

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 OTH 77/2023
(Please use this reference in your reply)

20 July 2023

Dear Mr. Capuano,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene 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 regard, we would like to bring to the attention of your company the information we have received regarding the **alleged violations of the human rights of the Newar Indigenous Peoples as well as 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.**

Marriot International

Several of the UN experts who address this letter to you had already expressed their concern in [OTH 184/2021](#), to which your company responded on 29 April 2021, 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 OTH 184/2021](#), 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 company [OTH 184/2021](#), 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 equally

concerned by the allegations received about the lack of interim measures put in place by your company, 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 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. Noting your company's response dated 29 April 2021 stating that it is your understanding that "legal due diligence was conducted through outside counsel in Nepal prior to Starwood's commitment to the project", please provide information as to how Marriott International, as a company involved in a merger or acquisition that brought new projects, activities and relationships into its portfolio, carried out its own independent responsibility to conduct human rights due diligence, beginning with an assessment of any human rights risks it was taking on, in line with the UN Guiding Principles on Business and Human Rights (UNGPs). Moreover, please provide information as to how Marriott International is undertaking its responsibility to carry out ongoing human rights due diligence in the context of the Chhaya Center project, taking into account how, as per the UNGPs, human rights due diligence processes require iterative human rights impact assessments that are consistently updated. If none of the above-mentioned responsibilities has been carried out, please explain why this is the case.
2. Please explain what measures have been adopted to ensure that the staff of your company as well as your business partners have adequate awareness, knowledge, and the tools to identify and report human rights abuses, including those alleged in the present letter, throughout your operations.
3. Noting your company's response dated 29 April 2021, stating that Marriott International committed to "collaborate with local counsel in Nepal and conduct additional research on this matter", as well as to "monitor and carefully assess the upcoming Supreme Court decision", please provide information as to the steps Marriott International has taken, or is considering to take, given the information it currently has (or the lack thereof) on the ongoing legal dispute concerning the land on which the Aloft Kathmandu hotel is situated.
4. Noting your company's response dated 29 April 2021 stating that Marriott International "provides a variety of means...to report unethical, abusive, and harassing behavior and potential human rights violations...[which] include Marriott's 24-hour toll-free Business Integrity Line...", please elaborate on the steps you have taken, or

intend to take, to ensure that affected peoples are aware of the existence of these reporting mechanisms. If no awareness-raising strategy exists, please explain the steps your company plans to take to ensure that such strategy will be put in place in the future. Additionally, please provide information as to whether such reporting mechanisms has been used to address any of the concerns or impacts arising out of the development of the Chhaya Center, where your hotel is located, as well as information on the outcomes and/or remedies provided to affected stakeholders as a result.

5. Please kindly provide information on the steps Marriott International has taken, or is planning to take, to ensure that it does not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to businesses 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), which provides guidance to States and businesses on the normative and practical implications of the UNGPs for protecting and respecting the vital work of human rights defenders.
6. Please provide information on whether your company publicly discloses how it is addressing human rights risks and impacts connected with its business activities.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company 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 company to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the Chhaya Devi Complex Pvt. Ltd and its home State Nepal. Additionally, a letter has been sent to the United States of America as your company's home State.

Please accept, Mr. Capuano, 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
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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

First and foremost, 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.”

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others 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”.

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.

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.”