and manage the impacts arising out of the project, thereby failing to ensure indigenous peoples' participation on equitable and inclusive terms, in projects that affect them. Yet, without conducting such assessments to identify how the project might impact indigenous peoples, or pre-establishing measures towards their inclusion and benefit-sharing from projects that affect them, FPIC processes themselves might be compromised (as consent for example, can only be given on the provision, understanding and acceptance of all relevant impacts arising from the project, including socio-cultural impacts posed to the communities).<sup>60</sup>

Additionally, impact assessments—whether environmental or social— are frequently not prepared in consultation with affected communities. Rather, they are carried out unilaterally, and sometimes, even without notice. This is evident in the lack of documentation that implementers are obliged to produce to financiers. For instance, in the case of the Likhu Project, community representatives from Sunuwar Sewa Samaj, an Indigenous Peoples organization, claimed that they had no idea about the EIA and Initial Environmental Examination (IEE) reports, and that these were made available only on order, in English. While the project developers had promised consultations and hearings, this did not happen.<sup>61</sup>

58. See, Draft RIPP, para 6. 'A draft Resettlement and Indigenous Peoples Plan (RIPP) was also prepared, in which the total number of affected households was decreased to 758 from 838 as identified in the EIA. As per the draft RIPP, "indigenous populations in the project areas were directly consulted by the NEA and Tanahu Hydropower Limited (THL) [THL is a subsidiary of the NEA, and both of them are the executing agencies for different components of Tanahu project] and consultants to confirm that they do not claim any project-affected land or their own land or the land they cultivate without title as their ancestral domain...the Project will have no impact on their cultural identity, survival and cultural resources."

59. Salcito, "FPIC at the IFC", page 10.

60. For instance, the World Bank's Operational Policies 4.10 on Indigenous Peoples contemplates the preparation of the IPP, or at least an IPPF as a document to ensure culturally appropriate social and economic benefits for indigenous peoples, and as a measure to avoid, minimize, mitigate and compensate for any potential adverse effects on indigenous peoples. While their exact details might vary depending on the specific project, they are to be established without exception in all cases where indigenous peoples are involved and affected by the project. For larger programs or those involving multiple sub-projects, the borrower is supposed to prepare an IPPF whenever the project area is likely to cover indigenous peoples by their very presence or collective attachment to the area. See the World Bank, "Operational Policy 4.10: Indigenous Peoples," July 2005, revised April 2013, accessed March 5, 2025, <https://thedocs.worldbank.org/en/doc/2e32d9beec85a16da0bac98a14df191-0290012023/original/OP-4-10-Indigenous-Peoples.pdf>, paras. 12-14. Both the Social Impact Assessments and the IPPF and/or IPP form the core documents for the borrower to ascertain "broad support" for the project. See, para 11.

61. "Hydroelectric Development Violates Human Rights on Nepal's Likhu River", Cultural Survival, January 12, 2022, accessed March 5, 2025, <https://www.culturalsurvival.org/news/hydroelectric-development-violates-human-rights-nepals-likhu-river>.

*“(Banks) never go directly to the community. In Khimti and Likhu (Projects), many private banks are involving. They will only contact to the Government and go to the sites, they will have an EIA—every bank should do this [referring to the obligation to conduct an EIA]...They will hire a consultant and assign a set of questionnaires and bring it to the people - they are also not representatives and they will submit to the banks, then the bank will allow the loan dependent on that EIA. EIA is also not very reliable or reality based, as they do not reach real affected persons. Persons doing assessments don't go from household to household, but reach out to only some people...they should come and ask the community representatives instead of going from person to person and giving unwanted benefits...”*

*-- Community Leader of the peoples affected by the Likhu Project*

#### ***Failure to provide meaningful information for informed decision-making***

In some cases, affected groups have reported not being informed of their rights and entitlements, including the right to FPIC. For example, a community leader affected by the Upper Arun Project reported that the project actors never informed them of their right to FPIC, or which authorities are responsible for conducting it.<sup>62</sup> In this case, information regarding the obligation to conduct FPIC and who it is incumbent on, was directly relevant to the community's free and informed choice, as it would have clarified that they were not obliged to say “yes” under any circumstances.

But even when information is given, it is incomplete. While international law provisions themselves do not provide exactly what information is required, the UN Permanent Forum on Indigenous Issues has clarified that information pertaining to the company or the financier, any legal or financial issues preceding or ongoing against the project or the company, any potential plans on project expansion or projects foreseeable in the area in the future—would be relevant matters for disclosure.<sup>63</sup> This seems obvious not simply for the sake of transparency in the project's governance—but also, since such details inform communities regarding any hidden or conflicting interests that could potentially influence the FPIC process, allows them to know whom to bring grievances to or hold accountable in case of non-compliance, or even assess the credibility of the developer's commitments. For example, in the Likhu River group of projects, where the company involved held multiple financial interests in the Likhu basin—communities have alleged fraud and deceit at the initial stages, and the company's non-abidance by its commitments. The multiple projects on the Likhu River, including Likhu 1, Likhu 2 and Likhu A—were all developed by the same private company and its subsidiaries who have held a track record of FPIC violations, been accused of intimidation and coercion in their implementation, and the destruction of biodiversity and wildlife as a result of their projects.<sup>64</sup> There was also no information from the concerned ministries on when the project had actually begun or when the construction licences were issued.<sup>65</sup> It is precisely to disclose these kinds of defaults, give communities full transparency and disclosure regarding the company's credentials and overall plans in the area, that this information is so important.

62. Chairperson of the Lomishisha Welfare Centre and community leader in the Upper Arun project.

63. Friends of the Earth, “Protecting Biodiversity Briefing Paper no. 7”, page 10.

64. See, Project Information in Annex.

65. Study Report on Likhu-4 Hydropower Project, pages 5-6.

Finally, the authors of this report also noticed that information, when disclosed, contains technical terms, and runs into several hundred pages, in languages not fully comprehensible to the affected people. In most cases, communities complained that they did not understand the documents, the consultations or consultation related notices, since they were not prepared and delivered in their indigenous languages.

### ***Restrictive and unpredictable timelines reducing the meaningfulness behind consent***

FPIC processes require time: whether in terms of predictability in timelines, timeliness in information provision, or in terms of adequate time for communities to understand, assess, process, and respond (decide) on any attempts to conduct FPIC, through their own indigenous peoples' decision-making structures. But in several cases, the timelines for making any claims, counterclaims or for decision-making were very tight, denying affected people the opportunity of carrying out a meaningful decision-making process. In the Likhu Project for example, communities were given 35 days to read through technical documents and respond with any claims.<sup>66</sup>

Communities also reported on timelapse of several years between the preliminary surveys and feasibility studies, and the final plans, during which, the project designs could be changed, project scope expanded, or communities could be kept in the dark about its progress so as to stifle opportunities for consultations and their full participation. In the Likhu Project, the initial study was conducted in 1993, and the final Project Report was only launched 15 years later, in 2008. But, the tendering and ancillary constructions continued through this period. The Project only expedited during the pandemic, which made it difficult for community members to register any grievances.<sup>67</sup>

### ***Failure to engage and negotiate in good-faith with the community***

No two FPICs look the same—since the projects, surrounding contexts, and the communities involved are different. For this reason, there is no all-inclusive list of actions that counts as “good-faith”, but it is generally understood to imply the opposite of reductionism of the right to FPIC, to a mere formality. It is based on transparent, two-way engagements, and mutual trust and respect.<sup>68</sup> However, this report finds issues such as withheld or delayed information, exclusion and unilateral decision-making by one party, refusal to deliver on promises, and manipulation tactics to circumvent legal obligations, by the project implementers and contractors.

This report found some cases where mitigation plans and compensation-related issues remained unaddressed or unimplemented, effectively buying time for project implementers or creating the appearance of good-faith engagement with the community. For example, in the context of issues arising out of the Lower Likhu Project, the developers came to a 13-point agreement with the community, but failed to deliver on even a single commitment. Nevertheless, the agreement's existence gave tacit approval to the developer to begin constructions in the meantime. Finally when confronted, the company conceded to a compensation amount of approximately \$3,680 and equivalent of five lakhs Nepalese Rupees for two community forests—far less than what it had

66. Study Report on Likhu-4 Hydropower Project, page 5.

67. Anonymous, community leader of Sunuwar Sewa Samaj; Study Report on Likhu-4 Hydropower Project, page 6. The community leader mentions that the community got information about the project only once the private company appointed consultants and published this information on the “gorkhapatra”. Until then several studies had already been conducted and the private company had already been allotted the project.

68. Sarayaku v. Ecuador, Inter-American Court of Human Rights, 2012, paras. 177, 185–200, accessed March 5, 2025, <https://www.escri-net.org/caselaw/2012/pueblo-indigena-kichwa-sarayaku-vs-ecuador/>.

initially promised.<sup>69</sup> In a couple of other projects, including the Tanahu project<sup>70</sup>, and the Upper Arun project<sup>71</sup>, the report found that the state authorities had unilaterally fixed the compensation rates, allowing no chance for community representation and negotiations.

Project developers and their consultants also reached out to individuals separately, instead of undertaking collective consultations. Community leaders recognise this as a “manipulative” and delay tactic—since it serves to break the collective negotiating power.<sup>72</sup> In a similar example to this, the community members affected by the UT-1 Project recalled that a third-party mediator had come to “mediate” compensation amounts, once a fixed amount for land acquisition had been allotted by the state authorities. Not only did this reduce the final compensation that the affected people received, state authorities also reached out selectively to certain people or local leaders to convince others to accept the pre-fixed amounts.<sup>73</sup> Finally, the project developers documented an “FPIC”, long after (seven years) the communities’ lands were already appropriated, and they had been displaced<sup>74</sup>—reflecting that FPIC was only an afterthought. All these examples demonstrate how communities as the rights-holders, found no genuine inclusion in the process, and had to suffice with pre-determined terms imposed by project actors.

Another practice that reflects FPIC is an afterthought, is in project implementers beginning with the constructions of ancillary structures—even while waiting for the affected peoples’ consent, or pending discharge of the bare minimum obligations of information disclosure and consultations. As discussed, consent or FPIC is a higher threshold obligation that MDBs specifically require in certain circumstances, while the general obligations of consultation and engagement apply across all projects, beginning as early as the design phase and continuing across the project cycle. In several cases, the project’s fate was sealed, since all other constructions were already completed, project designs approved, or license to commence works received—making no difference if the community consented or participated. In the Upper Arun Project for example, the project implementer had already scoped the EIA, gotten it approved, and was set to begin constructions—even while public hearings or consultations were yet to be conducted.<sup>75</sup>

Project implementers have often “inferred consent”—as opposed to receiving its clear expression from affected communities—on dubious grounds. In the Likhu Project, the project implementers did not seek consent nor even provided information regarding the construction of the tunnels,

69. The EIA admitted issues such as depletion of fishing as a livelihood, pollution and leakages into the streams, loss of habitat, and drying up of water across a 7 km stretch near the project. As mitigation measures, the project developers had promised to build nursery ponds and fisheries enhancement, compensate for loss of community forests and trees, and set up a new drinking water project. Federation of Community Forest Users Nepal (FECOFUN), “Community Forest User Group Members and Leaders Show Strong Community Leadership in Resolving Dispute with Hydropower Project on Their Own!” March 2023, accessed March 5, 2025, <https://fecofun.org.np/2023/03/23/4022/>.

70. On 31 March 2019, two committees of organised community members wrote to the THL and the ADB Management stating that the consultations were not adequate and meaningful, they did not agree with the determination of compensation, they would like the full RIPP in understandable form, and they did not consent to further household survey process and demanded collective consultation. See, Community Empowerment and Social Justice Network (CEMSOJ), “Tanahu Timeline,” accessed March 5, 2025, <https://cemsoj.wordpress.com/human-rights-advocacy/tanahu-hydropower-project/>.

71. The project has fixed the rate of NPR 1-1.5 million per ropani (unit of measurement where 1 Ropani equals 74 ft x 74 ft) to provide compensation”. “Upper Arun Hydroelectric Project Provides Over Rs 1 Billion for Land Compensation to the Project-Suffered Locals,” MyRepublica, April 3, 2023, accessed March 5, 2025, <https://myrepublicanagariknetwork.com/news/upper-arun-hydroelectric-project-provides-over-rs-1-billion-for-land-compensation-to-the-project-suffered-locals/>.

72. CEMS0J, “Tanahu Timeline”.

73. Anonymous, project affected community members from the UT-1 Project. In another interview with the Chairperson of the Lomishisha Welfare Centre who represents the affected people in the Upper Arun Project, the key informant expressed similar issues.

74. See, Rai, “Free Prior Informed Consent of the Tamang Indigenous People”, pages 15-16.

75. See “Upper Arun Project Description,” accessed March 5, 2025, <https://uahel.com.np/project/1/projectDescription>.

powerhouses, and other ancillary structures.<sup>76</sup> Despite the fact that a clear expression of consent for these ancillary structures, and also, a full understanding of the Project's scale would be crucial to an informed consent. In the Upper Arun Project, approval given to the EIA conducted appears to have been inferred as consent for the entirety of the project.<sup>77</sup>

### **3. Problematic patterns exhibited by the MDB-financier:**

#### ***Approving the reductionism of FPIC to consultations and information-sharing***

It is a recurring problematic practice amongst project implementers to document public consultations or hearings, and pass them off as FPIC processes. While safeguards policies and contractual agreements clearly place the obligation and legal responsibilities to conduct FPIC on the borrower, this does not absolve the financiers of their own responsibilities around project due diligence, monitoring, and supervision. Despite this, MDB-financiers have approved such documentation as indicative of consent for projects. For instance, in the UT-1 Project, the IFC – a project financier – approved an Indigenous Peoples Framework that included elements like information dissemination, meetings, and community engagement. However, this framework ultimately equated “consent” with the acceptance of compensation and other off-setting measures, such as communal benefits, fundamentally undermining the essence of FPIC.<sup>78</sup>

#### ***Accepting compensation or benefits in lieu of, or as indicative of Consent***

Likewise, the MDB Management has also interpreted the acceptance of compensation as equivalent to consent. In the UT-1 Project, the International Hydropower Association (IHA), hired to conduct FPIC on behalf of the IFC, demonstrated a shallow understanding of the process, taking no steps to emphasise that FPIC should precede project commencement. Ironically, IHA claimed that its FPIC standard was stronger than the IFC's, solely because it recognised that accepting compensation does not equate to consent—an acknowledgment that only highlights how deficient the IFC's approach truly was.<sup>79</sup>

#### ***Knowingly lowering or overlooking lowered project standards:***

Community-led documentations have alleged that project financing terms themselves, between the MDBs and the borrower-clients, imposed obligations that were lower than the MDB's own safeguards.<sup>80</sup> While it is not possible to verify this – since financing agreements are often not public – we did see examples where the MDBs knew, or should have known, that the standards enforced in practice by the project implementers did not meet their own standards and policies. In course of the Tanahu Project, the company offered affected peoples cash-based compensation where at the very least, the community demanded and were entitled to land-for-land compensation, per the MDB's Safeguards Policy.<sup>81</sup> The project actors claimed that they were in compliance with national laws, where such compensations are determined by district level-compensation committees, and used this reasoning to claim that communities had consented to the Project by accepting the cash compensation.<sup>82</sup> But “consent” effected this way, would not truly amount

76. “NEA, Tanahu Hydro Sign Power Purchase Accord,” Kathmandu Post, April 23, 2018, accessed March 5, 2025, <https://kathmandupost.com/money/2018/04/23/nea-tanahu-hydro-sign-power-purchase-accord>.

77. See “Upper Arun Project Description,” accessed March 5, 2025, <https://uahel.com.np/project/l/projectDescription>.

78. Salcito, “FPIC at the IFC”, page 12; Rai, “Free Prior Informed Consent of the Tamang Indigenous People”, pages 97, 99.

79. On the IFC Performance Standard 7, see, Salcito, “FPIC at the IFC”, page 10.

80. Rai, “Free Prior Informed Consent of the Tamang Indigenous People”, page 7.

81. CEMSOJ, “Tanahu Timeline”.

82. CEMSOJ, “Tanahu Timeline”.

to consent without meeting communities' legitimate demands on compensation. Likewise, in the UT-1 Project, community members explained that the compensation they received on account of land acquisition was not only inadequate, but failed to factor in any assets on the land,<sup>83</sup> whereas the Safeguards Policies of the concerned MDBs, in this case, EIB and ADB, additionally require compensation for any standing structures, crops, trees or other assets on that land.<sup>84</sup>

In the same UT-1 Project, the project implementers set up an indigenous peoples governing body, namely, the Indigenous Peoples Planning Board, after considerable push-backs from the community, and their advocacy effort with the IFC. While the Project had been in existence since at least 2007, the terms on which FPIC would be conducted were negotiated and approved by the Planning Board, only in 2018. By the time FPIC was to be carried out, the project activities that were undergoing until then had already impacted water levels and biodiversity, and destroyed housing infrastructure in the area. Community members recollect how despite some of their demands being met, the substantive outcomes were nominal. Perhaps, the results could have been different if the IFC Management had adhered to its standards, and not overlooked FPIC in the early phases of the project.<sup>85</sup>

#### ***Refusal to disengage with problematic borrower clients:***

MDBs continue to lend to the same borrowers and promoters with problematic track records in implementation of projects and violation of community rights. Accountability Counsel has previously analysed how despite sustained complaints, or even evidence of non-compliance with their commitments and contractual obligations, MDBs continue to finance repeat violators.<sup>86</sup> The NEA itself has at least nine complaints between 1989 and 2021, related to its project implementations, but has nevertheless secured funding for at least 20 other projects amounting to \$1.864 billion. Incentives to invest in the hydropower sector in Nepal only seem to be increasing, especially with the growing push towards climate finance. It is highly possible that these nine complaints are only a fraction of the total complaints lodged, that managed to cross the strict eligibility requirements that the MDBs' accountability mechanisms have set for themselves. Whereas due diligence would have required project financiers to scrutinise the NEA, and its other contractors/subcontractors past records of non-compliances.

83. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), "Study on the Impact of the Upper Trishuli-1, 216 MW Hydropower Project on the Indigenous Communities of Rasuwa" (Kathmandu: LAHURNIP, 2017) page 28, <https://www.lahurnip.org/uploads/publication/file/ut-1-report-final-eng.pdf>.

84. ADB, "Safeguard Policy Statement," June 2009, para. 8; EIB, "Environmental and Social Standards" (2018), paras. 6 and 17; and EIB, "Environmental and Social Standards" (updated 2022), para. 30.

85. Anonymous, a member of Indigenous Peoples Planning Board from the UT-1 Project. The community members spoke about how the IPP Board and Plan was perhaps an achievement for "them" (project actors) but not for the community, as their demands for free shares and electricity were not even accounted for. Consent was not prior and it felt forceful since at the time of giving consent, they did not know of the severe consequences.

86. See, Sara Jaramillo, "Why Do Multilateral Development Banks Finance Repeat Offenders?" Accountability Console Newsletter, April 3, 2023, accessed March 5, 2025, <https://www.accountabilityconsole.com/newsletter/articles/why-do-multilateral-development-banks-finance-repeat-offenders/>.

# CONCLUSION

The findings of this report underscore the systemic failure of the MDBs and the State to implement Free, Prior, and Informed Consent (FPIC) in hydropower projects across Nepal, revealing broader deficiencies in the governance of development finance. These failures are not isolated incidents but indicative of entrenched practices that disregard the rights and voices of Indigenous Peoples, leading to significant social, cultural, and environmental harms. Hydropower projects like the Likhu Project, the Tanahu Project, the Upper Trishuli-1 Project, and the Upper Arun Project highlight recurring patterns of failures to uphold the rights of Indigenous Peoples, from equating FPIC with mere consultations to bypassing legitimate Indigenous People's governance structures and disregarding customary land rights.

Such practices not only violate international human rights law and safeguard commitments but also erode the credibility of Multilateral Development Banks (MDBs) as proponents of just energy transition and sustainable development. More recently, MDBs have positioned themselves as leaders in financing climate solutions, but their legitimacy hinges on their ability to uphold the principles of FPIC, ensure meaningful participation of indigenous peoples, and prevent social, cultural, and environmental harms. Without rigorous adherence to safeguard policies, MDBs risk perpetuating injustices under the guise of development and climate finance.

Urgent action is required to address these gaps. MDBs must prioritise human rights due diligence throughout the project lifecycle, from appraisal to implementation, ensuring that FPIC is conducted as a dynamic and iterative process. This includes recognising indigenous peoples as rights-holders rather than stakeholders and holding borrowers accountable for repeated non-compliance. The failure to implement FPIC not only jeopardises the rights and livelihoods of affected communities but also undermines the environmental and social sustainability of projects critical to addressing climate change.

As the global push for renewable energy intensifies, MDBs face an imperative to align their practices with international standards, respecting the rights of Indigenous Peoples while fostering equitable development. Meaningful reform is not just a matter of policy compliance—it is a moral and practical necessity. By addressing these shortcomings, MDBs can contribute to a truly just and sustainable energy transition, where development projects benefit all stakeholders and uphold the dignity and rights of the most vulnerable.

# RECOMMENDATIONS

## TO MULTILATERAL DEVELOPMENT BANKS AND OTHER FINANCIERS:

- 1 Confirm** that FPIC has been obtained prior to the project's commencement, taking into account indigenous peoples' own collective decision-making processes. Financiers should ensure that FPIC should be engaged in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project. This includes not just the main project, but also its ancillary structures, like roads, tunnels, transmission lines, and workers camp sites.
- 2 Ensure** that consent is solicited from the entirety of the project affected people, including (1) those members who will bear socio-cultural impacts (2) those vulnerable and marginalized members within the communities such as women, elderly, children, and people with disabilities, (3) in case of large-scaled projects, those members who live beyond the vicinity of the project but who will rely on natural resources and river or mountain ecosystems for their livelihoods. This also means that financiers or those they contract as consultants, should consult with the legitimate representatives of the affected communities, instead of local government authorities.
- 3 Ensure** that the conduct of FPIC processes, or socio-economic, cultural, and environmental studies, which form the material information disseminated to project affected communities based on which consent is solicited, do not simply become a yes or no exercise or a simply rounds of consultations.
- 4 Ensure** that communities are aware of their rights and entitlements, including the safeguards that apply to the concerned project, what they imply, who those obligations rest with. For instance, financiers should give clarification that the obligation to conduct FPIC process lies with the project borrowers and implementers, whereas the responsibility to supervise and monitor that process rests on the MDBs.
- 5 Monitor** that consent and consultation, studies and assessments, are confirmed through site-visits across the project-affected area, and not simply through the desk-research. This is particularly important for communities who might not have the means or access to modes of transportation and communication, to attend consultations called for by project actors, outside of the project sites.
- 6 Ensure** that specialists conducting studies and assessments, practise inclusive methods of research with demonstrated expertise in indigenous knowledge<sup>87</sup>.
- 7 Respect** the mitigation hierarchy. Any compensation or benefits-sharing arrangements are

87. Anonymous, community leader of Sunuwar Sewa Samaj, response to the authors' question on recommendation for project financiers and other responsible authorities.

additional mitigation measures and do not replace the obligation to conduct the FPIC process. Compensation where considered, should be both, collective as well as individual compensation. As for benefits, the affected communities have often reiterated that benefit-sharing measures must be separate for them, relative to the general benefits enjoyed by the population as a whole.<sup>88</sup> The compensation and benefits should be allocated directly to communities, rather than through local governments.

## TO THE GOVERNMENT OF NEPAL AND NEPAL STATE-OWNED ENTERPRISES:

**1** **Address** the structural causes of violations of indigenous peoples' rights in the development context through legal and institutional reform measures, including, the recognition of individual and collective rights, land tenure, collective benefits, and indigenous institutions. This process should be based on consultation and participation of indigenous peoples in a manner that meets international standards.

**2** **Recognise** indigenous peoples as rights-holders in themselves, and under the national law explicitly guarantee the rights to Free, Prior and Informed consent (FPIC) and consultation for projects that concern and affect them, or involve their territories, natural resources upon those territories, or cultural resources of significance to them. Where international financiers are involved, states should also actively push financiers to engage with indigenous peoples' own representatives, that are separate from local level authorities.

**3** **Take** the initiative to participate in, or facilitate dialogues in good-faith: ensuring they are fair, inclusive, and transparent, including amongst different parties or those with different positions over the projects such as indigenous peoples vis-a-vis broader citizenry, and mediate differences—where necessary and requested.

**a** **Ensure** indigenous peoples' participation, beginning at the earliest stages—including conduct of area surveys and feasibility studies, prior to the involvement of any international financiers, and continue throughout the project-cycle.

**b** **Ensure** that indigenous peoples have all project information available in their languages, including through proactive disclosure, in a manner that is accessible and culturally appropriate.

**c** **Commit** to not proceeding with any constructions or activities in promotion of the project, while communities are engaging over project-related grievances.

**d** **Avoid** relegating the responsibility to engage in discussions, solely to private actors without any observation, participation, monitoring, or supervision from state authorities in the process.

88. Anonymous, Indigenous Peoples Planning Board (IPP Board) members from the UT-1 Project. The IPP Board members stated that the World Bank Group has promised tax revenues to all from the project, but that is a benefit for the entirety of the nation, and not just for the community. Whereas their claim is that affected peoples should be allocated separate benefits on account of the risks and impacts that the project specifically poses to them, so that the proceeds can be used to preserve their culture, restore environments, adapt their livelihoods, and be directed towards preservation of natural resources.

**4 Abstain** from exercising undue influence over project outcomes; for example, relaxing conditions for necessary licenses or using broad-sweeping executive powers, misrepresenting or suppressing facts solely in their knowledge (such as future project or project expansion plans in or around the project area), or engaging in coercive measures, including the use of security forces and legal repression, whether to effect consent, or stifle grievances.

**5 Discharge** state obligations as the primary duty-bearer around promotion and protection of the rights of indigenous peoples, and redressal of their violations against both, state agents as well as private actors.



*A tower of a transmission line was on the bank of Marshyangdi River in Lamjung district, Gandaki Province*

*Credit: Accountability Counsel*

# ANNEX

## 1. LIKHU HYDROPOWER PROJECT



A construction of a Likhu River hydropower project in the Eastern District of Nepal

Credit: Dev Kumar Sunuwar/Cultural Survival

**Description:** The Likhu Hydropower Project is a cluster of 4 run-off-the-river projects<sup>89</sup> with a total of 329.6 MW (Likhu 1 with 77 MW, Likhu 2 with 54 MW, Likhu A with 51 MW, and Likhu IVA with 12.5 MW respectively) built across the Likhu River in the Bagmati Province, 220 kilometers from Kathmandu.

The affected communities claim that the developers – who are common for at least three of the seven Likhu projects<sup>90</sup> – had not conducted FPIC for any of these projects, and Cultural Survival has documented claims against at least three of the seven projects: Likhu-1, Likhu A and Likhu 4. The overall findings from this report are also supplemented by an interview with the community leader from the project affected area.

**Community affected:** Sunuwar and Sherpa indigenous communities, along with other non-indigenous communities. While the number of physically affected from back-to-back projects is around 500-1000 households, we learned that the entire Sunuwar community is affected because the Likhu River on which the hydropower is built holds deep cultural, indigenous knowledge, and spiritual significance for the Sunuwar.<sup>91</sup>

**Issues:** Communities have alleged issues against all of the Likhu projects. They allege the lack of FPIC, including because “consent” was obtained under deceit and legal coercion as police

89. Note: the number of projects have now increased, with construction of the Likhu IV Project of 52.4 MW, the middle Likhu Small hydroelectric power project, the Lower Likhu Hydropower Project, and the Likhu Khola Hydropower Project. Six projects are already under construction, while two projects have applied for survey license. See, “Likhu Khola,” Nepal Water Resource Map (NWRMAP), accessed March 5, 2025, <https://nwrmap.info/river/likhu-khola>.

90. While the developers for the individual Likhu projects were different initially (Pan Himalaya Energy Pvt Ltd, Global Hydropower Associate), this changed on their acquisition by the MV Dugar Group, thus changing the overseeing authority for their development and management. “Hydropower Projects on Likhu River Fail to Obtain Consent,” Cultural Survival, February 16, 2021, accessed March 5, 2025, <https://www.culturalsurvival.org/news/hydropower-projects-likhu-river-fail-obtain-consent-indigenous-communities-nepal>.

91. Anonymous, community leader of Sunuwar Sewa Samaj.

forces were present on site, lack of information since project reports were either not made public, disseminated in languages which the affected communities did not understand, and were made only in national newspapers not easily available to the community<sup>92</sup>; inadequate environmental and social impact assessments; lack of compensation, including no compensation for access roads or construction related damages; and violation of the affected communities' cultural rights which are contingent on their exercise of stewardship over the Likhu river, and other resources.<sup>93</sup> Development funds promised to the community were instead given to local authorities<sup>94</sup> who distributed them arbitrarily.

The project developer appears to have sidelined these considerations as only a challenge between the capital intensive nature of operations and production of renewable energy.<sup>95</sup>

**Timeline:** The Likhu projects are usually discussed together as a "cluster", hence information regarding the timelines for individual projects are difficult to separate. The Likhu 1 Project is currently under construction, and is expected to be commissioned in 2025, while the Likhu 4 Project was connected to the grid in 2021, after first receiving its license to produce in 2012.<sup>96</sup> The Likhu 4 Project was "planned" to be co-financed by the IDBI Bank, India.<sup>97</sup> Likhu 4's construction started back in 2008 with the access roads only being completed, but halted after the exit of its Indian developer, until 2017-2018. Even while the project was to re-start construction, the transmission line was already planned up to the Khimti sub-station.<sup>98</sup>

**Promised Benefits:** All Likhu projects have been stated to have benefits such as electricity addition to the national grid, and exports to India.

**Major financiers:** While financiers for individual projects are difficult to separate out, we know that at least two of the projects (Likhu 2 and Lower Likhu) are financed by domestic bank consortiums, including the Nepal-Bangladesh Bank and the Nepal SBI Bank.<sup>99</sup>

**Private Stakeholders:** Most projects on the Likhu River are developed by the MV Dugar Group and its subsidiaries like Global Hydropower Associates, which has a Power Purchase Agreement (PPA) with the NEA.

92. Anonymous, community leader of Sunuwar Sewa Samaj.

93. The list of issues listed from the Likhu group of projects have been assessed through community-led documentation and interviews. See, "Hydroelectric Development Violates Human Rights on Nepal's Likhu River," Cultural Survival, accessed March 5, 2025, <https://www.culturalsurvival.org/news/hydroelectric-development-violates-human-rights-nepals-likhu-river> and, "Hydropower Projects on Likhu River Fail to Obtain Consent," Cultural Survival.

94. Anonymous, community leader of Sunuwar Sewa Samaj also mentioned that even though Likhu IV attempted to alleviate some concerns through compensation, they also distributed a total sum of 25 lakh Nepalese Rupee (NPR) through local government authorities amongst the six wards, who further distributed it at their own discretion.

95. "Hydropower Development," MV Dugar Group, accessed March 5, 2025, <https://mvdugar.com/business-category/hydropower-development>.

96. "52.4-MW Likhu IV Hydroelectric Project Commissioned in Nepal," Hydro Review, accessed March 5, 2025, <https://www.hydroreview.com/hydro-industry-news/new-development/52-4-mw-likhu-iv-hydroelectric-project-commissioned-in-nepal/#gref>.

97. "Likhu IV to Be Reduced to 50 MW," Nepal Energy Forum, May 8, 2014, accessed March 5, 2025, <http://www.nepalenergyforum.com/likhu-iv-to-be-reduced-to-50-mw/>.

98. "Defunct Likhu-4 Hydro Revived After 7 Years," The Kathmandu Post, December 2, 2017, accessed March 5, 2025, <https://kathmandupost.com/money/2017/12/02/defunct-likhu-4-hydro-revived-after-7-years>.

99. "Funding Agreement for Lower Likhu Hydro Project," MyRepublica, accessed March 5, 2025, <https://myrepublicanagariknetwork.com/news/funding-agreement-for-lower-likhu-hydro-project/>; "Consortium Led by MBL to Finance Likhu-2," MyRepublica, accessed March 5, 2025, <https://myrepublicanagariknetwork.com/news/consortium-led-by-mbl-to-finance-likhu-2/>. The Nepal Bangladesh Bank for example was a joint venture with the IFIC Bank in Bangladesh (the Nabil Bank, has now acquired the Nepal Bangladesh Bank in 2022).

## 2. TANAHU HYDROPOWER PROJECT



A construction site of the Tanahu Hydropower Project on Seti River in Tanahu district, central Nepal.

Credit: Skanda Gautam/ADB

**Description:** The Tanahu Project is a 140–160 MW storage-type project that sits on the Seti River, about 150 kilometers from Kathmandu. It is also claimed to be the largest dam in construction, in Nepal, standing at 140 meters.

**Community affected:** The Magar indigenous group claims that their lands will be fully flooded, and they will lose their livelihoods, as well as their sacred lands and traditional practices.

**Issues:** Lack of FPIC, displacement, no land-for-land and substitute constructions offered. Information not made available in an understandable language, and compensation decided without consultations.<sup>100</sup>

**Timeline:** The project construction began in 2018 and is to be commissioned by 2026. The project has clearly surpassed its timeline as per the 2018 PPA between the NEA and its wholly owned subsidiary, Tanahu Hydropower Limited (THL), it was required to commence commercial operations from April 2024.<sup>101</sup>

**Promised Benefits:** The project is supposed to serve as a buffer from electricity production during the dry months (or “lean season”), contribute to energy-security, as well as bring trade (export) benefits.

100. International Accountability Project (IAP), “Indigenous Communities Affected by the Tanahu Hydropower Project in Nepal File Complaints with the Asian Development Bank and European Investment Bank,” Medium, February 24, 2020, accessed March 5, 2025, <https://accountability.medium.com/indigenous-communities-affected-by-the-tanahu-hydropower-project-in-nepal-file-complaints-with-the-be02e0c021ce>.

101. “NEA Signs PPA for Tanahu Hydro Project,” Energy Central, July 2018, accessed March 5, 2025, <https://energycentral.com/news/nea-signs-ppa-tanahu-hydro-project>.

**Financiers:** ADB (\$150 million)<sup>102</sup>, Japan International Cooperation Agency (JICA) (\$184 million signed in March 2013)<sup>103</sup>, EIB (\$85 million signed in May 2013)<sup>104</sup> and \$87 million from NEA and the Government of Nepal.<sup>105</sup> The Project Data Sheet available indicates that the project financing proposal must have come from the NEA and the Government of Nepal, sometime in 2012.<sup>106</sup>

**Private Stakeholders:** Manitoba International, Canada, and Tractebel, Germany, observed the project procurement processes.<sup>107</sup> Song da Corporation, Vietnam and Kalika Construction Pvt Ltd. Nepal, have been involved in construction of the dam, the diversion tunnels, and upgrades to the access roads, while Sino Hydro is involved in mechanical works.<sup>108</sup>

**Current status:** The project's ancillary activities such as river diversion have already been completed<sup>109</sup>, while sub-station towers for the evacuated energy are under construction. In 2023, land acquisition for plots falling under the transmission line was underway.<sup>110</sup> Reports from 2018 claimed that land compensation was already paid, and physical infrastructure works almost completed.<sup>111</sup> Manitoba International mentions that the consulting agreements with THL had been signed as early as June 2015 for project supervision and in 2016, Manitoba was already surveying potential angles for transmission lines and constructing substations, meant to evacuate power from the basin.<sup>112</sup> Thus, the project preparatory works began even before FPIC had been solicited, while the ancillary activities continue despite this having been brought to the project actors – including the MDB-financiers' attention". This is even while the FPIC process itself, as of 2024, is yet to be conducted.<sup>113</sup>

102. Asian Development Bank (ADB), "Loan Agreement for Tanahu Hydropower Project (Loan No. 7941-NEP)," April 22, 2013, accessed March 5, 2025, <https://www.adb.org/sites/default/files/project-documents/43281-013-sfj-a1.pdf>.

103. Renewable Energy World, "Project Spotlight: 140-MW Tanahu Hydropower Facility," March 13, 2013, accessed March 5, 2025, <https://www.renewableenergyworld.com/hydro-power/project-spotlight-140-mw-tanahu-hydropower-facility/>.

104. European Investment Bank (EIB), "Nepal: Tanahu Hydropower Project – Initial Assessment Report," April 16, 2020, accessed March 5, 2025, <https://www.eib.org/attachments/complaints/sg-e-2020-02-iar-nepal-tanahu-hydropower-project-16-04-2020.pdf>.

105. MDBs involved in financing the Project majorly noted that there would be "no significant" environmental and social impacts since only 86 households would have to be relocated, and no major cultivation areas would need to be used for the project. The effects sustained by the community, and their concerns documented in across Reports, including by CEMSOJ and IAP, speak otherwise.

106. European Investment Bank (EIB), "Tanahu Hydropower Project," accessed March 5, 2025, <https://www.eib.org/en/projects/all/20120278>. This is to say that the project which continues to see violations of rights of indigenous peoples in 2024, first made it to the respective MDB's (EIB, ADB and JICA's) appraisal stage around 2012–2013, when the MDBs could have exercised greater due diligence, including conducting their own independent assessments.

107. "More Renewable Energy for Nepal: River Diversion at Tanahu Project," Tractebel Engie, accessed March 5, 2025, <https://tractebel-engie.com/en/news/2023/more-renewable-energy-for-nepal-river-diversion-at-tanahu-project>.

108. "140 MW Tanahun Hydropower Project Makes Breakthrough in Its Access Tunnel," MyRepublica, accessed March 5, 2025, <https://myrepublica.nagariknetwork.com/news/140-mw-tanahun-hydropower-project-makes-breakthrough-in-its-access-tunnel>.

109. "Successful Water Diversion Marks Progress," Waterpower Magazine, January 5, 2024, accessed March 5, 2025, <https://www.waterpowermagazine.com/news/newssuccessful-river-diversion-marks-progress-at-tanahu-hydropower-project-nepal-11415695>.

110. "Installation work of transmission lines for the 140 MW Tanahun project speeds up," Urja Khabar, accessed March 5, 2025, <https://www.urjakhabar.com/en/news/0805599565>.

111. "NEA Signs PPA for Tanahu Hydro Project," Energy Central.

112. "MHI to Support the Tanahu Hydropower Project in Nepal," Manitoba Hydro International (MHI), accessed March 5, 2025, <https://www.mhi.ca/news-events/news/114>.

113. As of 2024, ADB's Social Monitoring Report found that THL/NEA was still in the process of holding social consultations with the affected peoples, indicating that FPIC, which is a higher standard than consultations, had still not been conducted. See, Asian Development Bank, "Social Monitoring Report: Tanahu Hydropower Project (April–June 2024)," July 2024, [https://www.adb.org/sites/default/files/project-documents/43281/43281-013-smr-en\\_18.pdf](https://www.adb.org/sites/default/files/project-documents/43281/43281-013-smr-en_18.pdf). Likewise, EIB in its 2024 dispute resolution report found that several agreed upon measures such as delimitation of a "buffer zone", conducting surveys, and consultations in fully accessible and meaningful ways, were still pending, indicating that FPIC processes were not complete as they cannot possibly take place without such information. See, European Investment Bank, "Dispute Resolution Report: Nepal Tanahu Hydropower Project," August 26, 2024, pages 11-12, <https://www.eib.org/attachments/complaints/2024-08-26-dispute-resolution-report-11415695>.

### 3. UPPER TRISHULI-1 HYDROPOWER PROJECT



*The construction site of the Upper-Trishuli 1 Hydropower Project.*

*Credit: LAHURNIP*

**Description:** The UT-1 Project is a run-of-the-river project on the Trishuli River, 70 kilometers from Kathmandu, with a 216 MW power generation capacity. It is implemented by the Nepal Water and Energy Development Co. Pvt. Ltd. (NWEDC) – a Special Purpose Vehicle formed with participation of Korean Consortiums, the IFC and private Nepali investor (10%) (equity).<sup>114</sup> The investment received is the largest till date.<sup>115</sup>

**Community affected:** The project primarily affects the Tamang community that constitutes 95% of the project area.

**Issues:** The Project claimed to have secured broad community support with locals “comprehensively involved in the project.”<sup>116</sup> Project actors also said that the UT-1 Project serves as a model for benefit-sharing, with PAPs being able to buy shares of up to 10% into the project, and that up to 300 local residents have been employed at the site.<sup>117</sup> AIIB has described it as Nepal’s first FPIC

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[sg-e-2021-10-11-tanahu-nepal.pdf.](#)

114. Korea South East Power Company Limited owns 50 percent shareholding in NWEDC while Korea Overseas Infrastructure and Urban Development Corporation and the IFC own 25 percent and 15 percent of shareholding respectively. See, International Finance Corporation (IFC), Upper Trishuli-1 Hydropower Project, accessed March 5, 2025, <https://disclosures.ifc.org/project-detail/SII/35701/upper-trishuli>.

115. There are multiple related projects upstream and downstream of the area, including the UT 3A and 3B projects. See, “Upper Trishuli 3B,” Janata Ko Jalavidhyut, accessed March 5, 2025, <https://janatakojalavidhyut.gov.np/project/upper-trishuli-3b?lan=en>.

116. See, “Work Underway on Upper Trishuli 1 Project, Nepal,” Water Power Magazine, March 11, 2022, accessed March 5, 2025, <https://www.waterpowermagazine.com/news/newswork-underway-on-upper-trishuli-1-project-nepal-9544217>.

117. “Diversion Tunnel of 216-Megawatt Upper Trishuli-1 Project Completed,” The Himalayan Times, accessed March 5, 2025, <https://thehimalayantimes.com/business/diversion-tunnel-of-216-megawatt-upper-trishuli-1-project-completed>.

process.<sup>118</sup> This however, has been contradicted by communities and other civil society groups who amongst others point out the inadequate scope of environmental studies, and accordingly, mitigation measures, and full information disclosure.<sup>119</sup> While community concerns were solicited, they were not part of decision-shaping processes.<sup>120</sup> This is accompanied by other issues of inadequate compensation, and displacement. Interviews with community members informed the authors that even the Constitution of an Indigenous Peoples' Board came much later.

**Timeline:** The Project's expected commissioning is in March 2024 while the Nepal Water & Energy Development Company Pvt. Ltd (NWEDC) entered into a Power Purchase Agreement (PPA) with the NEA in 2018, and a Project Development Agreement (PDA) and a licence to operate in 2016. The UT-1 Project operates under a Build-Own-Operate-Transfer (BOOT) model wherein the company is responsible for the project's implementation for 35 years, until it hands it over to the Government.<sup>121</sup> Official and media reports claim that construction only started in 2020.

**Promised Benefits:** The Project is touted to supply approximately 1500 GWh output, and to increase Nepal's electricity capacity by up to 20%. Apart from energy security particularly through the dry season, it is also claimed to meet sustainable energy requirements.<sup>122</sup>

**Major financiers:** It has received lending from nine international investors, including the AIIB, ADB, Proparco France, Deutsche Investitions- und Entwicklungsgesellschaft (German Investment Corporation or DEG), Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden (the Development Bank of the Netherlands or FMO) and the Korean Development Bank.<sup>123</sup> The Multilateral Investment Guarantee Agency (MIGA) has advanced a guarantee up to \$150 million in 2019.<sup>124</sup>

**Private Stakeholders:** The Korean Co. Doosan Heavy Industries & Construction Co. Ltd., is constructing the project, along with its Austrian sub-contractor, ANDRITZ and Chinese sub-contractor, Power China.<sup>125</sup> According to the project website construction began in 2021, with an expected finish date of 2026 (five years).<sup>126</sup> Tractabel, Germany has been involved with the tendering, evaluation and supervision of construction.<sup>127</sup>

**Current status:** The diversion tunnel for the project is complete as of 2023.<sup>128</sup>

118. Asian Infrastructure Investment Bank (AIIB), "Nepal: Upper Trishuli-1 Hydropower Project," accessed March 5, 2025, <https://www.aiib.org/en/projects/details/2019/approved/Nepal-Upper-Trishuli-1-Hydropower-Project.html>.

119. Communities and civil society groups informed that only the EIA synopsis and not the full document, including the full extent of harms that are foreseeable, or predictable from the project have been made available. "IFI Observatorio Nepal: Upper Trishuli 1 Hydropower Project," The Reality of Aid, November 2019, 6, accessed March 5, 2025, <https://realityofaid.org/wp-content/uploads/2019/11/IFI-Observatorio-Nepal.pdf>.

120. The Reality of Aid, "Upper Trishuli 1 Hydropower Project", pages 5-6.

121. "Upper Trishuli-1 Hydropower Project," Early Warning System (EWS), accessed March 5, 2025, <https://ewsdata.rightsindevelopment.org/projects/13516-upper-trishuli-1-hydropower-project/>.

122. "Diversion Tunnel of 216-Megawatt Upper Trishuli-1 Project Completed," The Himalayan Times.

123. "Upper Trishuli-1 Hydropower Project," NS Energy Business, accessed March 5, 2025, <https://www.nsenergybusiness.com/projects/upper-trishuli-1-hydropower-project/>.

124. "Upper Trishuli-1 Hydropower Project," Early Warning System (EWS).

125. "Upper Trishuli-1, Nepal," ANDRITZ Hydro News, accessed March 5, 2025, <https://www.andritz.com/hydro-en/hydronews/hn36/upper-trishuli-1-nepal>.

126. "Upper Trishuli-1 HEP (216 MW)," Nepal Water & Energy Development Company (NWEDC), accessed March 5, 2025, <https://nwedcpl.com/project/upper-trishuli-1-hep-216-mw/>.

127. "Upper Trishuli-1," Tractabel Engie, accessed March 5, 2025, <https://tractabel-engie.com/en/references/upper-trishuli-1>.

128. "UT-1 Hydropower Project Foundation Laid," Spotlight Nepal, October 1, 2023, accessed March 5, 2025, <https://www.spotlightnepal.com/2023/10/01/ut-1-hydropower-project-foundation-laid/>.

## 4. ARUN GROUP OF HYDROPOWER PROJECTS



The Arun group of hydropower projects will be constructed on the Arun River. In the picture is the Arun River valley.

Credit: Dan Kumar Rai/Shutterstock

**Description:** The Arun group of projects comprises multiple projects on the Arun River, primarily in the Sankhuwasabha District, over 650 kilometers from Kathmandu. Some of these projects include, (1) the Upper Arun Project – a run-of-the-river project with an over 1063 MW capacity, to be implemented by the Upper Arun Hydro-Electric Limited (UAHEL), a subsidiary of the NEA, and (2) the Arun 3 Hydropower Project – a run-of-the-river project with a 900 MW capacity, which is currently under construction after procuring a PPA with the NEA. Of these though, only the Upper Arun project appears to be under consideration for receiving financial support from multilateral development banks.

**Community affected:** The Upper Arun Project affects the Bhote, Tamang, Sherpa, Gurung, and Rai indigenous communities.

**Issues:** Project developers claimed that the Arun group of projects would uplift the socio-economic conditions of the PAPs, create entrepreneurship and employment opportunities. PAPs would also be entitled to up to 30 free units of electricity.<sup>129</sup> The state authorities claim that the Upper Arun project would displace “just” 22 households over 2000 Ha, whereas the World Bank’s documents puts the affected, at an estimated 335 households (approximately 1,614 PAPs).<sup>130</sup> The community

129. “SJVN Optimistic About Mutual Benefits from Arun-III and Upper Arun Hydropower Projects,” Pardafas English, accessed March 5, 2025, <https://english.pardafas.com/sjvn-optimistic-about-mutual-benefits-from-arun-iii-and-upper-arun-hydropower-projects/>.

130. World Bank. “Environmental and Social Impact Assessment (ESIA) Study for Upper Arun Hydroelectric Project: Final Draft”,

members mentioned that the total number of people to be affected from the Upper Arun is yet to be determined, but so far as their engagement and participation goes, they were not consulted in the fixing of compensation rates, which were unilaterally determined by the project developers. Along with the World Bank, participating is the EIB for financing of up to 97 billion NPRs.<sup>131</sup>

**Timeline:** The PDA with the NEA was signed in 2014,<sup>132</sup> whereas the financial approval for the UAHEL (the NEA subsidiary developing Upper Arun project) came only in 2020, belatedly, after construction works had started in 2018. Its scheduled commissioning is in 2024.

**Promised Benefits:** Low cost electricity, with energy production above average even during dry seasons. The associated transmission lines are to also carry electricity for export to India.

**Major financiers:** The total project cost only for the Upper Arun project is estimated at \$1.8 billion USD.<sup>133</sup> Currently, both the Upper Arun as well as the Arun 3 projects are being financed by a domestic consortium of banks in Nepal and India,<sup>134</sup> but the Upper Arun project is expected to receive financing from a group of MDBs, led by the World Bank. The approval for the project was pending determination in 2025. Interestingly, the fact that the project was still being considered for approval with the World Bank considering leading the co-financing commitments alongside the ADB, Japan International Cooperation Agency (JICA), the Organization of Petroleum Exporting Countries (OPEC) Fund,<sup>135</sup> raised plausible concerns. This is because the World Bank itself in the 1990s, pulled out after preliminary surveys and feasibility studies — citing concerns over management of environmental, social and financial issues around the project.<sup>136</sup>

**Private Stakeholders:** Most of the Arun projects are being developed by Indian joint ventures, the SJVN Group including the Upper Arun Project, the Arun 3 Project, the Arun 4 Project, and the Lower Arun Project.<sup>137</sup>

**Current status:** The Upper Arun Project was granted a survey licence in 2019, and its feasibility studies were approved in 2021. It was estimated to begin construction from 2026,<sup>138</sup> but it stands to be seen how the project now progresses, after being dropped by the World Bank and other potential co-financiers from consideration.<sup>139</sup>

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January 2024, accessed March 5, 2025, <https://documents1.worldbank.org/curated/en/099012824100044115/pdf/P17872219a423f0941a3ee1b46896c4d196.pdf>.

131. "After 27 Years, World Bank Returns to Arun River," The Kathmandu Post, September 17, 2022, accessed March 5, 2025, <https://kathmandupost.com/national/2022/09/17/after-27-years-world-bank-returns-to-arun-river>.

132. "Sinohydro-Sagarmatha Power Company (SAPDC)," accessed March 5, 2025, <https://sapdc.com.np/>.

133. "World Bank Flip-Flop on Upper Arun," Nepali Times, accessed March 5, 2025, <https://nepalitimes.com/news/world-bank-flip-flop-on-upper-arun>.

134. Cabinet approves investment proposal for transmission component of Arun-3 Hydro Electric Project (Nepal portion) by Sutlej Jal Vikas Nigam(SJVN) Limited, Press Information Bureau (PIB) India, accessed March 5, 2025, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1566714>.

135. World Bank, "Upper Arun Hydroelectric Project," accessed March 5, 2025, <https://projects.worldbank.org/en/projects-operations/project-detail/P178722>. As of 2025, the World Bank has decided to drop the Project.

136. "Defining the Local in the Arun Controversy: Villagers, NGOs, and the World Bank," Cultural Survival Quarterly, accessed March 5, 2025, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/defining-local-arun-controversy-villagers-ngos-and-world>.

137. "SJVN bags yet another Arun River-based hydro project", Farsight Nepal, accessed March 5, 2025, <https://farsightnepal.com/news/144>.

138. "Nepal Requests World Bank to Expedite Financial Management of 1,063 MW Upper Arun Hydropower Project," MyRepublica, accessed March 5, 2025, <https://myrepublica.nagariknetwork.com/news/nepal-requests-wb-to-expedite-financial-management-of-1063-mw-upper-arun-hy...-67340b0f01fa1.html>.

139. World Bank, "Upper Arun Hydroelectric Project".

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