

**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 USA 15/2023  
(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 [USA 16/2021](#), to which we have yet to receive a response from Your Excellency's Government, regarding the possible impact of the Chhaya Center projects on Indigenous Peoples and communities, as well as the reprisals faced by human rights defenders.

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 USA 16/2021](#), 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 [USA 16/2021](#), 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 also concerned about the reported acts of intimidation against 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 would like to bring to your attention that we have not yet received a response to our letter dated 30 March 2021. In this regard, we respectfully reiterate our request for information regarding the measures that your Excellency’s Government has taken or is considering taking, to ensure that companies domiciled in your territory and/or jurisdiction, such as Marriott International, respect human rights in all their activities, including extraterritorial activities. In particular, please provide information on the measures that your Excellency’s

Government has taken, or is considering taking, to enact a legislation that would require human rights due diligence or the disclosure of human rights due diligence activities of companies such as Marriott International, domestically and abroad.

3. In addition, we would like to reiterate our request for information on the steps your Excellency's Government is taking, or considering to take, to ensure that individuals affected by the activities of Marriott International in the tourism district of Thamel, in Kathmandu, have access to effective remedies in your country, through judicial or extrajudicial State mechanisms.

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.

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 including the Chhaya Devi Complex Pvt. Ltd and Marriott International. Additionally, a letter has been sent to Nepal as the home-State of Chhaya Devi Complex Pvt. Ltd.

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

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

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

José Francisco Cali Tzay  
Special Rapporteur on the rights of Indigenous Peoples

## Annex

### Reference to international human rights law

We also would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. The United States of America has ratified international treaties 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, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

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).

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. 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.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain

from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, general comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse 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.

Moreover, principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

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.

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 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.