



CHHAYA DEVI COMPLEX LTD

Amrit Marg, Bhagwanbahal, Thamel, Kathmandu

Date: 24 June 2024

To:
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson 52
Rue des Pâquis
CH-1201 Geneva
Switzerland

Attn: Volker Türk, High Commissioner for Human Rights
Beatriz Balbin, Chief, Special Procedures Branch, OHCHR.

SUBJECT: OBJECTION TO ASSERTIONS MADE IN OHCHR SPECIAL PROCEDURES PRESS RELEASE

Dear Mr. Türk / Ms. Balbin,

We are writing in response to the recent press release issued by the OHCHR on 14 May 2024: (<https://www.ohchr.org/en/press-releases/2024/05/nepal-retaliations-against-human-rights-defenders-over-business-complex>),

which raised several allegations concerning the ownership of land and potential infringement on the rights of the indigenous people of the Newar Community, and accused the Chhaya Devi Complex (the "Project") of threats against Mr. Bagabat Narsingh Pradhan. We seek to clarify the matter on behalf of the Chhaya Devi Complex, as the rights and the good names of the investors and business owners have been infringed upon to an unacceptable degree. It is imperative to address the concerns raised by the OHCHR and ensure transparency and fairness in resolving this issue.

Regarding the concerns raised about the legality of the ownership of the land over which the Project sits (the "Land"). The Land was privatised in 1911 AD by the Rana rulers and the legacy of ownership has been successfully passed through legal channels. Our investors purchased this land in 2008 AD, in good faith, with all legal paperwork in place, and with a genuine plan to create an innovative multi-use development project solely for future business and economic development.

Please take note here that at the time of purchase no legal issues were in evidence or raised. It was only when the plan for the high value Complex was revealed that trouble began. No such objections, legal or otherwise, have been made regarding the private houses and an organisation that are also on the former *Guthi* owned property in the area, directly adjacent to the Chhaya Devi Complex.

Mr. Bhagabat Narsingh Pradhan's effort to criminalise the group of investors for something that happened 103 years ago is unfair. The endorsement of Mr. Pradhan's allegations by the UN body and related OHCHR experts, without scrutinising any evidence, is unjustified and biased against the independent right of business persons in Nepal.

Persistent Actions by Pradhan: Threats to Business Operations and Reputation

1. Mr. Bhagabat Narsingh Pradhan has, on a number of occasions over a considerable period of time, made a concerted attempt to halt construction of the Chhaya Devi Complex, citing archaeological significance. The District Court of Nepal rejected his claim on 3 May 2013 [[DISTRICT COURT STAY QUASH](#)] and another case was filed by Advocate Deepak Bikram Mishra under the influence and on the instructions of Mr. Pradhan; the Supreme Court rejected this latter claim on 4 July 2014. [[SUPREME COURT STAY QUASH-DEEPAK](#)]

2. A similar case was filed by Advocate Ramhari Shrestha and Anil Pradhan on behalf of the Indigenous Lawyers Forum under the influence and on the instructions of Mr. Pradhan; subsequently the Supreme Court of Nepal rejected this claim too on 19 December 2014. [[SUPREME COURT STAY QUASH-RAMHARI](#)]

3. Construction and completion of the Complex occurred after the Courts dismissed Mr. Pradhan's application to halt construction, denying his claim three times.

4. Mr. Pradhan's challenge over land ownership of Chhaya Devi Complex was dismissed by the District Court of Kathmandu on 11 Dec 2014 and, in the same way, the Appellate Court of Lalitpur dismissed the case again on 22 Feb, 2016. [[DISTRICT COURT DECISION 2071](#)][[APPELLATE COURT DECISION-2072](#)]

5. Despite Mr. Pradhan's attempts, the legal system upheld the validity of the construction, affirming the legitimacy of the Project. However, his defiance of the orders passed by the highest legal authorities of our country raises concerns regarding his respect for the judicial process. [[DISTRICT COURT DECISION 2071](#)][[APPELLATE COURT DECISION-2072](#)]

6. In addition to the aforementioned activities, since 2018, the year the Chhaya Devi Complex was inaugurated, Mr. Pradhan has been consistently engaged in disruptive campaigns against the businesses of Chhaya Devi Complex and the Aloft Kathmandu Thamel Hotel. [[DISRUPTIVE ACTIVITIES](#)]

7. On 19 February 2019, Chhaya Devi Complex held a press conference to address concerns regarding land ownership. Despite the orderly nature of the event, Mr. Pradhan's presence and protests resulted in disturbances and disruption of public order.

8. A First Information Report (FIR) was lodged against him, and Mr. Pradhan signed an undertaking, committing to refrain from such disruptive acts in the future.

9. Mr. Pradhan has persistently corresponded with UNESCO, the ILO, and other UN offices in Nepal and different government bodies including the Office of the Prime Minister and Council of Ministers; the Ministry of Culture, Tourism and Civil Aviation; the Ministry of Land Management; the Ministry of Home Affairs; various sub-committees of the House of Representatives (Parliament); the Department of Archaeology; and Kathmandu Metropolitan City, advocating for the restoration of Land and alleging violations of the rights of the indigenous Newar community in Thamel. However, these entities have not entertained his unsubstantiated

claims, as the Courts in Nepal have consistently ruled in favour of the Project, as all legal paperwork have been found to be valid and in good standing.[\[ARCHEOLOGY DEPARTMENT\]](#)[\[INTERNATIONAL RELATIONS COMMITTEE-PARLIAMENT\]](#)

10. In response to Mr. Pradhan's ongoing disruptive behaviour, a letter was submitted on 27 December 2020 on behalf of 1,200 workers and micro-entrepreneurs, signed by the Central Committees of the major Trade Unions; the Leaders of the Nepal Independent Hotel, Casino, and Restaurant Workers Union; the Union of Trekking, Travel, and Rafting Workers of Nepal[\[TRADE UNION LETTER\]](#); and the Executive Director of Chhaya Devi Complex. The letter expressed concerns about the harm caused to business operations and the disruption of peace. Despite an invitation being made to Mr. Pradhan to discuss and amicably settle matters, he did not attend to put forward any clarifications or engage in any settlement discussions. (Indeed, Mr. Pradhan subsequently described this letter as “threatening” – discussed in more detail below)

11. Only after police intervention and a call to Mr. Pradhan, did he attend a meeting and an agreement was signed on 5 January 2021 at Swayambhu Police Station. Leaders of the Trade Union facilitated the agreement, wherein Mr. Pradhan agreed to refrain from engaging in acts detrimental to the businesses operating within and out of Chhaya Devi Complex. In spite of his commitments, he has since continued his disturbances to businesses, that fall outside the realm of peaceful protesting.[\[POLICE SETTLEMENT\]](#)

12. Mr. Pradhan has persistently abused his authority by attempting to forcibly disrupt events booked by reputable clients, for example the Thai Embassy and the Supreme Court Bar Association, at the Aloft Kathmandu Thamel Hotel located in Chhaya Devi Complex. He has repeatedly approached potential tenants of the Complex and Institutions operating within the Complex, attempting to persuade them, again through unproven allegations, into severing their business relationships with the Chhaya Devi Complex.[\[SUPREME COURT BAR\]](#)[\[THAI EMBASSY PROTEST LETTER\]](#)

13. Approximately 220 individuals from the local community, including tenants, business owners and social workers have lodged a complaint against Mr. Pradhan’s disruptive actions concerning the Chhaya Devi Complex. This complaint was formally submitted to the Ministry of Culture, Tourism and Civil Aviation on 11 April 2022.[\[LOCAL PEOPLE PROTEST\]](#)

Despite the Courts’ rulings in favour of the Chhaya Devi Complex and the agreement signed before the Police, as referred to above, Mr. Pradhan has continuously attempted to terrorise our business. He has organised disruptive protests, intimidated clients to withdraw their business, and run false, tabloid-level media campaigns against us. These ongoing activities aim to weaken our business and severely damage our reputation. As a result, we have faced social, financial, and legal losses and our rights to enterprise and personal human rights have been infringed upon time and again. [\[DISRUPTIVE MEDIA CAMPAIGNS\]](#)

Trade Unions and Labour Unions take firm action against Mr. Pradhan's conduct

Mr. Pradhan claims that his campaign to restore the *Kamal Pokahari* pond, believed to date back to the Licchavi Kingdom has led to him facing threats including intimidating house visits by Trade union Leaders employed at the Chhaya Devi Complex and the Contempt of Court case filed against him in the Supreme Court of Nepal.

Despite legal rulings, Mr. Pradhan persists in protests and disruptive behaviours causing chaos to businesses within the Chhaya Devi Complex. In response to this the Trade Unions of Chhaya Devi Complex have reported Mr. Pradhan's activities to the National Office of their respective Trades Union. Twice, they have attempted to sit down and understand the matter of dispute with Mr. Pradhan, but he did not appear. [[TRADE UNION LETTER](#)].

He has also accused the Labour Union, and the Chhaya Devi Complex Board of Directors, of sending him a threatening letter. As reiterated above, the letter invites Mr. Pradhan for discussions to amicably settle differences and cannot be described as threatening (A translated and notarised copy of this letter is attached herewith in the Annexes).

A peace and security agreement was signed between the Labour Union and Mr. Pradhan at the Swayambhu Police Station, where Mr. Pradhan has agreed to refrain from disruptive activities and to not hamper any business activities of Chhaya Devi Complex. However, his disruptive actions have continued despite this agreement. [[POLICE SETTLEMENT](#)]

With respect to the allegations made by Mr. Pradhan regarding the charge of "Contempt of Court" against him, we note that this is a case filed by a tenant of Chhaya Devi Complex to protect her constitutional right to practise her business in a peaceful manner. We do not agree that this contempt of court filing is, in any way, an infringement upon Mr. Pradhan's civil, indigenous or human rights, as this is done through our judicial system. Just as it is his right to peacefully protest (which he has not exercised peacefully, or truthfully), so too is it the right of any of our tenants to file a complaint against Mr. Pradhan in a court of law. To claim that this action is threatening, and that it impinges upon Mr. Pradhan's rights, in any form, is hyperbolic and questionable, coming from the OHCHR, and assumes a bias in a legal procedure currently also *sub judice* in the Courts of Nepal.

Calls for Marriott International to immediately suspend involvement

It is particularly concerning that the OHCHR experts have taken steps to call for international chains such as Marriott International to "[...] immediately suspend its involvement in the Chhaya Center until the Supreme Court reaches a final decision [...]". We are compelled to point out that OHCHR, issuing such a definitive statement, despite being a reputed organisation, without giving us a fair chance of being heard, and without examining the proper evidence related to the matter, points to a preconceived bias. Such actions can and have already led to substantial damage to our business, investment, and human resource. Indeed, the matter is currently *sub judice* in the Courts of Nepal, and so there is no justifiable reason for Marriott to sever ties until the Supreme Court reaches a final decision.

The land ownership journey of the Chhaya Devi Complex

Now, we would like to provide a brief explanation of our land ownership, our commitment to compliance and our contribution to the *Newar* and other indigenous communities of Nepal. Our ownership of the land is rooted in legal processes and is in compliance with all relevant regulations. We have consistently upheld ethical standards in our business operations and have actively contributed to the well-being and development of the indigenous communities. We remain committed to transparency and accountability in all our endeavours.

1. The land initially belonged to the *Singhasartha Bahu Bhagawan* Temple, managed by the local *Pradhan* community through a Trust, or *Guthi*, in the *Newar* language. In 1911 AD, it was transferred to General Keshar Samsheer Rana, son of the then Prime Minister Chandra Samsheer, via a government order (Tok Sadar) for incorporation into his palace.
2. On 30 May 1968, ownership of the land encompassing 258.75 *ropanis* across Nepal, including the disputed Land measuring 26.75 *ropanis* (approximately 13,600 square metres), under the Keshar Samsheer Palace, was transferred to the *Guthi (Trust)* Corporation. Consequently, the local *Pradhan* community lost its connection to the land.
3. Legal disputes arose in 1970 between the local Trust and General Keshar Samsheer Rana regarding the 26.75 *ropanis* (approximately 13,600 square metres) of Land. The District Court ruled that the local Trust (*Guthi*) had no connection to the land. [[DISTRICT COURT-2030](#)]
4. The erstwhile Court of Appeal (now the High Court) upheld the judgement, and on 17 December 1976, the Supreme Court facilitated a reconciliation agreement among three parties: General Keshar Samsheer Rana, the Local *Guthi*, and the *Guthi* Corporation. According to the agreement, General Keshar Rana was granted ownership of the Land covered by the pond under the Trust (*Guthi*) registered tenancy. [[SUPREME COURT AGREEMENT 2033](#)]
5. As per the Supreme Court's Reconciliation Agreement, the land survey conducted in 1976 determined that the total area of the Land, including the pond and its banks, was measured as 12 *ropanis* and 13 *annas* (approximately 6,520 square metres) under plot number 167. [[THE MAPS OF THE AREA](#)]
6. The title of the registered *Guthi* tenancy was transferred to General Keshar's son, Kayur Samsheer Rana, who subsequently sold two pieces of land (the first covering 6 *annas*; and the second covering 2 *ropanis* 10 *annas*; for a total of approximately 1,525 square metres) as tenancy rights to Sudha and Bina Paudel, later acquired by Shanker Bikram Shah. The remaining plot of land, measuring 9 *ropanis* and 13 *annas* (approximately 5,000 square metres), was transferred to Mrs. Ambika Rana in 1987 after the passing of Keyur Samsheer. These transactions were carried out with the consent of the *Guthi* Corporation and the local *Guthi* through proper written documentation.

7. In 1991, a new rule was introduced by the government allowing trust (*Guthi*) registered tenants to convert their tenancy into Trust (*Guthi*) registered ownership, similar to privatisation. Both Ambika Rana and Shankar Prasad Shah converted their land to Trust registered ownership by paying the valued amount of money to the *Guthi* Corporation, as per a formal decision made on 1 February 1991.[[TRUST OWNERSHIP CONVERSION 2047 BS](#)]
8. The decision to convert the land plots into Trust ownership faced another legal dispute, but the Appellate Court confirmed the Trust registered ownership of the Land by a decision on 7 June 1996.[[APPELLATE COURT DECISION-2053](#)]
9. In 1999, the local *Pradhan* community filed a case against Ambika Rana and Shankar Bikram Shah, which was subsequently settled by the District Court of Kathmandu on 30 June 2005. As part of the settlement, Ambika Rana paid NPR 15 million plus 4 *anna* land to the local *Guthi*. [[DISTRICT COURT SETTLEMENT 2062](#)]
10. All three plots of Land, totaling 12 *ropanis* and 9 *annas* (approximately 6,390 square metres), were initially purchased by Pratima Pande and later acquired by Chhaya Devi Complex in 2008 (N.B. 4 *annas* (approximately 130 square metres) of the Land went to the *Singha Sartha Bahu Guthi* as per a deed agreement dated 2005). Plans to construct a multi-storey business complex were initiated by over 50 businessmen of Nepal, all from a variety of ethnic backgrounds. The building permit for the plinth level and full construction was approved by the Kathmandu Metropolitan City on 27 September 2012, and 17 October 2014, respectively. [[METROPOLITAN CITY PERMIT](#)]
11. Additionally, of the 258.75 *ropanis* that the *Guthi* used to hold around Nepal, most or all of it is now in either private or other hands, and no longer part of the *Guthi*. Only the Chhaya Devi Complex in the Thamel area (which accounts for around ten percent of the total land held by the *Guthi* at its peak) is under litigation. We have won both of our cases in the Lower and Appellate courts; and the case is currently sub judice in the Supreme Court of Nepal.

Compliance in construction: Building Chhaya Devi Complex within the statutory regulations of Nepal

1. Chhaya Devi Complex was developed by a consortium of over 50 esteemed business personalities, across a range of ethnicities, and a range of companies from Nepal. Their focus is on contributing to the development of the business and economic landscape of Nepal, and they are committed to the conservation of art and culture.
2. These entities hold strong reputations and significant social profiles within their communities and the larger social landscapes.

3. The first reconciliation was signed with the immediate neighbours surrounding the Project area; all signees belong to indigenous communities. This was mediated by the Municipal Corporation of Kathmandu. [[MUNICIPALITY SETTLEMENT WITH NEIGHBOURS](#)]
4. The Chhaya Devi Complex obtained permission from Kathmandu Metropolitan City, ensuring compliance with local regulations. [[METROPOLITAN CITY PERMIT](#)]
5. In 2012 the Complex received the City Planning permit from the Kathmandu Valley Development Authority Board under the Ministry of Urban Development, ensuring compliance with urban development guidelines. [[EIA & PLANNING PERMIT](#)]
6. Additionally, it received approval from the Ministry of Forest and Environment, demonstrating adherence to environmental standards on 9 January 2014. [[EIA & PLANNING PERMIT](#)]
7. The fully constructed building of Chhaya Devi Complex received the Building Completion Certificate from the Municipal Corporation of Kathmandu on 25 October, 2018. [[METROPOLITAN CITY-CONSTRUCTION COMPLETION](#)]
8. The local *Guthi* (Trust) committee, responsible for overseeing previous land ownership, issued a letter confirming the absence of any dispute involving the Land over which the Project sits. [[THAMEL GUTHI LETTER-NO DISPUTE](#)]
9. This letter further validates the legitimacy of the Chhaya Devi Complex's land ownership and resolves any lingering doubts or concerns regarding ownership disputes.

Evidence of the support of the indigenous community within and around the Chhaya Devi Complex

Inclusivity:

1. The entire area of Thamel is predominantly inhabited by the indigenous Newar Community.
2. The Pradhan community and their Temple *Guthi* Committee have joined hands with the Chhaya Devi Complex in the development of this area.
3. This collaboration demonstrates a collective effort towards the development and enhancement of Thamel, benefiting both the local and community visitors alike.
4. As an important and symbolic show of support by the main *Guthi* itself, in May, 2022 the *Singhasartha Bahu Bhagawan Temple's Guthi* High Priests held a three (3) day long consecration *Puja* (religious ceremony) within the entrance to the Chhaya Devi Complex.



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Representation:

1. Within the Chhaya Devi Complex, 3 out of 7 board members; 25 out of 45 shareholders; and 55% out of 1,200 staff are from indigenous groups including *Newars* and/or other indigenous peoples and marginalised communities.
2. This demonstrates a commitment to diversity and inclusion, ensuring that these communities have representation and opportunities within the Chhaya Devi Complex's operations and management.

We are deeply disappointed by the recent press release from OHCHR Special Procedures, which has infringed upon our rights to establish our business and uphold our reputation. Without affording us the opportunity to present our facts and evidence, this action undermines the principle of fairness and justice. We urge for a reconsideration of this decision and a fair assessment of the situation.

It is profoundly concerning that Mr. Pradhan has repeatedly attempted to obstruct our business operations. The apparent favouritism shown towards Mr. Pradhan by OHCHR, without affording us the opportunity to present our side of the story, raises serious questions about accountability. Despite our consistent efforts to respond to the release, our input has been disregarded entirely, at each turn with every communication ignored, reflecting a biased approach. We have been denied the chance to present our justifications, undermining the principles of fairness and due process, which is the basic foundation of Human Rights.

Furthermore, the presumptive tone of the press release suggests a prejudgment of the individuals involved, which is inconsistent with the principles of impartiality and neutrality that the OHCHR is expected to uphold. The dissemination of such statements can have, and have already had, far-reaching negative consequences, not only for the accused individuals but also for the credibility and effectiveness of the UN human right system as a whole.

Finally, and perhaps most gravely, the OHCHR has chosen to comment upon a case that is currently *sub judice* in Nepal, essentially weighing in upon a domestic matter, and potentially affecting the future judgement of the Supreme Court. In most countries, this is deemed illegal, as such commentary can interfere with due process. We cannot understand how a panel of internationally accredited lawyers has seen fit to insinuate guilt in a case that is currently under consideration at the highest level of the Nepali Courts. The statement issued, while asking those involved to wait until a Supreme Court decision, nevertheless recommends punitive action before such a decision, assuming guilt, and has presumptively taken the side of Mr. Pradhan in his allegations against the Chhaya Devi Complex, without due investigation and definitive proof, relying only on word of mouth of the individual who has made these allegations.



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Amrit Marg, Bhagwanbahal, Thamel, Kathmandu

In the light of these concerns, we respectfully urge the OHCHR experts to:

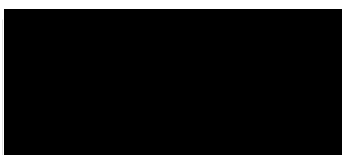
1. Conduct a thorough and impartial investigation into the allegations before making any further public statements;
2. Immediately retract the press release published by OHCHR on 14 May 2024;
3. Refrain from issuing press releases that contain unverified and potentially defamatory statements.

If a response is not presented within two (2) days from the experts, we will be left with no choice but to pursue legal recourse at an international level to address this matter.

It is crucial that the OHCHR adheres to the highest standards of accuracy and fairness in its public statements to ensure that justice is not only done but is also seen to be done.

Thank you for your attention to this matter. All the documents mentioned above have been translated in English and notarised copies have been attached.

We look forward to your prompt and constructive response.



Yours Sincerely,

Mr. Prithivi Bahadur Pandé

Chairman, Chhaya Devi Complex, Thamel

On Behalf of the Board of Directors, Stakeholders & Employees of Chhaya Devi Complex