



HOUSING AND LAND RIGHTS NETWORK

Habitat International Coalition

Urgent Action Appeal NP-DDFE-080512

Forced Eviction and Demolition of 248 Homes in Kathmandu, Nepal

A variety of local sources, including the National Alliance of Women Human Rights Defenders (NAWHRD), have confirmed that, on 8 May 2012, Nepalese authorities and police carried out a large-scale forced eviction in Kathmandu, using excessive force, neglecting due process and failing to provide alternative housing. The affected community is a cluster of informal settlements at Thapathali, Kathmandu on the banks of the Bagmati River.

In this act of state violence, Nepalese police and Nepal Armed Police Forces destroyed over 248 houses and a school. According to the information received, the eviction has made 994 persons homeless, including 401 children below the age of 15.¹ Most had been living there for the past six years, but 11 houses at Kuriya Gaon have been there for 20 years.

Thousands of families living on the banks of the Bagmati River are reported to be presently threatened with similar eviction without having been provided any alternative housing. The Thapathali removal apparently forms the first part of a government plan to clear the banks of the river from encroachment by landless squatters from Tilganga to Teku. While the exact number of families potentially affected by the planned evictions remains unknown, the residents report their fears that as many as 23,000 people may be affected. Officials have announced that the second phase of eviction will be carried out in the Teku area.²

Brief Description

Local authorities deployed more than 2,000 police personnel from the Nepal Armed Police Forces and three bulldozers to the area on Tuesday morning, 8 May 2012, to commit the Thapathali forced eviction. Sources report that many resident families were not informed in advance that the eviction would take place on that day, and that police awoke them at 05:00 AM, ordering them to gather their belongings and leave. The destruction of the houses then ensued until 13:00, although most of the destruction was done by 08:00.

Police used rubber bullets and teargas to control the resistant community. Law enforcement personnel assaulted several civilians, also beating elderly persons, pregnant women and children. Others suffered injuries from police-fired teargas and rubber bullets. According to information available on 9 May, 25–30 people had been injured from the beatings, including four who suffered serious head injuries. Among them was Nima Sherpa, against whom police fired a teargas canister, wounding him

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in the head.³ Local sources report also that police had beaten women who attempted to return to their houses to rescue some of their belongings.

The police prevented those injured from accessing medical treatment until 16:00, when they finally allowed them to seek treatment at the Bir Hospital. According to the police, 31 people were taken into custody. Local NGOs reported that this number exceeded 40, of whom 22 were children. Women and children were released in the evening, and the others arrested were reported released the following day.

Prior to the eviction, the government had come under the scrutiny of civil society for failing to take appropriate steps to identify those who were “genuine” landless inhabitants and neglecting state obligations to respect and protect residents’ housing rights. Nor did officials carry out any research to determine the number of children and elderly and other vulnerable persons to be affected by the relocation, or to evaluate the socioeconomic situation of the community. Authorities did not provide any alternative housing plan, consult with the community on its housing and livelihood options, nor provide for a resettlement plan or other form of reparation for the victims of their violent action.

The government announced that it was ready to provide NPRs15,000 (€133.15) as a housing allowance to those identified as genuinely landless and that it was preparing to relocate eligible residents the already evicted to Ichangu Narayan, in the far west of the Kathmandu Valley. The payment would be equivalent to a three-month rent allowance. Reportedly, only 67 families at Thapathali slum have sought compensation from the government as genuine squatters.⁴ The settlement included houses with thatched roof to brick made houses. By 14 May, 15 families each received that amount as relief from the Department of Urban Development and Building Construction (DUDBC).⁵

As a result of the 8 May evictions, many evicted families found themselves without shelter and their belongings, and are now deprived of food and water. The community has lost valuable property that has yet to be quantified, especially as they were not allowed enough time to gather their belongings, including food stores, cooking utensils, tools, clothes, citizenship papers, etc. Some saw their income sources, such as a small shop, a vegetable cart and other essential items, destroyed in the eviction. A local school run by an NGO, providing education for some 150 children, was among the first buildings to be destroyed.

Official Reasoning

For the last three years, the Nepalese government has announced its attention to evict the communities living alongside the banks of the Bagmati River “for development purposes.” On 29 February 20120, Deputy Prime Minister and Home Minister Bijay Kumar Gachhadar insisted on removing “the fake landless squatters at any expense.” He further said that he had requested top leaders of the three main political parties to support his policy, but has not received the required support. However, Minister for Physical Planning and Works Hyridayesh Tripathi and Chairman of the High-powered Committee for Integrated Development of the Bagmati Civilization (HPCIDBC) Mahesh Bahadur Basnet both supported Minister Gachhada’s commitment to remove those living along the Bagmati River banks.⁶

Actions Taken and Remedies Attempted

On 16 March 2012, the Asian Human Rights Commission (AHRC) issued an Urgent Appeal calling on the government to abide by the [UN Basic Principles and Guidelines on Development-based Evictions and Displacement](#), in order to ensure that any eviction not result in a family being rendered homeless and poorer, and to conduct a thorough and prior assessment of the affected families' socioeconomic situation and needs. The appeal further urged the government to see that the police officers securing the eviction exercise restraint.

In November, the HPCIDBC directed the slum dwellers to leave their settlement within two weeks. However, HPCIDBC did not offer them any alternative housing option.

The Minister for Land Reforms and Management, Bhim Prasad Gautam, announced a consensus with the United National Landless Squatters Front on 28 November 2011 to form a High-Level Landless Squatters Problems Resolution Commission within 10 days to solve problems of the landless squatters.⁷ In December 2011, the Minister promised that the government was committed to “managing new places for slum dwellers.”

However, the HPCIDBC met on 4 December 2011 and decided to resort to force to conduct the eviction. They threatened to evict the impoverished residents with a deployment of 3,000 police and armed police personnel.⁸

On 9 December 2011 morning, landless squatters from various other districts, including Shreekot, Patan and Dasharathchand Municipality, staged a sit-at the District Administration Office and Land Revenue Office, protesting that the local administration, particularly the Landless Squatters' Problems Resolution Commission, has not been serious to resolve their problems and has ignored them.⁹

Five slum dweller organizations petitioned the Patan Appellate Court on 11 December 2011 and won an order against three District Administrative Offices of Kathmandu Valley, the Nepal Police and the HPCIDBC to suspend the eviction process until 17 January 2012. The court further ordered the Office of the Prime Minister and Council of Ministers to conduct an investigation to determine the “genuine” landless slum dwellers and to develop appropriate housing alternatives for them, if they are to be evicted. On 27 January, the Supreme Court upheld the government decision to evict the slum dwellers, but further ordered the government to provide appropriate alternatives for them.

The slum dwellers have organized themselves in a National Squatter Forum, and have organized protests against evictions without appropriate solutions. In January 2012, they forwarded a letter to Minister Gachchhadar and HPCIDBC Chairman Basnet, urging them to develop a relocation plan in accordance with international standards.

A report by the Women Human Rights Defenders International Coalition (WHRDIC) reiterated the National Squatter Forum's request for the government to collectively plan for eviction. WHRDIC reported also that women human right defenders working

representing the same group along with slum dwellers had been “met with continuing harassment and police brutality.”

On 17 January 2012, police made a sweeping arrest of over 400 landless squatters. At around 04:00 that morning, 700–800 police with vans and trucks drove in the slums and “arrested every person they found in front of them.” They manhandled children and elderly people within the captured group for some 4–5 hours, then sent the detainees to various police detention centers around Kathmandu Valley.

All but 24 detainees were released within about 12 hours. The police planned to charge the 24, but the government released them without any charge after pressure from national human rights organizations. The police further raided the homes of the leaders of the slum dwellers defense movement, forcing the leaders into hiding for several days.

In the 8 May eviction process, security forces arrested 60 people, including 22 children, a disabled person and an 80-year old. Civil society pressured until all the detained persons were released.

Prime Minister Bhattarai visited the bank of Bagmati River at Thapathali on 13 May and directed the Commissioner of Kathmandu Town Development Authority Keshav Sthapit (also present) to make temporary arrangements for the squatters as soon as possible. PM Bhattarai blamed the squatters for listening to the NGOs and INGOs instead of taking the financial compensation provided by the government.¹⁰

The government has announced that it would relocate some evictees onto the land of Himal Cement Factory, in Chobhar, Lalitpur, until alternative housing arrangements can be provided to them. However, host communities are mounting resistance against the relocation plan, notably at Chobhar and Kirtipur.¹¹

Legal Aspects

Domestic Laws

The Interim Constitution of Nepal (2063/2007) guarantees human rights, incorporating women and children's rights that include the protection of all economic, social and cultural rights. However, no domestic legal framework regulates evictions. Nonetheless, the Supreme Court has affirmed the government's obligation to provide appropriate housing alternatives for those facing eviction, and Nepal also bears treaty obligations to uphold housing rights of everyone within its jurisdiction.

Human Rights, International Law, and Treaty Violations

The Thapathali forced eviction and demolition violate international law and Nepal's international and national human rights obligations and commitments.

Nepal ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), in 1991. States party to ICESCR, under Article 11, recognize the human right of everyone to “an adequate standard of living, including...adequate housing, and to the continuous improvement of living conditions.” These evictions also have an impact on the congruent rights of the inhabitants related to adequate housing,

including the right to food, the right to water, the right to health, the right to education and the right to work and means of subsistence.

The State of Nepal also has recognized the inhabitants' congruent civil and political rights to information and participation, as guaranteed under the International Covenant on Civil and Political Rights. Nepal ratified that treaty also on the same date in 1991.

These rights, as integral to the right to adequate housing, are also supported in General Comments No. 4 (1991) and No. 7 (1997) of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which oversees State parties' compliance with ICESCR. These international instruments recognize that "forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances."

Thus, international law imposes certain minimum norms and obligations that State parties to the Covenant must respect, including the duty to inform affected people well in advance, to agree with them on a plan for rehousing with secure tenure, and provide adequate compensation, as well as reparations in the case of forced eviction.

Moreover, the UN Commission on Human Rights has recognized that forced evictions constitute a "gross violation of human rights, in particular, the right to adequate housing."¹² Further, the UN General Assembly adopted by acclamation resolution A/RES/60/147 in 2006, recognizing gross human rights violation victims' the rights and entitlements to reparations.

Successive Special Rapporteurs to the UN Human Rights Council on adequate housing have stressed that the forced evictions carried out with conduct such as that exhibited by Nepalese officials and their agents would constitute a gross violation of human rights, in particular the right to adequate housing. They have noted that, in general, women, children and elderly persons are always the most affected by forced evictions, especially those already living in vulnerable situations.

To ensure these rights consistent with CESCR General Comment No. 7, it is understood that no one may be forcefully evicted without (1) effective and sufficient consultations with the affected parties, and (2) provision of appropriate and sufficient alternative measures. In other words, these minimum international norms guarantee for those who suffer eviction have access to appropriate measures, particularly alternative shelter, in order to secure an adequate living, and to assure sustaining economic activities where they reside.

Grounded in Nepal's existing treaty obligations, the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* further stress that States should adopt, to the maximum of their available resources, appropriate strategies, policies and programs to ensure effective protection of individuals, groups and communities against forced eviction and its consequences. States and governments at all levels also should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, and prosecute those who commit forced eviction as a gross violation of human rights.¹³

In its plan to relocate the community to Ichangu Narayan area, the government has further the responsibility to ensure that the relocation site will fulfill the criteria for adequate housing according to international human rights law, including services for attaining water and access to employment options, schools, and health-care facilities.

Conclusions:

The UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* specify that “Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. Any legal use of force must respect the principles of necessity and proportionality.” This has clearly not been the case in Thapathali and the AHRC calls on the government to investigate allegations of excessive use of force by the security forces against the community, including elderly, women and children.

In the case of these already-committed and threatened evictions, HPCIDBC and local authorities not only are violating State obligations of Nepal under ICESCR and other human rights instruments, but also have failed to inform the affected population of their fate, as planned by HPCIDBC and the local authorities, and impeded recourse in pursuit of other options, either in reasonable monetary compensation, alternative housing, or any form of reparation. The evictions also grossly deviate from the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement*, which affirm States’ obligation to protect against forced evictions.

HPCIDBC's planning and execution of public works projects in this way reveal a deep prejudice and material discrimination against impoverished citizens and the homeless. Thus, local authorities have become perpetrators of gross violations, and made their eviction victims the subject of reparations for which the State now bears ultimate liability.

Your Action!

Please write to the authorities in Kathmandu, urging them with recommendations—found in the sample letter below—to respect human rights, as they are obliged under international law and their own Constitution. Please send a copy of your letter also to the following: violation@hlrn.org, nawhrd@gmail.com and mahilaekata@gmail.com.

A sample letter is provided below, or you may send your letter automatically from the HLRN website at: <http://www.hlrn.org/cases.php>

For more information please contact either of the following organizations in Nepal:

National Alliance of Women Human Rights Defenders (Nepal)

Email: nawhrd@gmail.com

or

[sample letter]

Your Excellency:

We have learned from a variety of corroborating local sources that, on 8 May 2012, Nepalese authorities and a contingent of some 2,000 armed police carried out a large-scale forced eviction in Kathmandu, using excessive force and neglecting due process or alternative housing rights. The affected community is a cluster of informal settlements at Thapathali, on the banks of the Bagmati River.

In this act of state violence, authorities destroyed over 248 houses and a school, rendering 994 persons homeless, including 401 children below the age of 15. Most had been living there for the past six years, but 11 houses at Kuriya Gaon have been there for 20 years.

Thousands of families living in the banks of the Bagmati River reportedly are presently facing similar eviction without having been provided any alternative housing. Residents report that as many as 23,000 may be affected.

Police reportedly used rubber bullets and tear gas to subdue their victims at Thapathali. They assaulted several civilians, including by beating elderly persons, pregnant women and children. Reportedly, some 25–30 people were injured by the beatings, including four who suffered serious head injuries. Among them was Nima Sherpa, against whom police fired a teargas canister, wounding him in the head. Local sources report also that police had beaten women who attempted to return to their houses to rescue some of their belongings.

The police prevented those injured from accessing medical treatment until 16:00, when they finally allowed them to seek treatment at the Bir Hospital. According to the police, 31 people were taken into custody. Local NGOs reported that this number included several children. Women and children were released in the evening, and the others arrested were released the following day.

Despite numerous efforts by civil society, including the United National Landless Squatters Front, to negotiate a solution consistent with Nepal's State obligations to provide proper conditions and alternative housing in the case of an eviction, you oversaw the Thapathali eviction by force, resulting in numerous violations of the residents' human rights and norms binding on Nepal. This forced eviction action also contravened judicial orders, affirmed by the Supreme Court, to develop and implement an alternative housing plan for the landless squatters prior to any displacement.

While no domestic legal framework yet regulates evictions in Nepal, the Interim Constitution of Nepal guarantees human rights, including all economic, social and cultural rights, and international minimum norms also apply. However, the Thapathali forced eviction and demolition violate international law and Nepal's international and

national human rights obligations. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Nepal ratified in 1991. States party to ICESCR, under Article 11, recognize the human right of everyone to “an adequate standard of living, including...adequate housing, and to the continuous improvement of living conditions.” These evictions also have violated the congruent rights of the inhabitants related to adequate housing, including the right to food, the right to water, the right to health, the right to education and the right to work and means of subsistence, participation and access to justice.

These rights, as integral to the right to housing, are also supported in General Comments No. 4 (1991) and No. 7 (1997) of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which oversees compliance with ICESCR. These international instruments recognize that "forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances."

Thus, international law imposes certain minimum norms and obligations that State parties to the Covenant must respect, including the need to inform affected people well in advance, to agree with them on a plan for rehousing with secure tenure, and to provide adequate compensation, as well as reparations in the case of forced eviction.

To ensure these rights consistent with CESCR General Comment No. 7, it is understood that no one may be forcefully evicted without (1) effective and sufficient consultations with the affected parties, and (2) provision of appropriate and sufficient alternative measures. In other words, these minimum international norms guarantee for those who suffer eviction access to appropriate measures, particularly the rights to alternative shelter in order to secure an adequate living, and to assure sustaining economic activities where they newly reside.

Grounded in Nepal's existing treaty obligations, the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* further stress that States should adopt, to the maximum of their available resources, appropriate strategies, policies and programs to ensure effective protection of individuals, groups and communities against forced eviction and its consequences. According to the UN *Basic Principles and Guidelines*, States and governments at all levels also should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, and prosecute those who commit forced eviction as a gross violation of human rights.

In its plan to relocate the community to Ichangu Narayan area, the government bears the further responsibility to ensure that the relocation site fulfill the criteria for adequate housing according to international human rights law, including services for accessing adequate food, water, employment options, schools, and health-care facilities.

The UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* further specify that “Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. Any legal

use of force must respect the principles of necessity and proportionality.” This apparently has not been upheld in Thapathali.

In the case of these already-committed and threatened evictions, HPCIDBC and local authorities not only are violating State obligations of Nepal under ICESCR and other human rights instruments. They also have failed to inform the affected Thapathali population of their fate, as planned by HPCIDBC and the local authorities, or to allow recourse in pursuit of other options, either in monetary compensation, alternative housing, or any form of reparation.

HPCIDBC's planning and execution of public works projects in this way reveal a deep prejudice and material discrimination against impoverished citizens and the homeless. In this case, local authorities have become perpetrators of gross violations, and have made their victims the subject of reparations for which the State now bears ultimate liability.

Your Excellency,

We condemn the use of force and other violations carried out in the execution of the Thapathali eviction. Therefore, we urge you to ensure the following minimum measures:

- Immediate provision of relief services, including water, medication, food, shelter and emergency kits to all evicted persons;
- Provision of legal aid to ensure due recourse and remedy for the victims and those living under similar eviction threats;
- Medical treatment for women, children, injured and disabled people provided freely;
- The guarantee of the protection and personal security for all persons evicted and threatened with eviction;
- An immediate stop to mistreatment of slum dwellers and evicted persons;
- A prior alternative-housing plan to be negotiated immediately with all affected communities and households facing eviction;
- Implementation of that alternative housing plan in accordance with the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement*;
- Full reparations for those affected by the gross violation of their human rights resulting from the forced evictions at Thapathali and elsewhere;
- The arrest and prosecution of those responsible for the evictions;
- Necessary measures toward development of domestic legislation regulating housing and eviction policies and practices in Nepal consistent with its international treaty obligations and other relevant human rights norms.

The over-400 Member organizations of Habitat International Coalition and its Housing and Land Rights Network, in over 120 countries, oppose the exclusion of the poor and the creation of needless deprivation and deepening poverty through forced evictions. Instead, we promote the many civil alternatives to such conduct, as

developed in the norms of international law upholding human rights, in particular the human right to adequate housing and the corresponding obligations of the State.

We urge you and your offices to apply the same minimum norms of conduct in the public service, and we look forward to hearing of your efforts to apply them to the reparation of harm done to the persons rendered homeless by the Thapathali evictions.

Sincerely,

[Your name]

[Your organization]

Addresses of Duty-Holders:

1. **The Honourable Prime Minister of Nepal** Dr. Baburam Bhattarai
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¹ Asian Commission for Human Rights, “NEPAL: Concern over the condition of the elderly, women and children rendered homeless by evictions,” 10 May 2012, at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-102-2012>.

² “Kirtipur locals protest squatter relocation plan,” *The Kathmandu Post* (14 May 2012), at: <http://www.ekantipur.com/the-kathmandu-post/2012/05/14/nation/kirtipur-locals-protest-squatter-relocation-plan/234892.html>.

³ According to Women’s Rehabilitation Centre and National Women Human Rights Defenders.

⁴ “Demolition drive kicks off from Thapathali,” *Ojyaalo Online* (8 May 2012), at: http://unn.com.np/index.php?pageName=news_in_english_details&id=6661.

⁵ “Kirtipur locals protest squatter relocation plan,” *The Kathmandu Post* (14 May 2012), at: <http://www.ekantipur.com/the-kathmandu-post/2012/05/14/nation/kirtipur-locals-protest-squatter-relocation-plan/234892.html>.

⁶ “Tundikhel Might Be Next Landless Squatter Habitat: Gachhadar,” *Hamrakura* (29 February 2012), at: <http://hamrakura.com/en/?p=6657>.

⁷ “High level commission on landless to be formed,” *Hamrakura* (28 November 2011), at:

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- <http://hamrakura.com/en/?p=2179>.
- ⁸ According to media reports. William Nicholas Gomes, letter to Hon. Justice Kedar Nath Upadhyay, Chairperson, National Human Rights Commission, 16 March 2012, William's Desk, at: www.williamgomes.org; <http://www.salem-news.com/articles/march252012/nepal-housing-wg.php>
- ⁹ "Landless Squatters Stages Sit-In at DAO," *Hamrakura* (9 December 2011), at: <http://hamrakura.com/en/?p=3095>.
- ¹⁰ "Government to provide housing arrangement for Bagmati squatters," *Parakhi* (13 May 2012), at: <http://www.parakhi.com/news/2012/05/13/government-to-provide-housing-arrangement-for-bagmati-squatters>.
- ¹¹ "Kirtipur locals protest squatter relocation plan," *The Kathmandu Post* (14 May 2012), at: <http://www.ekantipur.com/the-kathmandu-post/2012/05/14/nation/kirtipur-locals-protest-squatter-relocation-plan/234892.html>.
- ¹² UN Commission on Human Rights, resolution 1993/77.
- ¹³ As consistent with Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution A/RES/60/147, and the Principles on housing and property restitution for refugees and displaced persons (see E/CN.4/Sub.2/2005/17 and Add.1).