

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the rights of Indigenous Peoples

Ref.: AL NPL 2/2023
(Please use this reference in your reply)

20 July 2023

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 44/15, 46/9, 52/9, 52/4, 44/8 and 51/16.

In this regard, we would like to bring to the attention of Your Excellency the information we have received regarding the **alleged violations of the human rights of the Newar Indigenous Peoples as well as the continued serious threats against human rights defenders due to the construction of the Chhaya Center business complex, developed by Chhaya Devi Complex Pvt. Ltd. in Thamel, in the central tourist district of Kathmandu, Nepal. The business complex houses a five-star hotel Aloft Kathmandu Thamel of US-based company Marriott International, among others.**

Several of the UN experts who address this letter to you had already expressed their concern in [AL NPL 1/2021](#) and in [JUA NPL 3/2017](#), regarding the possible impact of the Chhaya Center projects on Indigenous Peoples and communities, as well as the reprisals faced by human rights defenders. While we are grateful for Nepal's response to these communications, we regret that it primarily addressed the Fast-Track expressway project and failed to respond to the questions concerning the Chhaya Center project.

According to the information received:

Located in the central tourist district of Kathmandu, the Chhaya Center business complex was touted to be the biggest business complex in Nepal's history, constructed by privately owned Nepali company Chhaya Devi Complex Pvt. Ltd. Chhaya Center currently houses 200 retail stores, including high-end brand outlets, multiplex theatres, corporate offices, banquet and conference halls, casino, discotheque, as well as five-star hotel Aloft Kathmandu Thamel of the U.S. based-company Marriott International, Inc.

The Chhaya Center is built on a historically significant land that once contained a holy pond as well as important religious and cultural sites. The construction of the business complex on land of the Indigenous Pradhan Newar has resulted in the destruction of their religious and cultural customs. It

has completely engulfed the Kamal Pokhari pond and destroyed its banks that were used for daily rituals, death rites, festivals, as well as other religious and cultural purposes. This is despite the legal protection granted to the Guthi – an ancient social organisation system of the Newar in Nepal – by the courts in 1976. In violation of the Nepalese law, as extensively discussed [in AL NPL 1/2021](#), these communal lands were allegedly annexed through a series of private land registrations and in 2008, Chhaya Devi Complex Pvt. Ltd. purchased all the parcels of land.

In 2013, six Guthi members filed twelve lawsuits at Kathmandu District Court demanding the repeal of all unlawful land transfers and registrations involving the lands in which the Chhaya Center was then being constructed. Despite the slow progress of the Court process, characterized by frequent postponement of hearings, the construction of the complex continued at an accelerated rate, without the Newar Indigenous Peoples' free, prior and informed consent.

In 2017, the Supreme Court found that the transfer of Guthi lands to private ownership was in violation of the provisions set forth in the Guthi Corporation Act of 1976, and therefore, is subject to annulment at any time in accordance with the Land Revenue Act. Consequently, the Supreme Court determined that a re-examination of the case is warranted. Upon requesting all original documents pertaining to the lands from the land revenue office, the Court was provided the documents such as ownership titles. However, it was informed that the related decision or process files (called misil in Nepali) of the concerned land revenue office under the Land Ministry of the Government of Nepal could not be located, despite efforts to locate them. To date, the case is sub-judice in the Supreme Court.

We have received new information about over 30 postponements of the Supreme Court hearings for the past six years on the writ filed against the development of Chhaya Center project, while only three hearings took place in the past years. Importantly, the Supreme Court denied the petition to cease the construction of the business complex, which is finalized and has been fully operational since 2018.

Concurrently, official activities continue to be carried out at the Chhaya Center, including the annual assembly of the Supreme Court Bar Association, which took place in the conference hall and was attended by judges of the Supreme Court.

In March 2022, activists associated with the campaign to restore the historical Kamal Pokhari in Thamel filed a petition with the Securities Board of Nepal and concerned authorities, following news reports that Chhaya Devi Complex Pvt. Ltd. was planning to issue an Initial Public Offering (IPO) to become a publicly traded company. The petition drew the attention of the Securities Board of Nepal to the court cases sub-judice against the construction of the Chhaya Center and urged them not to approve the request for Chhaya Devi Complex to issue its IPO. The petition to the Securities Board of Nepal is currently on hold.

In addition to the information provided to your Excellency's Government in [AL NPL 1/2021](#) and in [JUA NPL 3/2017](#), we have received new information

regarding retaliations faced by human rights defenders, due to their legitimate activism in relation to the construction of the Chhaya Center business complex. In particular, on 14 January 2020, a contempt of court case was filed against **Bhagabat Narshing Pradhan**, a Nepali conservation activist who spearheads the campaign to restore the historical Kamal Pokhari in Thamel. The allegations against Bhagabat Narshing Pradhan include causing disturbance and disrupting public order. These charges stem from his peaceful protest during a press conference organized by Chhaya Devi Complex Pvt. Ltd. on 19 February 2019, where the company stated that the land on which the complex was constructed does not hold historical significance.

Furthermore, according to the information received, Bhagabat Narshing Pradhan has faced numerous threats, including an in-house visit on 27 December 2020 by trade union leaders employed at the Chhaya Center. The trade union leaders allegedly delivered Bhagabat Narshing Pradhan a threatening letter demanding him to cease his opposition to the business complex at national and international levels, as well as on social media, within three days. The letter warned that if he failed to comply, the workers of the complex “would be forced to fight for their rights”. The letter purportedly representing 1,200 workers, was signed by the leaders of the Nepal Independent Hotel, Casino and Restaurant Workers’ Union and the Union of Trekking Travels Rafting Workers Nepal (UNITRAV) and the Executive Director of Chhaya Devi Complex.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of alleged continued impunity and violations of the human rights of Indigenous Peoples and other peoples living in the surrounding area, including but not limited to, the alleged violation of the land and resource rights of the Newar Indigenous Peoples, the impacts of the Chhaya Center business complex on their cultural rights, acts of retaliation and judicial harassment against human rights defenders and affected Indigenous community members, and the lack of access to remedy experienced by Indigenous Peoples and community members. We are equally concerned by the allegations received about the lack of interim measures put in place by your Excellency’s Government, despite the ongoing land dispute, which has been ongoing at least since 2013 and has been aggravated by the construction of the business complex in 2018. We are also concerned about the reported acts of intimidation against Mr. Bhagabat Narshing Pradhan, reportedly in retaliation of his opposition to the project.

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

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

1. Please provide any additional information or comments that may be relevant to the human rights concerns raised in the present letter.
2. We respectfully request a response to our earlier questions pertaining to the Chhaya Center project addressed to your Excellency’s Government

in our letter NPL 1/2021 dated 31 March 2021. Please provide information on any steps taken by your Excellency's Government to ensure that the affected peoples and communities in your territory and/or jurisdiction have access to effective remedies for business-related human rights abuses relating to the construction of the Chhaya Center. In particular, please explain what measures are envisaged and/or have been implemented for the protection of the Indigenous Newar Peoples' cultural rights, including their right to maintain and develop their various ways of life and their traditional activities normally practiced in the area now occupied by the Chhaya Center. Please provide information on the plans your Excellency's Government is taking, or is considering taking, to restore the pond and the surrounding lands as communal lands of the local Indigenous Newar.

3. Noting the information provided in your Excellency's response dated 31 May 2021, that your Excellency's Government "has not prevented Newar community's access to the Thamel Monastery, the Kamal Pokhari and the surrounding areas to exercise their rights to religious practice", please provide information on the measures taken by your Excellency's Government to stop the gradual encroachment of the Kamal Pokhari by the Chhaya Center, particularly while the land dispute cases are ongoing.
4. Please provide information on the steps taken by your Excellency's Government to provide prompt resolution of the court cases concerning the Chhaya Center that are still sub-judice. Moreover, please provide information on the steps taken by your Excellency's Government, particularly the land revenue office, to ensure that the Supreme Court is in possession of all original documents pertaining to the land on which the Chhaya Center has been built.
5. Please provide updated information regarding the status of the petition filed with the Securities Board of Nepal and concerned authorities in March 2022. Please provide information on whether your Excellency's Government is currently considering, or plans to consider, the ongoing court cases related to the construction of the Chhaya Center in its processing of Chhaya Devi Complex Pvt. Ltd.'s application for the issuance of its IPO.
6. Please provide information on the status of the development of a national action plan on business and human rights, as a key step by the Government to protect against human rights abuses by businesses.
7. Kindly provide information on the steps your Excellency's Government has taken, or is planning to take, to ensure that the legitimate activities of human rights defenders are not obstructed, specifically in light of the recommendations provided to States in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2).

8. Please provide information about the measures taken to guarantee the rights and freedoms of Mr. Bhagabat Narshing Pradhan, and more generally, to respect and protect the rights to freedom of peaceful assembly and of expression in the context of the construction of the Chhaya Center.

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 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 Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to those business enterprises that are involved in the Chhaya Center project including the Chhaya Devi Complex Pvt. Ltd and Marriott International. Additionally, a letter has been sent to the United States of America as the home-State of Marriott International.

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

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transnational corporations and other business enterprises

Alexandra Xanthaki
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Margaret Satterthwaite
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José Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

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 relevant to the rights of indigenous peoples including ILO Indigenous and Tribal Peoples Convention, 1989, no. 169 (ILO 169), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

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 also wish to draw the attention of your Excellency's Government to its obligations under article 27 of the ICCPR, and article 15 of the ICESCR concerning, respectively, the right of everyone to enjoy his or her own culture and to take part in cultural life. This right includes the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (E/C.12/GC/21, para. 15.c).

As the UN Committee on Economic, Social and Cultural Rights makes clear in its general comment no. 21, States must adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and must obtain their free, prior and informed consent when the preservation of their cultural resources is at risk (para. 55). In the case of Indigenous Peoples, cultural life has a strong communal dimension that is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee has stressed that "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature must be respected and protected, in order to avoid the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity".

The Committee on Economic, Social and Cultural Rights highlighted that States parties must therefore take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources (para. 36). Furthermore, States parties must also respect the rights of Indigenous Peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life

(para. 49d).

We would like to echo the concerns previously raised by the Committee on Economic, Social and Cultural Rights' Concluding Observations on Nepal (2014), noting that Indigenous People are "deprived of their traditionally owned lands, territories and resources due to development projects carried out by the State party without seeking their free, prior and informed consent". The Committee recommended that the State "seek their free, prior and informed consent before launching any development projects", "continuously monitor the projects being developed so as to take corrective measures, if necessary", and "provide displaced families and groups with fair and adequate compensation" (E/C.12/NPL/CO/3).

The mandate holders in the field of cultural rights have recommended that States parties obtain the free and informed prior consent when the preservation of the cultural resources of concerned individuals or communities, especially those associated with their way of life and cultural expression, are at risk (E/C.12/GC/21, paragraphs 49(a), 52(f) and 55(e)). Concerned communities and relevant individuals should be consulted and invited to actively participate in the whole process of identification, selection, classification, interpretation, preservation/safeguard, stewardship and development of cultural heritage (A/HRC/17/38, recommendation c). The Special Rapporteurs have also underscored that States should make available effective remedies, including judicial remedies, to concerned individuals and communities who feel that their cultural heritage is either not fully respected and protected, or that their right of access to and enjoyment of cultural heritage is being infringed upon (recommendation L).

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 11 of the UN Declaration protects indigenous cultural traditions, customs and practices including archaeological and historical sites, and artifacts and asks states to provide effective mechanisms for redress, in conjunction with Indigenous Peoples. Article 23 affirms the right of Indigenous Peoples "to determine and develop priorities and strategies for exercising their right to development".

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."

Furthermore, we would like to highlight 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 of 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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In addition, businesses have an independent responsibility to respect all internationally recognised human rights, including by conducting human rights due diligence.

Lastly, we would like to refer your Excellency’s Government to articles 19 and 21 of the International Covenant on civil and political rights, as well as the provisions of 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.