



संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
**PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
GENEVA**

Ge.OHCHR.SP.2021/ 139

The Permanent Mission of Nepal to the United Nations Office and other International Organizations in Geneva presents its compliments to the Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), and with reference to AL/NPL 1/2021, Joint communication from the Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples dated 30 March 2021, has the honour to enclose herewith response of the Government of Nepal regarding the Terai/Madhesh Fast Track (Expressway) project and the Chhaya Center Business Complex raised in the joint communication.

The Permanent Mission of Nepal to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Special Procedures Branch

Office of the High Commissioner for Human Rights (OHCHR)

Geneva

Geneva, 31 May 2021





Response of the Government of Nepal to Chair Rapporteur of the Working Group on the issues of human rights and transnational corporation and other business enterprises, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the fights of indigenous people

I. Please provide information on the above-mentioned allegations regarding the construction of the Fast-Track expressway and the Chhaya Center Complex and associated impacts on the Newar's rights to lands, territories and resources, religious and cultural sites, traditional livelihoods, and housing.

The Kathmandu-Terai/Madhesh Expressway is a mega highway project that has been prioritized as a "National Pride Project" of strategic significance. Since the expressway must be designed and built as per the international standards, the Nepali Army considers this Mega Project as an opportunity. Therefore, the Nepali Army has set the target of building the Expressway as an exemplary state of the art of Civil Construction in South Asia. More importantly, this Expressway is expected to contribute significantly to Nepal's socio-economic development.

According to the Detailed Project Report (DPR) of KTFT (Approved on 18th August 2019 (2076/05/01 BS)), the road alignment site in the Khokana Area does not fall under any religious and cultural sites as verified by the Department of Archeology according to their letter dated 18th September 2018 (2075/06/02 BS). As per the decision of the Council of Ministers of 4 May 2017 (2074.01.21 B.S.), the Nepali Army has received the responsibility of constructing the Kathmandu-Terai Expressway, one of the National Pride projects. The acquisition of land of the Khokana area of Lalitpur district, for which a notice was published on 25 March 2016, has been completed and brought in the name of the Government of Nepal. Thus, construction of this fast track has not impacted Newar's right to lands, territories, and resources as well as their traditional livelihoods and housing.

2. Please provide information on any consultation processes undertaken with the Newar indigenous communities prior to the approval of the construction of the projects, and whether their free, prior, and informed consent was sought, particularly concerning potential relocation and social, cultural, and environmental impacts. Please indicate whether any measures are planned to include the participation of the Newar peoples in decision making and to obtain their free, prior, and informed consent to projects that may affect their lands and livelihoods.

The Environment Protection Act, 2019 provides that before commencing a development project, the proponent must conduct a summary environmental study, an initial environmental assessment (IEA), or environmental impact assessment (EIA) and get it approved by the competent authority. The Act requires conducting public hearings while preparing such a study or assessment. The provision intends to get views and consent of the affected/indigenous people on the proposed project before it begins. Similarly, The Land Acquisition Act, 1977 details the acquisition of land by the Government for public purposes, as well as the preliminary steps relating to acquiring land, compensation, notification of land acquisition, and right of the landowner to file complain, among others.

Free, prior and informed consent is the guiding principle adopted before commencing any development project or acquiring land for that purpose. No land is acquired without adequate



compensation to the title holder of the land. Before this project was officially handed over to the Nepali Army, the Government of Nepal, Ministry of Physical Planning and Development completed all necessary preliminary works such as road alignment planning, community consultation, publication of the notice for land acquisition, etc, as required by the Act.

Later, in compliance with Article 266 (4) of the Constitution of Nepal, the Government of Nepal decided on 4th May 2017 to hand over the overall construction management of Kathmandu-Terai/Madesh Fast-Track (Expressway) Road Project, the National Pride Project of Nepal, to the Nepali Army.

3. Please provide information on the status of the above-mentioned litigation process before the Supreme Court of Nepal.

A writ petition concerning the alleged acquisition of Khokana land by Government agencies including the KTFT project is *sub judice* in the Supreme Court of Nepal.

4. Please provide information on efforts to ensure the right to peaceful assembly and freedom of expression for those engaged in peaceful demonstrations against the above-mentioned projects. Please include information on the results of any investigation carried out in relation to allegations of coercion, threats, or violence against indigenous rights defenders and indigenous Newars during peaceful assemblies.

As the fundamental rights, the Constitution of Nepal guarantees every citizen freedom of opinion and expression as well as the freedom to assemble peaceably and without arms. There are no restrictions on peaceful assembly unless the act undermines the sovereignty, territorial integrity, nationality, and independence of Nepal or the harmonious relations between the federal units or the people of various castes, tribes, religions, or communities or incites caste-based discrimination or untouchability or on any act of disrespect for labour, defamation, contempt of court, incitement to an offence or any other act that may be contrary to public decency or morality. Human rights defenders, including those engaged in peaceful demonstrations, operate freely and independently throughout the country. Prevailing laws provide adequate safeguards to protect all of them. The National Penal Code explicitly prohibits and criminalizes the use of criminal force against any person. Threats and assault against peaceful demonstrators and indigenous rights defenders are investigated and prosecuted under the prevailing law. Therefore, in order to protect and secure civil rights, several coordination meetings between the government, stakeholders, and concerned persons were held for the peaceful settlement of land disputes.

In relation to the incident of protest by some people in Khokana in July 2020, the acquisition of land of Khokana area of Lalitpur district has been completed and brought in the name of the Government of Nepal, for which a notice was published on 25 March 2016. However, the local people tried to carry paddy transplantation protest on the land that has already been acquired by the Government. As the police were trying to control the protest, a clash arose when the protestors started throwing stones to police. Both the protestors and the police personnel sustained minor injuries in the incident. There was no involvement of Nepal Army in this incident. The person involved in protest were released immediately.

5. Please indicate what additional steps have been taken by your Excellency's Government to protect against human rights abuses by Nepali Army, as the institution managing the construction of the Fast-Track Expressway.

Nepal has an obligation to promote, protect and ensure the rights of all individuals within its territory or subject to its jurisdiction including the rights to life, security, and physical integrity, under



International Human Rights (IHRL) and International Humanitarian Law (IHL). So, the Nepali Army is also very sensitive about Human Rights (HR) and ensures that soldiers do not violate them.

Every year, the Nepali army conducts various training regarding IHRL and IHL, in coordination with ICRC. In addition, every individual serving in the Nepali Army is handed various booklets (Commander's Handbook), cards (Soldiers and ROE cards) about Human Rights to ensure that human rights are fully respected and not violated. If anyone violates Human Rights, s/he will be prosecuted and penalized under the Nepali Military Act 2006. To protect and promote Human Rights, the Nepali Army has also adopted punitive measures (such as imprisonment, prohibition from participation in UN missions, demotions, etc).

On 8 July 2002, the Nepali Army Directorate of Human Rights (DHR) was established as the Human Right Cell. It basically deals with cases involving allegations of human rights violations. Since then, the Nepali Army has issued and implemented various policies, directives, and instructions based on International Human Rights Law (IHRL) and International Humanitarian Law (IHL). In addition, the Chief of Army Staff (COAS) has issued various instructions such as instruction number 02/060 of 12 March 2004, number 01/061 of 10 January 2005, and special instruction of 14 September 2006, that have clearly instructed individual Army personnel to respect and support the protection and promotion of IHRL and IHL as well as judicial proceedings, during all military operations.

6. Please provide information on any steps that your Excellency's Government has undertaken, or is considering to take, including policies, legislation and regulations, to fulfill its obligation to protect against human right abuses by business enterprises within its territories and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the United Nations Guiding Principles on Business and Human Rights.

To promote human rights-friendly development and businesses, the Government of Nepal has always prioritized and adopted various measures in its plan, programs, and policies for preventing and addressing business-related human rights abuses. Investors are not exempted from human rights obligations mandated by the Constitution and other relevant Legislations. The Principles are based on the 'Protect, Respect and Remedy' framework. The framework outlines the duties to protect against human rights abuses by third parties, such as businesses through their policies, regulation, and adjudication. The companies have the responsibility to respect human rights, that is, to avoid infringement on the rights of others.

The Constitution has secured citizen's rights including freedom to establish and operate any industry, trade, and business in any part of Nepal (Article 17 (2) (f)), the freedom to form unions and associations (Article 17 (2) (d)), right regarding labour (Article 34), right to appropriate remuneration, facilities and contribution-based social security (Article 34 (2)), right to clean environment (Article 30), right to employment (Article 33) and right to constitutional remedies (Article 46). The Constitution under its directive principles and state policies also envisions that the government has the responsibility to fulfill its obligation under international human rights treaties. In addition to the above, in the case of violation of these rights, the victims have the right to get compensation.

The rights relating to employment and social security are incorporated as fundamental rights. This inclusion entails obligations for the State and business enterprises to ensure the welfare of employees and to provide decent work for all. The provisions under the Social Security Act further elaborate on the amount that must be submitted to the Social Security Fund (SSF) as provident fund and gratuity under the Labour Act and Regulations. In 2018, the government introduced a mandatory obligation for all sectors to implement a contribution-based social security scheme under the Contribution Based Social Security Act, 2017, and its regulation. Similarly, the Social Security



Schemes Operation Directives, 2018 provides Medical Treatment, Health and Maternity Protection Scheme, Accident and Disability Protection Scheme, Dependent Family Protection Scheme, and Old Age Protection Scheme.

The Acts Labour Act, Consumer Protection Act, and the Right to Employment Act, among others, are some of the critical developments in integrating human rights obligation in the business sector. The Labour Act, 2017 provides that the act's provisions are the minimum standard that must be adhered to in the matter concerning labour. It also contains a provision regarding dispute settlement with a foreign country that undertakes sales and market activities in Nepal, as it allows labor hired by such foreign entity to file a complaint with the Labor Office or Labor court if the foreign entity violates the terms and condition of the employment agreement. It also has a provision for Labor audits which must be done by entities to ensure their compliance with this Act, its regulations, and prevailing laws.

The Right to Employment Act, 2018 ensures that every citizen has the right to employment and to practice appropriate labour. The Act also guarantees a person's right to choose employment and the right of an employee not to be removed from employment without any reason unless it is required by the law. The Consumer Protection Act, 2018 has prohibited several activities including unfair trade and business activities. The Government of Nepal is responsible for the protection of the rights of the consumers and controlling activities related to unfair trade by formulating plans and policies. On the part of the remedies, for example, the Act provides that such complaints about the realization of compensation must be filed at the Consumer Court. The Environment Protection Act, 2019 mandates an obligatory Initial Environment Examination and Environment Impact Assessment to ensure that environment is not harmed while conducting business activity.

Nepal has recognized the importance of prioritizing the development of robust Intellectual Property protection and enforcement systems. As a result, in 2017, the Government of Nepal formulated its IP policy with the objective of making IP a national priority and emphasizing the valuable role IP plays in global socio-economic development. The Department of Industry of the Ministry of Industry, Commerce, & Supplies, regulates the patent and trademark issues while the Ministry of Culture, Tourism, and Civil Aviation oversees copyright issues.

The Government of Nepal has also developed the 5th National Human Right Action Plan (076/77-081/82) which includes the thematic areas such as Labor and employment, Nepal's international obligations, environment, and sustainable development. The Action plan incorporates activities that mandates industries and business enterprises to adopt principles, norms and values of the UN Business and Human Rights while operating any business or industries. Moreover, Nepal is in the process of framing an Action Plan based on the UN Guiding Principles on Business and Human Rights.

Similarly, The Government of Nepal (GoN) has enacted Special Economic Zone Act in 2016. The investors in SEZ are granted permission and are administered in all respect of export and import under strictly simplified One Window Policy or one-stop service. Likewise, the National Human Right Commission has authority to monitor, receive complaints, investigate and recommend actions against the responsible person or authority, including compensations to the victims.

7. Please provide information on any steps taken by your Excellency's Government to ensure that the affected people and communities in your territory and/or jurisdiction have access to effective remedies for business-related human rights abuses.

- Please see response 6.

8. Please provide information on the status of Nepali Army camps and other structures installed in Khokana for the construction of the Fast-Track Expressway and any proposed timelines for the removal of the camps and associated structures.



For construction and supervision, the project has ten camps along the KTFT alignment including a camp at Khokana. These camps are primarily established as a temporary logistic base for the management of manpower and materials as well as support the construction of the KTFT Project.

9. Please provide information on remedies and compensation available for indigenous peoples forced to relocate due to the loss of lands, housing and access to their livelihoods caused by the construction of the Fast-Track Expressway. Specifically, please provide information on any measures planned to prevent negative human rights impacts from evictions, including access to basic services, food, and education.

The Constitution of Nepal ensures every citizen's right to acquire, own, sell, dispose of, acquire business profits from, and otherwise deal with property. Moreover, Sub Article (2) of Article 25 of the Constitution provides that the State shall not, except for public interest demand, acquire, or otherwise create any encumbrance on a person's property. Under section 3 of the Land Acquisition Act, 1977, the Government of Nepal may, if it so deems necessary, acquire any land at any place for any public purpose, subject to compensation.

Free, prior and informed consent is the guiding principle adopted before commencing any development project or acquiring land for that purpose. No land is acquired without adequate compensation to the title holder of the land. As provided in the Act, the Government of Nepal had acquired the necessary land required for the project before handing it over to Nepali Army.

10. Please provide information on measures taken to grant the Newars access to the Thamel Monastery, the 'Kamal Pokhari' pond and the surrounding area in order for them to exercise their right to religious practice.

The Constitution of Nepal recognizes Nepal as the "Secular State". Nepal guarantees the right to freedom of religion as a fundamental right. The Constitution provides that every person shall have the freedom to profess, practice and protect his or her religion according to his or her conviction and every religious denomination shall have the right to operate and protect its religious sites and religious Guthi. Nepal is also party to the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

The GoN treats equally all religious minorities. There is no discrimination based on religious and ideological beliefs. Therefore, the Government of Nepal has not prevented Newar community's access to the Thamel Monastery, the Kamal Pokhari pond, and the surrounding area to exercise their rights to religious practice.