

Request for consideration of the Situation of Indigenous Peoples in Indonesia

under the

United Nations Committee of the Elimination of Racial

Discrimination's

Urgent Action and Early Warning Procedure

102nd Session

Submitting Organisations

- **Aliansi Masyarakat Adat Nusantara (AMAN)** or Indigenous Peoples Alliance of the Archipelago is an independent community organisation (mass organization) whose members comprise of communities of indigenous peoples from diverse natives of the Archipelago. AMAN was declared pursuant to a longstanding historical construction of indigenous peoples' movements in Indonesia. Since the mid of 1980s there had been new awareness within the non-government organisations (NGO) and social scientists on the widespread negative developmental impacts on all groups of the Indonesian society. Indigenous peoples are the main and largest in numbers suffered the most by (and become victims) politics of the development over the last three decades. The imminent oppressions towards indigenous peoples have been taking place in economics, politics, laws as well as other social and cultural spheres, therefore, on these grounds, AMAN was established. Address: Rumah AMAN, Jalan Tebet Timur Dalam Raya No.11A Kel. Tebet Timur, Kec. Tebet, South Jakarta, Indonesia. Post code: 12820. Telephone/Fax: +62-21-8297954/+62-21-837-06282; email: rumahaman@cbn.net.id, website: www.aman.or.id
- **Aliansi Masyarakat Adat Nusantara Pengurus Wilayah Kalimantan Barat (PW AMAN Kalbar)** is one of AMAN's functioning bodies at the regional level in West Kalimantan. Community members of AMAN Kalbar come from 9 districts namely Ketapang, Pontianak, Sanggau, Sintang, Bengkayang, Landak, Sekadau, Melawi, and Kapuas Hulu. Address: Jl. Budi Utomo, No.03, Siantan Hulu, Pontianak Utara 78241, Kalimantan Barat, Tel/fax: +62 561 885264/885211, email: amankalbar@ptk.centrin.net.id
- **Aliansi Masyarakat Adat Nusantara Pengurus Daerah Bengkayang, Singkawang dan Sambas (AMAN BENGSIKAWANG)** is one of AMAN's functioning bodies at the district level in West Kalimantan. It is established in 2018 and since then has been working directly with AMAN community members registered in two districts in West Kalimantan namely Bengkayang District and Sambas District and one administrative city Singkawang areas. Address: Jl. Raya Sanggau Ledo, Gg. Delima, No.06 B, Kelurahan Sebalu, Bengkayang, Kota Bengkayang, Kalimantan Barat. Email: amanbengsisibas@gmail.com
- **Aliansi Masyarakat Adat Nusantara Pengurus Wilayah Tano Batak (PW AMAN Tano Batak)** is the local chapter of AMAN based in Balige which provides direct support to the indigenous community of Ompu Ronggur and to other indigenous Batak communities in North Sumatra to uphold their rights to their lands and livelihoods. Address: Jl. Cornel Simanjuntak, No. 8A, Kel. Balige III, Kec. Balige, Kab. Toba Samosir, website: www.tanobatak.aman.or.id, e-mail: amantanobatak@aman.or.id
- **Institut Dayakologi (ID)** is an active community-based organization which primarily aims to revitalize and restore the cultural identity of the Dayak communities in Kalimantan through research, advocacy, publication and other activities. The Institute promotes the awareness of the Dayak people on their cultural integrity, land rights, intellectual property rights, etc. Address: Jl. Budi Utomo Blok A 3 No. 3-4, Pontianak 78241, +62 561- 884 567/+62 561-8831-735, e-mail: i.dayakologi@ptk.centrin.net.id
- **Lembaga Bela Banua Talino (LBBT)** or the Institute for Community Legal Resources Empowerment was established in 1993 and aims to address various issues and problems of local regulations and policies towards effective recognition and protections of the rights of local communities and indigenous peoples have been proved could not guaranty better conditions of economic, social and politics aspects. Address: Jl Budi Utomo, Komplek Bumi Indah Khatulistiwa, Blok A/3, Siantan Hulu, Pontianak 78241, Kalimantan Barat – Indonesia, tel. +62 561885623 fax. +62 561 884566, e-mail: lbbt@ptk.centrin.net.id
- **Lembaga Bentang Alam Hijau (LemBAH)** is an association established in 2003 works on indigenous peoples and local community rights advocacy, social, economic and cultural empowerment and revitalisation. LemBAH promotes resilient customary forest and community land tenure, agrarian reform and human rights. Jl. Sanggau Ledo – Bengkayang, Bengkayang City, West Kalimantan, Indonesia. Email: sekretariatlembah@gmail.com
- **Lembaga Studi dan Advokasi Masyarakat/ELSAM** or the Institute for Policy Research and Advocacy. Established in August 1993, ELSAM works to encourage and promote effective mechanisms of accountability for gross human rights violations; and to promote resolution of past human rights violations through revealing the truth, usage of sanction, and reparation, and; to establish acknowledged, democratic and sustainable association. Address: Jl. Siaga II No 31, Pasar Minggu,

Jakarta 12510, tel: +62 (21) 7972662/fax: +62 (21) 79192519, e-mail: elsam@nusa.or.id, web: www.elsam.or.id

- **Perkumpulan Nurani Perempuan (Women's Conscience)** is an indigenous women's organisation, founded in 1999 which acts to promote the rights and welfare of Dayak indigenous peoples on the Mahakam River in East Kalimantan. The organisation is staffed by Dayak Bahau. Initially set up to empower indigenous women, the rapid takeover of Dayak lands by palm oil, logging, mining and timber estates has led the organisation to focus principally on land rights. Address: Jl. KS. Tubun Dalam Komplek Wira Bakti RT. 12 No. 15 Kel. Sidodadi, Samarinda, Kalimantan Timur 75123, tel/fax: + 62 8115861244, e-mail: marthadoq@yahoo.co.id
- **Hutan Kita Institute (HaKI)** is an association legally incorporated in Palembang, South Sumatra on 1 October 2015. HaKI's members are individuals who share the same vision, aspirations, and goals to be at the forefront of the preservation and protection of forest ecosystems, improvement of community welfare, community management and community access to natural resources to achieve sustainable and equitable natural resource management. Address: No. 9H Jl. Yudo Lorok Pakjo Kecamatan Ilir Barat I Kota Palembang Sumatra Selatan, web: www.hutaninstitute.or.id, email: haki@hutaninstitute.or.id
- **Perkumpulan Sawit Watch** is an Indonesian Non-Government Organisation concerned with adverse negative social and environmental impacts of oil palm plantation development in Indonesia. It is active in 17 provinces where oil palm plantations are being developed in Indonesia. Address: Perumahan Baranangsiang III Jalan Danau Singkarak H17 Tegalega Bogor, Indonesia, tel: +62 251 352171/fax: +62 251 352047, e-mail: info@sawitwatch.or.id
- **Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically based Legal Reform)**, founded in 2001, was established by individuals who have long experience and a clear position regarding the importance of community and ecological-based law reforms on issues related to land and other natural resources. Address: Jl. Jati Agung No. 8, Jati Padang – Pasar Minggu, Jakarta 12540, Indonesia, tel: +62(21)78845871, fax: +62(21)7806959, e-mail: huma@huma.or.id
- **Transformasi untuk Keadilan Indonesia (TuK INDONESIA)** advocates for the respect, protection and fulfilment of human rights by State and non-state actors with a particular focus on policies, programmes and activities relating to agribusiness and natural resource management. Address: Jl. Tebet Utara II A No. 13, South Jakarta, Indonesia. Email: office@tuk.or.id, landline phone: +62-21-8352955
- **Wahana Lingkungan Hidup Indonesia (WALHI Eksekutif Nasional/Friends of the Earth Indonesia)** national executive is the largest environmental movement in Indonesia with 487 organisation members and 203 individual members in 28 provinces across the country. Since 1980 WALHI has been active in advocating environmental protection and restoration in Indonesia. WALHI works to continuously advocate the recognition of rights to environment, human rights are protected and fulfilled as primary manifestation of the State obligation to fulfil people's life resources. Address: Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 7941673, e-mail: info@walhi.or.id
- **Wahana Lingkungan Hidup Indonesia Kalimantan Barat (WALHI Kalbar)**, is one of Friends of the Earth Indonesia's provincial chapter in West Kalimantan province. It is one of the largest grassroots social and environmental movement in West Kalimantan together with its individual and organisational members. It stands for social transformation, peoples' sovereignty, and sustainability of life and livelihoods. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development. Address: Komplek Universitas Tanjungpura, Jalan M. Husni Thamrin Blok P No.41, Pontianak West Kalimantan. Email: kalbar1@walhi.or.id, Web: walhi.or.id/walhikalbar.or.id
- **Wahana Lingkungan Hidup Indonesia Daerah Jambi (WALHI Jambi)** is a forum of non-governmental organisations established in Jambi in 1998 whose membership is made up of local environmental groups, civil society organisations and concerned members of the public who work on environmental protections and human rights. Address: Jl. Titiran No.38 RT27 Kelurahan Lebak Bandung Kecamatan Jelutung Jambi, tel: +62 741 755 1959, website: www.walhi-jambi.com, email: jambi@walhi.or.id

- **Yayasan Padi Indonesia** is a non-governmental organisation concerned with the process of development (agriculture, forestry, fishery, and plantation) based on the principles of sustainability of natural resources and environment. Address: Jl. Mayjen Sutoyo, Gg. Surya Rt. 008 Rw. 012 No.39 (Gunung Malang), Balikpapan, Kalimantan Timur 76113, tel/fax: +62 542 734360, e-mail: info@padi.or.id
- **Bahatera Alam** is a local NGO based in Riau, Indonesia which strives to realise social welfare in the sustainable management of natural resources. Its program's include data and information centre development; local capacity building and; collaboration in natural resource management. Address: Jalan Naga Sakti Perumahan Griyo Puspito Blok D3 RT01 RW08 Kelurahan Binawidya, Kecamatan Tampan Panam, Pekanbaru, tel: +62 761 741 5611, web: www.bahteralam.org, email: bahteraalam06@gmail.com
- **Akar Foundation** is a not-for-profit, non-political organization established in Bengkulu in 2012 to realize social justice for communities. In its work, Akar Foundation upholds the value of egalitarianism, social accountability, inclusivity, participation, democracy, human rights, and gender justice. Address: Jl. Bakti Husada 8 No.17 D RT13 RW01 Nusa Indah Kecamatan Gading Cempaka Kota Bengkulu 38225, email: akar.bengkulu@gmail.com, web: www.akar.or.id
- **Nagari Institute** is an indigenous peoples' organization dedicated to supporting the rights of Minangkabau peoples. It provides legal and technical support to communities and workers suffering abuse of their human rights, land rights, and labour rights. Address: Komplek Perumahan Tipo Indah XIII Jorong Bandarejo Nagari Lingkuang Aua Kecamatan Pasaman Barat Kabupaten Pasaman Barat Sumatra Barat, email: gampo_chino@yahoo.co.id
- **Link-AR Borneo** was established in 2 April 2009 to conduct evidence-based advocacy to address the huge problems posed by the extractive industries' control over land, forests, and natural resources across the island of Borneo. Address: Jl. Tanjung Raya 2 Komplek Mutiara Saigon Nomor A25 Pontianak Timur Kalimantan Barat, tel: +6281254683793, email: linkarborneo@gmail.com
- **Perkumpulan Pegiat JPIC (Justice, Peace and Integrity of Creation)** is a local NGO based in Palangkaraya, Central Kalimantan, Indonesia. Established in 2010 to promote environmental justice for the marginalised by upholding the universal values of human rights. Specifically our work focuses on the Dayak Indigenous Peoples of Kalimantan whose right to life and to enjoy their environment and culture is under threat. Address: Jl. Belida No. 62, Palangkaraya, 74874, Kalimantan Tengah. tel: +62 8115118887, e-mail: jpickalimantan0816@gmail.com
- **PUSAKA** is a civil society organisation that focuses on research and advocacy for policies which promote and defend the rights of indigenous peoples and marginalised communities with the aim of empowering community capacity and critical education through participatory mapping and campaigns advocating for the protection of community rights, environmental sustainability and justice. Address: Jl. Palapa XI No.22 RT07/RW05 Pasar Minggu Kecamatan Pasar Minggu, Jakarta Selatan, DKI Jakarta, Indonesia, 12520. Phone and Fax: +62 21 27874913, email: yay.pusaka@gmail.com
- **The Palangkaraya Ecological and Human Rights Studies (PROGRESS)** is a non-profit organisation established in November 2014 in Palangkaraya, Central Kalimantan which focuses on research, campaign, and advocacy on ecology and human rights. PROGRESS strives to achieve environmental justice and sustainability based on the Universal Principles of Human Rights and to uphold the culture and wisdom of indigenous peoples and local communities and gender justice in Central Kalimantan. PROGRESS works together with indigenous people, people in rural area, oil palm plantation workers, and indigenous women, as well as workers and students in urban areas. Address: Jalan Sisingamanraja Induk No.44 Kecamatan Jekan Raya Palangkaraya Kalimantan Tengah, email: progress.palangkaraya@gmail.com
- **Forest Peoples Programme (UK)** is an international NGO, founded in 1990, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: marcus@forestpeoples.org

Request for consideration of the Situation of Indigenous Peoples in Indonesia under the United Nations Committee of the Elimination of Racial Discrimination’s Early Warning and Urgent Action Procedure

I. Introduction

1. The above-described Indonesian and international indigenous and civil society organizations (“the submitting organizations”) respectfully submit this request for consideration under the United Nations Committee on the Elimination of Racial Discrimination’s (“the Committee”) Early Warning and Urgent Action Procedures (“EW/UA Procedures”) at its 102nd session. This request supplements a prior and separate request submitted to the Committee during its 101st session¹ and concerns the imminent passage of new and substantially discriminatory and regressive legislation in Indonesia, namely, the Omnibus Law on Job Creation (*UU Cipta Kerja*, hereinafter, “Omnibus Law” or “the Law”). The process by which the Omnibus Law was finalized has already denied indigenous peoples their right to effective participation and instead privileged business interests. Once enacted, the law will further result in imminent, gross, and irreparable harm to indigenous peoples and their rights.

2. The Omnibus Law was largely drafted by businesses² and passed without proper consultations with the country’s indigenous peoples, denying them the right to full and effective participation. This Committee has consistently recommended that where legislation affects indigenous peoples, the State should ensure “adequate consultation with the view to obtain[ing] free, prior and informed consent”.³ Human rights bodies have emphasized that public health measures required in the midst of the COVID-19 pandemic may make proper consultations impossible for the duration of the pandemic.⁴ Despite this, the Law—which will impact indigenous peoples in numerous ways detailed below—was hastily approved without proper consultation and participation of the country’s indigenous peoples.

¹ Specifically, this request provides an update and further details regarding a new discriminatory bill referenced in Part III.B. of the prior submission.

² See, e.g., Bersihkan Indonesia and Fraksi Rakyat Indonesia, “Omnibus Law: The Oligarchic Law Book”, 19 October 2020, JATAM (Jaringan Advokasi Tambang – Mining Advocacy Network) available at https://d3n8a8pro7vhm.cloudfront.net/bersihkanindonesia/pages/1120/attachments/original/1603017537/Laporan_OL_Kitab_Hukum_Oligark_BI_FRI.pdf?1603017537 (identifying 18 politicians who pushed for the passage of the Bill and were mired in potential conflicts of interest, including the Minister for the Economy and the Minister for Investment); Human Rights Watch, “Indonesia: New Law Hurts Workers, Indigenous Groups: Massive Omnibus Bill Passed With Little Public Consultation”, October 15, 2020, <https://www.hrw.org/news/2020/10/15/indonesia-new-law-hurts-workers-indigenous-groups>

³ See, e.g., CERD Decision 1(100): Canada, 13 December 2019; CERD Concluding Observations: Ecuador, CERD/C/ECU/CO/23-24, 15 September 2017, para 19; CERD Concluding Observations: Russian Federation, CERD/C/RUS/CO/23-24, 20 September 2017, para 24; CERD Concluding Observations: Peru, CERD/C/PER/CO/22-23, 23 May 2018, para 21

⁴ See, e.g., Inter-American Commission on Human Rights, Resolution No. 1/2020, “Pandemic and Human Rights in the Americas”, adopted 10 April 2020, available at <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>, para 57

3. The Omnibus Law represents one of the biggest legislative changes in the country's history and will result in sweeping amendments to close to 80 existing laws that roll back already limited protections for indigenous peoples' rights and further privilege the interests of plantation companies and extractive industries. Whilst the business permitting process has been simplified through the Law, procedures for recognising the rights of indigenous peoples to their customary territories remain unchanged. Notably, there has been no progress made on the Bill on the Recognition and Protection of Indigenous Peoples Rights, despite its being before the legislature for almost a decade, indicating the deliberate preferencing of business interests over indigenous rights. Legislative amendments proposed in the Omnibus Law appear to reintroduce the colonial concept of *terra nullius* ('nobody's land'), whereby the State is able to deny the land rights of the country's indigenous peoples through its own arbitrary definition of 'abandoned lands', and compulsorily acquire indigenous peoples' lands without any free, prior, or informed consent and without fair and just compensation. The Omnibus Law also enables an increase in the already extensive criminalization of indigenous traditional practices while reducing penalties for corporate actors to mere administrative sanctions for environmental and forestry offences. Compounding the above, the Law will almost entirely abolish the already weak requirements, including the conduct of environmental impact assessments, that must be met before companies could obtain the necessary permits and proceed with business activities on indigenous peoples' lands.

4. The amendments to national legislation proposed in the Omnibus Law directly counter recommendations made by this Committee in its 2007 Concluding Observations, and specifically reiterated in communications issued by this Committee in 2009,⁵ 2013,⁶ 2015,⁷ that the State "amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples...;"⁸ and that Indonesia should "review its laws ... as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands."⁹ In addition, the acts and omissions of the State ignore the recommendations of its own National Commission on Human Rights (*Komnas HAM*), among which were to ratify as soon as possible the Bill on the Recognition and

⁵ CERD Communication under EW/UA Procedure: Indonesia, 13 March 2009, available at <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia130309.pdf>

⁶ CERD Communication under EW/UA Procedure: Indonesia, 30 August 2013, available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_7098_E.pdf

⁷ CERD Communication under EW/UA Procedure: Indonesia, 28 August 2015, CERD/87th/EWUAP/GH/CG/ks, available at

<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf>

⁸ CERD Concluding Observations: Indonesia, CERD/C/IDN/CO/3, 15 August 2007, available at https://www.ecoi.net/en/file/local/1079411/470_1219158150_cerd-c-idn-co-3.pdf (hereinafter

"CERD/C/IDN/CO/3"), para 16

⁹ CERD/C/IDN/CO/3, para 17

Protection of Indigenous Rights and to review and revise various regulations and laws related to natural resource use to ensure respect for and protection of indigenous peoples' rights.¹⁰

5. The Omnibus Law was ratified on 5 October by the Government of Indonesia, the House of Representatives (*DPR-RI*) and the Regional Representative Council (*DPD-RI*), and its passage is imminent. The Law was enacted on 3 November¹¹, 30 days following its ratification by the legislature, and as such, it will have become law by the time of this Committee's 102nd session. This situation fully meets the requirements for consideration by the Committee under its EW/UA Procedure. The adoption of this discriminatory legislation would exacerbate—and the speed with which the Law has been ratified evidences—the “significant and persistent pattern of racial discrimination” against indigenous peoples and the “encroachment on the traditional lands of indigenous peoples”,¹² including those documented in the submitting organizations' prior request to the Committee at its 101st session. The submitting organizations therefore respectfully request the Committee review this situation under its EW/UA Procedures at its 102nd session and **adopt a formal decision** urging the State to: repeal the newly-enacted Omnibus Law, and ensure respect for indigenous peoples' participation rights in the process of considering and adopting any future legislation affecting their rights (see specific requests in paragraph 22 below), ensuring that new laws also protects their substantive rights, fully and equally.

II. Situation of the Indigenous Peoples of Indonesia relating to the New Omnibus Law on Job Creation

A. Violation of the Participation Rights of Indigenous Peoples

6. The process of drafting and passing the Omnibus Law through the Indonesian legislature has denied indigenous peoples their right to effectively participate in decision-making affecting them. The Law was drafted predominantly by the business community and presented to the legislature in February 2020. Since then, the legislature has rushed along with finalizing the Law, with no consultation with indigenous peoples.¹³ The deliberation process over the Law left no scope for affected rightsholders to

¹⁰ National Inquiry on the Rights of Indigenous Peoples over their Land in Forest Areas, National Commission on Human Rights (Komnas HAM), 18 March 2016 (*hereinafter* “Komnas HAM Report”), available at https://rightsandresources.org/wp-content/uploads/2016/04/Komnas-HAM-National-Inquiry-on-the-Rights-of-Customary-Law-Abiding-Communities-Over-Their-Land-in-Forest-Areas_April-2016.pdf

¹¹ H. Beech and M. Suhartono, *The New York Times*, 3rd November 2020. Available at: <https://www.nytimes.com/2020/11/03/world/asia/indonesia-stimulus-bill-signed.html>

¹² CERD *Guidelines for the Early Warning and Urgent Action Procedures*, Annual Report A/62/18, Annexes, Chapter III, 2007, para 12

¹³ Jong, Hans Nicholas, “Indonesia bill weakening environmental safeguards to pass in October”, *Mongabay*, 24 August 2020, available at <https://news.mongabay.com/2020/08/indonesia-omnibus-deregulation-bill-pass-october/>

input into the process, as it proceeded in a manner that even violated the rules of Parliamentary decision-making in Indonesia.¹⁴

7. This Committee has repeatedly recommended States ensure that indigenous peoples effectively participate in decision-making that impacts their rights, including legislative decision-making,¹⁵ a principle that has become well-accepted in international human rights law.¹⁶ Moreover, numerous international human rights bodies have emphasized that the “right of indigenous peoples to be consulted with the objective of obtaining their free, prior and informed consent remains applicable during the pandemic”¹⁷, even if that means refraining from introducing new legislation for the duration of the pandemic as a result of “the impossibility of conducting prior informed and free consent processes...”¹⁸ Rather than respecting indigenous peoples’ rights and the advice of human rights experts, the Indonesian government has instead used the COVID-19 pandemic to rush through approval of the Law, hold discussions over the Law without notifying the public¹⁹ or consulting with affected rightsholders, and vote on the Law without the required quorum of members of Parliament physically present.

B. Imminent Enactment of Omnibus Law Threatens Grave and Irreparable Harm

a. The Omnibus Law would erode already weak protections for indigenous land rights

8. The Omnibus Law, ratified on 5 October 2020 by the House of Representatives and Regional Representative Council, proposes amendments to over 1,000 provisions in close to 80 existing laws²⁰ that weaken the regulatory environment for businesses at the expense of indigenous peoples’ rights.

¹⁴ Ibid

¹⁵ See, e.g., CERD Decision 1(100): Canada (recommending that the state “establish, in consultation with indigenous peoples, a legal and institutional framework to ensure adequate consultation with the view to obtain free, prior and informed consent regarding all legislation affecting indigenous peoples”); CERD Concluding Observations: Honduras, CERD/C/HND/CO/6-8, 14 January 2019, para 18 (recommending that the state, “Prior to the discussion and adoption of the bill on prior consultation that is currently before the National Congress, to carry out a thorough review of the bill, in the light of internationally recognized standards, and to guarantee the active, full and transparent participation of all indigenous and Afro-Honduran peoples...”); CERD/C/ECU/CO/23-24, para 19 (urging the state to “Fulfil its obligation to ensure consultation, with a view to obtaining the free, prior and informed consent of indigenous and Afro-Ecuadorian peoples, as a means of effective participation in any activities relating to legislative or administrative provisions that could affect their rights, particularly their right to the land and natural resources that they own or have traditionally used...”)

¹⁶ See *UN Declaration on the Rights of Indigenous Peoples*, 2007, Art. 19 (stating 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, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”)

¹⁷ UN OHCHR, “Topics in Focus: COVID-19 and Indigenous Peoples’ Rights”, 29 June 2020, available at https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenousPeoplesRights.pdf

¹⁸ Inter-American Commission on Human Rights, Resolution No. 1/2020, “Pandemic and Human Rights in the Americas”, adopted 10 April 2020, para 57

¹⁹ Jong, Hans Nicholas, “Indonesia bill weakening environmental safeguards to pass in October”, Mongabay, 24 August 2020

²⁰ Since the Bill was ratified, the State has published four additional versions of the Bill, each with significant differences from the others, leaving unclear which version will be finally enacted into law.

These amendments pose new obstacles to securing legal protection of indigenous rights and threaten to repeal the limited legal recognition that already exists. In effect, the regressive nature of the legislative changes in the Law would further undermine indigenous peoples' rights, rights that are already largely unprotected and precarious.

9. Provisions in the Omnibus Law create significant impediments to the legal recognition of indigenous land rights while also greatly expanding the options for government expropriation of whatever land rights communities may already hold. The Law provides for the establishment of a Land Bank to serve as a State-owned entity with the authority to compulsorily acquire 'abandoned lands', defined as those that are not cultivated or utilized by rights-holders within a two-year period. This provision appears to reinstate the colonial concept of *terra nullius* and justify the appropriation and dispossession of indigenous lands, as the definition of 'abandoned land' could include indigenous forms of land use and tenure. For example, rotational farming techniques, a mainstay of indigenous peoples' traditional economy and subsistence, require periodic burning to fertilize poor forest soils followed by extensive fallow periods. Moreover, these provisions in the Law undermine the holding of Indonesia's own Constitutional Court in decision No. 35/2012, that indigenous forested lands are not State lands²¹, by allowing the State to acquire indigenous customary forests as 'abandoned lands'.

10. The Omnibus Law couples this restriction on indigenous land rights with amendments that allow corporations to hold onto their lands indefinitely, thus illegitimately preferencing business interests over indigenous peoples' rights. Specifically, while the institutionalization of the Land Bank and its powers to acquire 'abandoned lands' threatens indigenous communities' ability to retain control over seemingly 'unused' lands, the Law amends *Law No. 39 of 2014 on Plantations* such that there would no longer be sanctions imposed on companies that do not exploit and cultivate their plantation lands within a set time period. This deletion of the status of 'abandoned land' for corporations – in combination with another amendment in the Law that extends the validity of Business Use Rights (*HGU*) from a maximum of 35 years to 90 years – effectively legalises the practice of land banking and speculation, further restricting indigenous peoples' efforts to secure their rights to their customary lands and instead preferencing the interests of corporations.

11. In addition to authorizing the acquisition of 'abandoned lands' by a Land Bank, the Omnibus Law also facilitates the expropriation of indigenous lands by expanding the definition of 'public interest' in *Law No. 2/2012 concerning Land Acquisition for Infrastructure Development in Public Interest* to include acquisitions in or for the purpose of establishing industrial estates, food security areas, and Special Economic Zones (SEZ), among others. The latter addition is particularly concerning

²¹ Constitutional Court of Indonesia, Decision No. 35/2012, available at https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional_Court_Ruling_Indonesia_16_May_2013_English.pdf

for indigenous peoples living in Kalimantan's borderlands, which have been prioritised by the Government of Indonesia as a SEZ,²² because their rights are already under grave threats from the vast encroachment on and takings of indigenous lands for road-building, plantations and mining along the Indonesia-Malaysia border, as detailed in the submitting organizations' prior communication to this Committee during its 101st session.

12. The regressive amendments in the Omnibus Law demonstrate that Indonesia is willing to countenance not only further disregard for indigenous peoples' rights, but to make those rights even more subservient to public and private sector economic interests. Specifically, the passage of this Law and failure to adopt the Bill on the Recognition and Protection of Indigenous Rights ignores the numerous recommendations of human rights bodies that the State ensure that the laws of Indonesia respect the rights of indigenous peoples to "possess, develop, control and use their communal lands".²³ They disregard and indeed defy recommendations by this Committee as well as other human rights bodies that the State ensure that Constitutional Court decision No. 35/2012 is fully implemented.²⁴ In addition, the above-mentioned amendments contained in the Omnibus Law violate a well-established principle of international human rights law that expropriation of indigenous lands should only occur with the free, prior, and informed consent of the affected indigenous people and agreement on fair and just compensation.²⁵ The Committee on Economic, Social, and Cultural Rights has explicitly recommended that Indonesia "Define strong mechanisms for ensuring the respect of their [indigenous peoples'] free, prior and informed consent on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation".²⁶ The National Commission on Human Rights *Komnas HAM* has similarly urged that resolution of indigenous land rights issues "must be given priority before any further development affecting MHA [indigenous peoples] is allowed",²⁷ including specific recommendations to, inter alia, implement Constitutional Court decision No. 35/2012; place a moratorium on the issuance of new business permits and licences, except ones for

²² *Breaking the Heart of Borneo*, 2020, Forest Peoples Programme [forthcoming]

²³ See, e.g., CERD/C/IDN/CO/3, para 17; Committee on Economic, Social, and Cultural Rights, Concluding Observations: Indonesia, E/C.12/IDN/CO/1*, 19 June 2014 (hereinafter "CESCR E/C.12/IDN/CO/1*"), para 39; Committee on the Rights of the Child, Concluding Observations: Indonesia, CRC/C/IDN/CO/3-4, 10 July 2014, para 70; Committee on the Elimination of Discrimination Against Women, Concluding Observations: Indonesia, CEDAW/C/IDN/CO/6-7, 27 July 2012, para 46; Komnas HAM Report, pp 21-28

²⁴ See, e.g., CERD EW/UA Communication to Indonesia, 28 August 2015; CESCR E/C.12/IDN/CO/1*, para 39

²⁵ See, e.g., UNDRIP, arts. 10, 28; CESCR, Concluding Observations: Bangladesh, E/C.12/BGD/CO/1, 18 April 2018, para 15 (recommending that the state "Ensure that the requirements of free, prior and informed consent are met in all cases of expropriation of land of indigenous peoples"); Special Rapporteur on the Rights of Indigenous Peoples, Visit to Guatemala, A/HRC/39/17/Add.3, 10 August 2018, para 103 (recommending that "an investigation be undertaken into the connections between corruption in the registration and ownership of land and the expropriation of indigenous communities' lands")

²⁶ CESCR, CO: Indonesia, E/C.12/IDN/CO/1, 2014, para 38

²⁷ Komnas HAM Report, p 6

traditional activities, that affect indigenous lands; and implement measures to prevent land rights conflicts and forced displacement of indigenous peoples.²⁸

b. The Omnibus Law strengthens the potential for criminalization of indigenous peoples' traditional practices

13. The Omnibus Law not only restricts indigenous peoples' land rights, it also includes amendments to laws on environmental and forest management that would make it easier than it already is to bring criminal cases against indigenous peoples for exercising traditional practices. *Law No. 32 of 2009 on Environmental Protection and Management*, Article 108, currently prescribes that clearing land by burning is a criminal offense punishable by up to ten years in prison. Applying this provision without exemptions would criminalize indigenous peoples' traditional, rotational farming techniques, in which a plot is cleared by fire and cultivated for only a few years, and then left to fallow before the nutrients are leached out of the soil. Indigenous farmers allow the forests to regrow, re-establish soil fertility, and re-absorb any carbon emissions resulting from clearance before returning to cultivate on that plot again. Indeed, this provision has been the basis of a majority of the 259 criminal cases brought against local indigenous farmers in 2019 and of the 1,298 cases across the archipelago in the past five years.²⁹

14. *Law No. 32* includes a local wisdom (or traditional knowledge) exemption,³⁰ however, which allows indigenous farmers to claim an exemption if they only burn up to two hectares of cropland and take precautionary measures, such as creating firebreaks and notifying the relevant local authority. The Omnibus Law would remove this local wisdom exemption, eliminating that recognition of and respect for indigenous peoples' traditional knowledge and practices and potentially increasing the already substantial number of criminal cases brought against indigenous farmers for engaging in traditional farming practices. By contrast, and consistent with the overall privileging of State and private sector interests over the rights of indigenous peoples, the Law lessens the burden on companies, removing what had previously been strict liability for companies that allowed fires to break out within their concessions.

15. The threat of criminalization and discrimination against indigenous peoples is further strengthened by amendments to *Law No.41 of 1999 on Forestry* and *Law No.18 of 2013 on The Prevention and Eradication of Forest Destruction*. One of these amendments explicitly defies

²⁸ Komnas HAM Report, pp 21-27

²⁹ Konsorsium Pembaruan Agraria, "Catahu 2019: Dari Aceh Sampai Papua - Urgensi Penyelesaian Konflik Agraria Struktural dan Jalan Pembaruan Agraria ke Depan", 29 February 2020, available at http://kpa.or.id/publikasi/baca/laporan/82/Catahu_2019:_Dari_Aceh_Sampai_Papua_-_Urgensi_Penyelesaian_Konflik_Agraria_Struktural_dan_Jalan_Pembaruan_Agraria_ke_Depan/

³⁰ *Law No. 32 of 2009 on Environmental Protection and Management*, Article 68(2)

Constitutional Court decision No. 95/2014 and reinstates provisions in these forestry laws criminalizing the use of forest products for subsistence purposes without a permit from the relevant authorities, provisions which the Court had invalidated in part due to its negative impacts on indigenous peoples' livelihoods.³¹ Other provisions in these two laws define offences for the conduct of various forestry activities, such as felling of timber, without the relevant permits.³² The Omnibus Law amendments increase the sanctions and provide for imprisonment penalties when administrative fines are not paid, threatening the most socially and economically vulnerable. The Law only allows an exception for indigenous peoples when they and their lands have been legally recognised through local regulations. This exception would provide virtually no protections to indigenous peoples, as less than one percent of indigenous territories are recognized in Indonesia,³³ covering a mere 35,202 hectares of customary forest,³⁴ and, as explained above in para 10, the Omnibus Law greatly restricts the ability of indigenous peoples to obtain control over their lands.

16. These provisions contrast with provisions in the Omnibus Law that decrease penalties for companies for similar offences. The Law amends the *Law No. 39 of 2014 on Plantations* to decrease the sanctions imposed on companies for the failure to keep firefighting equipment readily available and deletes Articles 105 and 109 to remove the threat of criminal sanctions for businesses that operate without a permit and fail to complete an environmental impact assessment. These amendments likely mean that there will be no liability for firms that had been involved in the large-scale plantation fires of 2015 and 2019, for which nine companies had already been found in criminal cases to have acted negligently and criminal charges had either been brought or planned for a further sixteen companies.³⁵

³¹ See Constitutional Court of Indonesia, Decision No. 95/2014, available at http://ditjenpp.kemenkumham.go.id/arsip/mk/2014/95_PUU-XII_2014.pdf

³² See *Law No. 18/2013*, Articles 82 (which contains criminal provisions for individuals felling trees without holding a forest utilization permit); Article 83 (which contains criminal provisions for the utilisation of non-timber forest products without the necessary permits from an authorised official); and Article 84 (which contains criminal provisions for individuals in possession of tools commonly used to fell trees without the necessary permits from an authorised official); and *Law No. 41/1999*, Article 50 (which contains criminal provisions for individuals found to be encroaching forest areas, felling trees or harvesting non-timber forest products without the right or approval from the relevant authorised official)

³³ See e.g., W. van der Muur, *Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia*, 22(2) CITIZENSHIP STUDIES 160 (2018), 165, available at <https://doi.org/10.1080/13621025.2018.1445495>.

³⁴ For a more detailed description of the failures of Indonesia to legally recognize indigenous lands, see Request for consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia under the United Nations Committee of the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedure, 101st Session, 9th July 2020, para 9

³⁵ See Jacobsen, Phillip, "New Indonesian law may make it harder to punish firms for haze-causing fires", Mongabay, 9 October 2020, available at <https://news.mongabay.com/2020/10/new-indonesian-law-may-make-it-harder-to-punish-firms-for-haze-causing-fires/>

These large-scale fires have had devastating impacts on the traditional lands of indigenous peoples and raise concerns about the cultural survival of affected communities.³⁶

17. The above-mentioned measures effectively criminalize aspects of indigenous peoples' traditional practices. This Committee has previously urged that States "repeal laws that criminalize aspects of indigenous cultures, in order to ensure that indigenous peoples ... can freely exercise their cultural and religious rights..."³⁷ Instead, the Omnibus Law seems to double down on the criminalization of indigenous peoples while giving preference to the interests of business actors, thereby also ignoring the State's responsibility to "Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous".³⁸

c. The Omnibus Law weakens participation rights and other measures intended to safeguard the rights of indigenous peoples

18. The above-detailed restrictions on indigenous peoples' substantive rights are supplemented by amendments in the Omnibus Law which almost entirely eliminate the already limited mechanisms by which indigenous peoples had opportunities to participate in business permitting decisions. For example, Article 37 of the Law amends the gazettement process of forest areas such that ground verification and discussions with local authorities and community leaders would no longer be conducted. The new process would thus no longer involve community participation nor consider indigenous peoples' land tenure claims. This move distances communities even further from participation in the licencing process, eroding their already tenuous ability to monitor and input into decisions that will greatly impact their ways of life.

19. The Omnibus Law additionally makes several amendments to *Law No. 32 of 2009 on Environmental Protection and Management* that removes the prerequisite of environmental impact assessments (EIAs) for various types of business permits, limits public and affected community participation in their conduct, and restricts the ability of communities to file an objection to the issuing of such a permit where businesses violate environmental regulations. The Law changes the licencing system to a 'risk-based approach', where EIAs are only required for projects with a "significant impact on the environment, society, economy and culture". The Law does not provide a clear methodology for assessing what constitutes a 'significant impact', leaving 'risk' determination highly subjective and at

³⁶ See, e.g., Cantera, Angel, "Indonesia's forest fires threaten Sumatra's few remaining Orang Rimba", *The Guardian*, 7 June 2016, available at <https://www.theguardian.com/global-development/2016/jun/07/indonesia-forest-fires-threaten-sumatras-few-remaining-orang-rimba>

³⁷ CERD Concluding Observations: Nepal, CERD/C/NPL/CO/17-23, 29 May 2018, para 24

³⁸ CERD Concluding Observations: Ecuador, CERD/C/ECU/CO/23-24, 15 September 2017, para 17

the overseeing agency's complete discretion. The Law also provides little confidence in the credibility of the overseeing body, as it has replaced the existing body that oversaw EIAs with a government institution that would not include any independent experts.

20. These provisions in the Omnibus Law reinforce earlier-detailed restrictions on indigenous land rights by significantly watering down or eliminating critical safeguards for indigenous land rights, namely, effectively participation in decision-making on the issuance of business licences and the conduct of environmental and social impact assessments. The responsibilities of States to consult with affected indigenous communities prior to issuing licences for projects proposed on indigenous lands and to ensure the conduct of impact assessments have been reinforced in numerous human rights court decisions and treaty body decisions, reports, and recommendations.³⁹ Each provision of the Omnibus Law detailed in this request is, by itself, of concern in its negative impact on indigenous peoples rights; taken together, the Omnibus Law demonstrates Indonesia's deliberate preferencing of business interests over and above and its denial of indigenous peoples' rights and its egregious disregard for its human rights obligations.

III. Conclusion and Request

21. The enactment of the Omnibus Law will further entrench and substantially exacerbate the existing and already severe racial discrimination against indigenous peoples in favour of State and private-sector interests in Indonesia. The regressive amendments to legislation in the Omnibus Law make more pressing and relevant than ever the Committee's concerns expressed in its prior communications adopted under the EW/UA procedure and in its 2007 Concluding Observations on Indonesia, which states "that references to the rights and interests of traditional communities contained

³⁹ See, e.g., CERD, Concluding Observations: Peru, CERD/C/PER/CO/22-23, 23 May 2018, para 10 (recommending that Peru "Step up its efforts to conduct timely and appropriate social and environmental impact assessments of natural resource development projects sited in indigenous peoples' territories with a view to protecting those peoples' traditional means of subsistence"); CERD Communication under EW/UA Procedure, France, 14 December 2018 (recommending that France "Ensure the right to consultation and free, prior and informed consent to all indigenous peoples affected by the Montagne d'Or project, including the realization of a social and environmental impact assessment with the effective participation of all affected indigenous peoples in accordance with their own institutions and decision-making processes"); CESCR, General Comment No. 24, E/C.12/GC/24, 10 August 2017, para 17 (recommending that "States parties should ensure that, where appropriate, the impacts of business activities on indigenous peoples specifically (in particular, actual or potential adverse impacts on indigenous peoples' rights to land, resources, territories, cultural heritage, traditional knowledge and culture) are incorporated into human rights impact assessments"); CRC Concluding Observations, Cameroon, CRC/C/CMR/CO/3-5, 6 July 2017 (recommending that Cameroon "Require companies to undertake assessments of, consultations on and full public disclosure of the environmental, health-related and human rights impacts of their business activities and their plans to address such impacts"); *Case of the Saramaka People v. Suriname*, Inter-American Court of Human Rights, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, para 40 (noting that ESIA's can provide "some objective measure of such possible impact on the land and the people" and the conduct of ESIA's can "ensure that members of the [indigenous] people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily")

in domestic laws and regulations are not sufficient to effectively guarantee their rights”.⁴⁰ The provisions in the Omnibus Law would likely lead to increasing number of land conflicts between indigenous peoples and business actors and increasing infringements of indigenous peoples’ rights by State and corporate actors, all situations on which this Committee has previously expressed serious concern.⁴¹ In the meantime, while the Omnibus Law was rushed through the legislative approval process, there has been no progress made to approve the Bill on the Recognition and Protection of Indigenous Peoples, which has been endorsed by many of the country’s indigenous communities and representative organizations and the passage of which has been recommended by multiple human rights bodies. The acts and omissions of the State in this regard have and will continue to cause gross and irreparable harm to the rights of indigenous peoples.

22. This escalation of the persistent racial discrimination against indigenous peoples in Indonesia compels international scrutiny and action. The submitting organizations therefore respectfully request that the **Committee issue a formal decision** recommending that Indonesia:

- a. Revoke and repeal the Omnibus Law;
- b. Expedite the enactment of the Bill on the Recognition and Protection of the Rights of Indigenous Peoples, after securing indigenous peoples’ informed participation and consent thereto;
- c. Establish, in consultation with indigenous peoples, a legal and institutional framework to ensure adequate consultation with the view to obtain free, prior and informed consent regarding all legislation affecting indigenous peoples; and
- d. Incorporate free, prior and informed consent in domestic legislation, in consultation with indigenous peoples, and in compliance with international human rights obligations and jurisprudence.

⁴⁰ CERD/C/IDN/CO/3, para 17

⁴¹ CERD/C/IDN/CO/3, para 17 (expressing concern about “the threat this [palm oil plantations] constitutes to the rights of indigenous peoples to own their lands and enjoy their culture”; and the “high number of conflicts” between local communities and palm oil companies)