HUMAN RIGHTS WATCH

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Briefing Materials for the US-ASEAN Summit
Sunnylands Estate, California, February 15-16, 2016

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Summary

When US President Barack Obama first articulated his administration's goal of a diplomatic rebalance to Asia, he outlined three areas in which the US government would focus its attentions: increased strategic and military ties, better economic integration, and greater attention to promoting democracy and human rights.

Obama outlined the last prong of the rebalance in a speech in Australia on November 17, 2011:

> Every nation will chart its own course. Yet it is also true that certain rights are universal; among them, freedom of speech, freedom of the press, freedom of assembly, freedom of religion, and the freedom of citizens to choose their own leaders.
>
> These are not American rights . . . or Western rights. These are human rights. They stir in every soul, as we've seen in the democracies that have succeeded here in Asia. Other models have been tried and they have failed – fascism and communism, rule by one man or rule by committee. And they failed for the same simple reason: they ignore the ultimate source of power and legitimacy – the will of the people.

On February 15-16, 2016, President Obama will host 10 government leaders from the Association of Southeast Asian Nations (ASEAN) for a summit at the Sunnylands estate in California.

For decades, the United States government has viewed ASEAN as an important economic, security, and political partner, and has forged closer ties with ASEAN countries as they have undergone major economic and political changes. In recent years, some countries, such as the Philippines and Indonesia, have made steady though uneven progress toward becoming democratic states with increasing respect for basic human rights. Most recently, in November 2015 the military junta in Burma allowed the opposition to contest elections and accepted the landslide victory of Aung San Suu Kyi's National League for Democracy—though it still maintains broad constitutional powers and de facto control over security forces and large parts of the economy.

Many ASEAN countries, however, continue to be plagued by deep-seated political and economic problems. As the chapters below outline, most of ASEAN's 10 members have extraordinarily poor human rights records. Beyond the lack of basic freedoms of expression, association, and peaceful assembly in many countries, problems across ASEAN include restrictions on civil society, failures on women's rights, the political use of courts, high-level corruption, lack of protection of refugees and asylum seekers, human trafficking, and abuses against lesbian, gay, bisexual, and transgender people.

For President Obama, the February 2016 US-ASEAN summit represents another chapter in the continuing efforts to rebalance attention to the Asia region. For many of ASEAN's leaders—in particular those who have not come to power through free and fair elections—the summit represents an unearned diplomatic reward: a robust US reaffirmation of their sought-for legitimacy as leaders of the 615 million people who live in ASEAN.

One particularly egregious example is the invitation to the summit for Thai Prime Minister Gen. Prayut Chan-ocha, who took power in a 2014 military coup, dismantled democratic institutions, and has led a relentless crackdown on critics and dissidents. Prayut has consistently delayed the date for a return to democratic rule, making it clear that he expects the army to manage the country's affairs even after a vote for a new parliament is held.

Prime Minister Nguyen Tan Dung of Vietnam and President Choummaly Sayasone of Laos preside over one-party authoritarian states that deny basic freedoms and use censorship, detention, and torture to maintain their party's hold on power. The communist party of each country has been in power since 1975 and have shown no interest in moving towards pluralism or genuine elections.

The sultan of Brunei, Hassal Bolkiah, is one of the world's few remaining hereditary government leaders and has imposed a near complete ban on freedoms of expression, association, and assembly. He plans to increase the imposition of Islamic law punishments, including whipping and stoning, for adultery, sex between unmarried persons, and homosexual activity.

The prime minister of Malaysia, Najib Razak, retained power in 2014 after a deeply flawed electoral process in which his party, which has been in power since 1967, lost the popular vote. Implicated in a major corruption scandal, he has engaged in a broad crackdown on Malaysia's political opposition, civil society organizations, and media.

Prime Minister Hun Sen of Cambodia has ruled for over 30 years, maintaining power through intimidation, violence, stolen elections, a coup against a coalition partner, and politically motivated prosecutions. He is also implicated in possible crimes against humanity committed in the mid-1970s when he was a commander in the Khmer Rouge. It had been longstanding US policy not to invite Hun Sen on an official visit to the United States.

The summit also takes place before Burma can be represented by a democratically elected leader, who will only take office in March or April 2016 after the country's historic November 2015 elections. Instead of meeting Aung San Suu Kyi or the person she nominates to lead the next government, President Obama will be giving a platform to the current president of Burma, Thein Sein, a former general put in power by the country's military junta. And the meeting comes only weeks after the Vietnamese Communist Party selected the country's next leaders at a January 2016 Party Congress—with no pretense of a democratic election.

ASEAN as an institution remains stubbornly hostile to the promotion of human rights. Founded in the 1960s as an anti-communist partnership among US allies in Southeast Asia countries, ASEAN's founding documents espouse regional cohesion and partnership and emphasize a principle of sovereignty stressing that members would not interfere in each other's "internal" affairs, which in practice has meant avoiding discussions of democracy, governance, and human rights.

Under pressure from an increasingly vocal public, only in 2007 did ASEAN members adopt a charter that mentioned human rights principles, although relevant provisions were heavily outweighed by language emphasizing the importance of "non-interference in the internal affairs" of ASEAN members. In 2009 ASEAN inaugurated an Intergovernmental Human Rights Commission, but it has no real powers: each government appoints its representative to the commission and it works through consensus, a procedural arrangement that makes it impossible to ever report on a human rights issue in any one country, since that country would object.

While ASEAN pretends to promote human rights, the United States has forged ahead with closer trade, political, or security ties with ASEAN as an institution and with each ASEAN member. In November 2015, the United States signed the Trans-Pacific Partnership (TPP), an economic and trade agreement that includes Vietnam, Malaysia, Singapore, and Brunei. The United States funds election observation, human rights nongovernmental

organizations, and legal reform efforts. It publishes generally strong annual human rights reports on ASEAN members as part of its annual global report. Yet the message of the United States to ASEAN and its members in recent years appears to have been: Please reform and improve your human rights record, but we'll reward you with closer ties regardless of what you do.

A better approach, one that would more appropriately hew to Obama's stated intention to use the Asia rebalance to promote democracy and human rights, would be for the United States to link its diplomatic rewards more explicitly to concrete improvements on human rights, for instance, by stating clearly what the costs are for governments that fail to reform.

In practice, this would mean telling a country like Vietnam that the US will not allow it to join the TPP or purchase additional military hardware until it releases political prisoners and repeals draconian penal code provisions. It would mean telling Malaysia that economic and security ties will stall or go into reverse unless the government stops prosecuting opposition political leaders and critics. It would mean telling Burma that still-remaining sanctions will be strengthened if the military does not honor its promises to disassociate from politics and the Burmese economy. It would mean ending military exercises with Thailand and Cambodia, which provide political cover and international legitimacy to Prayut and Hun Sen.

It would also mean urging ASEAN as an institution to drop its anachronistic preoccupation with "non-interference in internal affairs" and begin reforming its human rights commission so that it can actually report on human rights problems in ASEAN countries. It would mean allowing civil society to participate in ASEAN summits, starting with the Sunnylands summit.

An Asia rebalance that relegates human rights and civil society to the margins, as sideline issues or separate pillars, is a morally hollow diplomatic exercise. The better message would be for the United States to make it clear that its intensifying engagement will not merely be with ASEAN's leaders, but with the people of ASEAN countries. It should make it clear that it will insist on the strengthening of institutions that safeguard rights and livelihoods, such as independent courts and professional security forces, and provide increasing support to civil society groups that help promote the standards and values those institutions are meant to uphold.

The best way for President Obama to send that message would be to speak publicly about the very serious human rights problems that exist in ASEAN countries, offer assistance in reform efforts, and press ASEAN leaders to work directly with civil society leaders and the general public to build rights-respecting democracies.