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July 26, 2011

**“Indigenous Peoples in Asia”**



Co-Chairman McGovern, Co-Chairman Wolf, commission members,

Thank you for inviting Human Rights Watch to participate in a discussion on an often-overlooked topic: the rights of Asia's indigenous people.

These communities are often subject to serious human rights abuses by virtue of their status as indigenous people. They suffer endemic discrimination, physical violence, forced assimilation, and denial of citizenship; in addition, they endure high poverty rates and insufficient access to primary education and government health services.

Indigenous peoples' rights derive from the core international human rights instruments, and are reflected in the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the UN General Assembly in 2007 after decades of negotiation. The declaration interprets key rights, including those regarding lands and resources, such as recognizing traditional and collective occupation and use rights, and requirements that indigenous people give free, prior, and informed consent to the use of their land.

While the Declaration deliberately does not include a definition of "indigenous peoples," the internationally recognized Martínez-Cobo Study describes them as: "having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems." The United Nations and its specialized agencies, as well as certain regional intergovernmental organizations, consider self-identification as indigenous or tribal as a fundamental criterion.

We would like to focus today on two of the most serious rights violations we have documented against indigenous people in Asia, and offer some recommendations for US action.

### **Criminalizing expressions of identity or self-determination**

Human Rights Watch research shows that some governments in the region criminalize peaceful expressions of distinct identity or aspirations for self-determination by labeling such behavior as treasonous or a form of terrorism.

Human Rights Watch has published four reports documenting these kinds of abuses in Indonesia's easternmost province of Papua and its Moluccas Islands. The Indonesian government has prosecuted and imprisoned more than 100 peaceful political activists calling for self-determination or otherwise engaged in peaceful expressions of identity or aspirations for self-determination. This has included such acts as raising the Papuan Morning Star flag or the South Moluccan RMS flag—which regulations designate as “treasonous” symbols. Many of those detained reported being tortured or otherwise ill-treated.

In one case we documented, Johan Teterisa was sentenced to 15 years in prison for treason for unfurling a nationalist flag at a public dance in the Southern Moluccas in 2007 that was attended by the Indonesian president.

We have documented similar abuses against people engaged in peaceful expressions of identity or self-determination in Burma, Cambodia, China, India, and Nepal.

### **Failure to uphold laws crucial to indigenous communities**

Governments often fail to recognize or uphold laws on collective land rights of indigenous communities.

The 2001 Cambodian land law contains unprecedented recognition of collective land rights of indigenous communities by the state and provides for collective land titling of indigenous lands. It also recognizes the practice of shifting cultivation as part of the traditional land management system of indigenous communities.

This is laudable in the context of widespread prejudices against shifting cultivation practices (often mislabeled as “slash and burn”) in South and Southeast Asia, which has been used as a basis for denying indigenous peoples the rights to their lands.

However, land law provisions related to indigenous communities have not been implemented and are frequently violated, favoring powerful private and state interests and the economic exploitation of land, fertile upland areas, forests, and natural resources traditionally used and managed by indigenous people. Key implementing legislation was not

adopted in Cambodia until 2009; no indigenous community has yet received their collective land title.

Indigenous lands have also been conceded by the Cambodian government to the private sector for mining, tourism (hotels and golf courses), and economic land concessions; hydro-electric dams; and highways, without sufficient assessment of the environmental and social impacts of these development projects and with indigenous communities having no voice and no control over the grants process of the concessions.

Time and again across the continent we see that it is these communities that bear the costs of social inequities and environmental destruction—the result of corrupt governments seeking to benefit from economic development before resource tenure security (for land and natural resources) is in place. Human Rights Watch has written about these problems in at least a dozen Asian countries.

### **What can the US do?**

First, the international community as a whole needs to support and safeguard the rights of indigenous people as found in the Declaration on the Rights of Indigenous Peoples. This includes the rights to livelihood, education, and health, including registration of their communal lands and recognition of their traditional livelihoods. The US can do so through its strong bilateral ties and aid programs throughout the region as well as through its partnerships with the World Bank, Asian Development Bank, and United Nations agencies.

Second, the US should insist on better monitoring of the process of allocation of large-scale agro-industrial, mine, and tourism concessions in indigenous areas in order to assess their environmental and social impacts, ensure their compliance with international and national laws and standards, and guarantee the free, prior, and informed consent of affected indigenous communities.

Third, the US should weigh-in forcefully on cases in which indigenous activists have been harassed, threatened, and arbitrarily arrested for engaging in peaceful activism. It can do so by standing visibly with members of these communities.

Fourth, the US should ratify ILO Convention No. 169, the Convention concerning Indigenous and Tribal Peoples in Independent Countries.

Finally, the US should ensure that no US security assistance is going to any Asian security forces involved in abuses against indigenous communities.