

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

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Excellency,

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.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the impacts of the development of an airport by Bahamas Hot Mix Co. Ltd., a company domiciled in your territory, on the human rights of the population of Barbuda, including to food, housing, water and sanitation and to a healthy environment and cultural rights.

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

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>

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 an airport and of luxury 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) 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 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 situated 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.

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>

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>

The airport project

It is alleged that in 2017, while Barbuda's population had been evacuated to Antigua in the fear of hurricane Irma, large strips of the island's forest were cut for the purpose of the construction of an international airport and that this project was entrusted to Bahamas Hot Mix, a company based in the Bahamas. An important habitat of the red-footed tortoise and Barbuda Fallow deer, the forest was used for farming, grazing and hunting for generations in Barbuda. While two EIAs have been conducted for the airport, one in 2017 and one in 2018, there was no prior consultation with the population and, until today, the environment impact assessments are not publicly available.

On 2 August 2018, in the context of a judicial review challenging the legality of the decision of the Government to construct an airport for non-compliance with the 2003 Physical Planning Act and the National Sustainable Island Resources Plan of 2012, an interim injunction was granted against the airport construction. The judicial review also focussed on claims of various irregularities concerning the environmental impact assessment, including proper assessment of the project in the fields of geology, archaeology and biodiversity.

On 11 September 2018, the Court of Appeal unanimously dismissed the previous decision, setting aside the interim injunction. After the court dismissed the injunction, the airport construction resumed, but was further halted due to the discovery of (airy) cavernous grounds under the initial site, and due to financial issues related to the completion of the project on a second site.

It was then announced by the Prime Minister in January 2020 that the airport would be completed by June 2020.

On 7 February 2020, another application for an interim injunction against the construction of the airport was dismissed. An appeal was then lodged against this decision in front of the Court of Appeal and the ruling was scheduled for February 2021.

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 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 above-mentioned allegations.
2. Please highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against human rights abuse by business enterprises such as Bahamas Hot Mix Co. Ltd domiciled in the territory and/or jurisdiction of the Commonwealth of the Bahamas. Please provide information on what measures your Excellency's Government has taken to ensure that such 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 operations (including abroad), as set forth in the UN Guiding Principles on Business and Human Rights.
3. Please describe any guidance that your Excellency's Government has provided to business enterprises domiciled in the Bahamas on respecting human rights throughout their operations in line with the UN Guiding Principles, including by setting out the Government's expectations as to how human rights due diligence should be conducted, how to consult meaningfully potentially affected stakeholders, and how to remedy any negative human rights impacts.
4. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to

This communication and any response received from your Excellency's Government 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.

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 has been sent to the Governments of the United States of America and Antigua and Barbuda, as well as to the companies involved in the abovementioned allegations.

Please accept, Excellency, 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

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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 Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Antigua and Barbuda in 2019, which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and stipulates that States shall take appropriate steps to ensure the realization of this right. This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind. We also would like to draw the attention of your Excellency's Government's to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1992, on the rights to life and to non-interference with privacy, family, home or correspondence.

In its General Comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has clarified that the right to housing should not be interpreted in a narrow or restrictive sense, such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. It includes, among others, the availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition, including sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. The Committee has indicated that States must allocate sufficient resources to the realization of the right to adequate housing and prioritize the needs of disadvantaged and marginalized individuals or groups. The Committee has further clarified that the obligation to progressively realize the right to housing will almost invariably require the adoption of a national housing strategy which should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation. Moreover, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies with the obligations under article 11 of the Covenant. The Committee has also indicated that monitoring of the situation with respect to housing is an obligation of immediate effect.

In addition, in its General Comment No. 15 on the right to water, the Committee has affirmed that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The Committee further prescribed that States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations, which among others may include ensuring that proposed developments do not interfere with access to adequate water and assessing the impacts of actions that may impinge upon water availability

and natural-ecosystems watersheds.

We also wish to draw the attention of your Excellency's Government to its obligations under article 19 of the International Covenant on Civil and Political Rights which recognizes the right to freedom of expression and lays down that this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. As clarified by the Human Right Committee, freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

Furthermore, we would like to highlight 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 of 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, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In addition, businesses have an independent responsibility to respect all internationally recognised human rights, including by conducting human rights due diligence.

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Moreover, Principle 26 stipulates that "States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Under Pillar II of the UN Guiding Principles, business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

CESCR Recommendation N.24 (2017) also states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective”.

The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.” Principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

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”.¹⁰

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

¹⁰ Article 1, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

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 further recommend (para 155) that States where transnational corporations and other business enterprises (or their parent or controlling companies) are hosted or incorporated should take measures – including the necessary administrative, legislative, investigative and adjudicatory measures – to ensure that independent authorities provide prompt, accessible and effective remedies for the human rights violations of these enterprises.