

**Suman**

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**From:** Suman <suman@explorehimalaya.com>  
**Sent:** Friday, May 7, 2021 3:13 PM  
**To:** [REDACTED] 'registry@ohchr.org'; 'info@chhayacenter.com'; 'maheshps';  
**Subject:** Maheshwor Shrestha  
**Attachments:** REPLY TO MAIL OF 30 MARCH 2020  
ONCHR REPLY.docx

Att: Ms. [REDACTED]  
Programme Assistant  
Quick Response Desk, Special Procedures Branch  
Thematic Engagement, Special Procedures and Right to Development  
Department  
ONHCR

Ms. [REDACTED]  
Officer-in-charge  
Special Procedures Branch  
OHCHR

Please find reply to your mail of 30<sup>th</sup> March 2021 on attached  
Document !

**Suman Pandey**

President

**Explore Himalaya Travel & Adventure**

Thamel, Kathmandu, NEPAL

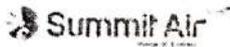
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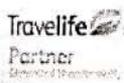
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**MEMBERS**



Replied 7th May.

Dear [REDACTED]

Programme Assistant

Quick Response Desk, Special Procedures Branch  
Thematic Engagement, Special Procedures and Right to Development Division  
Office of the United Nations High Commissioner for Human Rights

Thank you for the communication (mail of 30<sup>th</sup> March- 021) from Ms. [REDACTED] Officer-in-charge, Special Procedures Branch, Office of the High Commissioner for Human Right that carries the joint communication sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises: the Special Rapporteur on the rights of indigenous peoples. Pursuant to Human Rights Council resolutions 44/15, 43/14, 43/16 and 42/20.

Referring to explanation sought on possible violation of the rights of local Indigenous People (Local Newar Community & the Pradhan Family), please allow me to share lights on the issues before we come to a conclusion:

1. Although the issue has been presented as "violation of rights of indigenous Newar People (Pradhan Family) over their lands, resources and over the loss of religious and cultural sites in relation to the construction by Chhaya Center Business Complex" reality is not as mentioned and the charges are unnecessarily fabricated. Please be informed on the following facts:
  - a) This land had been occupied by General Keshar Shamsher Junga Bahadur Rana from 1967 BS (1910 AD) through "State's Order", st. similar to the "Royal Gazette" entitled as judicial and administrative directives as good as an "Act" during the time. Order may have been granted by then 'Head of the State'
  - b) **Chhaya Devi Complex is the Sixth Owner of this land** after occupied by General Keshar Shamsher in 1910AD, Kayur Shamsher (2039BS), Mrs. Ambika Rana (2044 BS), Sureshaya Housing (2062BS), Pratima Pandey (2064BS) and finally acquired by Chhaya Devi Complex in 2065BS. All handover of ownerships were made through proper legal procedures and endorsed by Government Authority. (PS. Difference between BS and AD is 56 or 57 yrs depending in the month for a particular date. Normally, middle of April is First day of a BS)
  - c) Initial dispute of land filed by the local Guthi Committee in 2027 BS had a claim for 29.5 Ropanis (1 Ropani 5472 sq ft). Chhayadevi Complex occupies only 12.5 Ropanis of land whereas the applicants do not claim for remaining part of land which is divided into smaller private properties.
  - d) The land where Chhaya Devi Complex is now, was privatized (Sole Ownership) by Ms. Ambika Rana under Guthi Act by paying compensation to Guthi Corporation in

2047 BS and the case filed against was ruled out by District and Appellate Courts successively in 2050 and 2053 BS.

- e) Again, the case was filed by local "Singha Sartha Bahu Guthi Committee" against privatization that ended in 2062 BS at Kathmandu District Court through a treaty that gave Rs. 1,50,00,000 (Fifteen Million) and 4 Anna (1/4<sup>th</sup> of a ropani) land to Guthi by Mrs. Ambika Rana as compensation. This part of the filing of case and signing of treaty was led by then Chairman of the "Guthi" and sitting Justice at Supreme Court, Mr. Hiranya Man Singh Pradhan.
  - f) After initiation of construction of Chhaya Devi Complex, several cases were filed in District, Appellate and Supreme Courts asking for orders to stop construction but every time including Three times from the Supreme Court, such requests for stopping the construction works were ruled out.
2. At the time of Completion of Construction and also from the date Chhaya Devi Complex had acquired this property, ownership was clean and absolute as a private property through Papers issued by Government and there is no argument from the local community of indigenous groups (Newars & Pradhans) so far !
  3. We need to be very clear in the term "Guthi", First "Guthi" is a private trust represented by local committee formed with a group of people that managed the property for Temples and other public interests, and, here in our case, it is "Singha Sartha Bahu God's temple Guthi" and whereas, "Guthi Sansthan" is the Government's Corporation. As per the Nepalese Law, Guthi lands normally have dual ownership. A private "Guthi" or the "Guthi Corporation" are usually Primary Owners known as "Land Owner" whereas the individual entity is secondary owner known as "Mohi". As per practices in Nepal, Secondary Owner (Mohi) occupies or cultivates land and pays revenue to primary owner and this revenue helps in running rituals for the Temples or subjects of public interests. As from the historical facts, Keshar Shamsher JB Rana had been given the right as Secondary Owner from "State's Order" Revenue paid by "Mohi" or secondary owner served in fulfilling philanthropic purposes of the primary land owners or "Guthi"
  4. In our case, The Local Committee, "Singha Sartha Bahu Guthi", called as "Guthi" elsewhere in this document, handed over their Primary Ownership to Government's "Guthi Corporation in 2024 BS, 1957 AD and due to this, Secondary Owner (Mohi) was compelled to pay revenue to Guthi Corporation which made the local committee unhappy and decided to file a court case at district court. All the charges made as above were ruled out by District and Appellate Court in 2031 BS stating, "Allegations did not have convincing supportive evidences".
  5. 1909 records confirm Primary Guthi ownership of land under the local "Guthi" committee whereas, General Keshar Shamsher Rana became the Secondary Owner in 1910 through "State's Order" or then "Royal Gazette". Local "Guthi Committee" handed over their Primary Ownership to Government's "Guthi Corporation" in 2024 BS (1967). Out of 29.5 Ropanis of land, only 12.5 ropanis remained vacant and remaining had already been fragmented n transferred to private ownership before 1967AD.

Supreme Court's judicial mediation/order of 1977 declared remaining 12.5 Ropanis to go under the "Guthi Corporation" as Primary Owner and General Keshar Shamsher Rana as Secondary Owner or "Mohi". This declaration of mediation endorsed the land other than what Chhaya has now (12.5 Ropani) to remain as private ! As mentioned above, there has been Four more owners of the land in between General Keshar Shamsher and Chhaya Devi Complex, **all transfers of ownerships had gone through formal legal proceedings.**

6. Lawsuits filed by Six individual persons in 2014, but not the local "Guthi" committee had been ruled out by District and Appellate Courts, even the **plea to halt construction and freeze land transactions were ruled out. Two more law suits filed under "Public Interest litigation" with same demands were ruled out by Supreme Court** at other different occasions.

In 2005 AD, local Guthi Committee headed by then sitting Judge of the Supreme Court, **Hiranya Man Singh Pradhan**, made a resolution with then owner of the land Mrs. Ambika Rana against aid compensation of Rs. **15,000,000 (Fifteen Million) and Four Ana land (1/4 Ropani)**. This money is still with the "Guthi" trust and Four Ana land used by Chhaya Devi Complex against a handsome yearly rent. Income from these are used by "Guthi" committee to perform religious and cultural rituals and the **main committee works in complete harmony with Chhaya Devi Complex management. Law suits were filed by Six Youths from the same family but they were all individuals, had no roles in "Guthi" committee.** After District Court's rule out, **Five members dropped** their involvement and it is only one person who is pursuing till date. For your kind information, he has been sacked by the committee for going against Community interest and lives at a different place, 6 kms away from Thamel area where Chhaya Devi Complex and local "Guthi" people are together in complete harmony.

7. Supreme Court's ruling of 2017 to re-examine the issue is based on a One sided Plea through a straight forward application, a Single person out of initial Six, and the final hearing is awaited. Detail of the case with previous Court's orders, including past evidences from 1967 AD till date, are yet to be examined by the Court.
8. The applicant has left no stones unturned to give tremendous pressure and terrorization to the groups of investors, workers, entrepreneurs or any other involved with Chhaya Devi Complex and it's broader enterprise networks. He has approached every source of force including **local Dons, hooligans, extremist groups, political parties, National and International Authorities**, etc. however, by judging on the facts and learning about his **cynical approach**, they all come to truth that allowed a big project like Chhaya Devi Complex to reach completion without hindrances and run operation already for Two Yrs as of now.
9. On the later days, Mr. **Bhagbat Narshing Pradhan** had been exhibiting acts of hostilities against Chhaya Devi Complex and It's interests. He was pursuing every client's, tenants and partners of Chhaya Devi Complex to break away and tried as much to destroy Chhaya Devi Complex's entrepreneurial capacities. As of now, we have become a big

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family with 150 enterprises, 1200 Workers and partners and many more. Since his acts of catastrophes against interest of Chhaya Devi Complex started emerging visibly, we came to know from the media that "**National Union of Tourism and Hotel Labors**" team personally visited and issued him a notice for not to act against interests of Chhaya Devi Complex since it is associated with their livelihood. Sources said that the case reached to police and a resolution made that Mr. Pradhan should pull out from acting against interests of people working with or any business establishments inside Chhaya Devi Complex, for the sake of Labor's bread and butter issues.

10. Concerns of Traditional practices and death rites are just myths, ruled out by court in 2031 BS (1974AD) already. Real local residents and members from the Guthi, the Newars and Pradhan families have no claim on it at all. The **local "Guthi" committee has issued a formal letter approved by the Committee Board** stating that they have no issues with Chhaya Devi Complex so far. Local residents are working together with Chhaya Devi Complex, they regret for the Cynical acts exhibited by Bhagbat Narsing Pradhan and expressed solidarity with us. They have spoken to the media, Social workers, activists and politicians. Several cultural and indigenous activist groups have realized the fact and expressed solidarity. They have tried several times to convince Mr. Bhagbat Narsingh Pradhan to not terrorize investments but failed due to facts of his cynical attitude!
11. Chhaya Devi Complex is an enterprise that believes in 'fair trade' and ethical practices. It represents a prestigious group of people from Nepalese Business Fraternity, all with significant investment records in CSR and sustainable practices. The Building has gone through a proper Environmental Impact Assessment that complies a "Public Hearing" as must. Almost every citizen in the community and indigenous groups of people are happy and work in harmony with Chhaya Devi Complex. Local Guthi is totally in confidence, local youth club partners with us, we are fully **recognized by the Municipality through their Three tier permission system** to build this complex, nothing went against legal norms. We had been reviewed by the **Kathmandu Valley Urban Development Authority and certified**. Nothing has gone wrong except Mr. Bhagbat Narsing Pradhan and his few accomplices who come from areas other than where we are.
12. We are aware on the ILO 169 and express full respect to the rights of local indigenous people. Our Management has donated or promised to bring more funding for the reconstruction of local "Singha Sartha God's temple" which is real owner of the "Guthi".

Referring to further question in the given matters, please find our reply as follows:

1. I hope that information provided as above explain all the issues that you have raised so far. Please let us know if you need anything more in relation to it.
2. There is no rule in Nepal directing for Human Rights due diligence to construction of Business Complex or any corporate establishments. We have done an Environmental Impact assessment under Ministry of Environment's directives which is duly endorsed by them. There is no adverse Human Rights impacts, larger group from the local

community is enjoying presence of Chhaya Devi Complex and it's Business establishments through works, entrepreneurial practices, ownership of space or overall development in their locality.

3. As per directives from the Ministry of Environment, we had to appoint an approved company to conduct our EIA and accordingly, NESS Pvt. Ltd was appointed. Ministry formed a panel of experts that had **Mr. Sagar Tiwari from SCEC institute to conduct studies on social sector**. Going through several hearings with the experts panels through reports made by Consultant, addressing every comment and findings, **a public hearing was organized where over seventy Local residents were present**. With unanimous decision to support the project, consultant company compiled report and submitted to Ministry which was duly reviewed by group of experts and Ministry officials, and finally approved. No negative reports were received from the locals on social, cultural and environments impacts however, some minor issues raised by experts including drainage outlet system, rain water harvesting, etc were addressed. By evidences of legality through available documents, there was no reason to claim that the land belonged to Indigenous community. People who led Public hearing was members from the said community and there was no arguments or differences at all, none of the members from "Guthi" committee, local residents, youth club members, social workers or activists or neighbors claimed any right or differed opinion on Chaya Devi Complex's sole right over the land.
4. All members in the promoter's team are dignified and leading businessmen in their field of operation, involved in one or other means of CSR practices, with respects to fair trade principals. There would be no question of involvement in any unethical Practices. Definitely, all of us would be careful in future expansions to keep away from disturbances and attempts to extortion.
5. We shall be careful about standard Human Rights Principals however, UN Guiding Principles shall be adopted if our Government rules shall state that.
6. a) **Adequate compensation had been provided by previous owners of the land** and as we are it's 6<sup>th</sup> owner, it may not be a compulsion to us however, in the gesture of partnership and cooperation with local community, we have already donated a handsome sum of money for reconstruction of the temple and assured to bring more funding in future through our own sources and friends circles.  
b) As entitled by laws of Nepal, this land of 12.5 Ropani was converted into sole ownership by Ms. Ambika Rana in 1990AD after paying money to the "Trust" of Guthi Corporation. We are not aware on the amount but it is as per government's published Tariff.  
c) 4 Ana of land (1368sq ft) owned by the "Guthi" committee (referred in No. 6) that was awarded by Mrs. Ambika Rana as a conflict resolution measure, is being used by Chhaya Center to construct a Newari Traditional Spout and mini pond to give a glimpse of honour to Newari Indigenous cultural values and as a gesture of cooperation with the "Guthi" committee, Chhaya Devi Complex is paying Rs. 1.8 million Rupees (15600 USD) annually which is far more than standard leasing rates in practice. Chhaya Devi Complex sought the amount paid would be used in supporting rituals and maintenance of Temple itself.

Therefore, I would once again, like to inform that the issue of Chhaya Devi Complex is not an with locals and indigenous community nor, it's a breach of law by capturing someone's property illegally, as fabricated by handful of people with minimum attachment or interest with the local community, Instead, it is the campaign initiated by some people tagged as activists, terrorizing investors to serve their interests and personal egos. We are trying to get independent verification of the facts from a group of journalists which shall be documented and would be happy to send for your reference in the near future. Should there be any need to further information on this letter in future, please do not hesitate to contact us!

Should you be willing to get authentic verification on our claims as above, please feel free to connect with people as below who belong to the core group of local community, members of "Guthi" or representation of indigenous community as have been described!

1. Mr. [REDACTED] – A resident adjoining to the referred land, belongs to family living for over 250 Yrs. – Ph: [REDACTED]
2. [REDACTED] – Ex Chairman "Guthi", Ex elected Chairman of Ward-29, living within 100m and a member of the said "Pradhan Family" – Ph: 9851064744
3. [REDACTED] – A member of Newar Indigenous Community within 200m with 200 Yrs family history. – Ph: 9851982195
4. [REDACTED] – A Campaigner and activist of the Newar Indigenous Culture and Heritage, living 200m from the land. – Ph: 9851037469
5. [REDACTED] – Leader and popular Activist for Kathmandu Valley Indigenous Heritage Conservation who comes from an Ancient Village of Khokana that is claimed to be the first human settlement in Kathmandu Valley. – Ph: 9863523829

Prepared by:  
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