

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL NPL 3/2020

16 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 37/8, 43/14, 42/20 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **destruction of homes, forced eviction and alleged torture and ill-treat of Chepang indigenous peoples in the Chitwan National Park in July 2020.**

According to the information received:

*Forced evictions*

The Chepang are one of Nepal's most marginalised indigenous groups and nearly 90 percent of them depend on subsistence farming, without having access to their own traditional lands. Approximately 60 Chepang families built their homes in Kusum Khola area of Madi municipality, with the permission of local government after being displaced by flood and landslides in the hills of Makawanpur district in 2017.

Kusum Khola lies in a buffer zone of the Chitwan National Park, a UNESCO World Heritage site. The National Park was established in 1971 in areas traditionally used and inhabited by indigenous communities who were displaced to the Park's buffer zone. Severe restrictions have been imposed on indigenous peoples' traditional livelihoods, such as gathering food and medicinal herb for their subsistence. Long-running tensions between the National Park administration and Chepangs exist. Reports indicate Chitwan National Park officials have repeatedly targeted indigenous peoples thereby worsening the poverty, discrimination and marginalization they experience

On 18 July 2020, a group of park rangers allegedly set two homes ablaze and destroyed eight others using elephants. Ten families from the indigenous Chepang community (52 Chepangs, including two infants, 17 children, and

older persons) were rendered homeless in the incident and almost all families lost their identity documents, money and other possessions.

The alleged forced eviction occurred when the park rangers first began approaching Chepangs' homes by grazing elephants on the land used by the indigenous community for farming, damaging their crops. Subsequently, the rangers set two of the homes on fire and unleashed elephants to charge at and destroy eight other homes. Local government officials were reportedly unaware of the Chitwan National Park rangers' actions.

Reportedly, the evicted Chepangs have not been relocated yet and are residing in tents, supported by Nepal Chepang Sangh (association) and the local municipality. They are facing challenges in meeting their daily livelihood.

On 27 July 2020, lawyers filed a writ petition to Nepal's Supreme Court in order to prevent the eviction of landless indigenous peoples in various parts of the country and to demand that the Government ensure their constitutional right to housing by providing an adequate alternative location.

In response to the writ petition, on 30 July 2020 the Supreme Court ordered all tiers of the Government to refrain from forceful eviction of persons from their settlement, irrespective of where they are living, during the current COVID-19 pandemic, and a show-cause notice has been issued to the Government requiring them to furnish explanations regarding forced evictions.

#### *Allegations of torture and ill-treatment*

On 22 July 2020, Mr. Raj Kumar Chepang, a member of the Chepang indigenous community, died from alleged torture committed by the army personnel inside the Chitwan National Park. On 16 July 2020, Mr. Kumar and six community members, including two women, went to collect *ghongi* (snails eaten by indigenous peoples as part of their traditional livelihoods) near the Jyudi River inside the park. The army personnel reportedly detained the Chepang group in a violent manner and transferred them to the Park Warden office at Kasara.

Reportedly, the Nepali Army is assigned to maintain security of the National Parks in Nepal. National Park rangers conduct patrolling together with Nepali Army officials.

According to the information received, army personnel allegedly tortured the Chepang men of the group. They were forced to carry heavy wooden logs and were beaten by the soldiers with boots and sticks. Upon arrival at the park office, the Chepang group were allegedly threatened to pay a fine per person, however they were subsequently released late at night the same day.

Due to his injuries, Mr. Raj Kumar fell ill on the day he was released and died a couple of days after the incident in the National Park on 22 July, at Bharatpur Hospital. His family filed a complaint at the District Police Office, claiming that their son was tortured by army personnel. Protests against the

death of Mr Raj Kumar have demanded accountability as well as compensation to the victims' families.

Reportedly, police investigations have been initiated and a member of the Nepali Army was arrested on 20 September 2020. Chitwan National Park officers have allegedly committed to paying compensation to the family of Mr. Raj Kumar, however to date they have not fulfilled their commitment in this regard.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that forced evictions, intimidation and violations of the rights of indigenous peoples are escalating. We are particularly disturbed by the allegations of violence used to evict Chepang peoples from their settlement, particularly as the alleged incidents took place amidst the COVID-19 pandemic and monsoon season. The occurrence of forced evictions during the crisis of the COVID- pandemic makes it particularly difficult for communities to protect themselves. We are also gravely concerned over the reported violence and alleged acts of torture and ill-treatment perpetrated by Army personnel against Chepang community members, which appear to have caused the death of Mr. Raj Kumar. Those allegations, if confirmed, would contravene the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law, notably the ICCPR (art.7) and CAT (art.2 and 16).

We wish to recall that already in 2008 following his country visit to Nepal, the Special Rapporteur on the rights of indigenous peoples raised concerns over serious human rights violations committed against indigenous peoples in the Chitwan National Park by park rangers and military officials designated to patrol the park's premises. The Special Rapporteur raised concerns over the lack of due process for such offenses and the need for investigations. He furthermore expressed concern that indigenous peoples displaced to the National Park's buffer zone remained landless and that severe restrictions were imposed on their traditional livelihood activities such as the gathering of food, medicinal herbs and firewood for their subsistence. The Special Rapporteur on the rights of indigenous peoples called for the National Parks and Wildlife Conservation Act to be amended to include enhanced participation of Adivasi Janajati in the management of National Parks and to guarantee their access to natural resources on which they traditionally have depended for their subsistence, as well as provide them the opportunity to share justly in the financial and other benefits of the parks.<sup>1</sup>

The 2016 General Assembly report of the Special Rapporteur on the rights of indigenous peoples explored in further detail how conservation measures impact on indigenous peoples. The report notes that evidence supports the correlation between secure indigenous land tenure and positive conservation outcomes in protected areas and emphasizes how conservation must be carried out in accordance with human rights standards on indigenous peoples' rights. The report underlines that the participation of indigenous peoples is a key condition for conservation to be sustained and that the management capacity of indigenous peoples is now well-recognised.<sup>2</sup>

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<sup>1</sup> A/HRC/12/34/Add.3, paras 45-37, 90 (e)

<sup>2</sup> A/71/229, 2016, para. 63

Regarding indigenous peoples' land rights and conservation, we 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 10 affirms that indigenous peoples 'shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.' Similarly, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, acceded by Nepal in 2007, establishes in Article 16 that relocation of indigenous peoples shall take place only with their free and informed consent.

Furthermore, the UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, article 28 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 29(1) of UNDRIP states that 'indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources'. Article 15 of the ILO Convention no. 169 affirms 'the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources'.

We wish to note that under international environmental law, the Conference of the Parties to the Convention on Biological Diversity adopted a decision in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples' rights are to be respected.<sup>3</sup>

Furthermore, we wish to recall UNESCO's *Operational Guidelines for the implementation of the World Heritage Convention*<sup>4</sup> of the according to which States Parties shall adopt a human-rights based approach and ensure the participation of a variety of stakeholders and right-holders, including indigenous people in the sustainable protection, conservation and management processes of the World Heritage properties. Notably, paragraph 117 of the Operational Guidelines sets out that: '*States Parties are responsible for implementing effective management activities for a World Heritage property. States Parties should do so in close collaboration with property managers, the agency with management authority and other partners, local*

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<sup>3</sup> UNEP/CBD/COP/DEC/XII/12

<sup>4</sup> Decision 43 COM 11A, <https://whc.unesco.org/en/decisions/7353/>

*communities and indigenous peoples, rights-holders and stakeholders in property management by developing, when appropriate, equitable governance arrangements, collaborative management systems and redress mechanisms.'*

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 in further detail international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information or any comments you may have on the above-mentioned allegations.
2. Please inform us of the legal basis on which the Nepali Army is authorised to operate in the National Parks and how this is consistent with Article 30 of the United Nations Declaration on the Rights of Indigenous Peoples.
3. What measures have been taken by the Government to ensure the right of indigenous peoples in National Parks and buffer zones to the lands, territories and resources which indigenous peoples have traditionally owned, occupied or otherwise used and to ensure security of land tenure in accordance with UNDRIP and ILO Convention No. 169.
4. Specifically, please provide information whether the National Parks and Wildlife Conservation Act has been amended to include enhanced participation of Adivasi Janajati in the management of National Parks in Nepal.
5. Please indicate the legal basis for the evictions and provide detailed information on the evictions of the Chepang conducted in Kusum Khola area, disaggregated by the number, gender, age, disabilities and other indicators of the persons affected. Please provide detailed information on the measures taken to prevent and, if appropriate, punish forced evictions carried out by State agents, including information on any measures adopted to ensure compliance with the order of the Constitutional Court of 30 July 2020.
6. Please provide information on how the human rights of persons who have been forcibly evicted are being protected and how their future welfare will be taken care of. Specifically, please provide measures taken by the Government to prevent the negative human rights impact of the evictions and home demolitions, including on the rights to adequate housing (both emergency shelter and long-term accommodation solutions), health, water and sanitation, food and education, in consultation with the people concerned. Please also

provide information on the reparation provided for their destroyed possessions.

7. Please indicate whether any specific actions have been taken to protect the evicted community in relation to health risks in the context of the COVID-19 pandemic.
8. Please provide information on the criminal investigations that the Government has carried out in order to investigate and bring to justice the perpetrators of the burning and destruction of houses and forced eviction of the Chepang community, the alleged torture and ill-treatment of Chepang community members and the death of Mr. Raj Kumar Chepang. If no investigation has been performed, kindly explain why.
9. Please indicate what measures have been taken to provide reparation, including compensation and rehabilitation, to the victims of torture and ill-treatment above mentioned.
10. Please provide detail of the witness protection measures which were made available in the context of investigations into the above cases.

We would appreciate receiving a response within 60 days. Passed 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 accept, Excellency, the assurances of our highest consideration.

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

## Annex

### Reference to international human rights law

In connection with 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 draw the attention of your Excellency's Government to its obligations under **binding international human rights instruments**, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

We would like to recall articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his or her life. In its General Comment No. 31, the Human Rights Committee states that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.<sup>5</sup>

With respect to the States' obligation to prevent acts of **torture**, Article 2 (1) of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment asserts that "[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Article 10 further states that a State Party is required to ensure that all law enforcement personnel, medical personnel, public officials and other persons who may be involved in custody, interrogation or treatment of any person are trained regarding the prohibition against torture, and that the rules relating to their duties incorporate the prohibition. In this context, we would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would also like to refer to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, acceded by Nepal on 14 May 1991, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions." This article must be read in conjunction with Article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind. We also would like to draw the attention of your Excellency's Government's to its obligations under articles 6 and 17 of the International Covenant on Civil and Political

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<sup>5</sup> CCPR/C/21/ Rev.1 / Add.13, paras. 15

Rights (ICCPR), ratified in 1991, on the rights to life and to non-interference with privacy, family, home or correspondence.

In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that the right to housing should be seen as the right to live somewhere in security, peace and dignity. It indicates that the right to housing includes, among others, legal security of tenure guaranteeing legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups. The Committee also declared that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances. Also in relation to article 11(1) of the ICESCR, the Committee stated on its General Comment No. 7 that indigenous peoples suffer disproportionately from the practice of forced eviction.

In this connection, we would like to bring to your attention the report on the right to housing for indigenous peoples by the former Special Rapporteur on the right to adequate housing, which calls upon States to declare a moratorium on forced evictions affecting indigenous peoples in order to ensure that no one is left without shelter and is adequately protected from the virus (A/74/183). In addition, we would like to refer your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), notably guideline no. 6 on forced evictions, as well as the "COVID-19 Guidance Note: Prohibition of evictions" elaborated by the former Special Rapporteur on the right to adequate housing.

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. The provision on self-determination under the two Covenants has been explicitly re-asserted by UNDRIP to apply to indigenous peoples (Article 3). UNDRIP sets out that indigenous peoples have the right to the full enjoyment of human rights under international human rights law (Article 1) and the right to life and security and shall not be subjected to any form of violence (Article 7).

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 10 affirms that indigenous peoples 'shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.' Similarly, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, acceded by Nepal in 2007, establishes in Article 16 that relocation of indigenous peoples shall take place only with their free and informed consent.

Furthermore, the UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands



and resources. In that regard, article 28 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.’

We furthermore remind you that UNDRIP states that no military activities shall take place in the lands or territories of indigenous peoples unless justified by a relevant public interest reason or freely agreed to by, or at the request of, the indigenous peoples concerned (Art. 30).

With regard to the **environment**, Article 29(1) of the United Nations Declaration on the Rights of Indigenous Peoples clearly states that ‘indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources’. Article 15 of the ILO Convention no. 169 affirms ‘the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources’.

We furthermore wish to recall that under international environmental law, the Conference of the Parties to the Convention on Biological Diversity adopted a decision in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples’ rights are to be respected.<sup>6</sup>

Furthermore, as detailed in the Framework Principles on Human Rights and the Environment (A/HRC/37/59), annex), which summarise the main human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Framework Principle 1). In addition, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2). States should also ensure the effective enforcement of their environmental standards against public and private actors (Principle 12).

We would also like to refer your Excellency’s Government to the 1998 Guiding Principles on **Internal Displacement**. Principle 5 establishes that “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”. We moreover stress that according to Principle 6 “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. We would like to particularly draw your attention to Principle 9, which highlights that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands”.

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<sup>6</sup> UNEP/CBD/COP/DEC/XII/12

Guiding Principle 28 establishes that “Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons” and that “Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration”. Principle 29 states that “Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Furthermore, Principle 8 of the Pinheiro Principles explicitly calls on states to “adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing”.

In regard to the requirement to ensure durable solutions for IDPs, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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