

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

Ref.: AL OTH 23/2024

(Please use this reference in your reply)

25 June 2024

Dear Mr. Gauli,

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.

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 60 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 your attention 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 to the Government of Nepal regarding the potential adverse impacts of the Fast Track project on Indigenous Peoples and

Ashish Nirman Sewa Pvt. Ltd.

communities 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 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

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

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

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

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 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

³ See <https://www.kvda.gov.np/>

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 and displacement. 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** 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 about specific due diligence or impact assessment measures taken by Ashish Nirman Sewa Pvt. Ltd. in relation to the development of the Fast Track project.
3. Please indicate how your company has conducted meaningful consultation with affected stakeholders and, in particular, with the affected Indigenous communities, before *and* after the commencement of the Fast track project. Please share whether any steps were taken to avoid the negative economic, social, cultural, and environmental impacts on the Indigenous Peoples and communities located in the project area, including by seeking their free, prior and informed consent for the project on their lands.
4. Please provide information on the steps taken by Ashish Nirman Sewa Pvt. Ltd. to establish, implement and/or enforce an operational-level grievance mechanism, including across its supply chain, in line with the UN Guiding Principles on Business and Human Rights, in order to address the adverse human rights impacts caused or contributed to by your company's operations.
5. Please describe the measures that Ashish Nirman Sewa Pvt. Ltd. has taken, or plans to take, to prevent the recurrence of such situations in the future.

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.

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., 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, Mr. Gauli, the assurances of our highest consideration.

Robert McCorquodale
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
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

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

Annex

Reference to international human rights law and standards

In connection with above alleged facts and concerns, 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. 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.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, 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.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”.

The Guiding Principles have 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” (guiding principle 13).

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”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).