

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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the rights of Indigenous Peoples

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(Please use this reference in your reply)

25 June 2024

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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 53/3, 55/5, 52/10 and 51/16.

In this regard, we would like to bring to the attention of your Excellency's Government the information that we have received regarding the **allegations of serious, ongoing threats of displacement of the Indigenous Newar Peoples and violations of their human rights due to the construction of the Kathmandu-Terai/Madhesh Fast Track (Expressway) Road Project. The Asian Development Bank (ADB) supported the feasibility study of the Expressway.** The construction and development of the Expressway has reportedly involved various domestic and international entities, including businesses from the Republic of Korea and China. The UN experts who address this letter to you have previously expressed their concern regarding the potential adverse impacts of the Fast Track project on Indigenous Peoples and communities to the government of Nepal in [AL NPL 1/2021](#).

According to the information received:

The Kathmandu-Terai/Madhesh Fast Track (Expressway) Road Project is a “mega highway project prioritized as an ‘infrastructure of national pride’ having strategic significance”.¹ It is planned to originate from Khokana, Lalitpur in south of Kathmandu.

Most Newars residing in Khokana and Bungamati vehemently oppose the acquisition of their lands for the construction of the Fast Track project as it has adversely impacted the Newars' right to land, territories and resources as well as their traditional livelihoods and housing. Furthermore, there was lack of respect of the free, prior and informed consent of the affected Newar communities in the design and implementation of the Project, thereby violating their right to self-determination. Reportedly, there has been only one public hearing about the Expressway project during the environmental impact assessment more than a decade ago, at which time the Indigenous Peoples that would be affected expressed their overwhelming opposition to giving up their lands in favour of the project and made alternative proposals. They have continued protesting against the project ever since. According to the

¹ <https://www.nepalarmy.mil.np/fasttrack/home>

information received, ownership has not been transferred to the army due to persistent opposition from the communities, despite the [response of the Government of Nepal](#) dated 31 May 2021, stating that “[b]efore the project was officially handed over to the Nepali Army, the Government of Nepal, Ministry of Physical Planning and Development completed all necessary preliminary works such as road alignment planning, community consultation, publication of the notice for land acquisition, as required by the Act”.

Affected Indigenous Peoples, primarily in Khokana and Bungamati, still use their land within the eight-kilometre stretch of the Fast Track project. However, it has been alleged that some of this land in the proposed entry point of the Fast Track has been unlawfully occupied by the Nepal Army for its camp. The establishment of these camps has generated a sense of intimidation among the Indigenous Newar communities.

The Ministry of Defence and other national authorities organized meetings to address the concerns of Indigenous Peoples affected by the construction of the Fast Track project. However, in these meetings, locally elected representatives as well as Ward Chairs, who do not represent the demands of the affected Indigenous Peoples, have been allegedly given more weight than representatives from the communities of Khokana and Bungamati themselves. It is alleged that the elected representatives try to defend the interest of land brokers who wish to benefit from the sale of land in the area following the construction of the Fast Track. As a result, the national authorities have portrayed the grievances of the Indigenous Peoples as being only about inadequate compensation, rather than addressing the requests of the communities and conservationists to relocate the entry point of the Fast Track Expressway eight kilometres southward from its current alignment. A new committee has been reportedly formed by the Government to deal with the grievances raised, but it remains to be seen whether it will be able to work and put forth the genuine demands of the Indigenous Peoples.

Most Newars of Khokana and Bungamati who have been notified that their lands will be acquisitioned for the construction of the Fast Track project are farmers. With agriculture as their primary livelihood, this will be impacted if their lands are lost, in fact some are already experiencing difficulties in accessing their lands or using their lands as collateral to obtain loans for the rebuilding of their homes damaged by the 2015 earthquakes. The loss of the agricultural and communal land will result in the Indigenous Peoples’ displacement, leading to their physical displacement and the disintegration of the community will imminently follow.

Moreover, the Fast Track alignment in the Khokana area, as currently planned, will pass through cremation and sacred sites, ritual routes, and water sources, as well as archaeologically significant sites, important Guthi land and ritual routes in Bungamati related to the Bunga day (Rato Machhindranath) Jatra, which is the tallest and longest chariot festival in the world. It was reported that in November 2018, in Khokana the Kodesh area lying in the Fast Track alignment site historical remains were found, including paved paths below the ground level, clay water pipelines alongside the road, a well, and other items such as oil lamps, vessels, which prove the archaeological significance of the area.

We also received new and concerning information regarding the continuous postponement of the hearings for the writ petitions sub-judice at Nepal's Supreme Court against the Government authorities involved in the construction of the Fast Track and other projects in the land of the Indigenous Newars. The cases, identified by case numbers 076-WO-0744 (filed by owners of individually but jointly owned lands) and 076-WO-0743 (filed by representatives for collective or communal lands, including religious Guthi lands), have experienced continuous delays in the legal proceedings. In the meantime, even though these petitions are sub-judice, the construction of the Fast Track project has continued.

In 2006, the Asian Development Bank had provided technical assistance to prepare for the Fast Track (Expressway), which included preparing a feasibility study as well as its environmental and social assessment.² In the ADB's [Technical Assistance Completion Report](#), it had recommended that “[a]lthough financing of the investment project was not carried out with ADB financing after completion of the Technical Assistance, the feasibility study and detailed preliminary design prepared under the TA could still be used as a basis for future development of the North-South Fast Track Road, which was found very viable economically”. In relation to the feasibility report, the ADB has not made it available even to the media. Other infrastructure projects sit on the proposed alignment of the Fast Track highway, including the Bagmati River Basin Improvement Project (Bagmati Corridor), the Thankot-Bhaktapur Transmission Line Project, the planned Kathmandu Outer Ring Road and one of the four new “Smart Cities” planned in Kathmandu valley. Of them, the Bagmati Corridor and Thankot-Bhaktapur Transmission Line projects are also ADB-financed projects. The Transmission Line project is now listed as “closed” on the ADB website while the construction of the transmission towers planned in Khokana under the project were long stalled and could not be erected due to community resistance and few towers that were forcibly erected remain without wires. Outer Ring Road and Smart Cities are projects under the Kathmandu Valley Development Authority (KVDA)³ and have also been long delayed due to opposition by those affected by the projects. Furthermore, there are reports about Nepal-India Railway Project and petroleum pipeline and storage facility proposed or planned along or near the Fast Track Expressway entry point.

Various domestic and international businesses have either rendered their services or are currently providing services throughout the entire project. Notably, these include:

1. The company from the Republic of Korea , **Soosung Engineering and Consulting Co. Ltd.**, was responsible for preparing the Detailed Project Report (DPR) for the project, approved by Nepal's Cabinet of Ministers on 18 August 2019.
2. The following companies from the Republic of Korea – **Yooshin Engineering Corporation, Korea Expressway Corporation, and**

² See <https://www.adb.org/projects/documents/nepal-40011-012>

³ See <https://www.kvda.gov.np/>

Pyunghwa Engineering Consultants Ltd. –are involved in the project as a joint venture, for the project design and construction supervision, in association with Nepali companies– **Garima International Design Associates Nepal Pvt. Ltd.** and **SITARA Consult Pvt. Ltd.**

The following businesses have also been directly involved in the construction of different tunnels or sections of the Fast Track expressway:

3. The Chinese company, **China State Construction Engineering Corp. Ltd. (China)**, was contracted for the 3,355-meter Mahadevtar tunnel section.
4. The Chinese company, **Poly Changda Engineering Co. Ltd.**, was contracted for the 3,060-meter Dhedre and Lendanda tunnel sections.
5. The Chinese company, **China First Highway Engineering Co. Ltd.**
6. The Nepalese joint venture **Xingrun-Ashish-Tundi JV**.
7. The Nepalese joint venture **Kumar-Roshan-Sichuan JV**.
8. The Chinese joint venture **CAMCE-SDLQ JV**.

While we do not wish to prejudge the accuracy of these allegations, and while not being opposed to the project per se as a nationally-important one, we are deeply concerned about the reports of alleged violations of the human rights of Indigenous Peoples and communities living in the surrounding areas, who do not appear to have been consulted in a meaningful way, and whose free, prior and informed consent has not been obtained.

We are furthermore concerned that the project’s impact on the land rights of the Indigenous Peoples will significantly erode their enjoyment of the right to adequate housing, in particular access to livelihoods, to the extent that they are at risk of disintegrating. In this regard, we are also concerned about disproportionate impacts on vulnerable groups, including gender impacts.

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

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, and we would be grateful for your observations on the following matters:

1. Please provide any additional information or comments that may be relevant.
2. Please provide information on the steps taken or being taken by your Excellency’s Government in relation to requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, including with regard to their

extraterritorial activities, in accordance with the UN Guiding Principles on Business and Human Rights.

3. Please provide information on how your Excellency's Government has ensured respect for human rights by taking additional steps to ensure that the companies China State Construction Engineering Corp; Poly Changda Engineering Co. Ltd., and Sichuan Road and Bridge (Group) Co. Ltd. as State-owned enterprises, respect human rights, including requiring human rights due diligence processes, in accordance with the UN Guiding Principles on Business and Human Rights.
4. Please provide information on the steps that your Excellency's Government is taking or considering taking to ensure that individuals adversely affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country, through judicial or non-judicial state mechanisms.
5. Please indicate the steps that your Excellency's Government has taken, or is considering taking, to implement the national action plan on human rights, in accordance with the UN Guiding Principles on Business and Human Rights, and how these steps will allow your Excellency's Government to address the allegations raised in this communication.

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.

Please be informed that a letter on this subject matter has been also sent to those business enterprises that are involved in the abovementioned allegations, including Soosung Engineering and Consulting, Yooshin Engineering Corporation, Korea Expressway Corporation, Pyunghwa Engineering Consultants Ltd., Garima International Design Associates Nepal Pvt. Ltd., SITARA Consult Pvt. Ltd., China State Construction Engineering Corp., Poly Changda Engineering Co. Ltd., China First Highway Engineering Co. Ltd., Xingrun Construction Group Co. Ltd., Ashish Nirman Sewa Pvt. Ltd., Tundi Group, Kumar Shrestha Nirman Sewa, Roshan Construction pvt. Ltd., Sichuan Road and Bridge (Group) Co. Ltd., China CAMC Engineering Co. Ltd. (CAMCE), as well as to the Asean Development Bank and the home-States of all involved companies (*Nepal, the People's Republic of China and the Republic of Korea*).

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

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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

Balakrishnan Rajagopal
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standard of living, and on the right to non-discrimination in this context

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Special Rapporteur on the rights of Indigenous Peoples

Annex

Reference to international human rights law and standards

In connection with the above alleged facts and concerns, we would like to draw your Excellency's government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. We would like to refer to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September, 2007, and the Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples.

The UN Declaration on the Rights of Indigenous Peoples in its article 1 states that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

UNDRIP asserts the right of Indigenous Peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (article 26), and furthermore states that Indigenous Peoples have the right to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned, occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (article 28). Article 32(2) recognizes the right of Indigenous Peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and to be consulted in good faith 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.

UNDRIP further underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Importantly, article 10 specifically prohibits forcible removal of Indigenous Peoples from their lands or territories without their free, prior and informed consent, and provides that relocation could take place only after agreement on just and fair compensation and, where possible, with the option of return.

Article 7 of ILO Convention No. 169 states that the peoples concerned shall have 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 or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

We would also like to draw your attention to article 15 of the International Covenant on Economic, Social and Cultural Rights, ratified by China 27 March 2001, according to which everyone has the right to take part in cultural life. As underlined by the Committee on Economic, Social and Cultural Rights, "States parties should take measures to guarantee that the exercise of the right to take part in cultural life

takes due account of the values of cultural life, which may be strongly communal, or which can only be expressed and enjoyed as a community by indigenous peoples. The strong communal dimension of indigenous peoples' cultural life 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. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. 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, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories." (General comment 21, 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 (Ibid., para. 49d).

We would like to recall that the Committee noted the obligation of States to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched, and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures (Ibid., paragraph 50a). In this connection, we would like to draw your Excellency's Government's attention to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage (A/HRC/17/38) and to the protection of cultural heritage (A/HRC/31/59 and A/71/317).

They stressed the significance of accessing and enjoying cultural heritage by individuals and communities as part of their collective identity and development processes. They underscored that the right to participate in cultural life implies that individuals and communities have access to and enjoy cultural heritages that are meaningful to them, and that their freedom to continuously (re)create cultural heritage and transmit it to future generations should be protected.

As cultural heritage represents values linked with the cultural identity of individuals and groups, access to and enjoyment of cultural heritage also include "contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes".

The mandate holders stressed that the right of access to and enjoyment of cultural heritage includes: (a) the right to know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others, and (b) the right to participate in the identification, interpretation and development of cultural heritage. In this connection, they have recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction, and acknowledge, respect and protect the rights of individuals and groups to feel associated (or not) with specific elements of cultural heritages; to access, enjoy and continuously (re)create the cultural heritages that are meaningful to them; and to transmit this heritage to

future generations.

General comment 21 (2009) also recalls that States have the obligation to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched, and transmitted to future generations as a record of human experience and aspirations. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

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).

States should also develop cultural heritage mapping processes within their territory and utilize cultural impact assessments in the planning and implementation of development projects, in full cooperation with concerned communities (recommendation e).

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, 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, 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 fulfil 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.

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.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General recommendation 24 (2017)).

We would like to also 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.