

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 OTH 179/2021

26 March 2021

Mr. Malki,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council. Special Procedures mechanisms can intervene directly with Governments and other actors, including multilateral banks or companies, on allegations of abuses of human rights that come within their mandates. They do this by sending communications to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on **EBD Paragon's business and investment in the development of the Mandalika region, West Nusa Tenggara province, Indonesia, which has allegedly resulted in human rights violations and abuses, including involuntary resettlement and forced evictions of the indigenous peoples and communities.**

According to the information received:

Background – Tourism development in the Mandalika region

The Indonesia Tourism and Development Corporation (“ITDC”) is an enterprise fully owned by the Government of Indonesia, which specializes in the development and management of integrated tourism complexes. One of the key

Paragon

tourist destinations that the ITDC has been developing is the Mandalika region, situated in Central Lombok Regency, West Nusa Tenggara Province.

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 Asian Infrastructure Investment Bank ("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,

- 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>

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 facilitate economic recovery following the COVID-19 pandemic.⁷

EBD Paragon’s business and investment in the Mandalika region

In 2016, EBD Paragon reportedly entered into an agreement with the ITDC to build **Paramount Lombok Resort & Residences** (“Paramount Resort”) on 7.65 hectares land in the Mandalika, in collaboration with Pembangunan Perumahan (Persero) Tbk (“PT PP”), a state-owned enterprise, and its subsidiary, PT PP Property Tbk. The total investment in this project reportedly amounts to IDR1.2 trillion (approximately US\$84 million at the current exchange rate of US\$1=IDR0.00007) and it is one of the large-scale projects in the Mandalika SEZ.⁸ The groundbreaking for the construction of Paramount Resort took place in April 2018 and the construction is apparently ongoing.

In parallel, **EBD Bauer**, EBD Paragon’s arm specializing in water and wastewater treatment, entered into a 50-year water concession agreement with the ITDC in 2015. The agreement includes the construction of two Sea Water Reverse Osmosis (SWRO) plants, which are described as “state-of-the-art” facilities capable of processing seawater into clean, potable water to serve the needs of international hotels in the Mandalika SEZ.⁹ EBD Paragon reportedly invested over US\$20 million for the SWRO plants,¹⁰ which are owned and operated by PT Perusahaan Air Indonesia Amerika (PAIA). The water produced

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- 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>
- 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 Indonesia Tourism Development Corporation, 2018 Annual Report, p. 17, https://drive.google.com/file/d/11XoEnYdFun_74CuRaNoR4LIKCyG-Ut86/view
- ⁹ ITDC gandeng perusahaan Amerika Serikat bangun Mandalika Lombok, 12 December 2015, <https://mataram.antaranews.com/berita/29792/itdc-gandeng-perusahaan-amerika-serikat-bangun-mandalika-lombok>; Indonesian American Water Company, <http://www.iawco.co.id/the-concession/>
- ¹⁰ Cerita Pengusaha Asal AS yang Pilih Berinvestasi di Indonesia, 10 October 2018, <https://ekonomi.kompas.com/read/2018/10/10/064500126/cerita-pengusaha-asal-as-yang-pilih-berinvestasi-di-indonesia>

in the SWRO plants is dubbed “Mandalika Eco-Water”, for its supposedly ecologically friendly impact.¹¹

EBD Paragon’s responsibility to exercise due diligence

There are well-documented allegations that the development of the Mandalika region 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 not only the ITDC’s compliance with its responsibility to respect human rights, but also EBD Paragon’s responsibility to exercise due diligence and to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”, in accordance with the UN Guiding Principles on Business and Human Rights.

Allegations of land grabbing, forced evictions and involuntary resettlement

In this regard, it is relevant to note that the Mandalika urban development and tourism project financed by the AIIB (“the AIIB project”) 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”.¹² Notably, some of the key risks recognized for the AIIB project included community opposition, land disputes and delays in land acquisition.¹³

In vigorously pursuing the tourism development in the Mandalika SEZ, the ITDC claimed that it had management rights (hak pengelolaan – HPL) over 92.7 per cent of land in the Mandalika SEZ.¹⁴ This land was reportedly “clean and clear”, namely, free of land title or disputes, and belonged to the ITDC.¹⁵ 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

¹¹ KEK Pariwisata Mandalika Terapkan Konsep Eco Water, 16 June 2016, <https://www.republika.co.id/berita/nasional/umum/16/06/16/o8u0wq372-kek-pariwisata-mandalika-terapkan-konsep-eco-water>

¹² 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

¹³ 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

¹⁴ 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.

¹⁵ 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

rights.¹⁶ The informal and customary title and usage of land are common in Indonesia, where most of the land is not registered with formal titles. Official titles also often overlap with customary land titles, as records are frequently inaccurate or incomplete.¹⁷ 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”.¹⁸ There are consistent reports by the UN human rights bodies that land conflicts, forced evictions and forced resettlement are widespread all over the country.¹⁹

As 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 by all parties entering into business with the ITDC and seeking to use land for property and infrastructure development. 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.²⁰ 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. Available information indicates that in October 2018, a local resident instituted legal proceedings against the ITDC, Paramount Resort and others, claiming ownership over land on which Paramount Resort and other international hotels were being constructed and that his land was unlawfully seized by the ITDC without compensation. In the same month, the West Nusa Tenggara provincial government reportedly issued a public notice, 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.

¹⁶ 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

¹⁷ Asian Development Bank Institute, Land Acquisition in Indonesia and Law No. 2 of 2012, ADB Working Paper Series No. 1036, November 2019, p. 10.

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. 43.

¹⁹ *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.

²⁰ 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.

The information received indicates that arbitrary land acquisitions, forced evictions and involuntary displacements of the local residents and communities continued 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 the ITDC arbitrarily seized their land and subjected them to pressure and threats to give up their land in that process. Komnas HAM found that the 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 development of the Mandalika region would affect the land use by the indigenous Sasak 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. With respect to the construction of Paramount Resort and the SWRO plants, it is unclear to us whether any consultations with the local indigenous peoples and communities were carried out. There are reasons to doubt that they were, or that they adequately met the international human rights standards. In the context of the AIIB project, the ITDC provided a summary of public consultations carried out between 2012 and 2018. While the consultations appear extensive on the

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)

²³ UN Declaration on the Rights of Indigenous Peoples, UN Resolution 61/295, 13 September 2007, articles 10 and 32 (2).

face value, 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 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. With respect to compensation offered by the ITDC, the amount was reportedly determined unilaterally, 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 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, and that the ITDC deployed excessive police and security forces in carrying out the land acquisitions. 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.²⁴ 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 violence and excessive force by security bodies.

²⁴ 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).

The Mandalika 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.²⁵ 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 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. In this regard, the Environmental and Social Impact Assessment (“ESIA”) that the ITDC prepared for the AIIB project noted that there were risks of groundwater contamination as a result of a large discharge of brine water from the SWRO plants. The ESIA further noted that if not managed properly, discharges of brine water could also have “adverse impacts on marine biota and intertidal biota”.²⁶ We have no information as to whether EBD Bauer or the ITDC has carried out a specific impact assessment of the construction, operation and management of the SWRO plants and what mitigation measures may have been undertaken to prevent groundwater and seawater contamination.

The land acquisition by the ITDC has also 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.

²⁵ Declaration on the Right to Development, art 2.

²⁶ ESC, Environmental and Social Impact Assessment (ESIA) / Environmental and Social Management Plan (ESMP) of The Mandalika Urban and Tourism Infrastructure Project, 28 September 2018, 2-22, https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/Environmental-and-Social-Impact_plan.pdf

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.*

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 Grievance Redress Mechanism (GRM) in the context of the AIIB project 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 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 EBD Paragon’s business partner, 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 those who object to the land acquisitions for the development of the Mandalika region. Rather than contributing to sustainable development that benefits the local population in the region, the project is allegedly fueling the pattern of aggressive land acquisition under coercion without prior consultations or adequate compensation, forced evictions, involuntary resettlements and loss of livelihood and cultural life for the local peoples and communities. These allegations, in turn, raise serious questions as to whether EBD Paragon has properly carried out human rights due diligence and has taken appropriate measures to identify, prevent, mitigate and account for adverse human rights impacts that are directly linked to its operations, products or services by its business relationships. Furthermore, as part of their responsibility to respect human rights, the ITDC should also provide for processes to enable the remediation of any adverse human rights impacts that they have caused or contributed to.³¹ It is of serious concern that the indigenous peoples and communities in the affected areas appear to have no recourse to effective remediation mechanisms, and the ITDC has so far disregarded Komnas HAM’s call to provide for remedies. Furthermore, the alleged criminalisation and intimidation of human rights defenders who have opposed the project for its detrimental impact on these communities, is cause for further concern. Such attempts to silence and deter human rights defenders from protecting and promoting the rights of others, contributes to a harmful and regressive chilling effect on civil society more broadly. In light of these factors, EBD Paragon may be seen to be complicit in human rights violations and abuses associated with the ITDC’s acts, by failing to exercise human rights due diligence and to use its leverage to mitigate adverse human rights impacts.

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

³¹ Principle 15, Guiding Principles on Business and Human Rights.

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 as to what human rights due diligence policies and processes have been put in place by EBD Paragon to identify, prevent, mitigate and remedy adverse human rights impacts of its business operations, in line with the United Nations Guiding Principles on Business and Human Rights.
3. Please provide information about any specific due diligence or impact assessment undertaken taken by EBD Paragon, concerning the establishment of Paramount Resort and the SWRO plants. In particular, please highlight whether and how EBD Paragon conducted due diligence on risks of:
 - a. involuntary resettlement and forced evictions of the local indigenous peoples; and
 - b. groundwater and seawater contamination in the Mandalika SEZ and its vicinity.
4. Please also provide information about how EBD Paragon ensured that the local indigenous peoples were consulted about the Mandalika project in a meaningful and effective manner.
5. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such situations in the future.
6. Please provide information on whether EBD Paragon has established or participated in an effective operational-level grievance mechanism to address adverse human rights impacts caused by its operations, in line with the United Nations Guiding Principles on Business and Human Rights. Please also provide any information as to whether such a mechanism has been used to address any concerns or impacts arising out of the development in Mandalika, as well as information on any outcomes or remedies provided as a result.

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.

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 has been also sent to the Governments of Indonesia and the United States, the AIIB, the ITDC and other companies involved in the abovementioned allegations and their home States.

Please accept, Mr. Malki, 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
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention 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 Rights of Indigenous Peoples;
- UN Declaration on the Right to Development
- UN Declaration on Human Rights Defenders;
- UN Guiding Principles on Extreme Poverty and Human Rights; and
- UN Guiding Principles on Business and Human Rights.

First and foremost, we would like to draw your attention 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. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that

when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Bearing in mind these responsibilities of business enterprises to respect human rights, we would like to draw your attention to human rights norms guaranteed under international human rights instruments adopted, acceded or ratified by Indonesia. In view of 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 as 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 (A/HRC/42/38, para 18). The Guidelines also recommend that development banks should conduct meaningful consultations to ensure that the development priorities of the intended beneficiaries are furthered by the projects they finance and should also guarantee access to information about projects they have financed before the projects are authorized (para 50).

We would also like to draw your attention 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 mediation 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 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.