

JOINT SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO DEVELOPMENT

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CASE STUDY: Tanahu Hydropower Project, Nepal

The Tanahu Hydropower Project (the “Project”) is funded by the Asian Development Bank (ADB) ([project number 43281-013](#)), the European Investment Bank (EIB) (project number: [20120278](#)), and the Japanese International Cooperation Agency (JICA). [Tanahu Hydropower Limited](#) (or THL), a subsidiary of [Nepal Electricity Authority](#) (NEA), is the project developer. The Project will construct a 140m high concrete gravity dam with a crest length of 215m on the Seti River, water storage facilities and associated transmission lines. The dam site is located about 2 km upstream from the confluence of the Seti and Madi rivers near to Damauli Bazaar at Vyas Municipality and an underground powerhouse is located on the right bank of the Seti River in Kahu Shivapur VDC in Tanahu district of Western Nepal. Other components of the Project include rural electrification and community development in the project area, and a reform and restructuring plan for the Nepal Electricity Authority.

Affected Communities

The Environmental Impact Assessment (EIA) of the Project approved in 2009 identified 838 project affected families consisting of different groups, including the indigenous Magar, Gurung and Newar, and the so-called lower caste Dalit communities, all of whom depend on the land for their livelihoods. According to the draft Resettlement and Indigenous Peoples Plan of the Project, more than 753 households will be directly affected by the hydropower project; 1 Spring water source with water tank, 1 well, 2 temples, 9 ghats (cremation sites), 6 jholunge (suspension) bridges, 1 temporary bridge, 2 roads, 11 trails, 6 thanti (resting place) and 111 sheds will be affected. However, in the updated Resettlement and Indigenous Peoples Plan of the Project published in 2018, the total number of affected households was decreased to 475 - at least 73% of them indigenous. Since the beginning of the Project, one main concern was the absence of accessible and timely project information. Residents are concerned about the specific impacts to their traditional lands and environment.

Complaints to ADB and EIB Independent Accountability Mechanisms

In February 2020, the independent accountability mechanisms of the ADB and the EIB found the complaints filed by 31 inundation-affected indigenous Magar families and six joint owners of a land plot in the inundation area organized under the “Directly Inundation Affected Peoples Collective Rights Protection Committee” (hereafter the Committee), eligible. In May and June 2021, fifteen indigenous Magar and one Newar as well as ten Dalit households living on or off the lands adjoining the inundation area (hereafter the new Complainants) submitted another complaint to the accountability mechanisms of the ADB and the EIB. Both complaints are currently in various stages of dispute resolution facilitated by the accountability mechanisms - the Office of the Special Project Facilitator (OSPF) of the ADB and EIB-Complaint Mechanism (EIB-CM). With their complaints, they have asserted their right to free, prior and informed consent (FPIC) and for land-for-land and

house-for-house compensation, among other demands such as benefit sharing and alternative environment and socio-cultural assessments to be conducted.

The following are some of the key and ongoing concerns of the communities about the negative impacts of the Tanahu Hydropower Project:

- 1) Lack of meaningful consultations and violation of their right to Free, Prior and Informed Consent by THL, OSFP and EIB-CM:** Since the initiation of the project, communities were not informed about the project or meaningfully consulted; Free, Prior, and Informed Consent (FPIC) of the affected indigenous communities was not obtained by the Project or the authorities. Communities have found that even the complaint mechanisms of ADB and EIB, i.e OSFP and EIB-CM have not been respectful of their right to FPIC with proper information not provided to them in advance or translated in local languages and in some instances information being shared with the company before being shared with communities.
- 2) Issues with the land for land compensation proposal of THL:** Through the negotiations as a part of the dispute resolution process, the company THL agreed to look into the provision of land for land compensation. They submitted a proposal on the process to determine if land for land compensation would be possible as there is no existing policy in Nepal. According to this proposal, they would require 3.5 years to explore the land for land option which is conditional on the approval of Nepal's Cabinet of Ministers. This estimated time frame is too long as communities have already been addressing their grievances for more than 6 years and may put them at further risk. THL has also mentioned in their proposal that if the process of approval for land for land compensation does not go ahead, they will provide compensation at earlier reduced rates. The communities thus feel that this proposal does not respect their demands and may leave them in a worse off position. There is also no guarantee for land-for-land compensation of the untitled lands that will be inundated by the Project.
- 3) Environment risks faced by the community with the progress in construction of the hydropower project without settlement of their lands:** The complainants have witnessed a drastic increase in floods and landslides affecting their lands and lives over the past two years, which increases their worries about the impacts once inundation occurs. There has also been illegal sand and stone mining on the riverbanks in the inundation area has been increasingly affecting their lands and lives over the past two years and has destroyed their lands, roads and canals, impacting those living close to the riverbanks. Community leaders have also received threats as a result of their opposition against the illegal sand mining activities.

The affected communities seek to continue to try to resolve their grievances with respect to their rights to FPIC and land for land compensation, as per Indigenous and Tribal Peoples Convention No.

169 of the International Labour Organization (ILO), UN Declaration of Rights of Indigenous Peoples (UNDRIP), and the safeguard policies of the ADB and the EIB.

Expressing the concerns mentioned above, the old complainants and the indigenous households from the new complainants recently wrote to the ADB and EIB Board of Directors, dated 15th December 2022. **The communities requested the Board of Directors of the Asian Development Bank to suspend remaining financing allocated for the Project until the Project makes concrete progress to resolve their grievances as follows:**

1. THL explicitly commits to provide replacement lands or compensation at replacement value for our lands - titled or untitled - that will be acquired for the Project and to ensure application of FPIC in the Project's processes concerning us in line with the Safeguard Policies of the ADB and the EIB;
2. THL makes concrete progress in identifying suitable replacement lands equivalent to the lands of the affected families of the Committee with meaningful participation of the Committee and take forward the land procurement process;
3. THL completes the process of definition of buffer zone to ascertain the impacts on the lands and settlements of the new Complainants at the earliest within a defined timeframe and with effective participation of the Complainants; and
4. THL supports the process of land registration for untitled lands that will be inundated by the Project and provides land-for-land compensation for the untitled lands as they have been traditionally used by the Magar indigenous community.

Additional reading:

1. [Nepal: The cost of hydropower- dispossessing indigenous Magar communities of land and water](#) by Prabindra Shakya and Alessandro Ramazzoti. *Minority and Indigenous Trends 2023*.
2. [What will our children get? Communities in Nepal assert their right to land for land compensation and meaningful consultations](#) by Vaishnavi Varadarajan. *International Accountability Project*.
3. [Advocacy timeline for Tanahu Hydropower Project Campaign](#). *Community Empowerment and Social Justice Network*.

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