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# ENERGY PROJECTS IN NEPAL: OPTIONS FOR CONFLICT PREVENTION AND MITIGATION<sup>a</sup>

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The Consensus Building Institute

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## EXECUTIVE SUMMARY

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Nepal has long struggled in its efforts to realize its enormous hydropower potential as a gateway to social and economic development. Barriers to progress include the recurrence of conflicts between project developers and local communities over the siting of energy infrastructure. In particular, some high-voltage electricity transmission lines have encountered opposition from local communities claiming both a stronger voice in project design to minimize negative impacts as well as greater material and non-material benefits as compensation for disruptions of their livelihoods, cultural norms and social fabric.

The Consensus Building Institute was commissioned by the World Bank, a key partner of the Government of Nepal, to examine the drivers and dynamics of these energy conflicts and make recommendations on how to strengthen national capacities to prevent and address site-specific disputes. Our findings are based on extensive literature and project document reviews as well as on interviews with a wide range of stakeholders from government, community groups, civil society, private sector, academia and international technical and financial partners. Field visits to project sites along the Khimti-Dhalkebar, Bharatpur-Bardaghat and Kabeli Transmission Lines helped anchor our analysis and suggestions in grassroots realities.

The prevention or resolution of a conflict fundamentally hinges on enabling a mutually acceptable exchange between relevant parties. Both substance and process factors, such as relationships and trust, play a key role. This is true in public disputes, of which energy conflicts are a sub-set, even as the government retains ultimate authority. Our analysis is therefore structured along two major components that determine the pathway of a dispute (mitigation or escalation) and condition its outcome. These components are:

1. The policy, legal and regulatory environment that widens or narrows a government's ability to meet community demands in a consistent, predictable way. In the specific case of energy conflicts in Nepal, we examine the provisions and instruments regarding compensation,

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rehabilitation and benefit-sharing which effectively govern the allocation of costs and gains from energy development across the population; and

2. The processes of planning and decision-making around energy infrastructure, with specific attention to the extent and quality of community engagement through communication and consultation practices as well as grievance redress mechanisms (GRM).

Our central focus is on transmission lines in Nepal. However, it is important to note that high-voltage transmission lines in many parts of the world present particular challenges of public opposition on economic, health and safety grounds. Yet, there is a dearth of codified global good practice specific to transmission lines and an urgent need to develop innovative approaches to community engagement and benefit-sharing appropriate to technical and economic parameters of this type of energy infrastructure. As a critical first step towards that, this report identifies Nepali and international expertise and models that, with the appropriate adaptations, could serve as inspirations for improvement in those areas where we identified challenges.

Such models include successes with community engagement and benefit-sharing schemes in hydropower projects in Nepal -- starting with Chilime and, more recently, Arun III -- as well as a pioneering effort to include a benefit-sharing program for communities along CASA 1000 whose planned route traverses remote and volatile areas in Afghanistan and Pakistan. With respect to policies and institutional approaches, we briefly highlight experiences from India, notably its Corporate Social Responsibility (CSR) policy and its implementation, through guidelines and targeted programmes, by Powergrid, a large government-controlled transmission utility.

From a conflict resolution perspective, significant challenges exist in current Nepali policies and practices relevant to transmission line siting. These are partly associated with the long timeframes and multiplicity of actors involved in project design and implementation, which leave communities in great uncertainty as the world changes around them. They are also partly underpinned by uncoordinated development planning and tensions associated with the country's complex transition. The Nepali experience shows that gaps can open between community expectations and institutional responses – and widen into chasms in the absence of early and systematic information-sharing and consultations or of a credible and accessible grievance redress mechanism.

Adequate monetary compensation matters, and the inconsistent application of prevailing rules regarding compensation encourages hard bargaining instead of joint problem-solving. Nonetheless, a more holistic view of community needs as well as a better understanding by communities of the potential benefits and risks of a project, can foster public acceptance and generate benefit packages that are in line with the community's own priorities. Mutually respectful engagement is the basis for both. Nationally too, there is scope in Nepal for greater clarity and evidence-based debate among policymakers and opinion-leaders, including in the media, of the promise and pitfalls of the country's energy resource development. Building systems and human resource capacity for multi-stakeholder policy dialogue and participatory planning at all levels will be key to a more productive and less acrimonious debate among Nepalis on forging a common energy future.

Significant opportunities exist to strengthen conflict prevention and mitigation in energy projects in Nepal. The current Energy Emergency has set the stage for an overhaul of the sector and several reforms currently underway could reduce infringement on communities and increase financial flows to project-affected people. The unbundling of the National Electricity Authority (NEA) holds promise for institutional strengthening, including in social and environmental safeguard management, given conducive organizational and incentive structures. The NEA already disposes of individual managers and front-line staff who work to engage with communities with good will, but they lack institutional support or recognition. This internal resource can be leveraged to increase the profile and ultimately mainstream sound

safeguards management. In addition, Nepal is developing mediation capacity, both at central and local levels, which offers opportunities for new forms of collaboration in preventing and addressing energy infrastructure disputes.

Our recommendations comprise concrete measures to build a sustainable, efficient and credible national energy disputes resolution system in Nepal. They include the following key actions, drawing on national capacity and international expertise, as appropriate:

In the short term:

- ❖ Provide technical and advocacy support to the timely promulgation and implementation of ongoing reform measures that will help prevent and mitigate conflicts with communities over the routing of electricity transmission lines and the level of material benefits.
- ❖ Promote an evidence-based national narrative around energy development in Nepal that recognizes its potential benefits as well as key distributional questions.
- ❖ Improve quality assurance and consistent implementation of plans encompassing improvements in community services, infrastructure, and livelihoods through training in strategic planning and programme management for field staff of the NEA's Environment and Social Safeguards Division (ESSD).
- ❖ Strengthen country systems at the operational level for community engagement, conflict assessment/management and grievance redress including through:
  - The recruitment and training in multi-stakeholder resource dispute management of a pool of independent mediators who are systematically deployed to facilitate dialogue at specific project sites where conflict risks are high.
  - The clarification of ESSD's role within NEA as a catalyst and custodian of improved community engagement and grievance redress management and the provision of strong technical support to develop guidelines, Standard Operating Procedures, templates and tools that can be used across all transmission line projects, including a centralized internet-based grievance classification and monitoring system.
  - The creation of a high-level inter-disciplinary body with energy, mediation and human rights expertise that provides strategic oversight over facilitation efforts and helps trouble-shoot where resolution requires action above the local level.
- ❖ Increase awareness of the importance of safeguard and conflict management to NEA's core business at senior management level through an analysis of the cost incurred in the past decade because of conflict and opportunities for peer exchange among all NEA project managers.

In the medium term:

- ❖ Convene an international technical forum to devise benefit-sharing schemes specific to electricity transmission lines.
- ❖ Undertake a National Dialogue on Energy Security, with the objective of educating the public about energy issues and building bridges of understanding between policy-makers, parliamentarians, civil society, and energy sector actors.
- ❖ Support mainstreaming of good safeguards and conflict management practices through training of all ESSD staff using the guidelines and tools developed in the short term.
- ❖ Adapt methodologies and instruments for community needs assessment to align with the World Bank's new Environmental and Social Framework, approved in August 2016.
- ❖ Support the creation of energy practice areas within Nepali institutions with a mission to promote transparency in public decision-making, social accountability and conflict management.
- ❖ Establish a strong social and environmental safeguards unit, with conflict management capacity, in the institutional set-up of the new National Transmission Grid Company (drawing on a strengthened ESSD as appropriate).

## OVERVIEW

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Nepal, the poorest country by per capita GDP in South Asia, grapples with a long-standing severe energy crisis. Though endowed with abundant hydropower potential, the country suffers from frequent power cuts and relies on fuel imports to partially address shortages; according to Government figures, millions use firewood to meet cooking and other basic needs.

Improving access and reliability of energy services presents its own set of challenges, however, including a number of policy, regulatory, institutional and political bottlenecks that hamper sector planning and profitability. Additionally, Nepal has seen a proliferation of conflicts between government authorities and local communities over the siting of energy infrastructure. These have slowed project implementation and, in some instances, stalled construction for extended periods, resulting in substantial financial losses for state and private power producers and significant economic and social impacts in communities. In a particularly fraught case, a short stretch along the Khimti-Dhalkebar Transmission Line became the subject of intense acrimony, culminating in a request by the affected families for review by the Inspection Panel of the World Bank, which had provided funding for the project.

As a key partner of the Nepali Government in sector reform and the expansion of electricity generation, transmission and distribution capacity, the World Bank expressed an interest in learning lessons from ongoing conflicts around energy projects in Nepal and in identifying measures for the prevention and effective mitigation of future disputes. To this end, the World Bank commissioned the Consensus Building Institute (CBI) to undertake an analysis of the drivers and dynamics of conflicts around the development of energy infrastructure in the country, and to propose options for building national systems and capacities for conflict management in energy infrastructure development.

Our central focus is on high-voltage transmission lines, though we substantially draw on both Nepali and global experiences with conflicts around hydroelectric projects, which dominate the country's electricity generation. The two types of infrastructure are both essential components of a functioning energy system; yet significant differences in their respective physical characteristics, and in the associated economics and regulatory environment, present distinct challenges from a community engagement and conflict management perspective. Transmission lines are surprisingly understudied despite vexing siting problems in many parts of the world. Comparatively more progress has been made on establishing standards and disseminating practices for gaining genuine public acceptance of hydropower schemes. A key question that we begin to explore, but that requires further consideration, is how energy sector actors can transpose learning in one domain to design adequate consultation processes and benefit-sharing mechanisms in another.

This report summarizes our findings and recommendations. These are organized around two broad areas that constitute major sources of grievance in often remote Nepali communities confronted with the construction of high-voltage transmission lines. These sources of grievance are:

1. The apportionment of substantive benefits and costs associated with energy projects, as reflected in provisions and instruments for compensation, rehabilitation and benefit-sharing, and
2. The processes of decision-making regarding the design and implementation of energy projects, as reflected in communication and consultation practices as well as grievance redress mechanisms (GRMs). These practices and mechanisms create and constrain options for community choice and voice on matters of great importance to their economic and social makeup.

For each category, we suggest short-term actions, both to capitalize on openings for policy change associated with the Energy Emergency and to enable a timely response to emerging conflicts before they escalate. We also outline measures requiring longer-term support for strengthening and institutionalizing community engagement and benefit-sharing practices that are adapted to the Nepali context but draw on the wider experience in the global development community, including the energy industry. In all cases, our starting point is an effort to seek out existing Nepali capacities and create a space for locally-led solutions, informed and supported by international expertise, as necessary.

Completed over the first half of 2016, our study has benefited from the inputs of a wide range of stakeholders from government, private sector, civil society, community groups, academic experts and development partners, in Kathmandu and in three project sites. We conducted field visits to gather the perspectives of project-affected people and front-line staff of the Nepal Electricity Authority (NEA), the implementing agency, along the Khimti-Dhalkebar (KDTL), Bharatpur-Bardaghat (BBTL) and Kabeli (KTL) Transmission Lines. We reviewed a wealth of project documents, position and research papers by Nepali think tanks and international investors working on energy in Nepal, and conducted a scan of experiences elsewhere in a search for models that might find applicability in Nepal.

Throughout the report, we draw on these insights and examples to illustrate observed practices, and to highlight promising responses that build on Nepali frameworks and know-how as well as on the multitude of efforts to create a stronger enabling environment for sustainable energy in the country. We nonetheless recognize both the limits of our own inquiry, which reflect the time and resources that were available to conduct it, and especially the complexity inherent in transforming an important political and economic domain such as energy development in Nepal. The scope and pace of possible progress on such key elements as more flexible laws, integrated development planning and meaningful consultation will to a significant degree hinge on broader developments in Nepal's governance. In devising our recommendations, we therefore strove to strike an appropriate balance between pragmatism and a level of ambition that would permit notable improvements in conflict management capacity. The evolving context will provide the best guide to the roll-out and sequencing of the recommendations, if adopted.

## COMPENSATION AND BENEFIT-SHARING

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While stakeholder engagement and trust-building are of paramount importance, and we will dedicate the second portion of this report to these issues, conflict management is also the art and science of unpacking the substance of a dispute in a process of discovery, and formulating solutions as an exchange of material and non-material benefits acceptable to all parties. For a negotiation to reach settlement, a “zone of agreement” must exist, wherein parties can identify overlapping interests and complementary preferences. The wider the potential zone of agreement among the parties, the more likely the prospect that a satisfactory solution can be found.

In the case of public disputes, such as energy conflicts, that involve governments as key stakeholders, it is the policy, planning, legal and regulatory frameworks that define and legitimate this zone of potential agreement from the perspective of government. The policy space, broadly defined, determines whether opportunities exist to meet community needs and demands in a consistent, predictable way. From the communities' perspective, formal and informal rights to land and resources, customary uses of those resources, perceived opportunities for economic development, the perceived relative gains and losses for different social actors within the community, and the perceived credibility and effectiveness of government policies, actions and personnel shape the zone of potential agreement.

## CURRENT POLICIES AND PRACTICES IN NEPAL

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Energy projects in Nepal can become subject to local opposition as a result of underlying structural challenges that increase conflict risks:

Firstly, energy projects are developed within a larger national context of a political transition that sees various groups jostle for power and resources. Usually located in rural and remote areas of the country for hydrological and topographical reasons, hydropower facilities and transmission lines traverse comparatively deprived territories, inducing communities and groups who often have little economic opportunity or access to social services to focus on a major capital project as a potential source of benefits.

The arrival of a project can hence give rise to what many characterize as inflated community expectations that may be beyond the financial wherewithal of project promoters. While this is true for both privately-funded and NEA-managed projects, the greater speed of the private sector as well as its flexibility, both financially and in terms of the range of options it can entertain, are credited with a better success rate in coming to mutually satisfactory agreements with project-affected people.

When both government personnel and community counterparts have limited understanding of applicable rules; government staff are inconsistent in how much discretion they use in applying the rules; and there is no structured dialogue process through which priorities and budgetary outlays can be established and monitored within the framework of a coherent plan, then local demands rain on NEA project managers and their staff in an ad-hoc fashion. This opens space for opportunistic bargaining that creates community divisions, and absorbs enormous amounts of government and community energies in micro-negotiations. Even if those are successful, they don't necessarily add up to an efficient and equitable process of benefit allocation. Added factors contributing to instability in project implementation are the pervasive influence of political party machineries in the flare-up or tamp-down of local opposition to development projects, as well as cumbersome bureaucratic approval processes, which delay disbursement of agreed-upon compensation and benefits, in some cases for years, while demographic and economic shifts render these agreements obsolete.

Secondly, and contributing to a sense of uncertainty, are challenges in the energy planning and regulatory systems as well as in coordination across all development sectors and agencies. A detailed discussion of this multi-faceted problem is beyond the purview of this report, and we point the interested reader elsewhere.<sup>1</sup> Notable is that while ambitious goals exist – such as ending extensive load-shedding in short order and generating 10,000 MW of electricity by 2026, compared to a current on-grid capacity of 780 MW of hydropower (representing more than 90% of total generation) – corresponding policies, master plans and institutional arrangements are in flux. This has implications for electricity market functioning and investor confidence, and also increases the conflict potential as inconsistent narratives and uncoordinated development schemes cascade into towns and farms.

In our interviews, we came across people who reported seeing the same landowners subject to multiple takings for different development projects, and suggested strategic social and environmental assessments at regional scale to limit such concentrated losses. Some questioned the need for communities to make sacrifices in the name of national advancement when progress remains so elusive – indeed skepticism as to whether the development of Nepal's resources will ultimately be deployed to meet Nepali needs, as opposed to those of outside powers, is a recurring theme.

Others based their unwillingness to accept transmission line siting decisions on conjectures about the future which may never come to pass but which have a great hold on the imagination in an environment

of generalized uncertainty. In Sindhuli, apprehensions were widespread on the potential conversion of the KDTL to a higher-voltage line and the consequences of such an upgrade in terms of greater health risks and easement restrictions. By contrast, an expected positive development, harking back to a government announcement three years ago of plans to include Phidim in its “model cities” programme, conjured up pictures of bustling settlements and markets in the very valley that is to be bisected by the Kabeli line. This triggered alarm over the large opportunity cost in foregone land value.

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## COMPENSATION

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Nepali communities who resist energy projects are sometimes portrayed as posturing to extract as much money as possible. It must be noted, however, that in all three sites we visited financial compensation was not the primary interest stated by local interlocutors. Their primary goal was to change the route alignment to avoid their houses and fields altogether. In Sindhuli, the fulcrum of opposition to the KDTL, collective resettlement in land-for-land swaps was also mentioned as a preferred option to cash, but is difficult to realize in Nepal’s challenging terrain.

These perspectives shed light on why Nepal’s land acquisition policy<sup>b</sup> — mandating 10% compensation for land within the Right-of-Way (RoW) and 100% for structures and the land they occupy — has not stemmed the tide of conflicts around the siting of high-voltage transmission lines. With limited requirements for labor in construction and maintenance, and involving restrictions on the use of narrow strips of land over long distances, transmission lines present particularly thorny problems of uneven apportionment of costs and benefits. Even additional ad hoc forms of “creative compensation,” notably the Government’s commitment to build a feeder road in Sindhuli that legally permitted full acquisition of the land in the RoW and paying 100 % compensation, ultimately failed to assuage opposition for a number of reasons, including a lack of inclusive and documented consultations with the community.

A significant problem is that cash payments tied to current land prices are not perceived to be commensurate with the economic harm incurred, not to mention the significant, and hard-to-monetize, cultural and social value of land in Nepal. Often steep increases in land values in rapidly urbanizing population centers are not captured in the payouts, especially when years intervene between assessment and disbursement as happened in Sindhuli. Additionally, a technical determination of the width of the RoW based on electrical infrastructure and safety parameters does not address questions regarding the economic viability of land properties in the general proximity of the corridor, including the ability to sell or mortgage assets and maintain productive or social enterprises. In Sindhuli, project opponents reported being rejected for loans because of commercial bank policies that allegedly bar the use of land in the vicinity of transmission lines as collateral, and they also anticipate a drop in enrollment in a local boarding school due to parents’ fears of adverse health impacts.

Such examples illustrate dilemmas around determinations of who can legitimately be considered “project-affected,” an issue on which a restrictive compensation regime clashes head-on with community experience. Additionally, the legal framework guiding compensation<sup>c</sup> is general while more specific organizational policies are not published in easily accessible form, leaving even some front-line NEA project staff to unwittingly disseminate misinformation.<sup>d</sup> More generally, we have found inconsistent application of the policies in different locales. The resulting lack of clarity on entitlements contributes to

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<sup>b</sup> According to a World Bank Portfolio Review of Transmission Lines and Resettlement (shared with us in draft form) many countries provide no compensation for access for construction and maintenance purposes or for limits on use within the Right-of-Way (ROW) as the land is technically not being acquired, though other means for reward distribution may be used.

<sup>c</sup> The 1977 Land Acquisition Act, the 1992 Electricity Act, the 1999 Local Self-Governance Act and others.

<sup>d</sup> E.g. Representations that the compensation for land under structures is 10% when in fact it is 100%.

allegations of discriminatory fund allocation practices that sow a sense of unfairness, and encourage hard bargaining.

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## BENEFIT-SHARING

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Conflicts with communities are not the only cause of energy project delays in Nepal, but are widely recognized to be a substantial risk factor. They are also not new. As in many parts of the world, Nepal has seen controversy associated with hydroelectric schemes, including over large-scale population displacement and environmental impacts. In the 1990s, Arun III became the first-ever case for review by the World Bank Inspection Panel and was cancelled after massive mobilization of local and international NGOs against it. Today, construction is poised to start on a modified version of the Arun III project which is reportedly whole-heartedly embraced by affected districts.<sup>2</sup> According to national press reports, a tripartite agreement was signed between local people organized in a Stakeholder Committee, the Nepal Investment Board (NIB) and the Nepali subsidiary of a private Indian power developer,<sup>3</sup> which is said to include provisions for training, employment, electrification, road infrastructure improvements and the allotment of equity shares to local residents.<sup>4</sup>

Arun III is an illustration of an increasingly common practice across the world of redistributing revenue from hydropower throughout the life of the project to transform local communities from “passive receptors and involuntary risk-bearers to active development partners.”<sup>5</sup> Such benefit-sharing initiatives are complementary to compensation and rehabilitation, seeking to improve rather than merely restore socio-economic well-being through mechanisms such as separate funds dedicated to infrastructure and service provision within the project impact zone. The World Bank and other development actors have conducted global reviews of these experiences and produced guidelines, which favorably showcase Nepali examples,<sup>6</sup> including, most recently, the Chilime project in a 2016 USAID brief on land tenure and energy infrastructure.<sup>7</sup> Chilime, developed by a subsidiary of NEA, not only pioneered the distribution of project shares in Nepal to local people and even a school, but also launched a major education campaign to explain the process and implications of stock ownership, illustrating the importance of outreach, alongside material benefit, for community understanding and buy-in.

Indeed, the importance of local influence over the allocation of funds is a point stressed in the literature.<sup>8</sup> This goes to the issue of governance structures, including how the funds are transferred to the local level and the degree of participation by community representatives and civil society in determining their use. In Nepal, the central government channels a portion of its hydropower royalties to the hosting development region (38%) as well as directly to districts within it (12%).<sup>9</sup> Sub-national authorities have flexibility in how revenues are spent, which has enabled some places, such as Makawanpur, to successfully create their own priority-setting and allocation systems; elsewhere, however, functionaries are unaware of district entitlements<sup>10</sup> or the financial transfers “get lost in the system.”<sup>11</sup> In any case, the royalties do not flow down to the Village Development Committee (VDC) level, keeping them at a remove from affected people, especially as local elections have not been held since 2002. This impedes both direct participation by affected people in deciding how to use revenues, and the leveraging of community capacities for locally-led development.<sup>12</sup>

Nepali experts, such as the Niti and Samriddhi Foundations, have extensively studied local disputes in the context of hydropower project and have pointed to the weak implementation of the royalty redistribution provision as significantly contributing to local conflicts. They are assessing the economic feasibility of allocating project resources to benefit-sharing, and developing a common strategy among private producers on meeting community expectations.<sup>13</sup> They highlight the absence of an adequate legal framework defining the scope and basis of benefit-sharing in the country as a serious policy gap, and



encourage a concerted effort to create appropriate national legislation and comprehensive guidelines, covering both the construction and operational phases of projects.

As the dearth of functional transmission lines is one of the main bottlenecks for evacuating power from hydroelectric plants, it would be crucial to incorporate both types of infrastructure in the development of a Nepali benefit-sharing framework through a systemic approach. High-voltage transmission lines everywhere present particular challenges of investment, public-private interaction, pricing and profitability (including of rate-setting and wheeling charges) as well as public opposition on economic, health and safety grounds.<sup>14</sup> This highlights the need for innovative models that are grounded in the technical and economic realities of the sector and the country.

Of great interest in this regard are examples of benefit-sharing schemes in Nepal. Notable are the payment, equivalent to 50 years of rent, by the Bhote Koshi Power Company to landowners along a transmission line in the 1990s and, more recently, the commitment within the Kabeli corridor to provide electrification for stretches of 2.5 km on either side of the line. In Sindhuli, too, an exemption from load-shedding was granted to the area in an effort to obtain support for the KDTL but failed to do so as it was not part of a package agreement that could more fully address other important community demands such as the provision of health insurance and more favorable terms of credit.

The case also illustrates the limitations, from a conflict mitigation perspective, of a Vulnerable Community Development Plan (VCDP) as a tool for benefit allocation, as the provisions therein may be necessary but not sufficient to engage and satisfy the full spectrum of local stakeholders concerns, especially those of comparatively advantaged and empowered community members who often are at the forefront of mobilizations to secure benefits and rights. The same phenomenon was evident in Dumkibas along the BBTL, where a small group of owners of substantial housing properties are at loggerheads with the NEA, and in Phidim along the Kabeli TL, where local leaders of the respective political parties, united in a “Concerned Committee,” are the engine and voice of opposition to the current alignment.

Moreover, in Kabeli, the project is undertaking some social service provision and training, but the effort appears to lack a unified prioritization of needs or budget. A 2011 Social Impact Assessment identified a majority of the population in the project area as indigenous and found that a substantial proportion of households experienced precarious livelihoods and health and food security conditions. Empowering project staff with strategic planning and stakeholder engagement skills to implement mitigation measures in a consistent and timely fashion would be of great benefit under such circumstances.

Refinements in the above-cited benefit-sharing initiatives were suggested by project implementers; in the Bhote Koshi case, the suggestion was to modify the time horizon of the payment scheme while in Kabeli the suggestion was to reduce fractures within communities, by including in benefit allocations VDC residents living outside the electrification zone. These recommendations, incorporating lessons learned from experiments in Nepal, could be brought to bear in a broader policy dialogue on key issues defining a benefit-sharing framework such as:

- what represents a “fair share” of revenues,
- what combination of public and private sources of funding could be mobilized,
- what institutional arrangements would facilitate efficient and equitable outcomes and hence reduce conflict, and
- what distribution and governance mechanisms could contribute to enhanced local development and social cohesion.

Such a dialogue could inform the ongoing discussions on energy sector reform, particularly on the progressively evolving enabling conditions for public-private partnerships. On the ground, one already

finds informal practices of cooperation on land acquisition between independent power producers and NEA. For example, in the case of the KTL, private power producers reportedly provided payments to landowners in a portion of the RoW in order to accelerate progress on construction and enable power evacuation from the upstream generation facilities in which they had invested. The NEA which of course retains ultimate responsibility for paying compensation, was expected to reimburse the private power producers for these financial outlays once bureaucratic procedures were completed.

## INTERNATIONAL GOOD PRACTICE

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Our literature review shows that there is limited cross-national guidance specifically on how to design effective compensation and benefit-sharing approaches and arrangements for communities hosting transmission lines. A global search yields only disparate pieces, from descriptions of compensation formulas that depart from the Nepali standard (e.g. incorporating “an encumbrance factor” representing the likely loss of agricultural output) to very recent, ambitious attempts by some North American utilities to manage transmission corridors as conservation areas.<sup>15</sup> While interesting, these appear to be of limited relevance to the Nepali context.

More pertinent are relatively recent developments in India which similarly faces long-standing difficulties in the construction of transmission lines due to resistance by land-owners and farmers. Key among these is the practice of Powergrid India, among the largest electrical power transmission utilities in the world, to allocate, in line with national law, at least 2% of the average net profit on Corporate Social Responsibility (CRS). Activities take place in areas immediately affected by projects (75%) and further afield (25%), an attempt to satisfy both those directly concerned and the larger communities of which they are members.<sup>16</sup>

Additionally, new guidelines issued by the Ministry of Power require all transmission companies to henceforth pay 85 % of the land value as compensation for tower pads and 15 % as compensation towards the diminution in the value of land within the RoW. Despite associated increases in project costs, the company was pushing for even further increases in order to reduce costly construction delays. The company’s “Transmitting Smiles” publication stresses not only economic and social programmes through community infrastructure and skills development, but the deployment of technologies — such as high-rise, multi-circuit and compact towers, high-capacity transmission lines, and GIS and GPS — to optimize route alignment and reduce RoW requirements.<sup>17</sup>

Finally, noteworthy in this context is CASA-1000, a large electricity trading project comprising a transmission infrastructure component intended to connect the Kyrgyz Republic, Tajikistan, Afghanistan and Pakistan. To build local ownership and support for safe construction and operation, support programmes worth \$70 million are under development for more than 600 communities living near the line along the whole corridor. While implementation has yet to begin and a variety of challenges can be anticipated, the attempt at designing and implementing a benefit-sharing scheme of this scale can be a learning platform for other projects, including in Nepal. This is the case not only in terms of methodologies for needs assessments and preserving flexibility over the course of a long project cycle, but also in the specifics of how commitments can be carried out and monitored in a way that contributes to community skill-building.

As a specific example, a 2014 World Bank Project Appraisal Document for Afghanistan outlines in some detail a number of key components for community benefit-sharing that could serve as models to be integrated and adapted to local realities elsewhere. These include:

- (1) Community grants for rural power or, where rural power extension is not possible, alternative development projects;

- (2) Community participation in project planning and implementation through strengthening accountability systems, basic financial-management skills training, and participatory monitoring; and
- (3) An information campaign and feedback loops between the corridor communities and the implementing agencies, through perception surveys, etc.<sup>18</sup>

The fact that many of these are as much about community engagement as about the substantive benefits themselves, yet again shows the inextricable link between them.

## OPPORTUNITIES FOR CONFLICT MITIGATION

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As noted above, the policy, legal and institutional framework fundamentally shapes the opportunity space for negotiating with project affected people. This framework is currently under major revision in the context of a declared national energy emergency. It is the fourth such emergency in the last decade, and the adoption of the 99 provisions that constitute the Action Plan on National Energy Crisis Prevention has not proceeded apace. Nevertheless, the overall direction points to promising reforms that could have a catalyzing effect similar to the 1992 Electricity Act, which did spur private and foreign investment in hydropower before the civil war ensued.

More specifically, two areas can be highlighted in which proposals for change reflect an understanding of the current regulatory and institutional constraints giving rise to conflicts around land acquisition and benefit-sharing, and a determination to address them:

First, the Action Plan contains a number of key propositions that would reduce infringement on communities in infrastructure siting and increased financial flows to project-affected people. These include:

- (1) The current approach, which privileges routing high-voltage transmission lines through private land and resorts to government land only if necessary, and is almost guaranteed to create friction, will be reversed (action 35 d);
- (2) Both the amounts of compensation for land in the RoW and the means of their distribution are to be modified (action 30), with the introduction of an annual rent to be paid by the developer, whether NEA or private, through VDCs/municipalities. Additional information gathered during our mission indicates that the NEA may be anticipating a lump-sum up-front payment at the time of construction (for example 20-30%) followed by annual lease payments for a duration of 35 years or longer. These would need to be based on changes in land value and hence include periodic reassessment and lease escalators.

Combined with the introduction of a land valuation system based on clearer and more nuanced categories of types and marketability of land (e.g. rural, peri-urban and urban), this would potentially provide project-affected people not only with a steady stream of income visibly tied to the transmission line but also address the problems encountered with using real estate near electricity infrastructure as collateral for bank loans.

Closely related to these provisions is the introduction last year of an updated policy on Land Acquisition, Resettlement and Rehabilitation for Infrastructure Development, which also foresees the modernization of the country's land database and generally brings the national framework more closely in line with World Bank safeguards. The policy is currently being transformed into an Act for submission to Parliament, a process that should be accelerated as much as possible in order to obtain a clear and coherent

framework as a basis for negotiation between project implementers, including managers and field staff, and affected communities.

(3) Additionally, the Action Plan contains a provision for providing a 10% equity stake in the project to the “affected communities and persons of the district” (action 78). It is unclear from the text in the Action Plan whether this encompasses both generation and transmission, though the former is more likely. Nonetheless, this is an important entry point for broader discussions around how benefit-sharing approaches could be introduced for transmission lines as well, using for example community development grants or dedicated funds, with participatory decision-making and monitoring, as planned in CASA-1000.

Secondly, the Action Plan foresees the introduction of wheeling charges, as well as tariff adjustments (action 20 and 21), laying the basis for greater financial health of the NEA, whose restructuring is crucial to improving the overall functioning of the energy sector in the country. The creation of a separate government-controlled National Transmission Grid Company is seen as a key step in the unbundling of the state monopoly utility. The long-awaited reform of the NEA and the accompanying greater commercial orientation and professionalization of management and staff could help introduce operational flexibility and incentive structures that promote organization’s priority attention to, and effective and speedier handling of, community expectations, building on the experience and efforts of independent power producers.

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## RECOMMENDATIONS ON COMPENSATION AND BENEFIT-SHARING

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### SHORT-TERM

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1. **Support ongoing reforms that will create a larger “zone of agreement” and facilitate better negotiations on compensation and benefit-sharing packages.** Especially pertinent are the following provisions contained in the Action Plan on National Energy Crisis Prevention:
  - Routing high voltage transmission lines as much as possible through public land (action 35 d)
  - Increasing the amounts of compensation for land in the RoW and the time horizon for distribution (action 30)
  - Allocating a 10 % equity stake in energy projects to affected people and communities (action 78)
  - Introducing wheeling charges and tariff adjustments (actions 20 and 21)

**Advocacy and the provision of technical support** should continue to be coordinated among development partners in the energy sector,<sup>19</sup> including the World Bank, ADB, MCC, Norwegian Government, USAID, DFID and others. This will foster shared learning, harmonized messaging, and complementary support for enabling policies and system- and capacity-strengthening initiatives.

Within this collaborative framework, the World Bank could more specifically focus on supporting the NEA in drafting a **clear and up-to-date RoW policy**, along with a plan for

- dissemination to all relevant staff, including project managers and their teams who engage on a day-to-day basis with communities and contractors.<sup>e</sup>
- Promote an evidence-based national narrative around energy development in Nepal** that recognizes its potential benefits as well as key distributional questions. This could be achieved through a series of workshops for the media and private and public opinion shapers, including political and community leaders. A model to draw on is the “Capacity and Consensus Building in Hydropower” programme, co-sponsored by the Independent Power Producers’ Association in Nepal (IPPAN) and the Norwegian Embassy. That programme facilitates knowledge exchange and dialogue between industry experts, policymakers, journalists and influential local actors in Kathmandu and select locales near key project sites across the country.
  - Improve quality assurance and implementation of plans encompassing improvements in community services, infrastructure and livelihoods** through training in strategic planning and programme management for ESSD field staff. Comprehensive and high-quality documents, such as the VCDP for BBTL and various consultants’ reports on KTL highlight that strong local capacity in these areas exists and could be leveraged for greater impact.

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#### MEDIUM-TERM

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- Adapt methodologies and instruments for community needs assessments in Nepal to align with the World Bank’s new Environment and Social Framework**, approved in August 2016. These safeguard standards are broader in scope and therefore potentially permit a better alignment between community concerns and institutional responses. This could avoid the mismatch that was evident in this regard in Sindhuli where the proposed VCDP activities were effectively boycotted by the community.
- Establish an international technical forum to explore innovative options for the design and implementation of benefit-sharing schemes specific to electricity transmission lines.** Our research identified the need for mapping and improving current practices in many developing country contexts. This important gap in knowledge and practice could be addressed through a dialogue on how to design benefit-sharing initiatives that fit the very particular economic, engineering and geographic/jurisdictional challenges of transmission lines.  
  
Expertise could be mobilized from development actors as well as the private sector, notably through the Sustainable Electricity Partnership,<sup>20</sup> an alliance of major international energy companies working in developing and transition countries. Nepali policymakers and experts (such as from government, including the Nepal Investment Board, as well as IPPAN, NITI Foundation, Samriddhi Foundation, etc.) could be centrally involved, leveraging their ongoing knowledge creation and mobilization efforts.
- Undertake an extensive National Dialogue on Energy Security** with the objective of educating the public about energy issues and building bridges of understanding between policy-makers, parliamentarians, civil society, and energy sector actors (related to Emergency Action Plan’s action 12).

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<sup>e</sup> A draft proposal for such work — containing a review of applicable laws and regulations, stakeholder consultations at the central and local level and country visits to Bangladesh and Pakistan — was submitted to the World Bank by the Environment and Social Studies Department (ESSD) of NEA in February 2015. The further evolution of the national conversation in the context of the Emergency Action Plan make this work all the more salient, as it could serve to improve the knowledge base within NEA and help to accelerate the operationalization of new provisions that concern transmission lines.

National dialogues on critical development issues have been held in many countries. When properly designed as multi-stakeholder platforms for joint priority-setting and problem-solving, they require substantial time and resources. At the same time, they can be transformative in debunking widespread misperceptions, aligning expectations and alleviating mistrust, key conditions for conflict prevention. Industry precedents include a national dialogue conducted by Shell in the United States in 2006/7<sup>21</sup> and a 2050 Energy Plan developed in Chile in 2015.<sup>22</sup>

7. **Consider establishing regular lines of communication, as appropriate, to brief political party leadership on progress and challenges in energy project implementation.** Strong formal and informal networks of influence reach from the center to the remotest regions of Nepal. As such they appear to have a determinant role in better addressing localized conflict.

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## COMMUNITY ENGAGEMENT

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The process of arriving at decisions affects both the quality of the decision itself and its acceptance by those who may suffer negative consequences as a result of it. Key to building ownership of a project and moving from NIMBY (Not in My Back Yard) to POOL (Please On Our Land)<sup>23</sup> is effective community engagement. Productive local engagement and ownership are much more likely when the project developer:

- Proactively shares information about the project and its context
- Engages in good faith in open, sustained, two-way dialogue to learn about and discuss community goals and concerns
- Seeks to meet community concerns wherever feasible by incorporating community input into project design, implementation and maintenance
- Is open and clear in situations when there are community concerns or requests that the developer cannot meet
- Establishes structured and easily accessible opportunities for community members to lodge grievances and obtain speedy resolution

Underlying these actions are assumptions about rights and responsibilities associated, in the public realm, with the social contract between the state and its citizens, and in the private sector with obtaining a “social license” to operate in a community. There are also instrumental reasons for building a productive relationship with a community over the life of a project as “the price of doing so is likely to be substantially less than the price of responding to conflicts ... that might well have been avoided by effectively engaging with the local community from the beginning.”<sup>24</sup>

Such engagement requires dedicated resources, systems, skills and strategies that have been lacking in many transmission line projects around the world including in much of North America and Europe.<sup>25</sup> The difficulties can be even greater in a transition context where national transmission systems and institutions may have limited capacities and face a host of strategic and operational challenges. Nonetheless, it is precisely in such contexts that trust in institutions can be strengthened and national unity solidified through robust consultation and grievance redress mechanisms at the project level.

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## CURRENT POLICIES AND PRACTICES IN NEPAL

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The World Bank Inspection Panel's review of the standoff in Sindhuli found multiple instances of non-compliance with consultation requirements<sup>26</sup> and concluded more broadly that Consultation, Disclosure and Supervision “cut across all of the other [issues] and seem to have been among the root causes of the problems.”<sup>27</sup> Indeed, our own inquiry found strong disagreements over the adequacy of consultation in all its dimensions — timing, methodology, location, language, attitude and availability of policy-relevant and site-specific information — not only in Sindhuli but also at the other two project sites visited. Nearly everyone we spoke to affirmed that the escalation in Sindhuli could have been avoided with significantly greater transparency and willingness to engage.

At bottom, these disputes are about the traditionally restricted practices of public decision-making in Nepal and an emerging demand from communities, in the context of broader political changes, for clearer parameters and more authentic and respectful engagement on large development projects affecting their livelihoods and social conditions. This issue takes on especially powerful resonance with the involvement of indigenous people, known as *adivasi janajati*, present among project opponents in all three sites, as local concerns intertwine with a strong national agenda of identity politics. Nepal has ratified ILO 169, an internationally binding treaty on indigenous peoples' rights, and has therefore assumed a series of obligations regarding projects affecting indigenous lands and resources,<sup>28</sup> yet it has no legal or policy framework in place on how to implement these commitments.<sup>29</sup> This leaves foundational questions unanswered on the meaning and application of collective rights in a governance context that, for a host of reasons, struggles to recognize such claims. Energy projects hence can be subject to controversy when their siting becomes a test case of unclear legal frameworks, with national and international human rights actors mobilizing alongside communities.

In addition to underlying political-economy factors, a number of issues inherent in both NEA's institutional make-up and the complexities of execution of energy projects contribute to conflict. Among these are:

- The long timeframes (with intervals of no construction at all during the rainy season or due to contractual disputes or other impediments) associated with the design and execution of a transmission line project, as well as with determination of compensation payments and their actual disbursement. Delays leave community members in a situation of uncertainty over months or even years regarding the material impacts to be expected, the process of consultation and decision making, and the benefits they will receive. This was the case for example in Sindhuli.
- The multiplicity of actors who interact in uncoordinated fashion with communities, sometimes spreading misinformation regarding the nature and impact of the project. This notably includes contractors who extensively operate in the field, sometimes with little regard to the needs or assets of the population which finds its crops destroyed or its lands covered in debris without clear or timely recourse.
- NEA staff turnover at all levels interrupting channels of communication and trust where particular individuals, especially Project Managers, have worked well with communities. This is in some cases exacerbated by poor record-keeping on consultations. In Phidim, for example, the “Concerned Committee” explained their resistance to permitting a land survey by reference to an earlier agreement, with the prior project management, on an alternative route through less populated areas nearby. That determination, reportedly based on a feasibility assessment in which the members of the Committee themselves participated, was said to have been recorded in documentation which got lost. This is causing a great deal of frustration on the part of the community which doesn't want to revisit what it feels is covered ground.

- Lack of role clarity between the engineering and ESSD staff in the field, with the former often interfacing with affected people, without any training in safeguards or negotiation in polarized environments. ESSD operates in parallel and appears sidelined, with core project staff lacking an understanding of their ESSD colleagues' role, expertise, and contribution. This was evident along the KTL, and points to the need to better leverage NEA's limited human resources.

Even where positions dedicated to community engagement exist in a project (such as the "Public Relations" officer in the Kabeli project or the "Communications Officer" on KDTL), these appear to be left unfilled for substantial periods of time or staffed by personnel that has neither the profile nor the delegated authority to defuse combustible situations. This leads to avoidance behavior by inadequately prepared front-line staff, reinforcing a vicious cycle of non-communication and hardening of positions by communities who don't feel heard. As pressure builds, it is the Project Managers who find themselves compelled to personally intervene to assuage discontent and find solutions in numerous small-scale conflict situations, a task that is more challenging than many have time or appetite for.

- The lack of even simple project-specific strategies for stakeholder engagement and communications as well as the absence of clear guidelines on the scope and functioning of project-based grievance redress mechanisms (GRMs). Unbeknownst to the recently arrived Project Manager, we found that for the KTL, a GRM at the local level was in fact in place, and had registered as many as 200 complaints over the course of a year. An overworked engineering staff person (not ESSD) was in charge of verification of these and referral to others on the project team or contractors for resolution. However, the record-keeping, performed manually, reflected only the date of receipt without any further information on the types of complaints or their progress, rendering it both laborious and nearly useless as an early warning/early action system for conflict mitigation. Members of the "Concerned Committee" circumvented the system altogether, bringing a case in court. Meanwhile, the new Project Manager, upon accidental discovery of the requirement for a GRM, with which his predecessor never complied, is proceeding to establish a structure involving VDCs and District-level officials based purely on his (apparently very good) instincts rather than the established GRM procedure, which doesn't seem to be widely known or followed.
- An apparent lack of prioritization within the NEA hierarchy of social and environmental issues, reflected in the secondary status of the ESSD in financial and human resource terms and in its subsidiary role as a sub-contractor to the Project late in the game and for limited purposes. More broadly, the NEA incentive structure seems to neither reward effective community engagement nor penalize the opposite.

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## INTERNATIONAL GOOD PRACTICE

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In the development sphere, a large number of institution-, sector- and company-specific guidelines exist outlining the rationale and key components of proper citizen engagement approaches and strategies over the entirety of the project cycle. The World Bank alone disposes of several guidelines, many recent, in the areas of consultations in investment operations, grievance redress, and social accountability.

Transmission lines have gotten less specific attention, although a consortium of European transmission system operators and NGOs, united in a partnership called Renewables Grid Initiative have begun to collect and codify experiences in this regard, including the technically challenging issue of how to involve

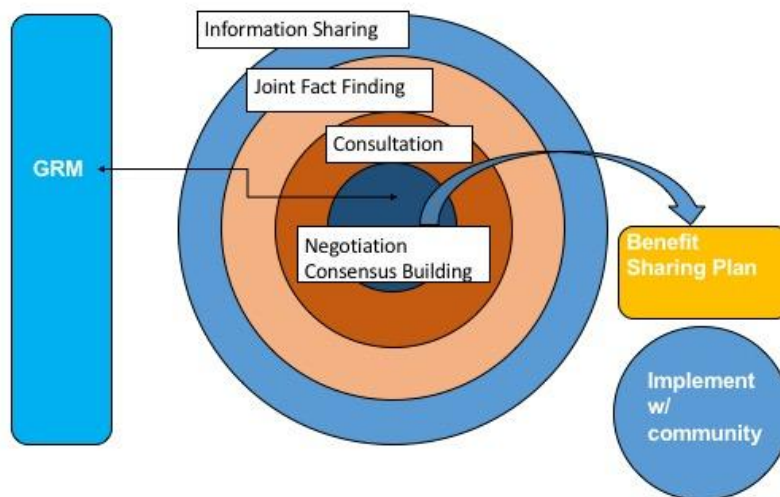


stakeholders in early routing determinations, and when and how to undertake modifications to avoid harm.<sup>30</sup> The World Bank is in the process of a sector review which could also inform a collective reflection by the electricity industry.

The fundamental principles and recommendations reflected in both industry and academic sources all converge on the same key messages, captured by way of example, in the following prescriptions on consultations:

- Initiate stakeholder involvement processes as early as possible and set realistic but firm timelines
- Include broad representation of legitimate stakeholder groups including government agencies and citizen groups
- Seek consensus, and consider using professional neutrals to facilitate collaborative decision-making
- Do not exclude contentious issues, instead seek ways to address negative aspects of any proposal
- Consider incorporating alternative siting processes (such as competitive solicitations or voluntary processes)
- Structure stakeholder involvement processes to supplement but not supplant formal processes, while modifying the latter to better accommodate consensus building opportunities.<sup>31</sup>

Added to the above, are guidelines for developing communication strategies and GRMs, as well as tools for participatory planning and monitoring of development activities in a benefit-sharing plan. A schematic representation of the different complementary elements of a comprehensive community engagement approach is provided below:



The question then is less where to obtain guidance but how to adapt it to local conditions and build ownership and capacity for implementation. Doing so is in itself a process that will require the mobilization

of various Nepali actors, in partnership with outside expertise, working on energy and dispute resolution, respectively.

## OPPORTUNITIES FOR CONFLICT MITIGATION

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Despite the evident challenges, we have found a number of good practice examples in Nepal that if scaled-up and mainstreamed in energy projects could make a real and measurable difference in preventing conflicts. Notable among these are the positive experiences of select NEA Project Managers, front-line staff, and consultants who are dedicated and creative in their interactions with communities, in some cases (e.g. Chilime, but also the Hetauda-Dhalkebar line) with demonstrated success in moving projects forward by finding solutions acceptable to all. An example is the new Project Manager for KTL, who is stepping into a long consultation void and organizing, in short order, public hearings in every village in the project area. He is also negotiating side deals that minimize opportunities for skimming (such as providing the local school with materials and WASH facilities instead of cash).

The main requests from him and others are more time and human resources, including senior people with standing in Nepali society, to support their community engagement efforts. They stress the need for continuous and personalized contact, knowledge of the specific circumstances and mores of a project site within a highly diversified Nepali context, as well as respect for how communities value their land and resources in both monetary and cultural terms.

It would be highly desirable for NEA to learn from and build on this currently unrecognized but real institutional capacity, in order to set new norms and performance standards that value community engagement and negotiation skills. Formal organizational realignment can accelerate this process, and the recent establishment of a centralized Safeguard Unit, overseen by the Deputy Managing Director of the NEA, to strengthen safeguard management in ADB-funded energy projects could be a promising model for a more comprehensive overhaul.

The private sector too offers interesting insights, both in terms of the resources expended on community engagement (e.g. in the Upper Karnali, 32 people were deployed over a 6-month period) and in terms of some of the approaches used. Chief among those is the practice of sending social and grievance teams into communities alongside engineering colleagues at the survey stage, permitting early input on route alignment and thereby maximizing the chances that one of the most difficult issues is handled peaceably and constructively.

In addition, mediation capacity has grown in Nepal in recent years, and, with appropriate external support, can be tapped for conflict prevention and management in energy projects, starting almost immediately. A pool of 10-15 senior mediators with ample experience could be assembled to deliver a range of conflict management services — from assessment to dialogue facilitation and mediation — in collaboration with the Project. These senior mediators could also ensure leadership in putting in place efficient and effective operational systems for conflict prevention along transmission lines.

At a local level, such a system would also substantially draw on the incorporation of community-based resource mediation expertise grounded in the work of Community Forest and Water Users' Groups. Their development has been supported by, for example, the Asia Foundation, which has spun off two potentially relevant initiatives, namely the Natural Resource Conflict Transformation Center in Nepal (NRCTC) and Mercy Corps' Inclusive Natural Resource Management Initiative.

## RECOMMENDATIONS ON COMMUNITY ENGAGEMENT

### SHORT-TERM

8. **Strengthen country systems at the operational level for community engagement, conflict assessment/management, and grievance redress.** This could be accomplished through the following key building blocks:

- **Create a roster of senior-level Nepali mediators** responsible for:
  - **Facilitating dialogue and assisting negotiations** between project-affected people, the NEA and other key stakeholders in project sites where conflict is known to present project risks, and prevent further escalation. As the facilitation capacity required will depend on the complexity and length of a conflict, multiple Senior Mediators working in teams could be deployed where necessary.
  - Developing a **tool for assessing conflict risk** and applying it to every major transmission line project in the World Bank portfolio. Such a tool would help identify potential “hotspots” and target conflict prevention efforts. An existing “conflict filter” for development projects jointly developed by the Nepal offices of the World Bank and the ADB could be adapted for this purpose, including through the integration of key parameters such as socio-political dynamics, ethnic make-up and ongoing demographic and land-use changes.
  - Overseeing the development of a **communications strategy** and a **stakeholder engagement strategy**, tailored to local needs and expectations, for each major World-Bank funded transmission line project.
  - Assessing the functionality of **project-level grievance redress mechanisms** and strengthen these as necessary to bring them in line with global good practice.
  - Recruiting and supervising **VDC-level facilitators and social mobilizers** tasked with the day-to-day implementation of the above strategies as well as with managing the GRM at the local level in cooperation with VDC officials, the project management team, and local ESSD offices. These local-level conflict managers could be drawn from a pool of community mediators active to date especially in forest and water user groups.

A precondition for success of these Senior Mediators is that they dispose of the requisite **skills, credibility and independence**. Therefore, we recommend that:

- Assessment and selection of roster members be conducted through a **rigorous recruitment process**.
- Roster members receive specific **training in multi-stakeholder resource-dispute management** and benefit for a limited roll-out period from international support in the form of coaching, back-stopping and trouble-shooting.

- When deployed, the Senior Mediators be paid through the Project budget and work closely with Project staff but retain a **high degree of autonomy** in the execution of their functions. Appropriate Terms of Reference and reporting lines can help safeguards this autonomy.
- **Develop policies and systems for an efficient, coherent and unified application of social and environmental safeguards in NEA transmission line projects.** This requires both setting clear expectations and quality control mechanisms and empowering NEA staff, especially field staff, with the requisite expertise and tools.

In the current institutional configuration, it would be highly beneficial to clarify and strengthen the role of **ESSD as a catalyst and custodian** of improved stakeholder engagement and grievance redress management across NEA. Additional resources and a stronger mandate and positioning of ESSD could support:

- The development and implementation of written **guidelines outlining a set of key principles and processes on consultation and grievance management**, based on global best practice but adapted to the Nepali context. In the absence of a national government policy on the meaning and implications of ILO 169 in Nepal, special attention could be devoted to consistent and culturally appropriate engagement with indigenous populations in project areas.
- The development of **Standard Operating Procedures and simple templates for notification of communities of the existence and functioning of GRMs and other tools** that can be disseminated to field project offices, communities and other stakeholders, including through the NEA website.
- The creation and management of a centralized **internet-based grievance classification and monitoring system** that can serve all projects (with a unified methodology for registering and tracking complaints and documenting redress process and outcomes). Such a system is both resource-efficient and allows managers to fully capitalize on the information it provides for early and appropriate risk management, as the feedback highlights, on an ongoing basis, successes and shortcomings in implementation of a particular project as well as across projects.

**Embedded technical assistance (TA)**, for example consisting of 2-3 national experts and 1 international expert and reporting directly to senior-most management, would boost the capacity and visibility of ESSD. Throughout the development of policies, systems and tools a close exchange between the ESSD and the independent mediator teams would be highly desirable as this could help field-test approaches and dissemination materials and channels. It could also help identify further capacity building needs.

9. **Establish a high-level inter-disciplinary body** to lend visibility to safeguards management, including stakeholder engagement, and address cross-cutting issues. Members could include senior representatives from the NEA, the National Human Rights Commission, the Mediation Council and development partners, as appropriate, to fulfill two key functions:

- Provide **strategic oversight** of the stakeholder engagement, communications and GRM activities led by the Senior Mediators; and
- **Review, verify and seek solutions to recurring issues, which cannot be resolved at the local level** but instead require trouble-shooting through policy change or other significant interventions (e.g. Criteria for consideration of rerouting; applications of ILO 169; commercial bank practices on collateral for land near transmission lines; conflicting national urban and energy development strategies, etc.).

10. **Increase awareness of the importance of safeguards and conflict management to NEA's core business at senior management level.** Options to achieve this include:

- Conduct an analysis of the cost of conflict as part of **making a "business case"** for continuous information-sharing and community consultation throughout the project cycle. Such costs include lost revenue due to construction stoppages, but also, for example, foregone investment in hydropower, and time and human resources dedicated to conflict de-escalation where consultation failures dramatically exacerbated tensions (e.g. Sindhuli).
- Facilitate **peer exchange among all NEA Project Managers** on community outreach, grievance redress management and participatory planning. Specifically, a series of workshops could provide opportunities for showcasing positive Nepali experiences, building a broader understanding of how successful safeguards management and accountability mechanisms can improve project implementation, and normalizing good practices in all projects, regardless of high staff turnover. Such workshops could also benefit from international participation, as appropriate. <sup>f</sup> In complementarity, learning visits for NEA senior managers to relevant centers of expertise and project sites abroad could be sponsored in cooperation with government and private sector partners.

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MEDIUM-TERM

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11. **Provide training in collaborative planning, strategic communication, and grievance management for ESSD field and headquarters staff** using the guidelines and tools developed (in the short-term). Staff at project sites at higher risk of conflict, as identified through the conflict assessment tool, should be prioritized.

12. **Establish a strong environmental and social safeguard unit, with conflict management capacity, in the institutional set-up of the new National Transmission Grid Company.** Important parameters for raising the profile and mainstream social and environmental considerations in energy projects include: the seniority of leadership responsible, the size and technical competency of staff, the incentives (career advancement etc.) associated with obtaining positive outcomes in community relations, and the location of the physical offices, which should be brought into close proximity to the operational center, both in Kathmandu and in the field.

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<sup>f</sup> For example, drawing on expertise from the Renewables Grid Initiative in Europe and the Administrative Staff College of India in Hyderabad (the latter already is a World Bank partner, and has extensive experience in policy advocacy, operational management and capacity building in Resettlement & Rehabilitation in infrastructure projects).

Once a strong social and environmental safeguards unit is established, it could potentially take on a greater operational role in strategic communication, stakeholder engagement and grievance management, in tandem or in gradual substitution of the Senior Mediators and their teams.

13. **Support the creation of energy practice areas within Nepali institutions with a mission to promote transparency in public decision-making, social accountability and conflict management.** A number of Nepali policies and organizations are devoted to strengthening domestic practices in these areas. These include: the 2007 Right to Information Act and associated 2009 Rules,<sup>32</sup> as well as the Mediation Act<sup>33</sup> that entered into force in 2014, and its custodian, the Mediation Council, (chaired by a Supreme Court Justice). In cooperation with development partners (e.g. USAID, Asia Foundation) that support these and related initiatives, specific expertise on supporting and managing development projects, including energy projects, could be fostered through capacity building efforts, including training.

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- <sup>24</sup> Ibid. pg. 13
- <sup>25</sup> See e.g., Keir, L.S. and Ali, S.H. (April 2014). *Conflict Assessment in Energy Infrastructure Siting: Prospects for Consensus Building in the Northern Pass Transmission Line Project*, Negotiation Journal; Tobiasson, W. and Jamasb, T. (2015), *Public Engagement in Electricity Network Development: A Case Study of the Beaulieu-Denny Project in Scotland*. Durham University Business School; and Ciupuliga, A.R. and Cuppen, E. (2013). *The Role of Dialogue in Fostering Acceptance of Transmission Lines: the Case of a France-Spain Interconnection Project*. Energy Policy, vol. 60, pp.224-233.
- <sup>26</sup> The Inspection Panel (12 February 2015). *Nepal Power Development Project – Investigation Report*. Report No. 93722-NP, see e.g. pg. 75 finding that “Management did not ensure adequate, timely, and meaningful consultations during Project preparation and implementation in non-compliance with OP/BP 4.01 Environmental Assessment, OP/BP 4.10 Indigenous People and OP/BP 4.12 Involuntary Resettlement.”
- <sup>27</sup> Ibid., p. 73
- <sup>28</sup> ILO Convention 169 (1989), Article 30. The Treaty was ratified by Nepal in 2007. Nepal also signed the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), which also requires FPIC. The corresponding World Bank Safeguards standard, found not be achieved by the Inspection Panel in the implementation of the KDTL, is a lesser requirement for consultation.
- <sup>29</sup> Cultural Survival (2015). *Observations on the Human Rights Situation of Indigenous People in Nepal in Light of UNDRIP*. Prepared for the Second Cycle of Universal Periodic Review of Nepal, 23<sup>rd</sup> Session of Human Rights Council.
- <sup>30</sup> See e.g. Renewables Grid Initiative (2013). *Beyond Public Opposition: Lessons Learned Across Europe*, and National Grid UK (2012). *Our Approach to the Design and Routing of new Electricity Transmission Lines*.

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<sup>31</sup> Raab, J. and Susskind, L. (2009). *New Approaches to Consensus Building and Speeding up large-scale Energy Infrastructure Projects*. Presented at Conference: The Expansion of the German Transmission Grid, Gottingen University, Germany.

<sup>32</sup> See e.g. <https://www.article19.org/resources.php/resource/38205/en/country-report:-the-right-to-information-in-nepal>

<sup>33</sup> <http://faolex.fao.org/docs/pdf/nep137757.pdf>