



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels
الشبكة العالمية للحقوق الاقتصادية والاجتماعية و الثقافية

TO:

The Prime Minister of Nepal, Mr. Pushpa Kamal Dahal

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CC:

Ms. Bidhya Devi Bhandari, President of Nepal
Mr. Sher Bahadur Deuba, President of the Nepali Congress
The Office of the Ministry of Energy, Government of Nepal
Mr. Mukesh Raj Kafle, Managing Director, Nepal Electricity Authority
Mr. Anup Raj Sharma, Chairperson, National Human Rights Commission of Nepal
Ms. Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous peoples
Mr. Philip Alston, UN Special Rapporteur on extreme poverty and human rights
Mr. Michel Forst, UN Special Rapporteur on the situation of human rights defenders

**HUMAN RIGHTS VIOLATIONS IN CONNECTION WITH WORLD BANK-FUNDED
ELECTRICITY INFRASTRUCTURE PROJECT**

10 August, 2016

Your Excellency,

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is the largest global network of organizations and activists devoted to achieving economic, social and environmental justice through human rights, consisting of over 270 organizational and individual members in more than 75 countries.

We write to express our deep concern regarding the reported and threatened human rights violations in connection with the World Bank-funded Khimti-Dhalkebar 220 kV Transmission Line Project (Project), within the Sindhuli District of Nepal, and operating on the lands of indigenous peoples. We are advised that, for over a decade, local Project-affected peoples, approximately half of whom are indigenous, have repeatedly raised concerns about the Project's human rights and environmental impacts. These include concerns regarding: appropriation of lands without adequate compensation or resettlement; impacts detrimental to local livelihoods including land devaluation, loss of economic opportunity and interference with agricultural activities; environmental impacts; health impacts; and impacts on historical, cultural, religious and sacred sites.¹

In response, we understand that Project-affected communities have been subjected to, and continue to face threats of, violence, intimidation and coercion by the State in connection with peaceful protests. These threats are allegedly taking place within a broader context of a lack of transparency and meaningful consultation necessary to resolve the dispute.

¹ World Bank Inspection Panel. "Nepal: Power Development Project (PO43311), Report No. 93722-NP, available at: <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/87-Investigation-Report-Nepal-Power-Development-Project1.pdf>

We are concerned about the apparent lack of adherence to human rights obligations in the context of the Khimti-Dhalkebar 220 kV Transmission Line project and wish to underscore the gravity of its consequences for the security and livelihoods of the affected communities, as well as for the good standing of the Government of Nepal.

Relevant context

We are advised that the State's Nepal Electricity Authority (NEA) initiated the Project in 2002. In May 2003, the World Bank approved a US\$84.11 million loan for the Nepal Power Development Project, which included the construction of the Project. According to the NEA's own documents, 114,516 people and 21,668 households risked being affected by the Project.² Despite the Project's potential impact, including on many indigenous households, the communities were not properly informed or consulted.³ Subsequently, the affected communities have raised persistent concerns about their lack of participation in the design and implementation of the Project. These communities have also repeatedly requested a project design that is both sustainable and compliant with a human rights framework. Project activities were suspended for several years in part due to these concerns.

In July 2013, the affected community members filed a complaint to the World Bank's independent complaints mechanism, the Inspection Panel (Panel), which conducted an investigation in 2014/15.⁴ The Panel found that various World Bank social and environmental safeguard policies had been violated, including via failure to inform and consult affected communities and failure to conduct adequate assessments of alternative project design.⁵ Further, the Panel found that the World Bank did not provide prompt and adequate resettlement support to families forcibly displaced by the Project, nor did it create a local and accessible way for people to register their complaints. We are advised that the Management Action Plan in response to the Panel's findings attempted to address the violations, but that it was reportedly insufficient to resolve the dispute. Among other things, we understand that the Management Action Plan did not include plans to consult with affected communities about the Project design or impacts.

Beginning in early 2014, the affected communities made several requests to Nepal's National Human Rights Commission (NHRC) to mediate and find a peaceful resolution. However, on 4 April 2016, the NHRC directed the government of Nepal and the NEA to resume the Project without redressing the human rights violations in the affected communities, which we are informed led to the present situation of violent repression of community protesters.

Violence against affected communities

We are advised that, on 10 April 2016, affected community members engaged in a peaceful sit-in protest against the Project outside the office of the Chief District Officer (CDO) of Sindhuli District, Nepal. In response, the CDO deployed armed police officers and civilian police to disperse protesters, who reportedly used force. This included physically dragging people and beating protesters, including women, with *lathis* (long bamboo sticks) on their backs, legs and arms. Shortly afterwards, the Armed Police Force erected a barbed wire fence around the site and initiated 24-hour surveillance, whereby groups of armed officers patrolled the construction of a transmission line tower located close to homes, fields, and a school.

We are informed that this violence is the latest in a long history of intimidation and disproportionate use of force in the implementation of the Project. For example, in November

² See Executive Summary of Environmental Impact Assessment Report for KDTL, page IV, section 4.3:

<http://www.accountabilitycounsel.org/wp-content/uploads/2013/04/Khimti-Dhalkebar-EIA-Summary.pdf>

³ As confirmed in the Inspection Panel's Final Report, the Bank's "Management did not ensure adequate, timely and meaningful consultations during project preparation and implementation as required by Bank Policy." See, page vi, para 31 at <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/87-Investigation-Report-Nepal-Power-Development-Project1.pdf>.

⁴ <http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/Nepal-Khimti-Dhalkebar-Complaint.pdf>.

⁵ See the Investigation Report from the Inspection Panel: <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/87-Investigation-Report-Nepal-Power-Development-Project1.pdf>.

2012, numerous armed police officers beat peaceful protesters, injuring at least ten women.⁶ Again, in April 2013, police forces accompanied Project staff to a disputed area, where at one protest the police allegedly beat women from local villages so severely that some victims required treatment at a Kathmandu hospital.

Intimidation and coercion of community leaders, and lack of meaningful consultation and engagement

Reportedly, during the April 2016 protest described above, a number of community leaders were invited to a discussion with the CDO and other district authorities regarding the communities' concerns. At the conclusion of this meeting, the police allegedly arrested six community leaders, including Mr. Surendrashwar Moktan, the chairperson of the grassroots group, the Local Struggle Committee. We are advised that the community leaders were released the following day after being coerced into signing a form which guaranteed that they would no longer obstruct construction associated with the Project. Community leaders reported that they were not allowed to read the document and were threatened with criminal charges and further imprisonment if they did not sign. Local authorities, including the CDO and the Superintendent of Police in the Sindhuli District, have repeatedly refused to disclose a copy of this document.

Further, we have been informed that approximately ten community members were arrested and detained in Sindhuli District on 2 July 2016, while peacefully protesting Project construction on their lands. They were detained in custody overnight. Similar to the detentions that took place in April 2016, these individuals were only released after they were coerced into signing a document committing to stop opposing the Project. Reportedly, construction is now continuing under the presence of armed paramilitary forces.

Such coercion is occurring within a broader context of the NEA's failure to engage in meaningful consultation with affected communities, despite efforts by such communities to encourage constructive dialogue, as described above. The affected communities have indicated that they are in favour of sustainable development that takes into consideration their human rights and includes them in the process of designing and implementing development projects. However, we understand that their position has been incorrectly characterised by the Nepalese authorities as anti-development. ESCR-Net is concerned by the framing of legitimate human rights defenders concerns as incompatible with the interests of the wider population, economic development and/or national security, as such action on the part of the State contributes to a climate conducive to defamation, criminalisation, backlash and harsh reprisals.

Human rights obligations guaranteed by Nepal

The actions, and inaction, of the State must be viewed within the context of international treaty obligations and related norms that require adherence to human rights obligations, meaningful participation of indigenous communities in projects impacting their lands and livelihoods, and the protection of human rights defenders.

In this regard, we respectfully note that Nepal is party to a range of key international human rights treaties including, among others, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). As such, it has assumed the obligation to guarantee a wide range of civil, cultural, economic, political and social rights to persons under its jurisdiction, through all appropriate short-term and long-term measures. Of particular relevance to this situation, these include: the right of self-determination; the right to an adequate standard of living; freedom from cruel, inhuman or degrading treatment or punishment; freedom from arbitrary arrest and detention; the right not to be compelled to confess guilt; the rights to freedom of expression and association; the right to health; and the right to take part in cultural life.

⁶ <http://aippnet.org/nepal-early-warning-regarding-possibility-of-violence-at-construction-site-of-khimti-dhalkebar-220-kv-transmission-lines-under-the-world-bank-funded-nepal-power-development-project/>

Significantly, the UN Declaration on the Rights of Indigenous Peoples provides the following:

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. (Article 10)

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(1))

Further, in accordance with the UN Declaration on Human Rights Defenders, States are obliged to provide specific protections to human rights defenders, including the rights: to meet or assemble peacefully; to make complaints about official policies and acts relating to human rights and to have such complaints reviewed; and to effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights.

Requests by ESCR-Net

In light of the seriousness of the situation described above, and the excessive delay in ensuring peaceful resolution in line with human rights obligations, we collectively call on the Government of Nepal to:

1. Take immediate steps to cease disproportionate force and ongoing intimidation by the Nepalese authorities — including but not limited to the CDO, the police, and the Armed Police Force — against affected indigenous and local communities engaged in peaceful protest, and to withdraw all armed police forces from the Project-affected area;
2. Undertake an investigation into the allegations of repeated suppression of dissent through use of force, intimidation and coercion by Nepalese authorities against indigenous and local communities engaged in peaceful protest, and ensure appropriate redress for any human rights violations;
3. Take appropriate measures to ensure that community concerns and participation shape the design of the Project and the avoidance and mitigation of any negative impacts associated with it, including via the establishment of a transparent, inclusive dialogue process in connection with the Project;
4. Suspend construction of the Project until the above process has been implemented fully and effectively, and
5. Take appropriate measures to comply with the other human rights obligations noted above, and as otherwise relevant to this situation.

Finally, we respectfully request that you keep us informed about further developments in this matter.

Sincerely,



Chris Grove

Executive Director, on behalf of ESCR-Net