

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL OTH 187/2021

22 June 2021

Dear Mr. Meldman,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to development; Special Rapporteur on the right to food; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 46/7, 44/15, 46/9, 42/23, 32/8 and 42/5.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter 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. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the impacts of the development of the Barbuda Ocean Beach Club, a multi-million dollar luxury resort project developed by the Peace Love and Happiness Partnership (PLH), a US-based investors' company registered in Antigua and Barbuda and built by your company, Discovery Land Company, a US-based developer, on the human rights of the population of Barbuda, including to food, housing, water and sanitation and to a healthy environment and cultural rights.

Discovery Land Company

According to the information received:

In fall 2017, the State of Antigua and Barbuda was hit by two successive category 5 hurricanes: Irma and Maria, which led to the evacuation of the entire population of Barbuda, of around 1,600 people, damaging key infrastructures including roads and energy distribution networks in addition to a great number of houses.¹ More specifically, it was estimated that as a result of the disaster, 95% of Barbuda's structures was damaged or destroyed.² The storms left the island of 23 kilometres by 12 kilometres, which hosts a rich biodiversity, and forests without one single leaf on any tree as witnessed by the United Nations Secretary General on the occasion of a visit in the region.³ In the aftermath of the hurricanes, the livelihoods of many individuals were also affected, which, at the time, further put at risks the full realisation of human rights, including to food, health, housing, education, water and sanitation, and a healthy environment and cultural rights.

It was estimated that the overall value of damages and disruption caused by both disasters was equal to 9 percent of the country's gross domestic product (GDP, current terms) in 2016, with 44 percent of the total damage costs affecting the tourism sector and 37 percent attributed to the housing sector.⁴ In fact it was established that, after Irma, 642 of the 670 houses on Barbuda's territory were either destroyed or damaged. In addition, the totality of the island's water sources were affected, with the contamination of ground waters and serious damages to rainwater collection and overall water distribution infrastructures.⁵ Both the agriculture and fishing sectors were also severely touched with the loss and damage of numerous vessels, small scale farmers' crops and livestock.

After the disasters, the Government of Antigua and Barbuda estimated that the amount needed for Barbuda's recovery, including for housing replacement and reparation and the water and sanitation sector, was US\$222.2 million.⁶

In the recovery phase, proposals for large-scale projects began to flourish, including the development of luxury real estate and tourist structures such as the Barbuda Ocean Beach Club.

In parallel, an amendment to the 2007 Barbuda Land Act was introduced with important changes proposed, including a change to one of the core elements of Barbuda's culture and traditions: the collective owning of the Island by all the residents since 1834. Allowing for private ownership, the amendment introduced in 2017 repealed part II of the Barbuda Land Act of 2007⁷ which provided, as per its article 3 that:

“Barbuda land is owned in common by Barbudans

¹ <https://news.un.org/en/story/2018/09/1018372>

² See for instance: <https://www.unicef.org/easterncaribbean/stories/barbuda-fighting-its-way-back-after-hurricanes>

³ <https://news.un.org/en/story/2018/09/1018372>

⁴ World Bank, GFDRR, UN, and EU, “Hurricane Irma Recovery Needs Assessment: A Report by the Government of Antigua and Barbuda”, https://www.gfdr.org/sites/default/files/publication/Antigua%20and%20Barbuda%20executive%20summary_print_text%282%29.pdf

⁵ Ibid.

⁶ <https://www.gfdr.org/en/publication/hurricane-irma-and-maria-recovery-needs-assessment-antigua-and-barbuda>

⁷ BARBUDA LAND ACT No. 23 of 2007 [Published in the Official Gazette Vol. XXVIII No. 5 dated 17th January. 2008. available at <http://extwprlegs1.fao.org/docs/pdf/ant78070.pdf>

(1) All land in Barbuda shall be owned in common by the people of Barbuda.

(2) Subject to sections 4 and 20, the title to all land in Barbuda shall vest in the Crown on behalf of the people of Barbuda”.⁸

The new 2017 Barbuda Land (Amendment) Act, which entered into force in 2018, provides as per its article that 3 paragraph 2 that:“ All persons residing on the Island of Barbuda shall be and are hereby declared to be tenants of the Crown; and such persons shall neither hold nor deal with any land situate within the said island save and except as hereinafter appears by the provisions of this Act and subject to any by-law made by the Council in that behalf”.⁹ The new article 17 also put forward, as a condition for the approval of major development in Barbuda, the submission of an environmental impact assessment (EIA) to the responsible minister, repealing the former provision which also provided for the obligatory consent of the people of Barbuda for the same purpose.

The Barbuda Ocean Club project

Launched in 2016, the Barbuda Ocean Club is a multi-million dollar luxury resort project developed by the Peace Love and Happiness Partnership (PLH), a US-based investors’ company registered in Antigua and Barbuda and built by, Discovery Land Company, a US-based developer. The project envisions the development of a low-density resort, composed of around 400 luxury residences, a golf course and a yacht marina, located on the unique, fragile and diverse natural site of Palmetto Point.

Partially affected by sand mining, it was already reported in 2008 that all the terrestrial plants of the site were identified as “special conservation concern”¹⁰ in a report presented to the Government. Palmetto Point was also identified as being subject to high hazard risks in terms of coastal erosion. The area is located in Codrington Lagoon National Park, surrounded by wetlands as well as a range of terrestrial plants, birds and reptile species and is a famous nesting site for turtles. In addition, the 2012 Sustainable Island Resource Management Zoning Plan established that Palmetto Point is a protected area.

Groundwater is essential on Barbuda given the absence of lasting streams or other bodies of water on the island. In fact, the island’s groundwater is its only source of drinkable water. In this context, the population has historically relied on wells for drinking water and it has been established that “the primary source of freshwater in Barbuda has been the shallow aquifers underlying 650 ha of sand in the Palmetto Point Area.”¹¹ In 2005, the water from wells around

⁸ Ibid.

⁹ BARBUDA LAND (AMENDMENT) ACT 2017 No. 41 of 2017, [Published in the Official Gazette Vol. XXXVIII No. 8 dated 22nd January, 2018] available at <http://extwprlegs1.fao.org/docs/pdf/ant188658.pdf>

¹⁰ Kevel Lindsay, John Mussington, and Jean-Pierre Bacle for OECS AND THE GOVERNMENT OF ANTIGUA AND BARBUDA “Biodiversity Inventory and Status Assessment Report for the Proposed Wallings Forest Protected Area (Antigua) and the Codrington Lagoon National Park (Barbuda) “ (2008), p. 4 available at: http://www.irf.org/wp-content/uploads/2015/10/Wallings-CodringtonBiodiversitySurvey_Antigua_2008.pdf

¹¹ Government of Antigua and Barbuda , “Antigua and Barbuda’s First Biennial Update Report”, 2020, p. 26 available at: <https://unfccc.int/sites/default/files/resource/Antigua%20and%20Barbuda%20-%20UNFCCC%20Biennial%20Update%20Report%201%20-%20Final.pdf>.

Palmetto Point was considered potable.¹² Some wells are still being used today around the island for a variety of purposes, including for livestock. It has been reported that “In recent years, most residents started spending a large percentage of their monthly income on bottled water due to waning confidence in the ground water quality.”¹³ Given their slow recharge, further pressure on groundwater sources, including due to the development of large scale tourist infrastructure, is a risk. In addition, it is alleged that wells were dug by the resort developers in 2020 on Palmetto Point site.

Furthermore, over recent years, concerns have been expressed about Barbuda’s groundwater quality which, allegedly, could be further affected by tourism and its affiliated construction, sand mining, and waste pollution, as well as by climate change. Due to salt intrusion and the other impacts of climate change on groundwater sources, desalination is now key for accessing water on the Island and “with desalinated water prioritised for domestic and tourism sectors, there is continual stress on freshwater supply particularly in the agricultural sector”.¹⁴ While PLH plans to develop its own desalination plant, the high water demand could put at risks the full realisation of the right to safe drinking water of the population, increasing the pressure on the system in place and resulting potentially in access challenges such as higher costs.

Palmetto Point, once the highest point of the area, is of particular importance for fresh water feeding of the Codrington lagoon, an area protected by the Ramsar Convention. The island being mostly flat, Palmetto Point plays a key role in channelling the water from the groundwater aquifer, located under the sand, to the lagoon and in ensuring the health of its rich ecosystem. Hosting a variety of young fish, lobsters and conch populations, the lagoon greatly contributes to the reproduction of marine species, an essential element for the fishing activities of the population. This lagoon is also a vital environment for migratory birds, including endangered species such as the West Indian whistling duck, and the frigate, for which the area constitutes the species’ largest nesting site in the Americas.

The removal of the dunes has already greatly impacted Palmetto Point. The land that will be occupied by the luxury properties and golf course will also affect small-scale farming and animal grazing. It will also potentially affect the traditional harvesting of sea plums and grapes by the community. In addition, the large-scale water desalinization process proposed to respond to project’s the fresh water needs is likely to affect the surrounding coral reefs with toxic spurge being discharged. Further development would also threaten the already scarce fresh water source flowing into the lagoon, thus impacting water turbidity and oxygen level and threatening its rich biodiversity. As a result, this would also impair fishing activities, affecting both the availability of and access to food for the communities in addition to seriously threatening their livelihood. In addition, the location of the planned centralized wastewater treatment plant along with the repair and fuel facility of the marina has not been established yet, raising further concerns in terms of the prevention of

¹² FAO, Country profile – Antigua and Barbuda, Aqua Stat Repot, 2015, available at : <http://www.fao.org/3/ca0429en/CA0429EN.pdf>

¹³ Jason A. Hubbart, Kirsten Stephan, Fritz Petersen, Zachary Heck, Jason Horne and B. Jean Meade, “Challenges for the Island of Barbuda: A Distinct Cultural and Ecological Island Ecosystem at the Precipice of Change”, MDPI Journal, 23 June 2020, p. 7.
Government of Antigua and Barbuda, p. 147.

potential leakage and contamination risks.

The project timeline and development

In December 2016, the conclusion of a memorandum of agreement between PLH and the Government took place, following a public vote organised in Barbuda. The residents voted in favour of the project, while there are concerns over the voters' full access to information relating to the development plan. Furthermore, some elements of the project were not mentioned on this occasion, such as the projected development of a yacht marina. These elements were not included in the memorandum of agreement either.

In 2017, after the conclusion of the agreement and its related lease, an environmental impact assessment was conducted by an independent firm for the developers of the project. As highlighted by them “(t)he work was required to be completed in a timely, sequenced manner under challenging circumstances, as the island’s resources, community services, and infrastructure were devastated in the wake of Hurricane Irma”.¹⁵ The initial impact assessment was conducted over the course of three weeks.¹⁶ It did not refer to the latest data available for the analysis, was not supported by sufficient scientific studies, and raised specific concerns about impacts on the ecosystems. In addition, it did not include a social nor human rights impact assessment of the project.

On 18 February 2018, based on the environmental impact assessment and a first version of the master plan, the project was conditionally approved, the Government recommending the conduct of further hydrological, hydrogeological, bathymetry and topological studies to inform dunes restoration, prevent storm surge, ensure the establishment of effective setbacks and water management systems as well as the development of mitigation measures to ensure the integrity and functionality of the ecosystems. An amended version of the master development plan was prepared for this purpose.

Over the following months, operations started, with alterations to the natural surroundings including the removal of mangroves by the contractors in certain areas. In addition, some of the already installed setbacks did not respect the government’s recommendations, further exposing the area to increased disaster vulnerability and risks of further saline intrusion due to floods.

On 17 February 2020, the Barbuda Council lodged a request to stop the work taking place at Palmetto and Coco points until further review, as per alleged breaches of the Physical Planning Act 2003 and the Environmental Management and Protection Act (2019) (EMPA). The latter Act provides that an EIA must be conducted for the development of “a yacht marina; a wastewater treatment, desalination or water purification plant; an installation for the manufacture, storage or industrial use of chemical products or hazardous materials; sand mining and other mining operation; an operation involving land reclamation, dredging and filling of ponds; and a hotel or resort

¹⁵ http://www.deborahbrosnan.com/uploads/4/8/6/7/4867822/plh_barbuda_project_overview.pdf

¹⁶ http://www.deborahbrosnan.com/uploads/4/8/6/7/4867822/plh_barbuda_project_overview.pdf

complex”.¹⁷ The letter raised concerns about a number of environment and human rights related issues including: the need to preserve the integrity of the ecosystems, the lack of setbacks around the lagoon, the proximity of some of the setbacks from the sea and the potential impacts of further development on a number of species including turtles, mangroves and seagrass. The essential role of the soil and vegetation in mitigating the impacts of natural disasters was also highlighted.

In this connection, the Barbuda Council filed an injunction application to the Eastern Caribbean Supreme Court to halt the ongoing construction work. The Council alleged that the project’s latest developments were not compliant with the initial plan as detailed in the EIA and master, analysis and management plans and reports related to the project’s approval. While the EIA provided for the establishment of wildlife corridors, large setbacks and open spaces, they were not established nor are they part of the latest version of the master plan. On 30 July 2020, the Council’s claim was dismissed and the injunction rejected.

On 26 August 2020, the Government informed the developers of ongoing violations in the project’s implementation phase including the reversal of wetland mitigation measures, impact on historic dunes and vegetation and work not being conducted in line with previous environmental review, guidance, monitoring and recommendation. It was thus requested to take immediate action and submit a remediation plan (within 5 days).

On 19 September 2020, 2 members of the Barbuda Council were arrested on the occasion of a visit to the site to inspect the concession, forming part of a case in court summoning 21 people facing similar charges.

On 1 October 2020, the Eastern Caribbean court ordered an interim injunction. Some operations and construction activities are however still ongoing despite the injunction.

On 20 January 2021, the interim injunction against the construction was lifted by the High Court of Antigua. Furthermore, the Court issued an injunction against the Council to forbid any sand mining.

As of now, things are moving fast on the island, with the company fencing the area and beginning the construction of the regasification station, an energy option that was first put aside due to potential negative impacts on the environment. Construction of the marina is scheduled to begin soon. In addition, promoters of the resort are currently widely advertising its 18 hole golf course.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our deep concerns regarding the potential impacts of the Barbuda Ocean Club Project on human rights, including the rights to food, water and sanitation, housing, and a healthy environment, as well as cultural rights. Furthermore we are deeply concerned about the potential consequences of the developments on Codrington Lagoon and Palmetto Point’s fragile ecosystems, parts of which are supposed to be protected by designation as a national park and pursuant to the Ramsar Convention on internationally important wetlands. These developments are impacting

¹⁷ <https://antiguaobserver.com/barbuda-council-asks-dca-to-issue-stop-order-on-plh-project/>

the population's livelihoods and further exacerbating the vulnerability of the island to storms and disasters, as nature and mangroves in particular provide for natural protection from such events. Furthermore, it is unclear whether a proper environmental impact assessment was conducted for all aspects of the project including for the potential Marina, as prescribed by Physical Planning Act 2003 and the Environmental Management and Protection Act (2019) and whether informed participation of all Barbuda's residents was ensured.

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/or comment(s) you may have on the allegations regarding the Barbuda Ocean Club project, mentioned above and the associated impacts on the population of Barbuda.
2. Please provide information as to what human rights due diligence policies and processes have been put in place by Discovery Land Company to identify, prevent, mitigate and account for how you address adverse human rights impacts throughout your business operations, in line with the UN Guiding Principles on Business and Human Rights.
3. Please provide information about any specific human rights due diligence or impact assessment undertaken taken by your company, concerning the construction of the Barbuda Ocean Club Project in the Palmetto Point.
4. Please describe the measures that your company has taken, or is planning to take, to prevent recurrence of such situations in the future.
5. Please provide information on whether Discovery Land Company 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 UN Guiding Principles. Please also provide any information as to whether such a mechanism has been used to address any concerns or impacts arising out of the construction of the Barbuda Ocean Club Project, as well as information on any outcomes or remedies provided as a result.
6. Please provide information whether Discovery Land Company has provided, or is considering to provide, effective remedy, including adequate compensation, to local communities affected by the construction of the Barbuda Ocean Club Project.

This communication and any response received from your company will be made public via the communications reporting [website](#) within 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 company 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 Antigua and Barbuda, the Commonwealth of Bahamas and the United States of America as well to other companies involved in the abovementioned allegations.

Please accept, Mr. Meldman, the assurances of our highest consideration.

David R. Boyd

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

Dante Pesce

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

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Special Rapporteur on the right to food

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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”.

We also wish to highlight that the Escazu agreement, as ratified by Antigua and Barbuda on 4 March 2020, guarantees “the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and

future generations to live in a healthy environment and to sustainable development”.¹⁸

In addition we would like to 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, no prior consultation with the population took place with regard to the construction of the airport and that the affected communities were not informed or consulted in a meaningful manner regarding the further development to the PLH project, including building of houses, the extension of the golf courses and the construction of a marina. 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 (para 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

- (a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;
- (b) Information should be shared in a format that is accessible to target populations.

¹⁸ Article 1, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.