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Committee on the Elimination of Racial Discrimination

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Request for Consideration of the Situation of Indigenous Peoples of the Aru Islands, Indonesia, under the Committee on the Elimination of Racial Discrimination's Early Warning and Urgent Action Procedure

I. Introduction

1. In order to avoid imminent and irreparable harm, the Indigenous Peoples Alliance of the Archipelago (AMAN), the national indigenous peoples' organization of Indonesia,¹ and Forest Peoples Programme² ("the Submitting Organizations") respectfully request that the Committee on the Elimination of Racial Discrimination ("the Committee") considers the situation of the Aru indigenous peoples of the Aru Islands District, Moluccas Province, under the its early warning and urgent action procedure. This situation concerns the Republic of Indonesia's ("Indonesia" or "the State") authorization of massive, industrial sugar cane plantations over the majority of the Aru indigenous peoples' ancestral territory and the lack of effective legal guarantees for their rights. Specific requests are set forth in paragraph 19 below.

2. In 2010, the Head of the Aru Islands District issued a 'principle permit' for the conversion of natural forests in the Aru Islands to plantations.³ This was endorsed by the Governor of the Moluccas, who issued a 'Recommendation Letter for the Minister of Forestry to enable Forest Release' in July 2011.⁴ Subsequently, in February 2013, the Indonesian Ministry of Forestry allocated 'forest land' to 19 of the 28 companies comprising the PT. Menara Group Consortium ("the Menara Group").⁵ A year later, on 6 February 2014, the Acting Governor of the Moluccas, Saut

¹ AMAN Profile <http://www.aman.or.id/en/about-aman/>.

² About Forest Peoples Programme, see: <http://www.forestpeoples.org/background/about-forest-peoples-programme>.

³ Statement of the Minister of Forestry, Zulkifli Hasan, was delivered in a press conference on 10 April 2014 at Mangala Wanabakti Building, Ministry of Forestry, Jakarta.

⁴ Vide Press Release issued by Forest Watch Indonesia, Aru Islands' Natural Forests were Threatened <http://fwi.or.id/publikasi/hutan-alam-di-kepulauan-arua-terancam-hilang/>

⁵ Menara Group is a Consortium consisting of 28 subsidiary companies namely: 1. PT. Anugerah Timur Indonesia (12.640 ha), 2. PT. Pratama Maju Lestari (13.200 Ha), 3. PT. Usaha Berkah Sejahtera (19.330 ha), 4. PT. Majutama

Situmorang, additionally authorized sugar cane plantation development in these same areas. Most recently, in June 2015, the Minister of Agriculture announced that the State has designated three locations for the development of industrial sugar cane plantations and processing facilities in Indonesia.⁶ He observed that “to achieve self-sufficiency of food, including sugar and beef, the Ministry of Agriculture has prepared three regions in eastern Indonesia namely Aru islands in Moluccas, Southeast Sulawesi and Merauke, for farm land and sugar cane plantations.”⁷ This latest announcement demonstrates that Indonesia intends to push through the plantations in Aru regardless of the depth of the local opposition and the highly probable extreme impact on indigenous peoples there.

3. The subject of this request is related to the imminent and massive violation of the Aru indigenous peoples' rights over more than 50 percent of their traditional territories and their sources of livelihood therein in relation to these massive sugar cane plantations. This area, which encompasses around 484,500 hectares and most of the islands in the Aru Island group, has already been granted in concession to the Menara Group. It corresponds to more than one-half of the traditional territories of the Aru indigenous peoples and includes more than one-half of their 179 villages. This is therefore an urgent situation that is fully compatible with the criteria adopted by the Committee in relation to the early warning and urgent action procedure. In addition to constituting a large-scale and serious “Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources,”⁸ it also represents a grave situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.”⁹

4. This situation is all the more urgent and grave given that the Committee has previously and on multiple occasions expressed serious concerns about Indonesia's discriminatory treatment of indigenous peoples, such as that exemplified by the present situation of the Aru indigenous peoples. In 2007, for instance, the Committee *inter alia*, urged Indonesia to review its laws to “to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands.”¹⁰ It reiterated this recommendation in 2009, observing that Indonesia “continues to lack any effective legal means to recognize, secure and protect indigenous peoples' rights to their lands,

Alam Nusantara (11.640 ha), 5. PT. Aru Alam Perkasa (13.960 ha), 6. PT. Hijau Raya Abaditama (19.790 Ha), 7. PT. Cipta Makmur Alami (19.740 ha), 8. PT. Berkah Alam Aru (12.330 Ha), 9. PT.Sahabat Aru Sejati (20.000 Ha), 10. PT.Rahmat Indonesia Subur (19,990 Ha), 11. PT.Berkah Rajab Indonesia (20.000 Ha), 12. PT.Pandawa Usaha Nusantara (19.420 Ha), 13. PT.Subur Makmur Abadi (19.520 Ha), 14. PT.Kreasindo Lahan Hijau (14.240 Ha), 15. PT.Platindo Aru Makmur (13.540 Ha), 16. PT.Cakra Makmur Sentosa (15.740 Ha), 17. PT. Aneka Bio Pulau Aru (14.380 Ha), 18. PT.Prakarsa Indonesia Timur (14.170 Ha), 19. PT.Sentra Aru Gemilang (11.590 Ha), 20. PT.Cahaya Malindo Abadi (19.760 Ha), 21. PT.Multi Aru Perkasa (20.000 Ha), 22. PT.Sari Indah Cemerlang (19.980 Ha), 23. PT.Inti Global Perkasa (20.000 Ha), 24. PT.Bina Makmur Lestari (20.000 Ha), 25. PT.Intra Jaya Kencana (19.890 Ha), 26. PT.Dobo Alam Makmur (19.990 Ha), 27. PT.Berkaj Dobo Perkasa (19.980 Ha), 28. PT.Anugrah Alam Dobo (16.583 Ha).

⁶ Amran Sulaiman, speaking after a meeting with the Investment Coordinating Board (BKPM) head Franky Sibarani, Amran said the government had prepared three regions — Southeast Sulawesi, Merauke in Papua and the Aru Islands in Moluccas — as the main sites for at least 10 sugar factories and sugar cane plantations for new investors. See Jakarta Post Thu, June 18 2015, 9:01 AM: Amran Sulaiman speaking after a meeting with the Investment Coordinating Board (BKPM) head Franky Sibarani, Amran said the government had prepared three regions — Southeast Sulawesi, Merauke in Papua and the Aru Islands in Moluccas — as the main sites for at least 10 sugar factories and sugar cane plantations for new investors. - See more at: <http://www.thejakartapost.com/news/2015/06/18/govt-prepares-areas-sugar-cattle-investors.html#sthash.1HxMLoSQ.dpuf>

⁷ *Id.*

⁸ See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at para. 12.

⁹ *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

¹⁰ CERD/C/IDN/CO/3, at para. 17.

territories and resources.”¹¹ Likewise, in 2011, 2012 and 2013, it expressed deep concern about these same issues in connection with the establishment of massive plantations on indigenous lands in Meruake, West Papua, the same kind of plantations that imminently threaten the Aru Islands and their traditional owners.¹² The Committee on Economic, Social and Cultural Rights (“CESCR”) also adopted detailed recommendations in May 2014, many of which concern Indonesia’s ongoing disregard for the rights of indigenous peoples in connection with agro-industrial plantations.¹³

II. General Description on Aru Islands

5. Aru Islands District is located in southeastern Moluccas Province adjacent to Australia in the Arafura Sea. This district encompasses 187 islands scattered throughout the region, five of which are big islands, and covers a total area of 8,563 km².¹⁴ The people occupying Aru Islands District derive from Aru ethnic society. They believe that the Mother Nature and all its contents are absolutely owned by the ancestors, who always watch it. With this philosophy, the balance naturally contained in nature will always be protected, thus damaging activities such as excessive exploitation and things is avoided because of the belief that humans have no right to nature unless it is for their basic needs.

6. Aru Islands District is very rich in natural and cultural resources. The Aru Islands are culturally diverse. There are 12 distinct indigenous languages with seven of them spoken by less than 2000 persons. Contemporary livelihoods are based upon subsistence horticulture (the principal crops being cassava and maize), the processing of sago, hunting of large game and trapping of small game in the forest, and fishing in rivers and inshore waters. This is supplemented by occasional wage labor and the sale of forest and marine produce. Biogeographically this district is home to various wallacea endemic fauna species including the bird of paradise, tree kangaroos, black cockatoos, Aru yellow-crested cockatoos, and cassowary.

III. Aru Indigenous Land Grabbing by the Menara Group

7. In 2012, the indigenous peoples living in several villages in Aru Islands were shocked to find the Menara Group surveying their traditional lands for sugar cane plantations without the prior provision of any information or their effective participation in decision making. Customary leaders and members of those villages gathered to discuss what was going on. Concerns arose that Menara Group’s activities would threaten their environment, lands and their future. In order to get clarity, they sought information in Dobo City, the nearest administrative center. After obtaining some information on the sugar cane plantation plans of the Menara Group, they formed a coalition to defend their islands from further plantation development. This coalition has firmly rejected any conversion of traditional indigenous lands in Aru to plantations and informed the State of their opposition (see Box 1 below).

8. The information gathered indicated that the Menara Group’s investment plan was instigated in early 2010. At the time, Aru Islands District Head issued a principle license, location permits,¹⁵ and a

¹¹ *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 13 March 2009, at p. 2. Available at: http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf.

¹² *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 2 September 2011; *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 2 September 2012; and *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 30 August 2013.

¹³ E/C.12/IDN/CO/1.

¹⁴ Complete information can be seen at: <http://www.wacananusantara.org/suku-arui/>

¹⁵ Location permit is a permit granted to the company to acquire land in accordance with Spatial Planning, which also valid as permit for transfer of title. Vide the Regulation of the State Minister of Agrarian Affairs/Head of National

‘recommendation for forest release’¹⁶ covering 481,403 hectares in favor of the Menara Group. This was affirmed and authorized by Governor of Moluccas, who issued a ‘Recommendation Letter for the Minister of Forestry to enable Forest Release’ in July 2011.¹⁷ Subsequently, in February 2013, the Indonesian Ministry of Forestry allocated forest land to 19 of the 28 companies comprising the Menara Group. The licenses issued by the Ministry of Forestry include a total of 305,120 hectares¹⁸ or approximately 50 percent of the entire 626,900 hectares of land in the Aru Islands. Aru Islands District has 177 Villages and 99 of these are included in the Menara Group concessions.

BOX 1: Statement of the People’s Coalition “SAVE ARU”

We, the undersigned, acting both personally or on behalf of the organization, after reviewing and studying the facts associated with the plan to open 484.493 Ha of forest land in Aru Islands for sugar cane plantation development by PT. Menara Group Consortium, state:

Aru Islands with all its richness constitutes the part of the Unitary State of the Republic of Indonesia (NKRI) that should be duly protected by the state against all forms of natural, environmental, and human degradation and destruction.

Government is urged to review and/or revoke all licenses issued without complying with the prevailing laws.

With the plan of PT Menara Group or other plantation investors to use 484.493 Ha of the total 626.000 hectares Aru Indigenous territories, the surrounding human, nature and environment are threatened.

Therefore, we the undersigned, hereby REJECT THE EXPLOITATION OF TRADITIONAL LAND AND INDIGENOUS PEOPLES OF ARU ISLANDS by PT. Menara Group and/or other investors either now or in the future. This statement is made and signed without coercion by any party whatsoever.

Ambon, 21 October 2013.

9. Since the permit granted by the State includes almost 50 percent of the Aru Islands indigenous peoples’ traditional territories, it gravely threatens their ownership, peaceful enjoyment and even the viability of their traditional territories. The scale of the imminent conversion of their lands to monocrop sugar cane plantations will also likely result in the destruction of their cultures and the economic resources that sustain their lives. Their means of subsistence in large part derives from the forest, which will be cleared wholesale to make way for monocrop plantations over a massive area of their territory.¹⁹ The forest is also the location of sites of fundamental cultural and spiritual vitality, which will also be lost when the forest is converted to sugar cane.

10. After obtaining licenses from the government in 2010, in 2012, the Menara Group conducted land surveys for sugar cane plantations in Aru indigenous people’s customary forests without prior consultation, and without providing any information on its plans. The Aru indigenous peoples only became aware when they saw the actual survey activities conducted by the Menara Group. To

Land Agency Number 2 of 1993 on the Procedures for Obtaining Location Permit and Land Title for Company in capital investments. Chronology of the issuance of this permit can be seen in the fact sheet issued by Forest Watch Indonesia: http://fwi.or.id/wp-content/uploads/2014/08/Lembar-Fakta-Kepulauan-Aru_FWI_RFN.pdf

¹⁶ Forest release is the change of designated function of forest area to non-forest area, see article 1(16) Government Regulation No 60 of 2012 on Procedures of Changing the Designated Function of Forest Area

¹⁷ Vide Press Release issued by Forest Watch Indonesia, Aru Islands’ Natural Forests were Threatened <http://fwi.or.id/publikasi/hutan-alam-di-kepulauan-ar-terancam-hilang/>.

¹⁸ The last forest in small islands across Indonesia “Cases Study on the Exploitation of Small Islands in Aru Islands District” Forest Watch Indonesia, 2014.

¹⁹ See Spriggs et al., *The Aru Islands In Perspective: A General Introduction* in THE ARCHAEOLOGY OF THE ARU ISLANDS, EASTERN INDONESIA (ANU Press: 2011), at p. 5 (explaining that the “village subsistence economy relies on processing the extensive stands of ‘wild’ and planted sago palms, and the swidden agriculture of bananas, cassava and maize. Hunting and collecting of forest resources are also important”).

provide security for its survey activities, the company involved the Indonesian Navy and the Police, a practice that has been widely criticized, including by the Committee, when such forces have been used elsewhere in Indonesia.²⁰ The police were not only involved in the company's survey activities, they have also actively limited the rights of indigenous peoples to freedom of peaceful assembly and association by prohibiting or dispersing peaceful meetings, such as when the Aru District Police prohibited and dissolved the indigenous peoples' customary deliberation about the plantations that was held in Dobo City on 11 December 2013.

11. On 23 October 2013, AMAN's Moluccas Chapter reported the Aru situation to Indonesia's National Commission on Human Rights ("Komnas HAM"). Komnas HAM investigated and found serious violations of indigenous peoples' rights (see Annex 1 for its findings of facts and recommendations). Additionally, in 2014, Komnas HAM conducted a National Inquiry on "Indigenous Peoples Rights Violations in Forest Areas." The Aru case was one of the cases investigated in that process. Komnas HAM found *inter alia* that the State "has ignored the rights of indigenous peoples in Aru Islands" (see Annex 2 containing its findings and recommendations). The State however has not responded to or acted otherwise to implement the recommendations adopted by Komnas HAM and, as demonstrated by the June 2015 statement by the Minister of Agriculture, it seems to be resolved to allowing the Menara Group to further develop its plantations in the Aru Islands.

IV. The State has failed to comply with various Domestic Laws and the Judgment of the Constitutional Court upholding Indigenous Peoples' Rights when it Authorized the Menara Group's Concessions

12. A study conducted by Moluccas Environment Maintenance Institution (*Lembaga Kalesang Lingkungan Maluku*) found that State licenses and permits issued to the Menara Group had been granted before the company obtained the required environmental permits from the Ministry of Environment. This contravenes Law No. 32 of 2009 on Environmental Protection and Management and Government Regulation No. 27 of 2012 on Environmental Permits.²¹ Despite this defect, the Governor of Moluccas declared a *post hoc* impact assessment "feasible" by Decree Nos. 114, 115, and 116, all dated 16 August 2012. There was also no prior consultation with indigenous peoples as required by the 2004 Plantations Act.²²

²⁰ See e.g., *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 2 September 2012 (stating that the "Committee is also concerned about information on allegations according to which encroachment activities are supported by the state party and enjoy the protection of the Indonesian army"); and E/C.12/IDN/CO/1, at para. 28.

²¹ See e.g., Law No. 32 of 2009, Articles 22 and 24; and Government Regulation No. 27 of 2012 on Environmental Permits, Articles 42-43.

²² Law No. 18 of 2004 on Plantations, Article 9(2) (providing that "In the event of the required land is customary land of indigenous peoples that actually exist, prior to the granting of right referred to in paragraph (1), the applicant shall conduct consultations with the indigenous peoples holding customary rights and the people holding the right over land concerned, to obtain agreement on the land transfer and compensation"). See also Second Amendment to 1945 Constitution, Article 18B(1)(b) (providing that "The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law") and; Second Amendment to 1945 Constitution, Article 28I(3) (providing that "The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations"); and Law No. 39 of 1999 on Human Rights, Article 6 providing that "In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government. The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times").

13. In its Decision No. 35/PUU-X/2012, issued in May 2013, Indonesia's Constitutional Court declared part of the 1999 Forests Act unconstitutional to the extent that it classified forests traditionally occupied and used by indigenous peoples to be "state forests".²³ This decision reclassified traditional indigenous lands to be privately owned by indigenous peoples, rather than "state forests", and thus also removed the jurisdiction of the Ministry of Forests over traditional indigenous lands.²⁴ This decision in principle corrects a substantial defect in Indonesian law, although others continue to impede the adequate recognition and protection of their rights.²⁵ However, judgments of the Constitutional Court are not considered to be binding on the State and the State has yet to adopt or amend laws or regulations to give effect to this ruling.²⁶ If it did, it would further add to the illegality of the massive grants of concession rights to the Menara Group in the Aru Islands. To make matters worse, as confirmed by the CESCR, the State also has subsequently adopted laws that are inconsistent with the Court's ruling.²⁷

14. In June 2014, the Committee on Economic, Social and Cultural Rights recommended that Indonesia amend legislative and other measures that are not in accordance with Constitutional Court's Decision. In addition, the CESCR urged the Indonesia to delimit and demarcate the boundaries of indigenous territories and customary forests, and to resolve any disputes in consultation with representatives of indigenous peoples and the Komnas HAM.²⁸ The continuation of Menara Group's plantation concessions in the Aru Islands is contrary to the decision of the Constitutional Court and, as discussed below, contravenes Indonesia's international obligations, the extent and nature of which engages the Committee early warning and urgent action procedures.

V. Massive Sugar Cane Plantations in Aru Islands Threaten Imminent and Irreparable Harm to the Indigenous Peoples of the Aru Islands.

15. The Committee, the CESCR and others have previously expressed concern about the absence of an effective legal protection framework for the rights of indigenous peoples²⁹ as well as inconsistencies with those rights, which impede and negate their exercise and enjoyment in multiple ways, in various provisions of extant Indonesian law. Nothing has changed since these concerns were

²³ See e.g., *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 30 August 2013 (noting "that the Indonesian Supreme court has ruled on 16 May 2013 that certain provisions of the Forestry Act No. 41/1999 are unconstitutional due to the classification of 'customary forest' as being part of 'state forests'. As a result of the law as currently drafted, indigenous peoples, such as those affected by the MIFEE project, have been denied rights to their lands in favour of an ownership right vested by the State").

²⁴ *Decision 35/PUU-X/2012, Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, Constitutional Court of Indonesia, 16 May 2013, at p. 4 (where the Court explained that "for more than 10 years of enactment, the Forestry Act has been used as a tool by the state to take over the rights of indigenous peoples over their customary forests areas to become state forest, which then on behalf of the state were given/or handed over to capital owners, through various licensing schemes to be exploited without consideration to the rights and local wisdom of indigenous peoples in the region, this has led to conflict between indigenous peoples with entrepreneurs exploiting their customary forest. Such practices occur in most parts of the Republic of Indonesia...").

²⁵ See e.g., CERD/C/IDN/CO/3, para. 15 (expressing concern "that under domestic law, these peoples are recognized "as long as they remain in existence", without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples").

²⁶ See *id.* (requesting "information on measures taken by the State party to implement the Decision of the Supreme Court of 16 May 2013").

²⁷ E/C.12/IDN/CO/1, at para. 39 (expressing concern "at provisions of recently adopted Law No. 18/2013 on Prevention and Eradication of Forest Destruction as well as other laws in force in the State party which contravene the Decision 35/PUU-X/2012 of the Constitutional Court on the right of ownership of customary forests").

²⁸ *Id.*

²⁹ See e.g., CERD/C/IDN/CO/3; E/C.12/IDN/CO/1; 'South-East Asia / Agrofuel: UN rights experts raise alarm on land development mega-projects', 23 May 2012, <http://www.srfood.org/index.php/en/component/content/article/1-latest-news/2263-south-east-asia-agrofuel-un-rights-experts-raise-alarm-on-land-development-mega-projects->.

aired. They have also observed that indigenous peoples' rights are routinely disregarded in connection with plantations in Indonesia and that the consequences are usually dire and long lasting.³⁰ Again, nothing has changed in the interim, a conclusion amply established by the State's practice, to paraphrase Komnas HAM, of simply ignoring indigenous peoples in the Aru Islands when issuing concessions that encompass close to 50 percent of their lands and 99 of their 177 villages. This massive area of their lands has been legally seized and transferred to the Menara Group and they will be largely deprived of their means of subsistence when, as is imminently threatened, their ancestral forests are converted to monocrop industrial plantations.

16. The former Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, identified plantations in Indonesia as placing indigenous peoples "on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples."³¹ This is precisely the situation presently threatened by the massive and non-consensual alienation of indigenous lands in the Aru Islands in favour of the Menara Group. The massive taking of indigenous lands for sugar cane plantations is also precisely the kind of situation that the Committee's early warning and urgent action procedure was designed to address. Not only has Indonesia ignored the prior concerns expressed by the Committee and many others when granting these concessions, it publicly declared in June 2015 that the concessions will be further developed despite the ruling of the Constitutional Court and irrespective of their unambiguous rejection by the affected indigenous peoples. In this regard, both the Committee and the CESCR have clearly recommended to Indonesia that such concessions or plantations more broadly are illegitimate without the free, prior and informed consent of the affected indigenous peoples.³²

17. When it reviewed Indonesia's plans to establish a massive oil palm concession on indigenous lands in Kalimantan province, the Committee highlighted "the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture."³³ It recommended that Indonesia 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."³⁴ It also recommended that "the State party secure the possession and ownership rights of local communities before proceeding further" with the concessions.³⁵ Similar recommendations were made by the CESCR in 2014. The Submitting Organizations respectfully submit that these are also the appropriate measures that are required in relation to the situation of the Aru Islands indigenous peoples.

VI. Conclusion and Request

18. Almost 50 percent of Aru Islands indigenous peoples' forest area will be converted to sugar cane plantations if the Menara Group is permitted to further proceed with its activities. This will lead to the imminent loss of Aru indigenous peoples' traditional livelihoods over the corresponding area.

³⁰ See e.g., *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 2 September 2011; *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 2 September 2012; and *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 30 August 2013.

³¹ R. Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session, 21 May 2007, at p. 3.

³² CERD/C/IDN/CO/3, at para. 17; E/C.12/IDN/CO/1, at para. 27 and 38 (the latter urging Indonesia to "Define strong mechanisms for ensuring the respect of their free, prior and informed consent on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation").

³³ CERD/C/IDN/CO/3, at para. 17.

³⁴ *Id.*

³⁵ *Id.*

It will also result in severe damage to the spiritual relationship between Aru indigenous peoples and their environment as well as grave harm to their cultural integrity. While these threats to indigenous peoples are manifest and very real, the State has not taken any action to address these threats or the rights that will be otherwise violated. Instead, the State is committed to allowing the massive taking of indigenous lands and the concomitant extreme and grave harm to the traditional owners.

19. Based on the above, the Submitting Organisations respectfully request the Committee to:

- a. Monitor and make recommendations under its early warning and urgent action procedure on the situation of Aru indigenous peoples affected by the plantation concessions granted to the Menara Group, including as proposed in paragraph 17 above;
- b. Urge Indonesia to urgently implement the decision of the Constitutional Court of 16 May 2013 with indigenous peoples' effective participation as well as ensure that there are national legal standards in place to direct the adoption of laws by regional governments in relation to the implementation of that judgment;
- c. Urge Indonesia to urgently develop policies and enact and amend laws in order to recognize and protect indigenous peoples' rights, including their rights to lands and territories and their ways of life; and
- d. Urge Indonesia to invite the UN Special Rapporteur on the Rights of Indigenous Peoples, or accept a request, for an on-site visit.

Annex 1: Komnas HAM Findings and Recommendations on Aru Case

Findings:

1. Violation of indigenous land rights, which is guaranteed and protected by Law No. 39 of 1999 on Human Rights particularly the provision of Article 6 paragraph (1) and paragraph (2), as well as Law No. 18 of 2004 on Plantation especially Article 9 paragraph (4) regarding Procedures on Granting Plantation Business License (IUP), which should guarantee and respect the indigenous peoples' right to their customary land. The granting of IUP to 28 (twenty eight) subsidiary companies of PT. Menara Group did not meet the whole procedure stipulated in Forestry Ministerial Regulation No. 26 of 2007 on Plantation Business Licensing Guidelines, because the absence of Recommendation Letter from Governor of Moluccas regarding compliance with the province macro plantation plan and Environmental Impact Assessment (EIA). Consequently, the validity of licenses issued afterwards should also be re-examined, including principle license granted by the Minister of Forestry to 19 (nineteen) companies under PT. Menara Group.
2. Violation of the rights to an adequate and healthy environment, which is guaranteed by Article 9 paragraph (3) Law No. 39 of 1999 on Human Rights. Article 25 of Local Regulation No. 3 of 2012 on Aru Islands' Spatial Planning states that production forest area allowed to be converted is 484.493 Ha. Meanwhile, Aru Islands land area based on the data in the EIA is 626 900 Ha. This policy alleged to be disrupting the ecological, social and cultural balance of the people who heavily depend on natural resources in their life. Large-scale plantation will require great supply of resources and generate enormous amounts of waste that could have implications for the non-fulfillment of the right to adequate and healthy environment. Potential violations of the right to adequate and healthy environment is also a result of allegedly unqualified EIA process and content as stated in the Letter of the Ministry of Environment No. B-668/Dep.I/LH/PDAL/01/2013 dated 25 January 2013. Based on the monitoring and evaluation performed by the Ministry of Environment, the EIA prepared by PT Menara Group does not meet the standard process and content. Thus, the Decree of the Governor of Moluccas No. 114, 115, and 116 dated 16 August 2012 regarding Environmental Feasibility must be revoked and re-perform the EIA process.
3. Violation of the rights to participation, in which the EIA document was not accompanied by any consultation with and objective assessment by the affected society, also did not meet the procedural aspects. People who complained to the National Commission on Human Rights believe that they never approve the EIA, but the EIA has been declared feasible by the Governor of Moluccas through Decree No. 114, 115, and 116 dated 16 August 2012 regarding Environmental Feasibility.
4. Violation of the rights to security guaranteed by Article 30 of the Human Rights Law, in which PT. Menara Group Consortium in its activities allegedly guarded by police and navy. Besides, PT. Menara Group allegedly not reporting its arrival and activities to the indigenous peoples' leader of the area they went to, instead they immediately conducted survey into the indigenous peoples' customary forests as happened in West Doka and Lainini Village. The process of surveying and marking the boundaries has triggered rejection from the local communities. Moreover, the action of PT. Menara Group that allegedly guarded by Police/Military Forces during its survey in Aru Islands customary forests has caused psychological pressure on the indigenous peoples. It shows that the company does not appreciate and respect the rights of indigenous peoples in Aru Islands.
5. Violation of the rights to justice, the right of equality before the law, and the right to freedom of peaceful assembly and association, in which the Police prohibited and dissolved the indigenous peoples' customary deliberation conducted in Dobo on 11 December 2013.
6. Violation of the rights to information, in which the free consent should be requested from the indigenous peoples in respect of an investment policy. Thus, the indigenous peoples can understand the potential impacts of an investment to allow them thinking about the measures that has to be taken should they accept or reject the investment. It is the norm and principle that must be upheld in dealing with indigenous peoples, which is called FPIC (Free, Prior and Informed Consent) and currently has become the national and international

norm in relation to indigenous peoples.

Recommendations:

1. Aru Islands District Head

- Reviewing the licenses granted to the companies under PT. Menara Group, if there are indications of procedural and substantive errors.
- Implementing the policy transparently, especially in issuing licenses or other documents related to the companies under PT. Menara Group.
- Performing regular monitoring and report in respect of licenses issued in the name of companies under PT. Menara Group.
- Respecting and protecting the indigenous peoples' rights, including immediately preparing measures to implement the Constitutional Court's Decision No. 35 of 2012 on the reaffirmation of customary forest area in order to protect the rights of indigenous peoples to their indigenous territories.
- Integrating and implementing the norms contained in the UN Declaration on the Rights of Indigenous Peoples (2007) into the development policies and programs.

2. Governor of Moluccas

- Revoking the Decree of the Governor of Moluccas No. 114, 115, and 116 dated 16 Agustus 2012 regarding Environmental Feasibility granted to the subsidiary companies of PT. Menara Group.
- Requesting PT. Menara Group to re-perform the EIA process in a transparent, participatory, and professional way.
- Supervising and reviewing the licenses that have been granted to PT Menara Group in accordance with Governor's authority.
- Respecting and protecting the rights of indigenous peoples, including immediately preparing measures to implement the Constitutional Court's Decision No. 35 of 2012 on the reaffirmation of customary forest area in order to protect the the rights of indigenous peoples to their indigenous territories.
- Integrating and implementing the norms contained in the UN Declaration on the Rights of Indigenous Peoples (2007) into the development policies and programs.

3. Regional Assembly of Aru Islands and Moluccas Province

- Respecting and protecting the rights of indigenous peoples, including immediately requesting the provincial and district governments to prepare measures in implementing the Constitutional Court's Decision No. 35 of 2012 on the reaffirmation of customary forest area in order to protect the rights of indigenous peoples to their indigenous territories.
- Supervising and reviewing the licenses that have been issued for PT Menara Group in accordance with Local Parliament's authority.

4. Regional Police of Moluccas Province

- Asking for information from the Chief of Aru Islands District Police related to the prohibition and dissolution of the Ursiwa Urlima Indigenous Peoples' customary deliberation on 10 December and 11 December 2013 through Dissolution Warrant (Sprint/712/XII/2013) regarding dissolution of meeting between Aru Indigenous Peoples and AMAN Moluccas Chapter.
- Supervising and ensuring the neutrality and professionalism of police officers in addressing the peoples' rejection over the investment of PT. Menara Group.
- Resolving disputes amongst the local communities through dialogue and mediation.
- Monitoring and supervising the investment activities of PT Menara Group so that it is in accordance with the prevailing legislation and human rights principles.
- Integrating and implementing the norms contained in the UN Declaration on the Rights of Indigenous Peoples (2007) into the law enforcement policies and social order.

5. Ministry of Forestry

- Reviewing the principle license that has been issued in relation to the allegation that the granting of Plantation Business License (IUP) to 28 (twenty eight) companies under PT. Menara Group is procedurally defective.
- No further processing the Forest Release License until all problems existing in the local communities and anything related to the licensing are declared *clear and clean*.

6. Ministry of Environment

- Expressly requesting the Governor of Moluccas to revoke Governor Decree No. 114, 115, and 116 dated 16 August 2012 concerning Environmental Feasibility in the name of the companies under PT. Menara Group.
- Requesting PT. Menara Group to re-perform the EIA in a transparent, participatory, and professional process.
- Investigating the alleged violations of Management and Environmental Protection Law related to the granting of 28 Plantation Business Licenses (IUP) to the companies under PT Menara Group without Environmental Permit.

7. Head of National Land Agency

- No further processing the Forest Release License until all problems existing in the local communities and anything related to the licensing are declared *clear and clean*.

8. Commander of Pattimura and Danlanal Moluccas Regional Military Command XVI

- Investigating the alleged involvement of military forces in securing the survey activities conducted by PT. Menara Group Consortium.
- Supervising and ensuring the neutrality and professionalism of military personnel in addressing the peoples' rejection over the investment of PT. Menara Group

9. PT. Menara Group

- Ensuring that all actions planned and carried out shall not endanger and violate human rights (*do no harm*).
- Respecting the rights of indigenous peoples by not conducting any activities possibly ignore and/or deprive the indigenous peoples of their rights, including customary land rights.
- Respecting the norms and provision of the law in conducting its activities.
- Implementing the business and human rights principles consistently and sustainably.
- Integrating and implementing the norms contained in the UN Declaration on the Rights of Indigenous Peoples (2007) into the company's policies and programs.

BOX 3: Komnas HAM findings and recommendations for PT. Menara Group sugar cane plantation case in Aru Islands

Findings:

The people of Aru islands are indigenous peoples who carry inherent rights, including the rights of indigenous peoples;

Government, especially Aru Islands Local Government has ignored the rights of indigenous peoples in Aru Islands;

The indigenous peoples expressed disapproval over the plantation development plan, which potentially take hold of their collective rights to their indigenous territories (it has been started by the allocation of forest land) – 96% of land covering Aru Islands;

There are issues related to indigenous peoples, forest management and land allocated for plantations (APL). Only those holding the license are considered as legal subject, while the indigenous peoples are not considered as legal subject equal to the license holder or other parties. It leads to imbalanced public service, in which privilege is given to the license holders, treating the indigenous peoples as if they are non-citizen to the state;

Any issues in respect of indigenous peoples must be seen from the perspective that indigenous peoples are legal subject;

Issues on customary law or justice system have been long negated, but the justice cannot be eliminated (even the sky falls, justice must be upheld);

There are indications of the violation of the rights to feel comfortable and secure due to the presence of police/military forces;

Violation of the right to information;

Violation of the right to economy and life resources. In this case, women have limited access to take marine products;

The right to identity is neglected. It plays key role in traditional rituals;

Environmental violation;

There are indications found related to the violation of the Right to Equality before the Law.

Recommendations:

Aru Islands District Government is urged not to wait until the indigenous peoples come to them, instead initiating the identification process for instance by inviting the representatives of indigenous peoples concerned to come to the district government and/or by performing inspection to the sites in the territories of Aru Indigenous Peoples;

It is importance to closely work with the Local Government in the recognition of Aru Indigenous Peoples and reaffirmation of Aru Indigenous Territory;

Forestry Agency of Moluccas Province and Agriculture and Forestry Agency of Aru Islands District are requested not to issue any license that does not comply with the prevailing regulation;

Local Government should guarantee women's rights in respect of customary status;

Local Government should guarantee the social welfare in developing spatial planning;

Government, PT. Menara Group, and security forces are expected to perform ideological approach instead of intimidation;

Central Government, Local Government, police and military forces shall remain neutral in providing people with security;

Central Government and Local Government should dig the people's aspirations in respect of development.