

Mandates of 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 Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on extreme poverty and human rights

Ref.: UA OTH 136/2022
(Please use this reference in your reply)

30 January 2023

Mr. Masatsugu Asakawa,

We have the honour to address you in our capacity as 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; Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 43/14, 44/15 and 44/13.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on the information we have received.¹ Special Procedures mechanisms can engage directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **the alleged imminent threat of forced evictions and home demolitions without plans for adequate alternative housing at Thapathali informal settlement, along the banks of the Bagmati river, in Kathmandu, which could affect up to some 17,500 people (3,500 families), in the context of implementation of Bagmati River Basin Improvement Project and related projects, financed by the Asian Development Bank. These evictions are planned without the provision of any alternative adequate housing and would render many affected persons homeless, thus threatening their health and right to a life in dignity. Additional 2,000 families living in other informal settlements in Kathmandu may also be targeted for evictions in the future. This would be the second time that residents**

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

of Thapathali informal settlement would be subjected to forced evictions, after their homes were initially demolished in 2012.

From the outset, we would like to recall the previous communication (NPL 1/2012) to Nepal on the alleged threatened eviction of 3,000 households and planned demolition of homes in 13 informal settlements on the Bagmati river, reportedly due to a revitalization project in Kathmandu. Reference is also made to communication (NPL 3/2012) on the alleged demolition of 249 houses and the forced eviction of 994 residents of the 'Thapathali' settlement in Kathmandu. We regret that to date no response has been received to these communications.

In his recent report on his country visit to Nepal ([A/50/38 Add.2](#)), the Special Rapporteur on extreme poverty and human rights noted that communities with whom he met during his mission expressed a constant fear of eviction. He urged the Government of Nepal to implement article 5 (4) (a) of the Right to Housing Act, which requires that consultations be held with citizens prior to eviction. The Special Rapporteur also recommended that “the Government should lay down more stringent criteria for eviction than is currently provided for under the Act and provide procedural guarantees for evictions, including full consultation with and the participation of affected communities through public hearings, as well as mediation, arbitration or adjudication by an independent body with constitutional authority in cases of disagreement over proposed alternatives”.

According to the information received:

While the families living Thapathali informal settlement are now under an imminent threat of forced evictions, they were already once previously subjected to forced evictions and demolitions of their homes back in 2012. Having nowhere else to go at the time, the families remained living in Thapathali, in semi-permanent structures. On 22 June 2012, the National Human Rights Commission addressed a letter (Ref. No. 1591, Investigation 874) to the Office of the Prime Minister and Cabinet of Ministers recommending to the authorities to identify the residents of informal settlements who were displaced following the demolition of their homes, make appropriate alternative arrangements for their shelter and provide compensation, among others. Towards the end of his second term (29 August 2011 – 14 March 2013), the Prime Minister at the time, Mr. Baburam Bhattarai, visited the settlement and pledged that an alternative would be found to forced evictions.

Involvement of the Asian Development Bank

Since October 2013, the Asian Development Bank is financing the implementation of several development projects along the Bagmati River with total project cost of US\$ 78.80 million. The project entitled Bagmati River Basin Improvement Project (Project Number: 43448-013) supports the creation of a river basin organization, improving the riverbank environment through various beautification and community schemes, constructing water storage facilities to

increase water availability in the dry season, and setting up flood forecasting and early warning systems.² It is categorized under category B for involuntary resettlement.

The High Powered Committee For Integrated Development of Bagmati Civilization (hereafter High Powered Committee) is an initiative under the Ministry of Urban Development of the Government of Nepal³, created with the aim of making the Bagmati river pollution-free. It is one of the implementing agencies of the Bagmati River Basin Improvement Project. The Bagmati river is both a sacred river and a major water source for the Kathmandu Valley. The Committee states that the river has become polluted in part due to human actions such as unplanned urbanization and waste disposal and that, among others, “illegal settlements of squatters along the banks have deteriorated the river environment and the water security”⁴.

As described in the Social Monitoring Report (Project Number: 43448-013, July 2022)⁵ prepared by the Government of Nepal for the Asian Development Bank, the Bagmati River Basin is deteriorating due to five main reasons, among them the “existence of squatters’ settlements on River Banks”. In the Social Monitoring Report, the High Powered Committee submitted that the “Government of Nepal has asked the ADB for financial help in the amount of US \$ 63 million to address the rising demand for Bagmati development and protect it from encroachments”.

In the updated resettlement plan submitted in September 2021, the Government states that “while large number of non-titleholder housing settlements (squatters) are present in the project area, the project has minimized involuntary resettlement impacts and leave these settlements unaffected.”⁶

Recent developments since March 2022

On 30 March 2022, the local authorities at the ward level assigned house numbers in Thapathali, which enabled inhabitants to get access to electricity. The community has built its own access point to public tap water.

On 25 August 2022, the National Land Commission⁷ signed an agreement with the Kathmandu Metropolitan City for the completion of data collection and identification of "genuine" residents of informal settlements. Data collection later stalled due to a general election which was held on 20 November 2022.

² <https://www.adb.org/news/63-million-additional-adb-funds-help-heal-nepals-bagmati-river>

³ <https://www.brbip.gov.np/>

⁴ <http://bagmati.gov.np/np/about-the-committee/>

⁵ Semi-Annual Social Safeguards Monitoring Report, July 2022, Nepal: Bagmati River Basin Improvement Project – Additional Financing. Project Number: 43448-013. https://www.adb.org/sites/default/files/project-documents/43448/43448-013-smr-en_3.pdf

⁶ <https://www.adb.org/sites/default/files/project-documents/43448/43448-013-rp-en.pdf>

⁷ The National Land Commission was established by the Government in accordance with the Land Act-1964, tasked with aiding the identification of informal settlements.

Renewed imminent threat of forced evictions since November 2022

Despite its assurances to the Asian Development Bank that involuntary resettlement would be minimized, the High Powered Committee issued on 11 November 2022 a 10-day notice to the residents of Thapathali to vacate the area under the threat of forced eviction. No information was provided on any resettlement plan, compensation or assistance to secure adequate housing after the eviction.

On 17 November 2022, civil society and residents of Bagmati riverbank informal settlements held a demonstration carrying banners and marching in Maitighar in protest of the planned eviction.

On 28 November 2022, the mayor of Kathmandu Metropolitan City deployed upon request of the High Powered Committee around 300 municipal police officers and 3 dozers to forcibly clear the Paurakhi Basti (community) in Thapathali. The police faced violent resistance when attempting to evict the residents. A number of persons were injured, including 18 police officers.

Currently 136 households - around 700 people - living in Thapathali are at imminent risk of forced evictions. The families have nowhere to go and a forced eviction into homelessness would put their lives and health at risk, particularly of pregnant and lactating women, as well as older persons. Children would be at risk of dropping out of school. No consultation was held specifically with residents of Thapathali settlement prior to the attempt to forcibly evict them on 28 November.

On 29 November 2022, it was reported⁸ that the National Land Commission has found that the Kathmandu Metropolitan City would carry out its demolition plan unilaterally, without consulting other government agencies or offering alternative arrangements for the residents. The Commission's chair reportedly said that the city cannot demolish the informal settlement before the Commission completes data collection and identification of "genuine" landless squatters.

On 30 November 2022, the mayor halted the planned forced eviction. However, on the same day the Kathmandu Valley Development Authority, which is under the Ministry of Urban Development, published a 35-day notice to vacate the riverbanks, affecting all the 3,500 households (approximately 17,500 people) living in informal settlements along the Bagmati river. The High Powered Committee had in the past held a series of consultations with residents of the informal settlements.

⁸ <https://myrepublica.nagariknetwork.com/news/national-land-commission-accuses-kmc-of-demolishing-landless-squatters-settlement-without-making-alternative-arrangement/>

On 1 December 2022, the Kathmandu Metropolitan City announced it would be consulting with other government agencies and authorities for solutions before initiating other eviction measures.⁹

Reportedly, on 14 December 2022, the National Land Commission has sent a letter to Kathmandu Municipality, to which the latter has not yet responded.

On 29 December 2022, the Kathmandu Municipality sent a letter to the new Minister of Home Affairs, who took over the function on 27 December 2022, requesting police support to evict Thapathali residents.

To date, civil society and residents continue protesting against the planned forced evictions, demanding a completion of the data collection and the identification of a safe relocation site in consultation with the community. They have been approaching for discussion the Prime Minister, Minister of Home Affairs, Ministry of Land Management, Cooperatives and Poverty Alleviation, among others.

Reportedly, the Kathmandu Municipality's development plan includes evicting further 2,000 families living in other informal settlements in Kathmandu.

Without prejudging the accuracy of the above allegations, we wish to reiterate as a matter of principle that multilateral development banks, such as the ADB, have obligations to respect human rights and to ensure, at a minimum, that they do not finance projects that contribute to human rights violations and abuses. To this end, it is incumbent on the ADB to carry out human rights due diligence in order to identify, prevent or mitigate any adverse human rights impacts of projects that they finance.

In the present case, we express serious concerns that ADB may be financing the project without proper due diligence and may be failing to adequately supervise and oversee compliance with its environmental and social safeguards. In particular, we are deeply troubled by the fact that the project has resulted in the threatened forced evictions of residents of informal settlements in Thapathali area without prior consultation and plan for alternative accommodation, which will likely put many at risk of homelessness. This is especially jarring since an identification process of residents of informal settlements has not yet been completed, which will likely complicate any possible attempts post-eviction to challenge the legality of the eviction and to claim redress and compensation for damages and property lost. By financing a project that violates international human rights law and standards, the ADB may be complicit in human rights violations associated with the acts of its client. The reputational risks associated with such a complicity are considerable.

In view of the fact that the ADB's 2009 Safeguard Policy Statement is currently being reviewed and updated, we wish to take this opportunity to underline that it is critical that it includes strong mechanisms to ensure the implementation of its safeguards against forced evictions and arbitrary displacement as a pre-requisite for the

⁹ <https://kathmandupost.com/kathmandu/2022/12/02/kmc-to-discuss-squatter-problem-with-government-agencies-and-stakeholders>

approval and continued financing of projects, including transparent information sharing, consultation with and participation of the affected communities. We consider that the Bagmati River Basin Improvement Project and related projects provide a clear illustration of the importance of fully and transparently disclosing all information relating to environmental and social risks at an early stage of the project planning, conducting thorough due diligence on such risks, and engaging in meaningful consultations with affected people and communities, prior to project approval. We hope that these lessons be taken into account in updating the Bank's Safeguard Policy Statement, so that the Statement can meaningfully guide the Bank's visions in encouraging respect for human rights through its projects.

We would like to draw your attention to obligations arising out of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Nepal on 14 May 1991, in particular concerning the right of everyone to an adequate standard of living for himself and his family, including adequate housing (article 11). We would also like to draw your attention to obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Nepal on 14 May 1991, on the rights to life and to non-interference with privacy, family, home or correspondence.

In its General Comments No. 4 and No. 7, clarifying obligations under the ICESCR, the Committee on Economic, Social and Cultural Rights emphasized that affirmed that "forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". In the same General Comment No. 4, the Committee clarified that States should take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

Further, in its General Comment No. 7, the Committee clarified that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, should evictions result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to the affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have

a right to adequate compensation for any property, both personal and real, which is affected.

We furthermore wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1), which provide that States should explore fully all possible alternatives to evictions in consultation and with the participation of all potentially affected groups and persons. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

In addition, we would like to refer to the Principles on security of tenure for the urban poor (A/HRC/25/54), and Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) - notably guidelines no. 5 to eliminate homelessness in the shortest possible time and stop the criminalization of persons living in homelessness and no. 6 on forced evictions.

We further wish to draw your attention to the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add. 2), in particular we would like to refer to Principles 5 and 6.

Finally, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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.”

The Guiding Principles provide that all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected

conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your organisation to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please explain the relevance of Thapathali settlement to the implementation of the Bagmati River Basin Improvement Project and related projects.
3. Please explain the risk classification as category B for the Bagmati River Basin Improvement Project and related projects.
4. Please provide information on how your organization has ensured that residents of informal settlements in Thapathali and other areas along the Bagmati river bank are protected from forced evictions and arbitrary displacement in the context of implementation of Bagmati River Basin Improvement Project and related projects.

5. Please provide information about the human rights due diligence policies and processes put in place by ADB to identify, prevent, mitigate and remedy adverse human rights impacts of the Bagmati River Basin Improvement Project and related projects, in line with the UN Guiding Principles on Business and Human Rights. In particular, please provide information about specific due diligence measures taken by your bank before deciding to finance the project and, please highlight how your bank conducted meaningful consultation with residents of Thalathali and other areas along the Bagmati river bank and explored feasible alternatives to their eviction and displacement in the context of implementation of Bagmati River Basin Improvement Project and related projects.
6. Please provide information on steps taken by your bank to establish operational-level grievance mechanisms to address adverse human rights impacts caused by your bank throughout your operations globally. If said grievance mechanisms are already in place, please also provide detailed information as to what complaints have been received so far and how they have been addressed.
7. Please provide information on how your organization has ensured that residents of informal settlements in Thalathali and other areas along the Bagmati river bank receive adequate compensation for their property in the context of implementation of Bagmati River Basin Improvement Project and related projects.
8. Please indicate how your organization has ensured that a rights-based approach is followed in implementation of Bagmati River Basin Improvement Project and related projects, specifically when it comes to dealing with informal settlements along the riverbanks.
9. Please describe the measures that your bank has taken, or plans to take, to prevent recurrence of such situations in the future.

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 adequate compensation for those victims that can be identified and accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your organisation to clarify the issue/s in question.

This communication and any response received from your organisation will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on this subject matter has also been sent to the Permanent Mission of Nepal.

Please accept, Mr. Masatsugu Asakawa, the assurances of our highest consideration.

Balakrishnan Rajagopal
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

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

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