

Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; 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 situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; the Independent Expert on the promotion of a democratic and equitable international order and the Independent Expert on human rights and international solidarity

REFERENCE:
AL IDN 5/2021

4 March 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to development; 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 situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; Independent Expert on the promotion of a democratic and equitable international order and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 44/13, 44/15, 42/23, 43/14, 43/16, 42/20, 36/4 and 44/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the allegations of human rights violations and abuses committed in the implementation of the Mandalika urban development and tourism project by the Indonesia Tourism Development Corporation ("ITDC") in the Mandalika region, West Nusa Tenggara province.**

According to the information received:

Background - The Mandalika urban development and tourism project

The Mandalika urban development and tourism project ("the Mandalika project") is a major tourism development project implemented by the Indonesia Tourism and Development Corporation ("ITDC"), an enterprise fully owned by the Government of Indonesia, in the Mandalika region, Central Lombok Regency, West Nusa Tenggara Province. Worth over US\$300 million in total, this project is largely funded by the Asia Infrastructure Investment Bank ("AIIB"), which provides for 78.5 per cent of its funding in loan (US\$248.4 million). The Mandalika project is the AIIB's first stand-alone operation in Indonesia, as well as its first tourism-related infrastructure investment.

West Nusa Tenggara Province is one of the poorest provinces in Indonesia with consistently high poverty and severe poverty rates. 85 per cent of Lombok's inhabitants are Sasak, the indigenous peoples with their own language, culture and traditions. The Sasak peoples account for over 99 percent of the total population in four villages of the Mandalika region (Kuta, Sukadana, Mertak and Sengkol). The majority of the Mandalika residents are farmers or fishers, relying on natural resources as their source of livelihood.

Many of them live in poverty and struggle to meet their basic needs, such as food, clothing, education, adequate housing and access to health care.¹

Over the years, the Government of Indonesia has been promoting tourism as an engine for economic growth and identified the Mandalika region's potential to become the next world-class tourism destination. Under the previous National Medium Term Development Plan (Rencana Pembangunan Jangka Menengah Nasional – “RPJMN”) 2015-2019, the Government introduced several measures to promote tourism in order to increase its contribution to the economy. The Mandalika region was designated as one of the 10 “National Strategic Tourism Areas” and became operational as a Special Economic Zone (SEZ) in 2017. The Bali Tourism Development Corporation (“BTDC”), which was entrusted to develop the Mandalika region since 2008, was renewed as the ITDC, and the ITDC started to “massively and intensively” construct infrastructure, such as roads, parks, and hotels, in 2017.² One of the key tourism infrastructure in the Mandalika SEZ is the Mandalika Circuit, which is under construction since 2018 and reserved to host a Grand Prix motorcycle race in 2021. The ITDC had expressed confidence that the Grand Prix event would bring tremendous economic benefits to the local population, in the form of employment of about 7,500 people, additional local investment of US\$150 million, and an increased number of foreign tourists to 300,000 people per year, with expected tourist spending of US\$40 million per year.³ Under this banner, the ITDC successfully entered into agreements with various private investors and obtained a loan of US\$248.4 million from the AIIB in December 2018 to develop basic infrastructure, such as roads, drainage systems, water and sanitation facilities, solid waste management facilities, electricity, and public spaces and facilities, in the Mandalika region and neighboring communities.⁴ The strategic importance of the Mandalika region further grew, as it was elevated to the status of a “Super Priority Destination” in 2020. In 2020, the Government reportedly dedicated IDR5.2 trillion (approximately US\$364 million) for infrastructure development in the five Super Priority Destinations,⁵ with IDR683 billion (approximately US\$48 million) reportedly allocated to the Mandalika region.⁶ Development of the Super Priority Destinations, including the Mandalika SEZ, remains the Government's strategic priority in 2021, in the efforts to revive the tourism sector and

- ¹ Based on data by the National Family Planning Coordinating Board (Badan Koordinasi Keluarga Berencana Nasional - BKKBN). ESC, Environmental and Social Impact Assessment (ESIA) / Environmental and Social Management Plan (ESMP) of The Mandalika Urban and Tourism Infrastructure Project, 28 September 2018, 4-57, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/Environmental-and-Social-Impact_plan.pdf
- ² See: Indonesia Tourism Development Corporation, Annual Report 2017, 44 and 64-68, <https://drive.google.com/file/d/1ZibKlKcL84t4DgWalJSwarwZ6SpnwZY5/view>
- ³ ITDC, ITDC focuses on developing the Mandalika as a catalyst for economic development in NTB, 16 October 2019, <https://www.itdc.co.id/news/itdc-fokus-kembangkan-the-mandalika-sebagai-katalisator-pembanguna-ekonomi-ntb-20191217142221>
- ⁴ Asian Infrastructure Investment Bank, Project Summary Information, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/mandalika-urban-tourism-infrastructure.pdf
- ⁵ Ministry of Communication and Information Technology, Percepat Infrastruktur 5 KSPN Super Prioritas, <http://indonesiabaik.id/infografis/percepat-infrastruktur-5-kspn-super-prioritas>
- ⁶ Pengembangan Destinasi Super Prioritas Tetap Dilanjutkan, 22 June 2020, <https://www.medcom.id/nasional/politik/Dkq7a88N-pengembangan-destinasi-super-prioritas-tetap-dilanjutkan>

facilitate economic recovery following the COVID-19 pandemic.⁷

The ITDC's human rights responsibilities and the AIIB's Environmental and Social Framework

There are well-documented allegations that the implementation of the Mandalika project has involved and resulted in serious human rights violations and abuses committed by the Government of Indonesia and the ITDC, including forced evictions and involuntary resettlement of the indigenous peoples, intimidation and threats against those opposing land acquisitions, loss of cultural and religious sites, and a lack of access to decent livelihood. These allegations raise concerns about the Indonesian Government's failure to respect human rights and protect against human rights abuses within its territories. The same factors also raise concerns about the ITDC's compliance with the AIIB's Environmental and Social Framework (ESF).

From the outset, the Mandalika project's significant environmental and social risks were recognized and it was classified as a "Category A" project, a high-risk project likely to have "significant adverse environmental and social impacts that are irreversible, cumulative, diverse or unprecedented".⁸ Notably, some of the key risks recognized for the Mandalika project included community opposition, land disputes and delays in land acquisition.⁹ This "high-risk" classification triggered the application of the AIIB's Environment and Social Standards (ESSs) on Environmental and Social Assessment and Management (ESS1), Involuntary Resettlement (ESS2) and Indigenous Peoples (ESS3). Under the ESF, the ITDC was responsible for, *inter alia*, assessing environmental and social risks and impacts of the project, preparing environmental and social plans (such as an Environmental and Social Management Plan, a Resettlement Action Plan, and an Indigenous Peoples Development Plan), and engaging in meaningful consultations with people affected by the project.¹⁰

Allegations of land grabbing, forced evictions and involuntary resettlement

In accordance with these standards, the ITDC submitted to the AIIB the Environmental and Social Impact Assessment (ESIA) / Environmental and Social Management Plan (ESMP) of the Mandalika project in September 2018. The ESIA/ESMP stated that the ITDC had management rights (hak

-
- ⁷ Ministry of Communication and Information Technology, Menparekraf: Pemulihan Ekonomi Pariwisata Secara Umum Jadi Fokus di 2021, 15 August 2020, <https://www.kominfo.go.id/content/detail/28599/menparekraf-pemulihan-ekonomi-pariwisata-secara-umum-jadi-fokus-di-2021/0/berita>; Ministry of Tourism and Creative Economy, Siaran Pers : Menparekraf Pastikan Pembangunan Lima Destinasi Super Prioritas Dipercepat, 28 December 2020, <https://www.kemenparekraf.go.id/berita/Siaran-Pers-:-Menparekraf-Pastikan-Pembangunan-Lima-Destinasi-Super-Prioritas-Dipercepat>.
- ⁸ Asian Infrastructure Investment Bank, Environmental and Social Framework, para. 13, https://www.aiib.org/en/policies-strategies/_download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf
- ⁹ Asian Infrastructure Investment Bank, Project Document of the Asian Infrastructure Investment Bank - The Republic of Indonesia: Mandalika Urban and Tourism Infrastructure Project, 7 December 2018, p. 26, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/mandalika-project.pdf
- ¹⁰ Asian Infrastructure Investment Bank, Environmental and Social Framework, para. 67, https://www.aiib.org/en/policies-strategies/_download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf

pengelolaan – HPL) over 92.7 per cent of land in the Mandalika SEZ.¹¹ This land was reportedly “clean and clear”, namely, free of land title or disputes, and belonged to the ITDC.¹² However, many local residents have occupied or used this “clean and clear” land for many years, without possessing formal titles to the land but with certain user rights.¹³ The informal and customary title and usage of land are common in Indonesia, as the majority of land is not registered with formal titles. Official titles also often overlap with customary land titles, as records are frequently inaccurate or incomplete.¹⁴ Given these problems, the land tenure system in Indonesia has been reportedly fraught with “widespread tenure insecurity, limited recognition of the customary rights of individuals and communities, and the unsustainable management of natural resources”.¹⁵ There are consistent reports by the UN human rights bodies that land conflicts, forced evictions and forced resettlement are widespread all over the country.¹⁶

Against this backdrop, it is our view that the ITDC’s claim that almost all of the land required for the project was “clean and clear” should have been subject to proper due diligence. In the Mandalika region in particular, there is a long history dating back to the 1990s of violent land grabbing by business enterprises, forced evictions and involuntary displacement of local populations, physical and verbal violence and intimidations against them to coerce them into vacating their land. It has been widely reported that the construction of the Lombok International Airport, which provides access to the Mandalika region, took 16 years to complete, largely due to the intense land conflicts.¹⁷ When the construction of the Mandalika Circuit began earlier in 2018, the ITDC allegedly engaged in a similar pattern of abuses, seizing the local residents’ land without compensation, demolishing houses and buildings on the land, and forcibly evicting them. In some cases, the local owners and users of the land were reportedly forced to sign a statement that they would comply with the land clearing and refrain from demanding any form of compensation for their land. The demolitions and evictions were reportedly carried out in an atmosphere of coercion and intimidation, with excessive deployment of security personnel and police force. In October 2018, the West Nusa Tenggara provincial government reportedly issued a public notice,

-
- ¹¹ ESC, Environmental and Social Impact Assessment (ESIA) / Environmental and Social Management Plan (ESMP) of The Mandalika Urban and Tourism Infrastructure Project, 28 September 2018, 8-28, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/Environmental-and-Social-Impact_plan.pdf.
- ¹² Asian Infrastructure Investment Bank, Project Document of the Asian Infrastructure Investment Bank - The Republic of Indonesia: Mandalika Urban and Tourism Infrastructure Project, 7 December 2018, footnote 8, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/mandalika-project.pdf
- ¹³ See: ESC, Environmental and Social Impact Assessment (ESIA) / Environmental and Social Management Plan (ESMP) of The Mandalika Urban and Tourism Infrastructure Project, 28 September 2018, 4-45, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/Environmental-and-Social-Impact_plan.pdf
- ¹⁴ Asian Development Bank Institute, Land Acquisition in Indonesia and Law No. 2 of 2012, ADB Working Paper Series No. 1036, November 2019, p. 10.
- ¹⁵ Report of 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, Raquel Rolnik, Mission to Indonesia, 2013, A/HRC/25/54/Add.1, para. 43.
- ¹⁶ *Ibid*, para. 55; Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Indonesia, 19 June 2014, E/C.12/IDN/CO/1, paras. 29-30.
- ¹⁷ See: Asian Development Bank Institute, Land Acquisition in Indonesia and Law No. 2 of 2012, ADB Working Paper Series No. 1036, November 2019, at 4-5.

calling on the ITDC to resolve land conflicts and restore the residents' livelihood. There are also wide media reports about protests against land grabbing and forced evictions carried out by the ITDC in December 2018, as the AIIB approved its loan.

As required under the ESF, the ITDC prepared a Resettlement Action Plan (RAP) for those households who would be displaced by the project. However, the RAP was clearly deficient in a number of aspects and it casts serious doubts whether the ITDC conducted proper due diligence and whether the Government exercised adequate oversight over it. Firstly, the scope of the RAP was expressly limited to a maximum of 150 households, while alternative sources suggest that many more households had lived on or used the land, in the range of several dozens to more than 100. In this regard, the AIIB has reportedly audited the ITDC's land survey and conducted its own assessment, but its findings have not been disclosed to date. Secondly, the measures devised by the RAP were *prima facie* inadequate to compensate for the irreparable damage to the rights-holders. As explicitly noted in the RAP, there is a wide gap between AIIB's ESS on involuntary resettlement and the national laws. The former requires that displaced persons, even without title or recognizable rights to land, receive "resettlement assistance and compensation for loss of non-land assets", while the national laws do not recognize such rights for persons occupying the land without formal titles. While the ITDC committed to conforming to the AIIB's standard, those without formal titles were labelled "squatters" and offered meagre compensation under the RAP. Under the RAP, the displaced residents were merely offered IDR 10 million (approximately US\$700) per household as "handshake" money, half of which would be used as a payment for a 100 m² lot of land that they would be eventually allocated. Farmers cultivating the land were offered one-off cash compensation for loss of income for maximum 12 months, which is clearly inadequate to compensate for their loss of livelihood. Thirdly, the RAP explicitly excluded land owned or claimed by third parties on the basis that it would be acquired in accordance with the national law, most notably Law No. 2 of 2012 on Land Acquisition in the Public Interest ("Law No.2 of 2012"), and thus would not involve involuntary resettlement. Law No. 2 of 2012 empowers the State to acquire private land for infrastructure development in the public interest and sets out processes for land acquisition. While the law provides for clearer processes for land acquisition than the previous legal framework, it is widely recognized that its "provisions about compensation and resettlement fall short of international human rights standards and obligations".¹⁸ Notably, Law No. 2 does not require the State to heed their views or to explore alternative options to land acquisition, and unregistered right-holders occupying land according to customary law may be denied compensation.¹⁹ Reports suggest that Law No. 2 of 2012 has often allowed the State to arbitrarily seize land without meaningful consultations and without paying adequate and fair compensation to the rights-holders.²⁰ As against this backdrop, it is questionable whether the application of Law No. 2 of 2012

¹⁸ Report of 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, Raquel Rolnik, Mission to Indonesia, 2013, A/HRC/25/54/Add.1, para. 63.

¹⁹ *Ibid.*

See, for e.g., Gustaaf Reerink and Laurens Bakker, "Indonesia's Land Acquisition Law: towards effective prevention of land grabbing?", in *Land Grabs in Asia: What role for the law?*, edited by Connie Carter and Andrew Harding, Routledge, 2015.

could serve as an adequate measure to mitigate and compensate for the impact of involuntary resettlement.

The information received indicates that arbitrary land acquisitions, forced evictions and involuntary displacements of the local residents and communities continued even after the loan approval and escalated in 2020, leading to protests and complaints against the land acquisition carried out by the ITDC. In August 2020, the local residents reported to the National Human Rights Commission, Komnas HAM, that ITDC arbitrarily seized their land and subjected them to pressure and threats to give up their land in that process. Komnas HAM found that ITDC did forcibly evict the residents from their land and engaged in acts of intimidation. Komnas HAM sent a letter to the ITDC, urging them to “stop all forms of intimidation and/or threats to land owners and activities on the land” until the parties reach a settlement and to hold a dialogue with the affected communities to resolve the disputes.²¹ Upon receiving further information about forced evictions that had been carried out or planned, Komnas HAM conducted monitoring missions from 28 September to 1 October and from 12 to 15 October 2020. Following the missions, Komnas HAM recommended that the ITDC pay compensation to the evicted residents for the loss of buildings and crops located on their land and to provide them with psychosocial recovery and rehabilitation. Komnas HAM also recommended that the parties identify, locate, verify and clarify the disputed land plots, and urged the Government to identify alternative solutions in order to protect the residents from forced evictions in accordance with human rights.²² According to the available information, the ITDC has not followed Komnas HAM’s recommendations to date.

Meaningful consultations and information disclosure

As the Mandalika project would affect the land use by the Sasak indigenous peoples and involve their relocation, the ITDC is required under international human rights law to engage in consultations with the affected peoples in order to obtain their free and informed consent prior to the project approval, as well as to obtain such consent where it would result in their relocation from their lands.²³

However, there are serious concerns that the affected indigenous peoples and communities were not informed or consulted in a meaningful manner about the Mandalika project’s plans and measures to mitigate its adverse impact. While the ESIA/ESMP and the Indigenous Peoples Development Plan (IPDP) contained a summary of what appears to be extensive public consultations carried out between 2012 and 2018, the information received suggests that the consultations were far from genuine, meaningful or inclusive. It is reported that these consultations were often carried out in an atmosphere of coercion

²¹ Komnas HAM, KETERANGAN PERS Nomor: 036/Humas/KH/IX/2020 Komnas HAM RI Dorong Perlindungan Hak atas Tanah Warga Terhadap Praktik Pengusuran Paksa di Kawasan Ekonomi Khusus Mandalika, NTB, 1 September 2020, [https://www.komnasham.go.id/files/20200901-keterangan-pers-nomor-036-humas-\\$TXX.pdf](https://www.komnasham.go.id/files/20200901-keterangan-pers-nomor-036-humas-$TXX.pdf)

²² Komnas HAM, Keterangan Pers No 043/Humas/KH/X/2020 Rekomendasi Komnas HAM RI atas Penyelesaian Sengketa Lahan Sirkuit MotoGP Mandalika, 15 October 2020, [https://www.komnasham.go.id/files/20201015-rilis-rekomendasi-komnas-ham-ri-\\$H3LH3.pdf](https://www.komnasham.go.id/files/20201015-rilis-rekomendasi-komnas-ham-ri-$H3LH3.pdf)
UN Declaration on the Rights of Indigenous Peoples, UN Resolution 61/295, 13 September 2007, articles 10 and 32 (2).

and intimidation, with the presence of government officials and members of the police and security forces. In some of the “consultations”, select members of the communities were reportedly taken to the ITDC’s office and asked to sign a statement in support of the Mandalika project. The participants in many of the consultations were also reportedly not representatives of the local indigenous communities, but rather local government officials. Furthermore, it is evident that the ITDC failed to disclose information in a timely manner and to consult with the affected people and communities in designing and implementing the project, given that the ITDC disclosed the draft RAP and consulted with the affected households in July 2019, more than a year after the AIIB’s project approval in December 2018.²⁴ With respect to compensation offered under the RAP, the amount was reportedly determined unilaterally by the ITDC, without any meaningful input or consultations with the affected peoples and communities.

Threats and intimidations against human rights defenders and the local residents

The reports that we received further suggest that human rights defenders and members of the local communities opposing the ITDC’s land acquisitions have been subject to intimidations, harassments and threats. In 2019, some members of the local communities seeking to protect their land were criminalized and sentenced to 3-month imprisonment for causing “disturbances”, while others investigating and monitoring ITDC’s land grabbing were subjected to threats and intimidations by unidentified individuals. The impression that many actors conveyed to us is that such threats and intimidations may be authorized, or even incited, by high-level central government officials, including President of Indonesia Joko Widodo. President Widodo has publicly stated that he would “hunt and assault” anyone who hinders infrastructure investment in Indonesia, and given the Mandalika project’s national importance, the authorities have implied their readiness to seize required land by all means and to silence anyone hindering the project. The local communities’ opposition to land acquisition has been almost invariably described by the authorities as “noise” or “blockades” to be eliminated, rather than legitimate human rights concerns, in order to ensure that the Mandalika project goes ahead.

These allegations are consistent with a broader pattern of intimidation, threats, harassments, attacks and violence against human rights and environmental rights defenders, as well as use of security apparatus to punish and intimidate them, as reported by a number of international human rights mechanisms.²⁵ There are also reports by civil society, specifically indicating that indigenous community leaders and human rights defenders faced criminalization while seeking to defend rights to indigenous territories, and infrastructure development projects resulted in forced evictions that often involved the use of

²⁴ Indonesia Tourism Development Corporation, Resettlement Action Plan: Mandalika Urban and Tourism Infrastructure Project, 25 February 2020, https://www.aiib.org/en/projects/approved/2018/_download/indonesia/Resettlement-Action-Plan-MUTIP-Final.pdf

See: Human Rights Committee, Concluding observations on the initial report of Indonesia, 21 August 2013, CCPR/C/IDN/CO/1, para. 16; Communications by the special procedures mandate-holders of the UN Human Rights Council: [IDN 4/2020](#), [IDN2/2020](#), [IDN 4/2019](#), [IDN 1/2019](#); Report of the Working Group on the Universal Periodic Review, 14 July 2018, A/HRC/36/7, paras. 128, 139.24, 139.65, 139.66, 141.56 (recommending to adopt stronger measures to protect human rights defenders).

violence and excessive force by security bodies.

The project's benefits to the communities and a lack of remedies

Our departure point is that the Mandalika project, like other Indonesian development plans, should aim at the constant improvement of the well-being of all persons, consistent with the Declaration on the right to development.²⁶ The AIIB's ESF also specifically sets out that where the project results in involuntary resettlement, it should enhance or at least restore the livelihood of the displaced persons and to improve their overall socioeconomic status. However, the Mandalika project has so far failed to bring benefits to the local peoples and communities. Quite to the contrary, it appears that it has a negative impact on their human rights. The local residents who have been displaced from their land are reportedly relocated to Rangkep village for the time being. However, it is alleged that there is no clarity or information about the relocation plan and they currently do not have adequate housing or income to meet the costs of living at the relocated site. There are also concerns that the construction of infrastructure in the project area has contaminated water sources for the local communities. The local communities have noticed that since the construction of the Mandalika Circuit began in 2018, the well water that they use for their daily needs has become turbid and saline, and they have not been able to access clean water from the well. Furthermore, the land acquisition by the ITDC has allegedly destroyed places of worship and customary rituals for the indigenous local communities, and they have not been replaced to date.²⁷ As Komnas HAM has pointed out, as a result of the evictions for the benefit of the Mandalika project, the local residents have not only lost their land as a place to live and a source of livelihood, but the survival of the whole communities is also at risk, as their social and cultural order and structures may be changed or destroyed by the land clearing.²⁸ In the words of Komnas HAM, those who have lost their land would not “necessarily get the same / better life than before”.²⁹ This is in stark contrast to the ITDC's claim that the Mandalika project would significantly enhance the livelihood of the local population and contribute to lifting them out of poverty.

Furthermore, there are concerns that the affected peoples and communities do not have access to effective mechanisms to seek remedies. It has been reported that the ITDC has established the project-level Grievance Redress Mechanism (GRM) and that as of 4 November 2020, the GRM has received 67 complaints, mostly relating to “shortage of water (not Project induced), land prices, dust, noise and employment opportunities”.³⁰ However, while the problem of water shortage was reportedly resolved by supplying water to the communities, it is

²⁶ Declaration on the Right to Development, art 2.

²⁷ See for e.g., ITDC Diminta Kembalikan Tanah Ulayat, Diklaim Milik Masyarakat, Koranmerah, 30 December 2018, <http://www.koranmerah.com/2018/12/30/itdc-diminta-kembalikan-tanah-ulayat-diklaim-milik-masyarakat/>

²⁸ Komnas HAM, Keterangan Pers No 043/Humas/KH/X/2020 Rekomendasi Komnas HAM RI atas Penyelesaian Sengketa Lahan Sirkuit MotoGP Mandalika, 15 October 2020, [https://www.komnasham.go.id/files/20201015-rilis-rekomendasi-komnas-ham-ri-\\$H3LH3.pdf](https://www.komnasham.go.id/files/20201015-rilis-rekomendasi-komnas-ham-ri-$H3LH3.pdf)

²⁹ *Ibid.*

³⁰ SBF Project Implementation Monitoring Report, Indonesia: Mandalika Urban and Tourism Infrastructure Project, 4 November 2020, https://www.aiib.org/en/projects/details/2018/approved/download/project-implementation-monitoring-report/PIMR_SBF_Indonesia_Mandalika-Urban-and-Tourism-Infrastructure-Project_4_November-2020_Public-Version.pdf

unclear how other complaints have been addressed, whether any complaints in relation to the involuntary resettlement and forced evictions have been received, or ultimately, whether the ITDC's GRM would be considered a legitimate, accessible, equitable and transparent grievance mechanism, in light of the above allegations that the local residents and communities have been subject to coercion, threats and intimidations.

Without prejudging the accuracy of the above allegations, we wish to express our serious concerns that the ITDC appears to have *prima facie* failed to respect human rights by arbitrarily expropriating land from the local residents, forcibly evicting them from their land and engaging in acts of intimidation against human rights defenders and those who object to or question the ways in which the Mandalika project is implemented. This, in turn, raises serious concerns that your Excellency's Government has failed to protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises. This duty to protect human rights requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. Given that the ITDC is an enterprise under full ownership and control of the Government, allow us to further highlight that your Excellency's Government has an additional duty to exercise adequate scrutiny and oversight over the ITDC's operations and ensure that it fully respects human rights. We furthermore express concerns that the ITDC has effectively ignored Komnas HAM's recommendations to provide for remedies and the affected peoples and communities appear to have no recourse to remedies.

In addition, we are dismayed by the information that the Mandalika project has not contributed to development that benefits the local population in the region, but rather further impoverished and marginalized them. These allegations run counter to the Government's strong commitments to achieving Sustainable Development Goals (SDGs), which are grounded on full respect for human rights and include specific goals and targets on achieving inclusive and sustainable economic growth. While acknowledging the value of tourism in Indonesia as a driver of economic growth, development pursued at the expense of human rights would be neither inclusive nor sustainable, and would leave the poor and the vulnerable further behind, contrary to the promises of the SDGs.

Finally, the alleged criminalisation and intimidation of human rights defenders who have opposed the project and or its implementation for its detrimental impact on the affected communities, is cause for further concern. Such attempts to silence and deter human rights defenders from protecting and promoting the rights of others – particularly when such efforts are articulated in statements by high level central government officials - contributes to a harmful and regressive chilling effect on civil society more broadly.

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.

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

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please provide information that your Excellency's Government is aware of, on due diligence carried out by the ITDC on land use and ownership in the project's area and areas of influence. Please provide *warkah*, if available, to show the history of land ownership and use in the concerned areas.
3. Please provide information on any steps that your Excellency's Government has undertaken, or is considering to take, including policies, legislation and regulations, to fulfill its obligation to protect against human rights abuses by business enterprises within its territories and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
4. Please indicate what additional steps have been taken by your Excellency's Government to protect against human rights abuses by the ITDC, considering its status as a fully State-owned enterprise.
5. Please provide information on any steps taken by your Excellency's Government to ensure that the ITDC implements recommendations by Komnas HAM to compensate the evicted residents and provide them with rehabilitation, as well as to verify the land ownership and use over the disputed plots of land.
6. Please provide information on any investigation or inquiry undertaken by your Excellency's Government into the allegations of threats and intimidations made against the human rights defenders and members of the local communities opposing the land acquisitions.
7. Please provide information on any steps taken by your Excellency's Government to ensure that the affected peoples and communities have access to effective remedies.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your

Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on this subject matter is also being sent to the ITDC, the AIIB, other companies involved in the abovementioned allegations and their home States.

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

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Dante Pesce
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Saad Alfarargi
Special Rapporteur on the right to development

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to relevant international human rights law and standards, as well as authoritative guidance on their interpretation. They include:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- UN Basic Principles and Guidelines on Development-based Evictions and Displacement;
- UN Declaration on the right to development
- UN Declaration on the Rights of Indigenous Peoples;
- UN Declaration on Human Rights Defenders;
- UN Guiding Principles on Extreme Poverty and Human Rights; and
- UN Guiding Principles on Business and Human Rights.

With respect to the above allegations that the local residents have been arbitrarily expropriated of their land and forcibly evicted, we would like to recall article 17 of the Universal Declaration of Human Rights, which guarantees everyone of the right to own property and the right not to be arbitrarily deprived of their property. Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to an adequate standard of living for himself and his family, including housing. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights clarified that this right to housing should be seen as the right to live 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. Upon her visit to Indonesia, the former 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, Raquel Rolnik, specifically recommended that "Land policy should protect the interests of low-income households, indigenous communities and communities occupying land based on customary (adat) law" (A/HRC/25/54/Add.1, para. 81).

The Committee also declared that forced evictions are *prima facie* incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances. The Committee enunciated in its General Comment No. 7 that forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. Paragraph 15 of the same General Comment provides that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that

adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons.

In this regard, we also wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1), which specify that evictions can only take place in “exceptional circumstances”; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines provide that States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate. Moreover, the Guidelines state that States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions.

Having regard to the fact that the Mandalika project concerned the Indigenous Sasak peoples and communities, we would also like to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to indigenous peoples’ rights. Article 26 of UNDRIP asserts the right of indigenous peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. Article 32 affirms that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”. UNDRIP furthermore underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Importantly, article 10 specifically prohibits forcible removal of indigenous peoples from their lands or territories without their free, prior and informed consent, and provides that relocation could take place only after agreement on just and fair compensation and, where possible, with the option of return.

We further recall that the UN Declaration on the right to development (A/RES/41/128) defines the right to development an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development (article 1.1). The Declaration further states that the human person is the central subject of development

and should be the active participant and beneficiary of the right to development (article 2.1) and requires that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8.2). We are concerned at the information that, contrary to these commitments, the affected indigenous peoples and communities were not informed or consulted in a meaningful manner about the Mandalika project's plans and measures to mitigate its adverse impact. We refer to the Guidelines and recommendations on the practical implementation of the right to development, which urge states to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. Specifically:

(a) Consultation processes should be institutionalized rather than ad hoc, and any potential conflicts of interest among those convening the consultations should be addressed in order to ensure that the consultations truly reflect the viewpoints of affected stakeholders (this is particularly important when consultations are convened by a State or by private actors that would benefit directly from the proposed project);

(b) Those convening a consultation should transparently inform the consulted communities about the potential impacts of the decisions to be made, and the priorities of those affected must be taken into account. (A/HRC/42/38, para 18). Further, the Guidelines recommend that States should institute public planning processes that are participatory and include monitoring mechanisms. Whenever possible, States should decentralize participatory planning processes, thus enabling local communities to pursue development initiatives that reflect their interests and to draw more domestic resources (para 19).

We would like to draw the attention of your Excellency's Government to articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the rights to freedom of opinion and expression, peaceful assembly and association. The Human Rights Council resolution 31/32 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in meditation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

In addition, we would like to refer your Excellency's Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2) and details the State's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (article 12). We would also like to recall article 5 (a), which provides for the right to meet or assemble peacefully and article 6 points b) and c), which provides for the

right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

Finally, we would like to draw the attention of your Excellency's Government to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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. Taking into account the fact that the ITDC is a fully State-owned enterprise, allow us to recall that, when adopting the UN Guiding Principles on Extreme Poverty and Human Rights, States agreed that they "should take additional steps to protect against abuses of human rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies" (UN Guiding Principles on Extreme Poverty and Human Rights, para. 99). The thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) also examined in detail the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations:

- “88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations....

- 94. States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.”