

Mandate of the Special Rapporteur on extreme poverty and human rights

Ref.: AL OTH 18/2022
(Please use this reference in your reply)

8 March 2022

Dear Mr. Bazin,

I have the honour to address you in my capacity as Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolution 44/13.

I write in reference to the joint communication of 26 March 2021 addressed to you, regarding the alleged human rights violations and abuses committed in the implementation of the Mandalika urban development and tourism project (Ref: OTH177/2021). I appreciate your comprehensive reply dated 24 August 2021, which I have carefully reviewed. I have also examined replies received from the Government of Indonesia and other concerned parties, as well as information made available to me by other stakeholders in order to further consider the situation and clarify outstanding issues to addressed.

I appreciate that Accor has no legal interest or entitlement to the land on which Pullman Hotel is being constructed, and AAPC Indonesia, Accor's wholly-owned subsidiary, has no role in relation to the acquisition of the site for the Hotel or any related construction activities. However, your reply confirms that AAPC Indonesia has agreements with the ITDC, pursuant to which the former was appointed as the "Operator" to provide services in relation to the operation and management of the Hotel. The UN Guiding Principles on Business and Human Rights make unequivocally clear that business enterprises have the responsibility not to cause or contribute to adverse human rights impacts through their own activities, and to prevent or mitigate such impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. Thus, Accor has the responsibility to conduct human rights due diligence to ensure that AAPP Indonesia does not contribute to human rights violations and abuses through its business relationships with the ITDC.

I commend Accor's strong commitments to human rights and efforts of having conducted its own investigation into the allegations. While I note your findings that the investigation did not reveal any human rights violations in connection with the acquisition or construction of the Hotel site, it is a publicly reported fact that the land on which Pullman Hotel is constructed is subject to ongoing legal proceedings since 2018 and the claimant has consistently maintained that he has not received compensation from the ITDC. Thus, the issue is far from resolved, and raises a question as to whether Accor has conducted adequate and appropriate human rights diligence before entering into partnership with the ITDC.

In this letter, based on the most recent developments on the site concerned, I wish to share my observations on the following four issues:

- (a) the conditions under which the alleged forced evictions took place;

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- (b) the consent of the affected households and communities;
- (c) the compensation for the loss of land, properties and livelihoods; and
- (d) the conditions of resettlement.

I believe that resolving those issues is a prerequisite for the success of the Mandalika project in the long run and for ensuring that the project genuinely benefits the Sasak indigenous peoples and communities in the Mandalika.

a) Conditions under which the alleged forced evictions took place

I note that there are different views and accounts as to whether and how the alleged forced evictions have taken place in the implementation of the Mandalika project. In considering the differing claims, it is helpful to recall narrowly defined conditions that justify evictions under international human rights law.

Under international human rights law, evictions are justified only in the most exceptional circumstances and should be “carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality”.¹ Where evictions are unavoidable, affected individuals, groups and communities should be provided with the following procedural protections:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (d) especially where groups of people are involved, government officials or their representatives should be present during an eviction;
- (e) all persons carrying out the eviction should be properly identified;
- (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) legal remedies should be provided; and
- (h) where possible, legal aid should be provided to persons who are in need of it to seek redress from the courts.²

It is underlined that protection against forced eviction is not linked to property rights and should be afforded to all, “regardless of ownership or tenure status of those

¹ Committee on Economic, Social and Cultural Rights, General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 1997, para. 14.

² Ibid, para. 15.

affected”.³ Evictions that do not comply with these requirements would be considered forced evictions, which are widely recognized, including by the Committee on Economic, Social and Cultural Rights, as a “gross violation of human rights”.⁴

In the present case, there appear to be varying understandings among different stakeholders as to what procedural protections should have been applied to families and individuals who owned, occupied or used land required for the Mandalika project. As far as “Enclave Land” legally owned by the local community is concerned, the land acquisition processes were reportedly carried out in accordance with Law No. 2/2012. As indicated in the original communication, however, the land acquisition processes under Law No. 2/2012 do not provide the same level of procedural protections as international human rights law. The replies of the Government, the Asian Infrastructure Investment Bank (“AIIB”) and other stakeholders also do not provide details as to how the land acquisition processes were actually carried out and what compensation was provided to the owners of Enclave Land. In this regard, I note that there are legal cases before the Supreme Court of the Republic of Indonesia, in which the legal ownership of certain plots by local residents, including one on which Pullman Hotel is built, has been confirmed, and the concerned residents have consistently claimed that they have not been paid any compensation for the land acquisition. It is furthermore noted that Law No. 2/2012 only applies to land for which owners can establish legal ownership, and hence, a significant minority of land in the Mandalika.

In most cases, the concerned indigenous peoples and communities did not have a legal title, but occupied or used the land for many years. Notwithstanding the absence of legal title, they should have been provided with due process protections and effective remedies for their loss and damage. As will be further elaborated below, however, it is unclear whether all the affected peoples and communities have been afforded full procedural protections and effective remedies in this case.

In this regard, there is still a troubling lack of clarity about exactly how many households are and have been affected by land acquisition and evictions. The Government indicated in its reply that the latest census in March 2021 found that as many as 190 families have been affected. This seems to show a great discrepancy between the number of families initially covered by the Resettlement Action Plan (137, maximum 150) and the actual number of families affected. Credible sources also suggest that many more families have been recently evicted from their land over the past few months. Furthermore, 100 or more families reportedly continue to live in the Mandalika project area that is fenced off to prevent public access and face imminent risks of forced evictions in the coming weeks, ahead of the MotoGP event scheduled to take place on 20 March 2022.

b) Consent of the affected peoples and communities

As the affected peoples and communities are indigenous Sasak peoples, it is incumbent on the Government and ITDC to obtain their free, prior and informed consent to land acquisition before it is executed. International human rights law

³ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, Leilani Farha, Guidelines for the Implementation of the Right to Adequate Housing, A/HRC/43/43, 26 December 2019, para. 38 (a); Office of the High Commissioner for Human Rights and the UN Habitat, Forced Evictions, Fact Sheet No. 25/Rev.1, 2014, <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>, p. 5.
General Comment No. 7, para. 2.

provides that indigenous peoples “cannot be forcibly removed from their lands without their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return”.⁵

The Government assured in its reply that “the Majelis Adat Suku Sasak/Sasak Tribe Customary Council has affirmed that the process of development and land acquisition related to Mandalika has been carried out humanely and persuasively, with respect to the law” and that there were no forced land grabbing and evictions. I wish to highlight in this regard that the free, prior and informed consent to land acquisition and agreement on compensation should be sought from affected indigenous peoples, through procedures and institutions determined by themselves. In the consent process, indigenous peoples should specify which representative institutions are entitled to express consent on their behalf. However, I have not received or found information confirming that the affected Sasak indigenous peoples in the Mandalika have explicitly identified the Sasak Tribe Customary Council as such a representative institution.

Furthermore, meaningful consultation with and participation of affected indigenous peoples are critical components of a consent process. While appreciating information provided by the Government and the AIIB that numerous consultations with the local communities were carried out, the consultations appear to have largely targeted local village chiefs, local government officials or the broader public. It reveals very little evidence that affected landowners and users were meaningfully consulted and that their free and informed consent was sought and obtained prior to land acquisition. In addition, while I understand that the Government has recently established the Land Dispute Resolution Task Force (SATGAS) to settle land disputes, it is largely composed of police and military forces, which is amplifying the landowners and users’ fear of intimidation against them. This runs counter to the requirement under international human rights law that the prior and informed consent should be sought under conditions free of coercion, intimidation or manipulation.

c) Compensation for the loss of land, properties and livelihoods

One of the recurring allegations raised in this case is that the affected peoples received either no or woefully inadequate compensation as a remedy for forced evictions and other violations of their human rights. According to international human rights law, all persons threatened with or subject to forced evictions should be provided with appropriate remedies, including compensation. Compensation should be provided for any economically assessable damage, including “...physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential...” and others. Furthermore, “where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better”.⁶ Indigenous peoples also have the right to redress, including restitution or, when it is not possible, “just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed

⁵ United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, A/RES/61/295, Art. 10.

⁶ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, basic principles and guidelines on development-based evictions and displacement, A/HRC/4/18, Annex 1, para. 60.

consent”.⁷

According to the Indonesian Government’s reply, 121 families who occupied the land were given access to a temporary relocation site and a payment of IDR 10 million (approximately USD695) per household to eventually purchase land at a permanent resettlement location in Dusun Ngolang. 96 residents who used and cultivated the land were reportedly provided one-off compensation of IDR 4.5 million (approximately USD313) per 100m². On the face value, these amounts appear inadequate and disproportionate to damage that the affected residents have suffered. The latest information received also suggests that some residents have not received compensation to date and refused to relocate on that basis. Consistently with this information, the AIIB’s reply showed that the payment of compensation was delayed for many affected households. The payment of IDR 10 million was reportedly not made to 54 households who occupied land, while 31 primary farmers and 10 secondary farmers were also not paid their compensation.

The information received furthermore indicates that people who still live in the Mandalika project area but were never formally included in the verification process by the Land Dispute Resolution Task Force (SATGAS), will be offered compensation of mere IDR 3 million (approximately USD209) for the loss of their house. The compensation does not take into account the loss of land, crops or livelihoods, which clearly falls short of international human rights standards.

The lack of compensation for the loss of livelihoods has been echoed by fisherfolk in the Batu Kotak Bay area, who had been making their living from fishery and seaweed cultivation and had settled in the area for many years. Their access to the shore has been reportedly restricted due to the Mandalika project and hence they have effectively lost their livelihoods. According to the information received, however, they have not been given compensation or provided with any support to compensate for their loss of livelihood. The area is subject to further development and the fisherfolk and their families will be required to vacate the area in due course. However, as they have no formal land ownership, they will be only offered IDR 3 million (approximately USD209) for the loss of their house and compensation for 0.1 hectare of land.

The Mandalika project has also negatively affected the livelihood of smaller traders and hawkers who used to sell goods in the beach areas. It has been reported that the entire beach areas are no longer freely accessible and they are thus unable to stay and continue their businesses in the areas. However, no compensation has been offered to these traders and hawkers, and employment options for the local population are extremely limited, contrary to the promise that the Mandalika project would generate employment. While some members of the community have found odd jobs as constructions workers or cleaners, their wages are reportedly extremely low in the range of IDR50,000 (approximately USD3.5) per day, which is clearly unlivable in itself. I appreciate Accor’s commitment to ensuring that “a substantial majority of employees at the Hotel will be from the Lombok and surrounding area so that Accor can provide employment and training opportunities for the community”. To date, however, it is alleged that the Mandalika project has not provided any support to the local indigenous peoples in developing capacity and skills to find employment in new sectors that it brings, thereby failing to compensate for their loss of livelihood and

⁷ United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, A/RES/61/295, Art. 28.

exacerbating their already vulnerable economic situation.

Thus, the information received overwhelmingly indicates that many of the affected peoples have not been given effective remedies for forced evictions and the loss of their properties and livelihood, particularly just, fair and equitable compensation.

d) Conditions of resettlement

Another issue that is subject to conflicting information and claims in this case is the conditions of resettlement. The Indonesian Government claimed that 121 families have been provided with temporary housing in the HPL 94 Area, while waiting for the construction of permanent residences in Dusun Ngolang. On the other hand, however, I have received information according to which the affected residents were not informed or consulted about temporary and permanent relocation plans. Reports also suggest that some residents have refused to move to the temporary relocation site, as they object to land acquisition and sought to remain on their land.

According to international human rights law, persons subject to eviction have rights to “participate meaningfully in decisions on alternative housing, relocation and compensation”,⁸ as well as “full and prior informed consent regarding relocation”.⁹ Identified relocation sites must also fulfil the criteria for adequate housing according to international human rights law, including:

- (a) security of tenure;
- (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate;
- (c) affordable housing;
- (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants;
- (e) accessibility for disadvantaged groups;
- (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and
- (g) culturally appropriate housing.¹⁰

I have not been presented with evidence confirming that the affected peoples were consulted in advance and participated in developing relocation plans. As planned residences in Dusun Ngolang are 2 kilometres away from the Mandalika and on a

⁸ Office of the High Commissioner for Human Rights and the UN Habitat, *Forced Evictions*, p.30

⁹ Basic principles and guidelines on development-based evictions and displacement, para. 56 (e).

¹⁰ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18, Annex 1, para.55.

hilltop without direct access to the sea, the permanent relocation is likely to profoundly change the affected peoples' lives and livelihoods. The relocation plans seem to pay little regard to how the affected peoples may be able to continue accessing the sea, which is an integral element of their traditional way of life and an important source of livelihood. It is critical that the affected peoples are informed, consulted, and enabled to participate in decision-making about relocation plans, so that relocation sites are appropriate and comply with human rights standards.

Proposed ways forward

The purpose of this letter is not to pronounce any judgements on the facts, but to identify areas of concerns and propose ways forward. I believe it is critical to address and resolve the issues identified above, in order for the Mandalika project to fulfil its promise of bringing better livelihoods and living conditions for the local population.

As a first step, I would strongly encourage you and all the business enterprises involved in the Mandalika project to support the process of appointing an independent mediator, who is not affiliated with or engaged by any of the concerned parties. Such an independent mediator could be empowered to facilitate mediation among different parties, with a view to reconciling conflicting claims and finding mutually agreeable solutions.

I have also indicated to the Government of Indonesia that I would welcome an invitation for me to carry out an informal visit to the Mandalika project. Such a visit would provide me with invaluable opportunities to directly hear from all relevant stakeholders, come to an assessment of the situation, and offer concrete recommendations.

I would welcome any additional information and comments that you may have on the above-mentioned issues. I stand ready to provide you with any technical support and cooperation.

This communication and any response received 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.

I may publicly express my concerns in the near future as, in my view, the information received is sufficiently reliable to indicate a matter warranting further public attention. The press release will indicate that I have been in contact with you to clarify the issues in question.

Please be informed that a similar letter is also being sent to the Government of Indonesia, the AIIB and the concerned investors.

Please accept, Mr. Bazin, the assurances of my highest consideration.

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights