

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 191/2021

22 June 2021

Dear Mr. Saidi,

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 an airport by your company, domiciled in the Bahamas, on the human rights of the population of Barbuda, including to food, housing, water and sanitation and to a healthy environment and cultural rights.

Bahamas Hot Mix Co. Ltd.

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 an airport and 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 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.

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.

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>

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 allegations regarding the Barbuda airport 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 Bahamas Hot Mix Co. Ltd. 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 airport.
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 Bahamas Hot Mix Co. Ltd. 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 airport Project, as well as information on any outcomes or remedies provided as a result.

6. Please provide information whether Bahamas Hot Mix Co. Ltd. has provided, or is considering to provide, effective remedy, including adequate compensation, to local communities affected by the construction of the Barbuda airport 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 sent to the Governments of Antigua and Barbuda, the Commonwealth of Bahamas, and the United States of America, as well as to the companies involved in the abovementioned allegations.

Please accept, Mr Saidi, 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

Karima Bennoune
Special Rapporteur in the field of cultural rights

Saad Alfarargi
Special Rapporteur on the right to development

Michael Fakhri
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”.

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 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.

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