

**Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights of internally displaced persons**

Ref.: AL OTH 99/2023  
(Please use this reference in your reply)

6 September 2023

Mr. Sharif,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 53/10, 53/3, 52/9, 52/10, 52/4, 51/16 and 50/6.

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 the 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.

We are sending this letter to seek additional clarification on your response to our joint communication of 14 February 2023 ([AL OTH 133/2022](#)), which relates to **allegations of human rights violations and abuses committed in the implementation of the Mandalika urban development and tourism project, which**

**is financed by the Asian Infrastructure Investment Bank (AIIB).** Previous concerns have been expressed around the implementation of this project by the Special Procedures in communications [AL OTH 133/2022](#), [AL OTH 17/2022](#), and [AL OTH 24/2021](#). We remain extremely concerned about the situation in the Mandalika region.

Based on the most recent developments, we wish to share our observations on the following issues:

- (a) *Transparency and procedure of consultations*
- (b) *Disclosure of information regarding site visits and audits*
- (c) *Project-level Grievance Redress Mechanism*
- (d) *Intimidation by security personnel*
- (e) *Resettlement, compensation and loss of livelihood*
- (f) *Selection of independent facilitators*

We believe that resolving these issues is a prerequisite for ensuring that the Mandalika project genuinely benefits the Sasak Indigenous Peoples and communities in the Mandalika region. This is also essential to mitigate the reputational risks to the Asian Infrastructure Investment Bank (AIIB).

We note that the AIIB has repeatedly stated that the construction of the MotoGP Circuit is not part of the AIIB-supported project. The Circuit, however, is considered as an integral part of the “Mandalika Urban and Tourism Infrastructure Project”. The project is financed via a sovereign backed loan of USD 248.4 million by the AIIB to the Indonesian Tourism Development Corporation (ITDC) – a company wholly owned by the Government of Indonesia. Thus, this letter considers the impact of the Mandalika project as a whole, rather than individual components of the project, which are obviously directly related to one another.

We believe that AIIB has a responsibility to monitor ITDC’s actions.

According to guiding principle 19 of the United Nations Guiding Principles on Business and Human Rights as well as the human rights obligations of its member states, AIIB has a responsibility to use its leverage to encourage the entity (the ITDC, in this case) that caused or contributed to the impact to prevent or mitigate its recurrence. AIIB has the responsibility to mitigate any continuing impact (by other parties involved) to the greatest extent possible. In this context, “leverage” means the ability to induce remedial changes in the wrongful practices of the party that is causing or contributing to the impact. If such efforts are unsuccessful, AIIB should consider ending the relationship and demonstrate efforts it has made to mitigate abuses. Indeed, AIIB’s Environmental and Social Framework itself makes it clear that the enabling of clients to identify and manage environmental and social risks and impacts of projects is a key aspect of the responsibilities of AIIB when financing a project.

### *Transparency and procedure of consultations*

As highlighted in the previous communications, it is incumbent on the AIIB and ITDC to obtain the free, prior and informed consent of the Indigenous Sasak Peoples, as affected communities, through meaningful public consultations before any land acquisition is executed. Articles 10–11, 19, 28–29 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples refer to the requirement to seek Indigenous Peoples’ free, prior and informed consent on measures affecting them. A similar requirement is expressed in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization. The Expert Mechanism on the Rights of Indigenous Peoples, working under the mandate of the Human Rights Council, clarified the implications of this requirement in 2018 (A/HRC/36/92), and the Committee on Economic, Social and Cultural Rights recently reaffirmed that this is also a requirement under the International Covenant on Economic, Social and Cultural Rights (E/C.12/GC/26, para. 16).

AIIB’s present safeguards only include ‘free’ and ‘prior’ consent. This formulation is narrow compared to the existing international standards on this matter. The consent must be ‘informed’, which requires that the information provided should be both sufficiently quantitative and qualitative, as well as objective, accurate and clear; that it should be presented in a manner and form understandable to Indigenous Peoples, including translation into a language that they understand; and that adequate resources and capacity should be provided for Indigenous Peoples’ representative institutions or decisions-making mechanisms, while not compromising their independence.

The rights of Indigenous Peoples over their lands, resources and territories are also integral parts of free, prior and informed consent, as construed in the UNDRIP. The right to “own, use, develop and control” the lands, territories and resources (art. 26) gives rise to a right to free, prior and informed consent consistent with Indigenous peoples’ right of self-determination<sup>1</sup>. The supervisory bodies of the International Labour Organization (ILO) have underlined the interconnection between consultation and participation.<sup>2</sup> In order to obtain the free, prior and informed consent of Indigenous Peoples, meaningful consultations should be organized with them prior and during the projects. The Human Rights Committee has also elaborated on Indigenous Peoples’ right to participate in a way that goes beyond consultation, noting that participation in the decision-making process must be “effective”.<sup>3</sup>

We strongly encourage AIIB to strengthen existing standards, include ‘informed consent’ and incorporate the requirement to obtain “free, prior and informed consent” in its Environmental and Social Framework in line with international human rights standards. AIIB should exercise due diligence to ensure that the ITDC carries out meaningful consultations with the affected people and communities about the project’s design, impact, and mitigation and monitoring measures.

Informed consent would require full transparency of AIIB’s actions as well as full disclosure of project-related documents such as AIIB’s comprehensive audit of

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<sup>1</sup> [UN Doc. A/HRC/39/62](#)

<sup>2</sup> See ILO Committee of Experts on the Application of Conventions and Recommendations, general observation on indigenous and tribal peoples (observation 2010/81)

<sup>3</sup> See *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 7.6

ITDC's land survey, upon which hinges the affected communities' access to a consultative process of determining the appropriate level of compensation for loss of housing, livelihoods, land and properties. etc.

In your response dated 14 April 2023, it has been stated that the ITDC has been conducting years of consultations dating back to 2012, including consultations with the Indigenous Peoples in the affected region. Further, the response indicates that consultations are ongoing as the project is implemented. In addition, it has been stated that the consultations conducted by ITDC included "focus group discussions with village leaders, women, older people, youth, customary (adat) representatives and disabled groups which were supplemented by interviews by ITDC and its consultant with key individuals and communities".

According to information that we have received however, the majority of the affected people have complained about not having been consulted and/or not having been informed of any meetings. While we appreciate that in the same response, AIIB has mentioned some site visits and consultations conducted by AIIB and ITDC, there is still a lack of clarity about exactly how many people and groups participated in the consultations, the formats of said consultations, whether the meetings were translated into Sasak to foster dialogue among relevant stakeholders, and the detailed outcomes of the same. Hence, concerns remain that the participation of the affected Indigenous Peoples in the Mandalika project has been insufficient.

We recall that, under international human rights law, "the intertwined concepts of consultation and participation are mechanisms to ensure that Indigenous Peoples can decide their own priorities for the process of development and exercise control over their own economic, social and cultural development" (International Labour Organization, *Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169): Handbook for ILO Tripartite Constituents* (Geneva, 2013), p. 19). Mere consultation is thus not enough: what is required is that consent is obtained, in other terms, that a genuine negotiation takes place, with a view to reaching an agreement.

We are concerned that the outcomes stemming from these consultations are not easily accessible to the relevant stakeholders and local communities and the process of conducting these consultations continues to remain unclear.

While appreciating information provided by the Government and the AIIB that numerous consultations with the local communities were carried out, we note that the consultations appear to have largely targeted local village chiefs, local government officials or the broader public.

It is critical for the relevant stakeholders and affected communities to be notified regarding the specific outcome of each consultation and subsequent actions taken. We urge AIIB to provide evidence that consultation(s) with affected populations were carried out and indicate when and where the consultations were held, who participated in them and the conclusions of the consultation(s). Additionally, we urge AIIB to provide information on steps taken to verify that the ITDC has engaged in genuine, meaningful and inclusive consultations, with the affected peoples and communities to

obtain their free, prior and informed consent ahead of any resettlement or relocation taking place.

**Against this background, we request further information on the conduct of the ‘weekly project-level meetings’ with ITDC on the environmental and social aspects of the project which is stated to include ‘reports by the AIIB Consultants and ITDC meetings held with local stakeholders.’**

*Disclosure of information regarding site visits and audits*

In response dated 14 April 2023, AIIB stated that “the AIIB Project team has been carrying out frequent implementation support and monitoring. In addition to regular Project monitoring missions, the Project team conducted more targeted technical visits/meetings (by videoconference during the pandemic) to review progress and address specific issues. The Bank has also engaged national environmental and social experts (including a second local social expert, recently hired, referred to together with the first as AIIB Consultants) to monitor the Project’s implementation and provide necessary support to ITDC, focusing on stakeholder engagement and resettlement.”

We would appreciate information on whether proposed agendas and schedules were publicly released prior to these missions and visits, in a language the Indigenous Peoples understand and through channels ensuring the information effectively reaches them.

We understand from the information received that in the site visit conducted by AIIB representatives/ consultants in February 2023, the representatives did not meet or engage with indigenous community members and civil society organizations that have been publicly advocating for the rights of the project-affected people. We therefore would be grateful for any information concerning any conditions of participation imposed on the stakeholders in the ensuing interactions with AIIB, as well as for any information concerning how the interlocutors were identified or chosen.

Additionally, the response of 14 April 2023 stated that “the site visits of AIIB’s Project team in June 2022 and November-December 2022, AIIB received generally positive feedback from Project stakeholders, including Indigenous Peoples with regard to the Project’s benefits and anticipated positive impacts.”

We would be grateful for any specific information concerning such “positive feedback”.

In addition, the information received suggests that results of these visits were not presented to the Board of Directors and the visit report was not disclosed to the public. We would therefore welcome any information concerning whether the AIIB intends to publicly disclose the report, and if not, why not.

In the response dated 14 April 2023, AIIB noted that the “Bank has also engaged national environmental and social experts (including a second local social expert, recently hired, referred to together with the first as AIIB Consultants) to monitor the Project’s implementation and provide necessary support to ITDC, focusing on stakeholder engagement and resettlement. The AIIB Consultants have travelled several

times to Lombok, most recently in February 2023, to visit the Project area and speak with Project-affected people; Indigenous Peoples and Village Chiefs; representatives from ITDC and local government; and local NGO/CSO groups.”

We would like to express our disappointment in relation to the most recent site visit conducted by AIIB in June 2023 wherein we have received reports regarding the Bank’s delegation’s refusal to visit a key eviction site and postponed related meetings, without proposing a new date.

#### *Project-level Grievance Redress Mechanism*

As per the reply received dated 14 April 2023, the existing Grievance Redress Mechanism (GRM) addresses grievances relating not only to the Project, but more generally to any concern in any area in Mandalika under ITDC’s jurisdiction, including the MotoGP Circuit. The GRM operated by ITDC has been operational since 2020. As per the information received, this GRM is insufficient and difficult to access.

One of the pre-conditions for affected persons to file a complaint under the Project-affected Peoples’ Mechanism (PPM) as per the ESF is “when their Project-related concerns cannot be addressed satisfactorily through the Project-level Grievance Redress Mechanism or the Bank’s management process” (para 72.1, ESF). Further, it is unclear whether the Project-level GRM has an in-built escalation function to forward a complaint to the PPM depending upon a) the seriousness of a case; b) when a complaint has been dismissed; c) deemed as ineligible at the project-level. In our view, this policy needs clarification.

The lack of public reporting of complaints in a registry, bearing confidentiality of the complainants in mind, is also a huge drawback in how the GRM operates. There is an implied risk of omission where complaints deemed “ineligible” may not be made public especially in projects that employ Independent Accountability Mechanisms deemed appropriate by the Bank.

The PPM also excludes matters related to judicial proceedings that project-affected people may have sought. Parallel filing of a complaint or claim should be considered under the PPM regardless of any legal relief sought by project-affected people to further accountability.

#### *Intimidation by security personnel*

Free, prior and informed consent requires, in particular, that the context or climate of the process should be free from intimidation, coercion, manipulation and harassment (A/HRC/36/92, para. 20).

Yet, while we welcome the drawing up of the Security Personnel Management Plan, we have received concerning information from multiple sources regarding ITDC’s reliance on security forces and intimidation of stakeholders during mandated site visits and consultations and consequent use of excessive force against those who voice their concerns against the project. Indeed, we previously raised concerns over threats, intimidation, and acts of harassment against Sasak human rights defenders (See AL OTH 133/2022).

Given that some of the actors involved are human rights defenders, we wish to recall your attention to the the United Nations Declaration on Human Rights Defenders which states that everyone has the right to promote and to strive for the protection and realization of human rights. We refer, in particular, to article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms.

While in its responses dated [3 May 2021](#) and [3 May 2022](#), AIIB claims to have found no evidence of coercion or direct use of military or intimidation relating to land acquisition and resettlement, we have received information to the contrary and thus, express disappointment in the lack of transparency and accountability with respect to the militarization of the remediation processes of the project.

Excessive presence of and use of force by security personnel during site visits and consultations create a fear of reprisals and result in an atmosphere of mistrust towards government and Bank officials among the affected communities. There can be no fruitful outcome or dialogue stemming from such “consultations”. Any information gathered under coercion, intimidation and/or manipulation cannot be deemed to be a legitimate outcome of the site visits and cannot be qualified as a consultation of the affected communities and those representing their interests.

We note in your response dated 14 April 2023, in relation to the security presence on the task force for the settlement of land disputes, that the composition of the taskforce was disclosed. **We request further information as to how such personnel were selected to conduct this delicate task.**

It has also been stated that AIIB and ITDC have agreed on certain measures to mitigate the risks in relation to the use of security personnel, which includes the development and implementation of a standard operating procedure (SOP), and that Indigenous communities are allowed to raise their concerns during coordination meetings. In your response dated 14 April 2023, it is indicated that the ‘security protocols are anticipated to be publicly disclosed on ITDC’s website when their review by Indonesian authorities has been completed’. **We would request an update regarding the public disclosure of the security protocols.**

#### *Resettlement, compensation and loss of livelihood*

From the outset, there have been well-documented allegations that the implementation of the Mandalika project has involved and resulted in serious human rights violations, including arbitrary land acquisitions, forced evictions, involuntary displacement and coerced resettlement, impoverishment and loss of livelihoods, failure to adequately consult and obtain the free, prior and informed consent of the Indigenous Sasak. Multiple issues have been reported with regard to both the temporary relocation site and the permanent resettlement site, where conditions are still not in place to guarantee safe and adequate housing for all project affected persons, nor the replacement of lost livelihoods. These allegations raise the question whether AIIB has discharged its obligations to exercise due diligence in order to avoid being complicit in human rights violations associated with the acts of its client, ITDC. It is also

questionable whether, in financing the Mandalika project, AIIB has remained compliant with its own Environmental and Social Framework.

In light of the multitude of reported human rights violations and poor resettlement outcomes linked to the Mandalika project, and in order to ensure compliance with requirements under International Human Rights Law, AIIB should conduct a critical review of its Environmental and Social Framework, particularly related to land acquisition and involuntary resettlement, as well as Indigenous Peoples. This review should be conducted in a transparent manner and through consultations with and input from a wide range of external stakeholders such as civil society organizations, project affected communities and their representatives, human rights bodies and others. In particular, the ESF should be reviewed to ensure that:

- no project is approved by AIIB for financing before it has been clarified whether or not involuntary resettlement can be avoided, and in case not, before a resettlement plan has been prepared, through adequate consultations and with the agreement of project-affected persons, and that plan has been assessed as compliant with AIIB's ESF; Free, prior and informed consent should be required as a condition for financing in case the project involves the resettlement of Indigenous Peoples;
- the term “meaningful consultations” is clearly defined in the context of involuntary resettlement (not only in the more general section entitled “Environmental and Social Standard 1”) - Genuine and inclusive consultations should be held to: explore alternatives to resettlement; determine how resettlement is to be carried out (in case no viable alternatives can be found); select an adequate resettlement site as close as possible to the project affected persons' original homes; determine the design of new adequate housing to be offered to project affected people to replace the housing they would lose due to the resettlement; spatial planning of the new settlement; any other compensation for any property or livelihoods that would be lost as a result of the resettlement that is not recoverable. Project affected persons should not only be consulted, but also have the opportunity to participate in the entire resettlement process – from the choice of relocation site, through the planning and management of the resettlement and integration, to the designing of rehabilitation and development programmes;
- resettlement is not carried out until such a time as a comprehensive, human rights compliant resettlement plan is in place. All costs of the relocation and the resettlement should be borne by the actor proposing and/or carrying out the resettlement;
- all project affected persons subject to resettlement continue exercising their right to adequate housing, regardless of security of tenure and received adequate compensation for any property and livelihoods lost. The ESF, currently requiring “not [to] include compensation to such persons for the land that has been settled illegally” should thus be further improved, reflecting the fact that in reality in many countries communities thrive for decades or longer without formal land title, often

exercising customary rights or having even paid for the land but lacking formal recognition only due to States' inaction or high administrative fees;

- project affected communities share in the benefits from the project and as a minimum do not find themselves worse off than prior to the resettlement.

Noting information on AIIB's website that the "[ESF] version applicable to a given AIIB-financed project (Project) depends on when the Project enters or entered AIIB's investment pipeline"<sup>4</sup>, we would further emphasize that the ESF revised as suggested above should apply to all AIIB-financed projects, including retroactively to projects approved earlier such as Mandalika.

We take note of the Project's Resettlement Action Plan (RAP) currently under implementation. However, we find it deeply flawed. From the outset, RAP proposes first relocating project affected people to a temporary relocation site until the construction of homes in a separate permanent relocation site. This is in contravention with international standards and also appears to contradict AIIB's own ESF (ESF 2019: ESS 2, 4(p)). AIIB should suspend its support for the Mandalika project pending the full review of the RAP, to avoid creating a situation of *fait accompli*.

To better understand if there have been gaps between international standards related to resettlement, the RAP and human rights violations alleged in this Project, we call on AIIB to disclose its Mandalika site visit reports, including from the most recent visit in June 2023. While AIIB and ITDC aim to publicly release a report and supporting documentation once the resettlement process is complete, we request an update of the implementation and effective execution of the RAP with periodic update reports in the interest of accountability and transparency. Without such information, compliance with AIIB and ITDC's human rights obligations is put into question.

#### *Selection of independent facilitators*

The Government of Indonesia assured in its reply dated 11 April 2023 that "ITDC and AIIB have carried out environmental and social due diligence processes to identify, prevent, and mitigate any potential negative impact arising out the Mandalika Urban and Tourism Infrastructure Project." To this end, ITDC appointed two independent stakeholder facilitators in February 2023 who will act as mediators to address any gaps and status quo between ITDC and its stakeholders, particularly the Indigenous communities.

While we take note of the appointment of independent stakeholders' facilitators with the specific task of negotiating an agreed upon solution, we continue to be concerned about the way such independent facilitators are appointed as well as the independence of the process if the terms of reference are developed by ITDC, only to be reviewed by AIIB. Such independent facilitators should be appointed to ensure that they will create a space where meaningful dialogue may be fostered among the affected Indigenous communities and other relevant stakeholders.

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<sup>4</sup> <https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html>, as accessed on 25 August 2023

We take note of AIIB's communication to ITDC that "the facilitators would need to be intimately familiar with the local context. Cultural sensitivities, Indigenous and English language skills, as well as the candidates' independence (including in relation to any prior engagements or activities)" would be key criteria and that two facilitators were appointed on 23 February 2023, but their profiles, roles and objectives are yet to be publicly disclosed as indicated by you.

We would be grateful for any additional information on actions taken to disclose the profiles of the independent facilitators, with specific emphasis on such information being made available in the Indigenous language to support the comprehension of the project-affected communities; as well as for any information on whether the independent facilitators have already been engaging with the project-affected communities and what steps have been taken to encourage and foster such interactions.

#### *Proposed way forward*

We believe it is critical to address the issues identified above, in order for the Mandalika project to fulfil its promise of bringing better livelihoods and living conditions for the Indigenous Peoples.

We wish to reiterate as a matter of principle that multilateral development banks, such as the AIIB, have obligations to respect human rights and to ensure, at a minimum, that they do not finance projects that contribute to human rights violations and become complicit of human rights abuses. To this end, it is incumbent on the AIIB to carry out human rights due diligence in order to identify, prevent or mitigate any adverse human rights impacts of projects that they finance.

**We strongly urge the AIIB to prioritize the disclosure of relevant information regarding the project and impact on the Indigenous communities and the extent of progress of the RAP underway through an appraisal of the implementation and effective execution of the RAP with periodic update reports in the interest of accountability and transparency.**

**We remain concerned about the deployment of security forces and military personnel at the project site. We encourage further consultations and other remediation processes in relation to this project.** In the interest of transparency and accountability, we urge AIIB and ITDC to consider **an independent human rights review with relevant stakeholders**. We believe that such an undertaking would greatly aid all relevant stakeholders in understanding the progress of the project, potential areas of improvement and foster avenues of collaboration, especially among affected communities.

**We encourage the AIIB to support the process of appointing an independent facilitator, who is not affiliated with or engaged by any of the concerned parties, and to disclose information regarding how such facilitator has been identified and selected in advance of their appointment.** The role of such an independent facilitator should be to facilitate mediation among different parties, with a view to reconciling conflicting claims and finding mutually agreeable solutions, in accordance with the applicable international human rights standards.

**Additionally, we encourage the AIIB to foster meaningful public consultations and site visits with the affected Indigenous communities with prior notice of such events and subsequent public disclosure of information gathered, key outcomes and proposed ways forward.**

**We would be grateful to receive detailed information on all complaints that have been submitted to the Grievance Redressal Mechanism by ITDC so far and how they have been addressed, in the interest of accountability and transparency.**

We reiterate the critical importance of protecting and promoting human rights (see Annex) and for the relevant stakeholders and affected communities to be notified regarding the specific outcome of each consultation and subsequent actions taken. We urge AIIB to provide evidence that consultation(s) with affected populations were carried out and indicate when and where the consultations were held, who participated in them and the conclusions of the consultation(s). Additionally, we urge AIIB to provide information on steps taken to verify that the ITDC has engaged in genuine, meaningful and inclusive consultations, with the affected peoples and communities to obtain their free, prior and informed consent ahead of any resettlement or relocation taking place.

We would welcome any additional information and comments that you may have on the above-mentioned issues. We 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.

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

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

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

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

Irene Khan  
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Balakrishnan Rajagopal  
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Mary Lawlor  
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José Francisco Cali Tzay  
Special Rapporteur on the rights of Indigenous Peoples

Paula Gaviria  
Special Rapporteur on the human rights of internally displaced persons

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to draw again your attention to the international norms and standards applicable to the present case.

At the outset, we wish to underline that, as an international investment bank with international legal personality, the AIIB is bound by human rights obligations under general rules of international law (International Court of Justice, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion (20 December 1980), I.C.J. Reports 1980, 73 at 89–90 (para. 37)). Moreover, Member States retain their international human rights obligations when acting through an international organization (International Law Commission, articles on the Responsibility of International Organizations with Commentaries (A/66/10) art. 58(2) at 91, para. 5). States that borrow from international financial institutions and multilateral development banks also continue to be bound by their own international human rights obligations in the context of development projects financed by them. This gives rise to a clear due diligence responsibility on the part of the AIIB not to facilitate violations of their human rights obligations or those of borrowing States.

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, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. 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.

The Guiding Principles further provide that all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the

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

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

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

Bearing in mind these responsibilities of international financial institutions to respect human rights, we would like to draw your attention to human rights norms guaranteed under international human rights instruments. Specifically, we would like to recall the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP sets out international human rights standards relating to Indigenous Peoples' rights. Article 26 asserts the right of Indigenous Peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Article 32 affirms that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources".

UNDRIP furthermore underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Importantly, article 10 specifically prohibits forcible removal of indigenous peoples from their lands or territories without their free, prior and informed consent, and provides that relocation could take place only after agreement on just and fair compensation and, where possible, with the option of return.

We also wish to draw your attention to article 17 of the Universal Declaration of Human Rights (UDHR), which guarantees everyone the right to own property and the right not to be arbitrarily deprived of their property. Furthermore, article 25.1 of UDHR and article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognize the right of everyone to an adequate standard of living for himself and his family, including housing. In its general comment no. 4, the Committee

on Economic, Social and Cultural Rights clarified that this right to housing should be seen as the right to live in security, peace and dignity. It indicates that the right to housing includes, among others, legal security of tenure guaranteeing legal protection against forced evictions, harassment and other threats. Upon her visit to Indonesia, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, specifically recommended that "Land policy should protect the interests of low-income households, indigenous communities and communities occupying land based on customary (adat) law" (A/HRC/25/54/Add.1, para. 81).

In both general comment 4 and general comment 7, the Committee affirmed that forced eviction are *prima facie* incompatible with the requirements of the Covenant.

In this regard, we also wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (NHRC/4/18, annex 1), which specify that evictions must be authorized by law and ensure full and fair compensation and rehabilitation. All potentially affected groups and persons have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

We also wish to draw attention to the report of the previous Special Rapporteur on the right to adequate housing (A/74/183) in which she stated that, for Indigenous Peoples, the concept of home is not just about a built structure where one lives, but is about one's place on the planet, defined through one's lands, resources, identity and culture, which in turn requires that the right to housing must be interpreted and applied in a manner that is responsive to Indigenous Peoples' experiences of housing and home.

Additionally, we would like to draw your attention to articles 1, 2, 6(1), 9, 19, 20(2), 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which provide for the right to self-determination, the right to life, the right to liberty and security of person, the right to freedom of expression, the right to be free from discrimination, the right to freedom of peaceful assembly and of association, and the right to equality before the law.

Furthermore, given that the ITDC is a fully State-owned enterprise, we would like to recall that, when adopting the UN Guiding Principles on Extreme Poverty and Human Rights, States agreed that they "should take additional steps to protect against abuses of human rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies" (UN Guiding Principles on Extreme Poverty and Human Rights, para. 99). The thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) examined in detail the duty of States to protect against human rights abuses involving those business enterprises that they own or control. In particular, we would like to highlight the following conclusions and recommendations:

- “88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations....
101. State-owned enterprises should strive to be role models and fully meet their responsibility to respect human rights.
102. To do so, they should adopt appropriate policies and processes to address abuse, including a policy commitment, human rights due diligence and remediation mechanisms when harm occurs, which are integrated throughout their operations.”