

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development and the Special Rapporteur on the rights of indigenous peoples

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(Please use this reference in your reply)

24 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to development and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 43/16, 44/15, 42/23 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of threats and intimidation by Government and police officials against indigenous community members of the FPIC and Rights Forum who have raised concerns regarding the environmental and human rights impacts of the Marsyangdi Corridor transmission line project that is being developed by the State-owned company, Nepal Electricity Authority, with funding from the European Investment Bank (EIB).**

The FPIC and Rights Forum is a grassroots network, formed by Indigenous community representatives from several districts affected by the proposed transmission line project. The FPIC and Rights Forum was formed to coordinate and mobilise community efforts to ensure free, prior, and informed consent of the affected peoples, in the context of the project.

According to the information received:

Background

The European Investment Bank (EIB) is financing the Marshayandi Corridor Transmission Line project in Lamjung District, Nepal. The project is implemented by the state-owned company, the Nepal Electricity Authority (NEA). The project has raised social and environmental concerns among communities, including Indigenous Peoples, living along the proposed transmission line route. The FPIC and Rights Forum have expressed their concerns about this project for the past four years. The key demand of the community is to reroute the transmission line that is passing through their villages, including Bajhaket village. Bajhaket is a mixed community with Indigenous Peoples (Ghale, Gurung, Tamang, Bhujel).

The FPIC and Rights Forum have submitted petitions to local district authorities and national authorities on behalf of communities. In 2018, community representatives submitted a formal complaint to the EIB. This complaint triggered a compliance review process of the financing of the project. On 7 December 2021, community members and members of the FPIC and Rights Forum reportedly experienced threats and intimidation by State

officials, including police officers.

Timeline of Events leading up to 7 December 2021

On 13 March 2021, various community organizations of Bajhaket and other adjoining settlements, including a community forest conservation group, a youth group, and a women and mothers' group, submitted a joint letter to the Besishahar Municipality. The application requested that the local government relocate the transmission towers to protect the village, land, and natural environment.

In April 2021, the EIB released a report of its findings pursuant to the aforementioned 2018 formal complaint. The findings included non-compliance in several areas, including inadequate public consultations and lack of a process to obtain free, prior, and informed consent from the affected Indigenous Peoples. After the release of this report, EIB suspended funding while compliance issues are addressed.

On 8 August 2021, the communities submitted an application to the Ministry of Home Affairs through the District Administration Office in Lamung requesting a process for free, prior, and informed consent be undertaken. They demanded not to install the transmission towers in their village and to find alternative solutions to avoid the multi-dimensional impacts of the transmission line.

On 4 October 2021, the communities of Raut Thok Village (an adjoining village of Bajhaket village) submitted an application to the NEA office in Besishahar Municipality, Lamjung District, urging the NEA not to construct the transmission line in their village as they remain concerned about the adverse impacts to the land, health, natural environment, and livelihoods of the people. The application urged the NEA office to relocate the project to other sites.

On 28 October 2021 the EIB participated in an online dialogue with indigenous community representatives to discuss progress on the project and implementation of its report.

Events of 7 December 2021

On 7 December 2021, a delegation of Government officials and police visited Bajhaket village, one of the indigenous communities affected by the transmission line project, to reportedly pressure the community to accept the project. The Chief District Officer of Lamjung district participated in the visit with approximately a dozen police carrying firearms from the Lamjung District Police Office and NEA officials. A meeting took place between these officials and community members in a field.

Reportedly, approximately 25-30 affected community members including women and Indigenous Peoples, were subject to intimidation by these officials, in the presence of armed police officers, with the aim of forcing them to stop protesting and accept the transmission line project. Officials warned community members that they must accept the project as it is a symbol of

national pride. They also threatened to push the project forward even if community members did not agree, and issued a warning that police forces would otherwise be mobilized to accomplish this.

Community members reiterated their position that the transmission line should be re-routed, and that community members affected by the project must be adequately compensated. Six of the community members who were reportedly subject to intimidation on 7 December were also in attendance at the online dialogue with EIB on 28 October 2021.

On 8 December 2021, 14 indigenous community members from Bajhakhhet Village filed a complaint to the National Human Rights Commission of Nepal regarding the intimidation by Government officials and police that took place the day before and requested an investigation into the incident.

On 26 April 2022, a total of five transmission towers located on lands were acquired by NEA, in Dordi Rural Municipality-2, Archalbot. The owners of the lands where the towers were built, felt pressured to accept a compensation offered, fearing that NEA would not provide it later on.

NEA officials went to Archalbot with approximately 28 police officers to build the rings for holding the transmission wire on the towers (Tower No. 33 B and 33 C). However, they could not put the rings on that day due to protests by the communities

On 27 April 2022, the same group of NEA officials, accompanied by approximately 30 armed police officers, visited the same village in Archalbot. The NEA officials and construction workers, with the support of armed police forces, managed to install the rings that hold the transmission wire in Tower No. 33 B and 33 E.

As of 1 May 2022, the situation on the ground continues to escalate. Several members of the community have reportedly suffered physical attacks by the police due to their protests, and some have also been arrested for obstructing the construction of the transmission line.

While we do not wish to prejudge the accuracy of these allegations, we are concerned about these threats and acts of intimidation as well as the reports that your Excellency's Government is failing to meet its international human rights obligations to protect the human rights of Indigenous Peoples and communities against abuses by business enterprises operating in its territory and/or under its jurisdiction. We are equally worried that if the Government were to push this project forward, the threats and intimidation may escalate alongside the risk of adverse environmental impacts. We are disturbed by the lack of good faith consultations with the affected indigenous communities, the failure to obtain free, prior, and informed consent of the affected Indigenous Peoples, and the significant and irreversible social and environmental damage that the project can incur to the culture and livelihoods of indigenous communities as well as to the lands, resources, culture, and livelihoods and to the environmental impact it would have. We recall that while the Marshayandi Corridor Transmission Line project presents a financial interest, the Government has assumed international legal obligations on the rights of Indigenous Peoples and environmental protection. Indigenous Peoples and their knowledge are vital to the sustainable

management of natural resources and biodiversity conservation, both of which are essential elements for combating climate change and fulfilling the Sustainable Development Goal (SDG) 13 on climate action as well as SDGs 14 and 15 on the conservation of biodiversity. Furthermore, the Government response, including the presence of armed police officers during the December visit to one of the affected communities, may have the effect of not only restricting their peaceful and legitimate work in defending their human rights, but also resulting in a chilling effect on other groups and individuals also engaged in doing so. The targeting of human rights defenders through intimidation, threats, and criminalization are of particular concern, as this appears to be in direct retaliation for their legitimate and peaceful activities promoting Indigenous Peoples' rights and the defence of their traditional lands, territories and resources. We are concerned that such allegations will not only denigrate the efforts of the above-mentioned Indigenous human rights defenders to denounce human rights violations, but also the efforts of other human rights defenders and human rights organisations, contributing to a chilling effect on civil society and their ability to exercise the rights to freedom of expression, freedom of assembly, and association without fear of retaliation.

In this context, we note that in 2018 the Committee on the Elimination of Racial Discrimination expressed concern over the absence of laws in Nepal guaranteeing the rights of Indigenous Peoples to own, use and develop their traditional lands and resources, and by allegations that those rights had been violated in the context of hydropower, road widening and other development activities that were often accompanied by involuntary displacement. The Committee recommended that Nepal find an adequate negotiated solution to resolve the dispute regarding the rights of Indigenous Peoples over their traditional lands and natural resources, including by revising legislation and taking into account the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), obtaining the free, prior and informed consent of Indigenous Peoples prior to the approval of any project affecting the use and development of their traditional lands and resources; and taking measures to guarantee that evictions are carried out in accordance with international standards" (CERD/C/NPL/CO/17-23).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites the international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any information on independent investigations of the alleged threats and intimidation suffered by these communities, including the FPIC and Rights Forum in relation to the Marsyangdi Corridor transmission line project.
3. Please provide information on the environmental and social impact studies carried out prior to the approval of and/or during the

development of the Marsyangdi Corridor transmission line project of the State-owned National Electricity Authority and whether these studies were prepared with a human rights-based approach.

4. Please provide information on any consultation processes undertaken with the affected Indigenous Peoples prior to the approval of the Marsyangdi Corridor transmission line project and whether their free, prior, and informed consent was sought. Please indicate whether any measures are planned to include the meaningful and inclusive participation of the affected Indigenous Peoples in decision-making and to obtain their free, prior, and informed consent for projects that may affect their lands and livelihoods.
5. Please indicate what steps your Excellency's Government has taken or is considering to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuses by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate, and account for how they address their impacts on human rights and the natural environment throughout their operations, as set forth by the UN Guiding Principles on Business and Human Rights.
6. Please provide information on any steps taken by your Excellency's Government to ensure that the affected communities, including Indigenous Peoples in your territory and/or jurisdiction have access to effective, adequate and timely remedies and compensation for development and business-related human rights abuses.
7. Please provide information on the measures in place to ensure that human rights defenders, including those defending their land rights, can carry out their legitimate work without fear of criminalization or retaliation of any sort, from State and non-State actors.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform you that a communication concerning the above-mentioned allegation has also been sent to the European Investment Bank and the Nepal Electricity Authority.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elżbieta Karska
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Saad Alfarargi
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Annex

Reference to international human rights law

In relation to the above-mentioned facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Nepal has ratified numerous international treaties, including those relevant to the rights of Indigenous Peoples, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and ILO Indigenous and Tribal Peoples Convention, 1989, No. 169 (ILO 169).

In 2007, Nepal ratified ILO Convention No. 169 which affirms the rights of Indigenous Peoples "to decide their own priorities for the process of development" and to "participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly" (Art.7(1)). Article 14 (1) mandates recognition of Indigenous Peoples "rights of ownership and possession" over the lands they "traditionally occupy." This includes "lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities."

We furthermore wish to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with a favourable vote by your Excellency's Government. Article 26 asserts the right of Indigenous Peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.' Article 23 affirms the right of indigenous peoples "to determine and develop priorities and strategies for exercising their right to development." Furthermore, Article 32 states that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Furthermore, UNDRIP affirms that indigenous peoples have the right to practise and revitalize their cultural traditions and customs and have the right to the protection of the environment in their traditional lands, territories and resources, including from the dumping of hazardous waste.

Article 28(1) states that "indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." Article 28(2) furthers this by affirming that "unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress."

We further recall that the UN Declaration on the right to development (A/RES/41/128) defines the right to development an inalienable human right by virtue

of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development (article 1.1). The Declaration further states that the human person is the central subject of development and should be the active participant and beneficiary of the right to development (article 2.1) and requires that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8.2). In this line, the ILO Convention 169 prescribes that indigenous peoples of the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well being and the lands they occupy.

We also refer to the Guidelines and recommendations on the practical implementation of the right to development, which urge states to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. The Guidelines further recommend (para 37) that States should respect the right of indigenous peoples to self-determination to fulfil the right to development. Indigenous peoples should be empowered to develop their own development priorities and provide their free, prior and informed consent as guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.

Furthermore, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations with Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur. States may be considered to have breached their international human

law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Furthermore, business enterprises should remedy any actual adverse impact that it causes or to which it contributes. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would like to refer to the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) and recommendations contained therein elaborating on the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations:

88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.

94. States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.

We would like to also refer your Excellency's Government to the [Working Group's Guidance on ensuring respect for human rights defenders](#). The Report on human rights defenders and civic space – the business and human rights dimension (A/HRC/47/39/Add.2), highlights the need for addressing the adverse impact of business activities on human rights defenders. It unpacks for States and business the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.

Lastly, we would like to refer your Excellency's Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2). The Declaration details the State's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of carrying out their legitimate work as human rights defenders (article 12). We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.