

INDIGENOUS PEOPLES IN ASIA

HEARING BEFORE THE TOM LANTOS HUMAN RIGHTS COMMISSION HOUSE OF REPRESENTATIVES

ONE HUNDRED AND ELEVENTH CONGRESS

SECOND SESSION

JULY 26, 2011

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INDIGENOUS PEOPLE IN ASIA

TUESDAY JULY 26, 2011

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,

Washington, D.C.

The Commission met, pursuant to call, at 10:00 a.m., in Room 212, Rayburn House Office Building, Hon. James P. McGovern [cochairman of the Commission] presiding.

Cochairman McGOVERN. Good morning. I want to thank everyone for being here today. I would also like to thank Molly Hofsommer and the staff of the Tom Lantos Human Rights Commission for coordinating this hearing, and I especially want to thank our witnesses for their attendance.

We are here today to bring attention to the human rights issues facing the indigenous peoples of the world. This is the final hearing in a series we have held on indigenous peoples. Previously, we examined Latin America and Africa. This time, we turn our attention to Asia.

According to the United Nations and the "Study on the Problem of Discrimination Against Indigenous People," "indigenous" refers to ethnic communities who have resided in a region for extensive periods of time, predating the arrival and settling of another, dominant, ethnic community. When the newly-arrived community becomes the main political, economic and social power, indigenous peoples frequently become a marginalized minority facing various forms and degrees of discrimination.

It is estimated that the global indigenous population amounts to somewhere between 300-500 million, occupies 20 percent of the land surface, and can be found in nearly all countries on the planet. A sizable number of those people are in Asia itself, with over 700 indigenous groups consisting of an estimated 250 million people. Despite the vast differences among the native populations, many of the problems they face are universal for indigenous peoples. High rates of poverty, low-life expectancy and rampant malnutrition are just some of the challenges indigenous communities are living with today. These groups often lack fundamental civil and political rights, making self-determination difficult. Access to justice is only a dream for many, and far too frequently indigenous people are the subjects of human rights abuses, including extrajudicial killings and forced disappearances.

Some Asian countries have created legislative provisions aimed at protecting

indigenous people within their States. In many cases, however, these regulations are either overlooked or ignored. Alternatively, these groups are simply recognized as minorities, which does not provide the same protections they would otherwise be entitled to if they were classified as indigenous peoples.

The way of life for Asian indigenous peoples is also threatened by forces of change in the name of development and globalization. Populations face the challenges of land loss, population growth, warfare, environmental degradation and economic marginalization.

Today, we will review the general situation of indigenous peoples in Asia, and then look more closely at specific case studies: The Adivasis in India, the Rohingya of Burma, and the native peoples of the Gilgit-Baltistan region of Pakistan.

Just so you know, a lot of people down here in Washington have trouble understanding my Massachusetts accent when I pronounce things in English. So I apologize for my mispronunciation.

While this is only a small sampling of the millions of indigenous peoples, I hope it will bring attention to the scale of challenges facing indigenous peoples throughout Asia.

It is my hope that the United States becomes a leader in protecting and promoting indigenous peoples' right to self-determination; a right that is critical to the survival and well-being of these groups. Only when people are able to speak with their own voice can they truly be protected.

[The statement of Mr. McGovern follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES P. MCGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS AND COCHAIRMAN OF THE TOM LANTOS HUMAN RIGHTS COMMISSION

Rep. James P. McGovern (MA)

TLHRC Hearing: Indigenous People in Asia

2172 Rayburn HOB

Tuesday, July 26, 2011

10:00 AM-11:30 AM

Good morning. I want to thank everyone for being here today. I would also like to thank Molly Hofsommer and the staff of the Tom Lantos Human Rights Commission for coordinating this hearing, and I especially want to thank our witnesses for their attendance.

We are here today to bring attention to the human rights issues facing the indigenous peoples of the world. This is the final hearing in a series we have held on indigenous peoples. Previously we examined Latin America and Africa. This time, we turn our attention to Asia.

According to the United Nations and the “Study on the Problem of Discrimination against Indigenous People,” “indigenous” refers to ethnic communities who have resided in a region for extensive periods of time, predating the arrival and settling of another, dominant, ethnic community. When the newly arrived community becomes the main political, economic, and social power, indigenous peoples frequently become a marginalized minority facing various forms and degrees of discrimination.

It is estimated that the global indigenous population amounts to somewhere between 300-500 million, occupies 20% of the land surface, and can be found in nearly all countries on the planet. A sizeable number of those people are in Asia itself, with over 700 indigenous groups consisting of an estimated 250 million people. Despite the vast differences amongst the native populations, many of the problems they face are universal for indigenous peoples. High rates of poverty, low life expectancy, and rampant malnutrition are just some of the challenges indigenous communities are living with today. These groups often lack fundamental civil and political rights, making self-determination difficult. Access to justice is only a dream for many, and far too frequently, indigenous people are the subjects of human rights abuses, including extrajudicial killings and forced disappearances.

Some Asian countries have created legislative provisions aimed at protecting indigenous people within their states. In many cases, however, these regulations are either overlooked or ignored. Alternatively, these groups are simply recognized as minorities, which does not provide the same protections they would otherwise be entitled to if they were classified as indigenous peoples.

The way of life for Asian indigenous peoples is also threatened by forces of change in the name of development and globalization. Populations face the challenges of land loss, population growth, warfare, environmental degradation, and economic marginalization.

Today, we will review the general situation of indigenous peoples in Asia, and then look more closely at specific case studies: the Adivasis (AH-di-vahs-ees) in India, the Rohingya (roW-HING-yah) of Burma, and the native peoples of the Gilgit-Baltistan (GILL-git BALT-i-stan) region of Pakistan. While this is only a small sampling of the millions of indigenous peoples, I hope it will bring attention to the scale of challenges facing indigenous peoples throughout Asia.

It is my hope that the United States becomes a leader in protecting and promoting indigenous peoples’ right to self-determination; a right that is critical to the survival and well-being of these groups. Only when people are able to speak with their own voice can they truly be protected.

Cochairman McGOVERN. I would just say that along with the oral testimony presented, I would submit into the record written testimony from all of our witnesses here today.

So, having said that, I want to welcome our panel. Sophie Richardson, Advocacy Director of the Asia Division of Human Rights Watch; Rashmi Ekka, founder and Executive Director of the Adivasi Development Network; Jennifer Quigley, Advocacy Director of the U.S. Campaign for Burma; and Senge Sering, Institute for Gilgit Baltistan Studies. Anyway, I apologize for my terrible pronunciation. I apologize especially to the reporter here who is trying to get my words down here.

STATEMENT OF SOPHIE RICHARDSON, Advocacy Director Asia Division,
Human Rights Watch

Ms. Richardson. Thanks, Mr. McGovern. It is always a pleasure to work with you. Since I can't possibly improve on the introduction you have just given about the broad problems, I want to talk about two of the specific issues that came up repeatedly when I canvassed my colleagues who work regularly on 16 countries across Asia. These were the two most frequently-cited problems that indigenous communities face.

But first, while Human Rights Watch does not take a position on the merits of particular self-determination claims, obviously we feel very strongly about the right of people to engage in those discussions. Our research shows that some governments in the region continue to criminalize peaceful expressions of distinct identity or aspirations for self-determination by labeling such behavior as treasonous or as a form of terrorism.

I wanted to particularly point today to a couple of reports we have done about Papua and the Moluccas in Indonesia. We could obviously have a long conversation on the subject also about Uighurs.

But in Papua, we have documented that the Indonesian government has prosecuted and imprisoned more than 100 peaceful political activists for doing nothing more than calling for self-determination or otherwise engaging in peaceful expressions of identity. This has included acts such as raising the flag of Papua or the RMS Moluccan flag, which the Indonesian government has intentioned with international law and indeed the Indonesian constitution now regulated as being a form of treason. Simply to fly one of these flags constitutes treason.

Many of the people that we interviewed who have been imprisoned on these charges have been tortured while in custody. In one case we documented, Johan Teterisa was sentenced to 15 years in prison for treason for unfurling a flag at a public dance in the Southern Moluccas in 2007 that had been attended by President Yudhoyono, and we have documented similar abuses against people engaged in peaceful expression of identity or self-determination in Burma, Cambodia, China, India and Nepal, among others.

The other issue I would like to draw some attention to is the failure to uphold laws that are crucial to indigenous communities. Governments often fail to recognize or uphold laws, particularly on collective land rights of indigenous communities.

I wanted to draw particular attention to the 2001 land law in Cambodia which contains unprecedented recognition of collective land rights of indigenous communities by the states and provides for collective title of indigenous lands. It also recognizes the practice of shifting cultivation as part of the traditional land management of indigenous communities.

This is laudable in a context in which there is typically widespread prejudice

against shifting cultivation practices, which are often misunderstood as slash and burn agriculture. This is common in South and Southeast Asia. These biases have often been used as a basis for denying indigenous people the right to use of their lands.

But the land law provisions related to indigenous communities in Cambodia 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 until 2009, and to date, no indigenous community has actually received title to their collective lands.

This is a problem that we have seen time and again across the continent, and I am sure we will hear more about this morning. The larger problem, I think, is that indigenous communities wind up bearing the costs of social inequities and environmental destruction, which is usually the result of corrupt governments seeking to benefit from economic development before resource tenure for land or natural resources is in place. We have written about these problems in at least a dozen different countries.

I want to make a couple of quick recommendations about how the U.S. can actually become a leader in this realm. First of all, the international community as a whole needs to support and safeguard the rights of indigenous peoples as found in the Declaration on the Rights of Indigenous Peoples. This includes the rights to livelihood, education and health, including registration of communal lands and recognition of traditional livelihoods.

The U.S. is in a position to do this, not just through bilateral relationships, but also through its role and influence over the World Bank, the Asian Development Bank, the United Nations and others.

Second, the U.S. should insist on better monitoring of the process of allocation of large scale agro-industrial, mining and tourism concessions in indigenous areas in Asia in order to assess their environmental and social impact, ensure their compliance with international laws and standards, and guarantee, and this is the most important part, the free, prior and informed consent of the affected indigenous communities.

Third, the U.S. needs to weigh in forcefully on cases in which indigenous activists have been harassed, threatened and arbitrarily arrested, or worse, for engaging in peaceful activism. We would like to see would like to see the U.S. ratify the ILO Convention No. 169, which is the convention concerning the rights of indigenous people, and that is a legally binding document.

Last, but not least, and this is a subject we have discussed in a couple of different contexts, I think the U.S. needs to do a much better job when it is making decisions about military assistance to ensure that the militaries who are seeking greater U.S. cooperation, have not themselves been implicated in one way or another in violating the rights of indigenous communities.

I will stop there. Thanks.

[The statement of Ms. Richardson follows:]

Prepared Statement of Sophie Richardson

Testimony of Sophie Richardson,
Asia Advocacy Director,
Human Rights Watch:
Tom Lantos Human Rights Commission
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.

Cochariman McGOVERN Ms. Ekka

STATEMENT OF RASHMI KIRAN EKKKA, Founder and Executive Director,
Adivasi Development Network

Ms. Ekka. Good morning and Johar. My name is Rashmi Ekka, and I am from the Oraon tribe of the eastern state of Jharkhand in India. I am part of Adivasi Development Network. We are an organization that works for the empowerment of the indigenous peoples in India. According to the 2001 census, there were 85 million people who are identified with different tribes across India. Now, if Adivasis are growing at the same rate as the rest of India, we are now 100 million strong people. That would be approximately a third of the United States population, and also a significant percentage of Asia's 260 million indigenous people.

We collectively call ourselves Adivasis, "Adi" meaning first and "Vasis" meaning inhabitants. The government of India recognizes us as Scheduled Tribes in the constitution. This recognition makes us beneficiaries of affirmative action in education and the public sector.

With hundreds of tribes spanning the length and breadth of India, it is difficult for me to represent all of them. However, our problems are largely the same. We are isolated -- economically, socially, politically and geographically. We are the lowest point of every socio-economic indicator.

Economic challenges: Adivasis make some of the poorest people in the world. India's per capita income is \$1,265. In my State, where 30 percent of the people are Adivasi, the per capita income is \$99, meaning that the average Adivasi earns only 27 cents a day.

Poverty brings with itself a myriad of problems, the primary three being lack of education, lack of access to health care and nutrition, and lack of economic opportunities. Only 27 percent of Adivasi women in my State are literate, compared to a national average of 54 percent.

With low levels of education, employment prospects are few and far between. Most Adivasis are small holder agriculturists who depend on rain to grow their food. Severe food insecurity haunts them each as they are given to the vagaries of drought and monsoons.

Food insecurity has severe consequences on our children as well. Many of us did not receive the proper nutrition between the ages of 6 months and 2 years, and this has led to physical and mental stunting. Malnutrition is high at 77 percent for babies and 68 percent for pregnant mothers. Another consequence of food insecurity is the mass exodus from the rural areas to urban centers. The men take on jobs in mining, construction and other sectors and live in urban slums. Girls as young as 10 are trafficked into bonded labor. As domestic help, they are often physically and sexually

abused.

Socio-cultural isolation: Adivasis are not part of the Indian Caste System. Historically our status is hence that of a mlechcha or barbarian. Because we have been traditional forest dwellers and meat eaters, we have been perceived as rakshasas or demons in the ancient books. This mind-set severely handicaps our integration into the mainstream culture. We are discriminated against on the basis of our ethnicity, our color, our religion, our language and our cultural practices. We carry with ourselves a heavy baggage of low self-esteem. Mainstream culture often tells us we are not beautiful, we are not intelligent, and we cannot be successful.

As recognized members of Scheduled Tribes we are beneficiaries of affirmative action. However, the Caste System, the prevailing mind-set, you know, it impacts our everyday relationships with non-Adivasis and makes it difficult for us to find acceptance in the workplace and in school.

Political challenges: Adivasis have long struggled for a political voice at the national level in India. Even today, as a strong collective of nearly 100 million people, we do not have any leaders at the national level with national influence and appeal. We have found some degree of success at the regional level. However, many of our problems related to regulations still remain. One of them would be the problem of land and water and forest rights.

In 2006, the Scheduled Tribes and Other Traditional Forest Dwellers Act was passed. As traditional forest dwellers, we are now legally entitled to the resources from the forest floor which had been denied to us for decades, since the British. However, the implementation of this Act has been far from perfect and we are still susceptible to harassment, eviction, extortion of money and sexual molestation by forest officials.

And finally, I want to address our geography. Indigenous people the world over, we seem to have a knack for settling down in lands which are rich in minerals, forest produce and timber and other resources which the developing world wants. As development has taken place, we have had to pay the price. Every time a dam has been built, a mine has been mined, a factory has been set up, our home, our land, has been taken away from us.

Forty percent of India's minerals, including our uranium reserves, are found in my state, Jharkhand. Since 1951, 60 million people have been displaced in India because of development projects. Twenty-four million of them are Adivasis. We have not received any compensation or rehabilitation. And without our land, the forests, our water, our rivers, we do not have any other means of livelihood.

With so many issues that plague our daily lives, basic survival is in question for many Adivasis. Growing dissent has caused some to protest against the government using violent means. India's largest internal security threat, Naxalism, feeds on the grievances of the people she has let down. Your support will assist us in our journey to

find solutions.

In closing, I would like to say that India's Adivasis who come from 600 different tribes are a people rich in their knowledge of the natural world. We know the magic of plants and their medicinal properties. We belong to our land. It is the hours source of our science, our technology, our way of life, religion and culture. It is the essence of our existence. As we approach a 9 billion person world which will be plagued with food insecurity, climate change and rising levels of pollution, the world can learn how to live in harmony with nature from indigenous people.

Thank you. Johar.

Mr. McGovern. Thank you very much.

[The prepared statement of Ms. Ekka follows:]

Testimony of Rashmi Kiran Ekka
Founder and Executive Director
Adivasi Development Network
Before
The Tom Lantos Human Rights Commission
United States Congress
On
Indigenous Peoples in Asia
July 26, 2011

Good Morning and Johar! My name is Rashmi Ekka and I am a member of the Oraon tribe from the Eastern state of Jharkhand in the Chotanagpur Plateau of India. I am part of Adivasi Development Network, an organization that works for the empowerment of Indigenous Peoples in India. According to the 2001 census there are 85 million indigenous people who constitute 8% of India's one billion. If Adivasis are growing at the same rate as the rest of India, we are now closer to the 100 million indigenous people mark today. That would be approximately a third of the United States population. Also we are a significant percentage of Asia's 260 million indigenous people.

We collectively call ourselves Adivasis - the first inhabitants of India. The government recognizes us as Scheduled Tribes in the Constitution of India. This recognition makes us the beneficiaries of Affirmative Action in Education and the Public Sector. With hundreds of tribes spanning the length and breadth of India, with as many different cultures and languages it is difficult for me to represent all Adivasis. However our problems across the country are largely the same. We live in the remotest parts of the country. We are isolated - economically, socially, politically and geographically. We are the lowest point of every socio-economic indicator.

Economic Challenges:

Adivasis make some of the poorest people in the world. India's per capita income is \$1,265. In my state, where 30% of the population is Adivasi, the per capita income is \$99 meaning that an average Adivasi in my state earns only 27 cents a day. Poverty brings with itself a myriad of problems - the primary three being lack of education, lack of access to health care and proper nutrition and lack of economic opportunities. Only 27% of Adivasi women in my state are literate as compared to 54% literacy in women across the country. With low levels of education, employment prospects are few and far between. Most Adivasis are smallholder agriculturists who depend on rain to grow their food. Severe food insecurity haunts them each year as they are given to the vagaries of draught and monsoons. Food insecurity has had severe consequences on our children. Many of us did not receive proper nutrition between the ages of 6 months and 2 years and this has led to physical and mental stunting. Malnutrition is high at 77% for babies and 68% for pregnant women. My family in India, adopted an Adivasi baby girl, three years back. Baby Riya's biological mother was severely malnourished and stunted. Because of this Riya was born with a very low body weight and even after receiving very good care, Riya's health has been a struggle and she often ends up in the Intensive Care Unit. Another consequence of food insecurity is the mass exodus from the rural areas to the urban centers. The men take on jobs in mining, construction and other sectors and live in urban slums. Girls as young as 10 are trafficked into bonded labor. As domestic help they are often physically and sexually abused.

Social Isolation:

Adivasis are not part of the Indian Caste System. Historically our status is hence that of a *mlechcha* or barbarian. As traditional forest dwellers and meat eaters we have been perceived as *rakshasas* or demons in the ancient books. This mindset severely handicaps our integration into India's mainstream population. We are discriminated against on the basis of our ethnicity, our color, our language, our religious practices and our culture. Adivasis carry with themselves a heavy baggage of low self-esteem. Mainstream culture often reinforces the belief that we are not intelligent, not beautiful and cannot be successful. As recognized members of Scheduled Tribes we are beneficiaries of Affirmative Action, however the prevailing mindset impacts our everyday relationships with non-Adivasis and makes it difficult for us to find acceptance and success at school and the workplace.

Political Challenges:

Adivasis have long struggled for a political voice at the National level in India. Even today, as a strong collective of nearly a 100 million people, we do not have any leaders with national appeal and influence. We have found some degree of success on a moreregional level. However many of our problems related to regulations still remain. One of them would be the problem of land and forest rights. In 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was passed. As traditional forest dwellers we are now legally entitled to the resources from the forest which had been denied to us for decades. However the implementation of this Act has been less than perfect and forest dwellers are still susceptible to harassment, eviction, extortion of money and sexual molestation by forest officials.

And finally I want to address our Geography.

Indigenous people the world over have a knack for settling down in lands that are rich in minerals, forest produce, timber and other resources. As development has taken place, Adivasis have had to pay the price. Every time a dam has been built, a mine has been mined, a factory has been set up, our land, our home has been taken away from us. 40% of India's minerals including uranium reserves come from my state, Jharkhand. Since 1951, 60 million people have been internally displaced in India because of development projects. 24 million of them are Adivasis. Most Adivasis did not receive proper compensation and rehabilitation, and without their land, rivers and forests they were often left with little means of making a livelihood.

With so many issues that plague our daily lives, basic survival is in question for many Adivasis. Growing dissent has caused some to protest against the government using violent means. India's largest internal security threat – Naxalism – feeds on the grievances of the people she has let down. Your support will assist us in our journey to find solutions.

In closing I would like to say that India's Adivasis who come from over 600 different tribes are a people rich in their knowledge of the natural world. We know the magic of different plants and their medicinal properties. We belong to our land, which is the source of our science, technology, way of life, religion and culture. It is the essence of our existence. As we approach a 9 billion people world which will be plagued with food insecurity, climate change and rising levels of pollution, the world can learn how to live in harmony with Nature from Indigenous People.

Thank you! Johar!

Cochairman McGOVERN Ms. Quigley

STATEMENT OF JENNIFER QUIGLEY, Advocacy Director, U.S. Campaign for Burma

Ms. Quigley. Thank you, Cochairman McGovern, for holding this hearing today.

For decades, the Rohingya people have been victims of systematic and widespread human rights violations at the hands of Burma's military junta. In a recent report released by the Irish Center For Human Rights, an expert on international human rights law claimed that these mass atrocities perpetrated by Burma's military regime against the Rohingya minority in the country's western region may constitute crimes against humanity. Overlooked for years, their plight and the root causes of their dire situation remain under-examined.

The Rohingya are a Muslim ethnic minority living in northern Arakan state in western Burma. They face religious and ethnic discrimination at the hands of Burma's military regime which does not recognize the Rohingya as citizens of Burma. The regime does not consider the Rohingya people as one of the 135 legally recognized ethnic minority groups in Burma, leaving the Rohingya stateless, homeless and rights-less. To this day, Burma's military regime maintains that the Rohingya immigrated to Burma from India while under British colonial rule, omitting their earlier arrivals and settlements in the region.

Today, the Rohingya Muslims constitute one-third of the total population of Arakan state, where their population numbers around 725,000. The remaining population in the State are Buddhist Arakanese.

In 1978, the Burmese Army launched a military offensive called Dragon Kin to root out these so-called foreigners. Hundreds were arrested, tortured, raped and killed. In the following months of the military operation, over 300,000 Rohingya fled to Bangladesh. The Bangladeshi government refused to provide food supplies and other necessities to the Rohingya refugees, leaving many of them to die from starvation and disease.

Again in 1991, the Burmese Army launched another military operation to drive out for Rohingya from Burma. More than 268,000 Rohingya fled to Bangladesh. The Bangladeshi government forcefully repatriated over 60 percent of them back into Burma with full knowledge of their heightened vulnerability to persecution, discrimination and insecurity.

The Rohingya are denied fundamental human rights and freedom, and the military regime to this day continues to perpetrate human rights violations against this vulnerable population. The regime refuses to issue identification cards to the Rohingya, which are necessary to be able to travel, as well as to obtain passports and enroll in higher education. They are denied land ownership and property rights. The land on which they live can be taken away at any given time. Furthermore, they must seek permission to

marry, a process that may take months or years and may involve considerable bribes and requirements to renounce their religion.

Moreover, restrictions on movement can prevent the Rohingya from accessing health care and education, or from working. In many cases, the Rohingya are denied health care or required to pay arbitrary fees. In addition, their nonlegal status makes it extremely difficult for the Rohingya to find employment. Acute and chronic malnutrition is rife among the Rohingya minority.

Furthermore, the Rohingya are victims of modern day slavery and are used for various forms of forced labor. These people are forced to work without pay on construction sites for roads, railways, as well as building Army barracks. Because they are forced into these construction projects with no compensation, they cannot generate any income to feed themselves or their families.

Land confiscation has become a common practice, as the regime forcibly evicts the Rohingya from their land in preparation for development projects such as oil or gas pipelines and hydropower plants. Among several development projects in the region, the regime is building the Shwe gas pipeline through Arakan state for the benefit of the Chinese government. It is likely the Rohingya will be further subjected to increasing human rights abuses upon the beginning of this construction project.

As if their home government does not treat them badly enough, the Rohingya do not find welcome in other countries where they seek refuge. Hundreds of thousands of Rohingya have fled to Bangladesh, Thailand and Malaysia to escape persecution and adversity, only to fall into greater trials. Currently, over 30,000 Rohingya live in squalid refugee camps in Bangladesh where they are denied access to food supplies, medical aid and education.

Those in the camps are recognized as refugees and benefit from the meager protection from the UNHCR. However, it is estimated that up to 200,000 live in deplorable conditions outside the refugee camps in Bangladesh as illegal immigrants and unofficial refugees in makeshift camps. In recent months, both the official and unofficial Rohingya refugee camps have been subject to violent attacks, further jeopardizing their safety.

Many Rohingya have also fled to Thailand and Malaysia, with the hope of finding refuge and life beyond misery and poverty. However, they are subjected to dehumanizing treatment by both Thai and Malaysian authorities. In December 2009, it was widely reported that Thai officials towed a boat of Rohingya refugees back into international waters in a motorless barge where they were left at the mercy of the sea.

The plight of the Rohingya will continue in its miserable state until Burma is willing to recognize them as citizens. There needs to be greater international attention to also address the immediate humanitarian needs they face in each country in which they reside.

The United States should work with ASEAN and other regional powers to urge the Burmese regime to immediately amend or repeal the 1982 citizenship law, with the effect of granting citizenship and accompanying rights to the Rohingya in Rakhine state; to issue birth certificates to all Rohingya born in Burma in compliance with domestic and international law; to take immediate steps to eradicate all discriminatory policies and practices against the Rohingya population, including restrictions on movement, freedom to marry and arbitrary detention; to eliminate forced labor and other coercive measures.

The United States should work with governments in the region who receive Rohingya refugees to provide them with adequate protection, humanitarian assistance and other basic services and work with the Bangladeshi government and UNHCR to register undocumented Rohingya refugees in order to strengthen protection and humanitarian assistance and reduce sexual and gender-based violence; provide more humanitarian assistance and urge the Bangladeshi government to allow more access for humanitarian assistance organizations into Kutupalong, the unofficial refugee camp; and develop a large-scale, needs-based assistance program to assist impoverished local communities hosting Rohingya refugees.

Thank you very much.

Mr. McGovern. Thank you.

[The prepared statement of Ms. Quigley follows:]

U.S. House of Representatives
Tom Lantos Human Rights Commission
Hearing : Indigenous Peoples in Asia
July 26, 2011
10:00 AM, Rayburn House Office Building Room B-318

Testimony of Jennifer Quigley
Advocacy Director, U.S. Campaign for Burma

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Co-chair McGovern, Co-chair Wolf and Members of the Commission,

Thank you very much for holding this hearing today. For decades, the Rohingya people have been victims of systematic and widespread human rights violations at the hands of the military junta. In a recent report released by the Irish Center for Human Rights, an expert on international human rights law claimed that these mass atrocities perpetrated by Burma's military regime against the Rohingya minority in the country's western region may constitute crimes against humanity. Overlooked for years, their plight and the root causes of their dire situation remain under-examined.

Brief history of Burma's Rohingya Minority

The Rohingya are a Muslim ethnic minority living in northern Arakan state in western Burma. They face religious discrimination at the hands of Burma's military regime, which doesn't recognize the Rohingya as citizens of Burma. The regime does not consider the Rohingya people as one of 135 legally recognized ethnic minority groups in Burma, leaving the Rohingya stateless, homeless and rights-less.

The first Rohingya people arrived in Burma as early as 7th century. These early migrants were known to be Arab sailors and merchants who traveled to Burma for economic pursuits. To this day, Burma's military regime maintains that the Rohingya immigrated to Burma from India while under British colonial rule, flagrantly omitting their earlier arrivals and settlements in the region.

Today, Rohingya Muslims constitute 1/3 of the total population of Arakan State, where their population numbers around 725,000. The remaining population are Buddhist Arakanese.

As early as 1942, the Rohingya have been the target of state-sponsored persecution. In 1942, an estimated number of 100,000 Rohingya were slaughtered by Burmese nationals, local Arakanese communists and Japanese occupiers. In 1978, the Burmese Army launched a military offence, named Dragon King, to root out these so-called 'foreigners'. Hundreds were arrested, tortured, raped and killed. In the following months of the military operation, over 300,000 Rohingya fled into Bangladesh. The Bangladeshi government refused to provide food supplies and other necessities to the Rohingya refugees, leaving many of them to die from starvation and disease.

Again in 1991, the Burmese Army launched another military operation to drive out more Rohingya from Burma's lands. More than 268,000 Rohingya fled to Bangladesh. The Bangladeshi government forcibly repatriated back into Burma over 60% of those who fled, with full knowledge of their heightened vulnerability to persecution, discrimination, and insecurity.

Mass Atrocities Against Rohingya: Loss of Land and Rights

The Rohingya are denied fundamental human rights and freedom, and the military regime consistently perpetrates human rights violations against this vulnerable population. The regime refuses to issue identification cards to Rohingya, which are necessary to be able to travel, as well as to obtain passports and enroll in higher education. They are denied land ownership and property rights. The land on which they live can be taken away at any given time. Furthermore, they must seek permission to marry, a process that may take months or years and may involve considerable bribes and requirements to renounce their religion. Moreover, restrictions on movement can prevent the Rohingya from accessing healthcare and education, or from working as civil servants. In many cases, the Rohingya are denied healthcare, or required to pay arbitrary fees. In addition, their non-legal status makes it extremely difficult for the Rohingya to find employment. Acute and chronic malnutrition is rife among the Rohingya minority.

Furthermore, the Rohingya are victims of modern-day slavery and are used for various forms of forced labor. These people are forced to work without pay on construction sites for roads, railways, as well as building army barracks. Because they are forced into these construction projects with no compensation, they cannot generate any income to feed themselves and their families.

Land confiscation has become a common practice, as the regime forces the Rohingya to evict from their lands in preparation for development projects such as gas/oil pipelines and hydropower plants. Amongst several other development projects in the region, the regime is also building the Shwe gas pipeline through Arakan State. It is likely the Rohingya will be further subjected to these abuses upon the beginning of this construction project.

Stateless and Unwanted

As if their home government does not treat them badly enough, the Rohingya do not find welcome in other countries where they seek refuge. Hundreds of thousands of Rohingya have fled to Bangladesh, Thailand, and Malaysia to escape persecution and adversity only to fall into even greater trials. Currently, over 30,000 Rohingya live in squalid refugee camps in Bangladesh where they are denied access to food supplies, medical aid, and education. Those in the camps are recognized as refugees and benefit from meager protection from the UNHCR. However, it is estimated up to 200,000 live in deplorable outside the camps in Bangladesh as illegal immigrants

Many Rohingya people also fled to Thailand and Malaysia, with the hope of finding refuge and a life beyond misery and poverty. However, they are subjected to dehumanizing treatments by both Thai and Malaysian authorities. In December 2009, it was reported that Thai officials towed a boatful of Rohingya refugees back into international waters in a motorless barge, where they were at the mercy of the shark-infested sea.

The plight of Rohingya will continue in its miserable state until Burma is willing to recognize them as citizens. There needs to be greater international attention to also address the immediate humanitarian needs.

The United States should work with ASEAN and other regional powers to urge Burma:

To immediately amend or repeal the 1982 Citizenship Law, with the effect of granting citizenship and accompanying rights to the Rohingya in Rakhine State.

To issue birth certificates to all Rohingya born in Burma in compliance with domestic and international law.

To take immediate steps to eradicate all discriminatory policies and practices against the Rohingya population, including restriction on movements and arbitrary detention.

To eliminate forced labor and other coercive measures.

The United States should:

Work with the Bangladeshi government and UNHCR to register undocumented Rohingya refugees in order to strengthen protection and humanitarian assistance and reduce sexual and gender-based violence.

Develop a large-scale, needs-based assistance program to assist impoverished local communities hosting Rohingya refugees.

Cochariman McGOVERN Mr. Sering

STATEMENT OF SENGE SERING, Institute for Gilgit-Baltistan Studies

Mr. Sering. Thank you, Mr. Chairman.

I am thankful to the Commission for this opportunity to represent the indigenous people of Gilgit-Baltistan, which is a U.N.-declared disputed territory under Pakistan's control. The worsening human rights situation of the indigenous people in Gilgit-Baltistan is a serious cause of concern and effective protection and promotion of their rights is urgently required.

Gilgit-Baltistan is home to more than one million people who belong to Balti, Shin, Burushu, Khowar and Wakhi ethnicity. They consider themselves different from predominant Pakistani groups and share strong cultural links with the Tibetans, Kashmiris, Jajiks, Uighurs and Mongols.

The region is situated at the confluence of Central Asia, China and South Asia, and greatly helps China with access to the markets and energy strongholds in the Middle East and the Indian oceanic region. Gilgit-Baltistan is a resource-rich region where uranium, copper and gold are found in abundance, and glaciated water bodies cover a catchment area equal to the size of South Carolina.

Pakistan and China's investigated strategic and economic interests in Gilgit-Baltistan restrict the natives from benefiting from their own resources. Pakistan's unilateral decision to award mining licenses to the Chinese companies has endangered control of the natives over their land. Despite repeated local demands, Islamabad has failed to transfer legislative authority over trade and transit and resource management to the indigenous political institutions which limits access to revenue worth millions of dollars. Pakistan also denies natives the royalty and usage compensation over the rivers, which the Pakistani provinces currently receive on an annual basis.

The disputed region remains in tight control of Pakistan's notorious secret service agency, ISI, and the situation forces the majority among the natives to remain silent and tolerate the oppression. As of now, more than 180 activists remain behind bars for demanding political and religious rights, and many face sedition charges for confronting Chinese and Pakistani companies.

Given the fact that more than half of the native population lives below the poverty line, the majority of the valleys still lack basic facilities like clean drinking water, schools and health centers, and more than 300,000 educated youth remain jobless, it is vital for the natives to regain control over their land and benefit from the resources to enhance living standards.

According to the media sources, China would invest more than \$30 billion in Gilgit-Baltistan to construct large water storage dams which will displace hundreds of thousands of people and damage their link with their ancestral land. The situation will

change social demography, impacting indigenous languages, traditions and other traits of culture. It will also prevent the natives from accessing their resources like pastures, irrigation outlets, forests and minerals. The situation undermines regional security and creates environmental problems of great magnitude.

Without the consent of the natives, who are mostly Shi'as, Ismailis and Sufis by religious denomination, Pakistani Secret Service agents use Gilgit-Baltistan as a hideout and launch pad for the extremist terrorists who actively support Pakistan's Talibanization. On many occasions, natives clashed with these rogue elements, but failed to oust them due to pressure from secret service agencies.

In addition, native students of Gilgit-Baltistan are forced to learn religious courses, which contradict local secular traditions, lack regard for the local history, and actively promote jihad and terrorism. The situation seriously undermines promotion of indigenous cultural beliefs and national identity.

The situation, in which thousands of Chinese personnel have assumed de facto control of the region, poses serious political threats both for the natives and the international community. China's presence in Gilgit-Baltistan complicates the Kashmir issue and prolongs the dispute between India and Pakistan, which is like oxygen to the terrorists and rogue elements within ISI.

The situation could lead to a potential war between three nuclear nations, creating political and economic instability at the global scale. Many among locals fear that Gilgit-Baltistan would end up like Tibet and East Turkestan if China's unwarranted interventions are not challenged. They emphasize that since both Pakistan and China lack constitutional rights and sovereignty over Gilgit-Baltistan, therefore, international community must help in withdrawal of Pakistani and Chinese personnel and citizens from the region.

Protecting indigenous people's land rights serves U.S. interests in cost-effective conservation, mitigation of climate change and global food security. The U.S. should help prevent human rights violations caused due to these massive scale land grabs which pose threats to local livelihoods. It is once again stressed that social and cultural well-being of the indigenous peoples of Gilgit-Baltistan coincides with U.S. national economic and security interests.

At the same time, the U.S.A. must persuade both India and Pakistan to open channels of economic and cultural activity between Ladakh and Gilgit-Baltistan and enable the United Nations to increase its role in Gilgit-Baltistan to protect the rights of the natives. The Institute believes that substantial decreases in Pakistani influence in Gilgit-Baltistan will allow promotion of indigenous cultures and help neutralize extremism and Arab tribal influences that have been forced upon the natives in the name of Islamic values.

The Institute for Gilgit-Baltistan Studies therefore calls for the demilitarization of

Gilgit-Baltistan, promotion of genuine autonomy and democracy, withdrawal of extremist elements, reinstatement of state subject rule, and people to people contact between Ladakh and Gilgit-Baltistan. It asks Pakistani rulers to empower local political institutions, including granting absolute legislative authority over the natural resources, tourism and trade to the legislative assembly in Gilgit-Baltistan.

I once again thank you, Mr. Chairman, for this opportunity.

[The prepared statement of Mr. Sering follows:]

**Testimony of
Senge Sering, Institute for Gilgit Baltistan Studies (IGBS)
Before
The Tom Lantos Human Rights Commission
United States Congress
July 26, 2011**

Respected Chairman I am thankful to the commission for this opportunity to represent the indigenous people of Gilgit- Baltistan, which is a UN-declared disputed territory under Pakistan's control. The worsening human rights situation of the indigenous people in Gilgit-Baltistan is a serious cause of concern and effective protection and promotion of their rights is urgently required.

Gilgit-Baltistan is home to more than one million people who belong to Balti, Shin, Burushu, Khowar and Wakhi ethnicity. They consider themselves different from predominant Pakistani group and share strong cultural links with the Tibetans, Kashmiris, Tajiks, Uighurs and Mongols. The region is situated at the confluence of Central Asia, China and South Asia; and greatly helps China with access to the markets and energy strongholds in the Middle East and the Indian Oceanic Region. Gilgit-Baltistan is a resourcerich region where uranium, copper, and gold are found in abundance; and glaciated water bodies cover a catchment area equal to the size of South Carolina.

However, Pakistan and China's vested strategic and economic interests in Gilgit-Baltistan restrict the natives from benefiting from their own resources. Pakistan's unilateral decision to award mining licenses to the Chinese companies has endangered control of the natives over their land. Despite repeated local demands, Islamabad has failed to transfer legislative authority over trade and transit routes; and resource management to the indigenous political institutions, which limits access to annual revenue worth millions of dollars. Pakistan also denies natives the royalty and usage compensation over the rivers, which the Pakistani provinces currently receive on annual basis.

The disputed region remains in tight control of Pakistan's notorious secret service agency, ISI, and the situation forces the majority among the natives to remain silent and tolerate the oppression. As of now, more than one hundred and eighty activists remain behind bars for demanding political and religious rights and many face sedition charges

for confronting Chinese and Pakistani companies. Given the fact that more than half of the native population lives below the poverty line; majority of the valleys still lack basic facilities like clean drinking water, schools and health centers; and more than 300,000 educated youth remain jobless; it is vital for the natives to regain control over their land and benefit from the resources to enhance living standards.

According to the media sources, China would invest more than thirty billion dollars in Gilgit-Baltistan to construct large water storage dams which will displace hundreds of thousands of people and damage their link with their ancestral land. The situation will change social demography impacting indigenous languages, traditions and other traits of culture. It will also prevent the natives from accessing their resources like pastures, irrigation outlets, forests and minerals. The situation undermines regional security and creates environmental problems of great magnitude.

Without the consent of the natives, who are mostly Shias, Ismailis and Sufis by religious denomination, Pakistani secret service agents use Gilgit-Baltistan as a hide out and launch pad for the extremist militants who actively support Pakistan's Talibanization. On many occasions, natives clashed with these rogue elements but failed to oust them due to pressure from secret service agencies. In addition, native students of Gilgit-Baltistan are forced to learn religious courses, which contradict local secular traditions; lack regard for the local history and actively promotes Jihad and terrorism. The situation seriously undermines promotion of indigenous cultural beliefs and national identity.

The situation, in which thousands of Chinese personnel have assumed de-facto control of the region, poses serious political threats both for the natives and the international community. China's presence in Gilgit-Baltistan complicates the Kashmir issue and prolongs the dispute between India and Pakistan which is like oxygen to the terrorists and rogue elements within ISI. The situation could lead to a potential war between three nuclear nations creating political and economic instability at the global scale. Many among locals fear that Gilgit-Baltistan would end up like Tibet and East Turkestan if China's unwarranted interventions are not challenged. They emphasize that since both Pakistan and China lack constitutional rights and sovereignty over Gilgit-Baltistan; therefore international community must help in withdrawal of Pakistani and Chinese personnel and citizens from the region.

Protecting indigenous peoples' land rights serves U.S. interests in cost-effective conservation, mitigation of climate change, and global food security. The US should help prevent human rights violations caused due to these massive scale land grabs which pose threats to local livelihoods. It is once again stressed that social and cultural well-being of the indigenous peoples of Gilgit-Baltistan co-insides with U.S. national economic and security interests.

At the same time, USA must persuade both India and Pakistan to open channels of economic and cultural activity between Ladakh and Gilgit-Baltistan and enable the United Nations to take increase its role in Gilgit-Baltistan to protect the rights of natives.

The Institute believes that substantial decrease in Pakistani influence in Gilgit-Baltistan will allow promotion of indigenous cultures and help neutralize extremism and Arab tribal influences that have been forced upon the natives in the name of Islamic values.

The Institute for Gilgit Baltistan Studies therefore calls for demilitarization of Gilgit-Baltistan, promotion of genuine autonomy and democracy, withdrawal of extremist elements, re-instatement of state subject rule¹ and people to people contact between Ladakh and Gilgit-Baltistan. It asks Pakistani rulers to 1 State Subject Rule (SSR) prevents outsiders from acquiring land and immovable assets in Gilgit-Baltistan. The law was abolished by Prime Minister Bhutto in 1974 to enable Pakistani citizens settle in the region and help change empower local political institutions including granting absolute legislative authority over the natural resources, tourism and trade to the legislative assembly in Gilgit.

I once again thank you Mr. Chairman for this opportunity.

Cochairman McGOVERN. Thank you very much. I thank all of you.

I also want to just add for the record that in addition to the statements made by the witnesses today, I would like to officially submit into the record written testimony from First People's Worldwide, an NGO who advocates for indigenous rights and who has provided us with information regarding the Asian indigenous groups that we are discussing today.

Furthermore, I would like to submit for the record testimony from J.P. Raju, the Adivasi leader from the National Adivasi Alliance; testimony from Nick Wertsch and Padma Priya of Samata India, a tribal rights advocacy group; and testimony from Lorena Vaca of the Indian Law Resource Center. I would like to thank everyone who has worked to help put together this very helpful information.

So I want the record to reflect that. I want to thank all of you for your testimonies. I want to thank you for your advocacy of the various indigenous groups that we are discussing here today.

You know, we are gathering in Washington D.C. and a lot of the governments of the countries where the peoples we are talking about reside have big embassies here. They have very expensive paid lobbyists and they advocate for their economic interests and their military interests very effectively as a result of that. They are a constant presence. But very rarely do the issues that we are discussing here today come up in the conversations that we have with the official governments and with their paid lobbyists.

Part of what we are trying to figure out here in front of this Commission is how the United States can be a better advocate for human rights at every level, including a better advocate for human rights for indigenous peoples around the world. So if I could just ask a couple of questions just to kind of set the scene as to where we are right now.

You have been working with various indigenous groups in Asia for quite some time. How do you assess the impact or the role of the United States in terms of being an advocate for human rights, an advocate for proper representation, an advocate to prevent lands from being taken away from various indigenous groups? Has the United States been out front? Have we been way behind? Have we been somewhere in the middle? How do you assess our role up to this point? Have we been too silent? You have mentioned a number of things that we can do. I appreciate that. But I guess I am trying to figure out what have we been doing? This is open to all of you.

Ms. Richardson?

Ms. RICHARDSON. It is a big question. I would say that the U.S. has arguably been marginally better than, for example, the EU or member states, or indeed other more progressive governments within Asia. But I think as a general matter, there is still a great deal more that the U.S. can and should do. Often I think the U.S.'s defense of the rights of indigenous people, either individuals or communities, often gets tangled up, as is usually the way, with larger geopolitical interests or in some instances with respect to U.S. corporate interests.

If you follow, for example, the case that is making its way through Federal Court in the U.S. against Exxon on behalf of some Achenese in Indonesia, there is a classic example of an indigenous people's land rights being absolutely trampled upon, and it is taking years and years and years of very high profile, very complicated and, frankly, very expensive litigation to get a U.S. company to comply, and the U.S. Government has tried, I think, on a couple of occasions, to either kill the case entirely, rather than speak out, I

think quite effectively, on behalf of the indigenous people.

Cochairman. McGOVERN. Ms. Ekka.

Ms. EKKA. This is a difficult question to answer because this is, how can I say it, an Indian internal security matter, internal affairs matter, and as such, the U.S. does not go in there as much. But I think what can be done is that when aid work happens in India, through USAID, et cetera, that there be a mandate that there be more focus on indigenous people and working with them.

Cochairman. McGOVERN. For example, do the Adivasi leaders have a relationship with our embassy in India? If there is a human rights abuse, is there a point of contact? Do we respond? If lands are being taken away in an unjust way or if a U.S. corporation is behaving in a way that has an adverse impact on the community, is there a relationship there in which the U.S. responds?

Ms. EKKA. Yes, I don't think there is a strong relationship yet. Dialogue is more on a national level, regional level, than on an international level.

Cochairman. McGOVERN. It would seem to me if our embassy were more sensitive to some of the realities of the community, that would be a good thing. At least it would be take away the excuse that no one has talked to us. But I appreciate it

Ms. Quigley?

Ms. QUIGLEY. I would have to agree with Sophie that it is sort of like marginally better than other progressive countries.

Cochairman. McGOVERN. That is not an enthusiastic endorsement of it.

Ms. QUIGLEY. In the case of Burma and sort of like our indigenous communities, the U.S. has basically a mixed response. Recently Assistant Secretary Schwartz has been to Bangladesh and had been very vigorously pursuing the harsh treatment in which the refugees and the unofficial refugees are facing in Bangladesh.

Less so is the U.S. responding on the political front when it comes to indigenous rights. We hear a tremendous amount of talk, particularly from this administration, on pursuing engagement, and one of the things that we have been advocating for was that means with all parties. And for them it sort of meant Aung San Suu Kyi is released from house arrest and there is a new, quasi-new sheen of civilian government over the military junta, and so the engagement there.

And you have a tremendous amount of ethnic minorities, you have a tremendous amount of indigenous communities that the cease-fires are going to end, there is going to be renewed armed conflict, this is going to be taking place in an area where China is trying to build hydropower plants, natural gas pipelines. The regime is doing the dirty work for them and we are not really seeing a response from our embassies in the region at all about reaching out to these communities and understanding what their needs are and what they need from the U.S. Government. This is sort of like, I feel like we are talking to a brick wall with the administration.

That said, Congress has been very responsive in trying to, again, sort of, like us, talk to a brick wall about reaching out to these communities and bringing them into this process. And it just not happening, with the exception, as I said, Assistant Secretary Schwartz reaching out to the regional governments on the issue of treatment of the refugee population.

Cochairman. McGOVERN. And Assistant Secretary Schwartz is a good guy, but I think he is leaving.

Ms. QUIGLEY. Yes.

Cochairman McGOVERN. Mr. Sering.

Mr. SERING. Thank you, sir. Well, the United States has been dealing with different countries, and the case is different when it comes to each individual case, but I will talk in context to Pakistan.

I would say that the United States to walk a really fine line because of its dependence on Pakistan to eliminate terrorism in the area is very important, but at the same time, it has taken some steps in Gilgit-Baltistan that is very encouraging. For instance, investment in health and education projects.

So when we compare United States with, let's say, China, which is only interested in building dams in the region or building roads that will connect China with Iran and the Pakistani ports, the United States interests in capacity building at the micro level, providing for the local people for basic health and education benefits, it is very promising.

But I would say, as Ms. Jennifer said, there is a difference between how the State Department will deal with Pakistan and how Congress will deal with Pakistan. The State Department has largely tried to promote the interests of Islamabad, whereas at the State Department we have more hope that there are certain representatives who are interested in extending their support to the indigenous community.

Cochairman McGOVERN. I guess what I am trying to get at is we have embassies all over the world, and sometimes expressing concern doesn't have to be so confrontational. It could be something as simple as the human rights officer or development officer going into a community and just listening and learning and then reporting back to Washington as to what the realities are.

Advocating for human rights doesn't always have to be confrontational. There are various ways you can do it. Advocating for people's rights doesn't always have to be confrontational. It can be done in a way that hopefully you bring the government along with you to try to be more sensitive and more responsive to some of the concerns of the indigenous communities.

I am always amazed when I go to certain countries or when I visit indigenous communities that no one from our government has ever been out to listen and to learn, and I think sometimes just by going out to listen and learn, you know, that in and of itself is a signal, a powerful signal.

Let me ask, considering the frequent denial of civil and political rights to indigenous communities, how effective are grassroots organizations in promoting their own rights? Do these internal efforts have the potential to be successful on their own or is there a role for outside organizations and governments?

Ms. RICHARDSON. It varies enormously. You know, for example, the land law I was speaking about in Cambodia was not necessarily the result of advocacy on behalf of indigenous organizations inside the country. There was some of that, but that wasn't the main driver. Yet it led to one of the better pieces of legislation we have seen across the region.

At the other end of the spectrum, we are talking about people whose very ideas, that they have ideas or want to discuss peacefully self-determination can get them a 15 to 20 year sentence in prison, and their ability to organize in any way or effectively articulate those concerns even within the legal framework of a given country can be

extremely problematic.

That is one of the problems that we have seen over and over again, that even trying to have a discussion about, for example, having the autonomy laws in China upheld to their fullest extent. So even people having a peaceful conversation about existing legislation that ought to be upheld winds up getting people jail sentences. And those are some of the circumstances where having others weigh in and say this is what they are entitled to do could be helpful.

Cochairman McGOVERN Ms. Ekka.

Ms. EKKA I think there are different places where it is more effective for the grassroots organization to work and other places where international pressure does help. For example, my state, Jharkand, was created only 11 years back. In India states are drawn along linguistic lines and nobody ever felt the need that indigenous people should have their own state and it took years and years of lobbying by various regional political groups to get that.

But on the other hand we have, like Sophie was mentioning, activists or people who are fighting for indigenous rights who get branded as traitors. One would be the case of Dr. Binayak Sen, who is a doctor. He was treating people who have violently dissented against the government and he was branded as a traitor and thrown into jail. So for people like that, yes, international voice and international pressure does help.

Cochairman McGOVERN. Ms. Quigley.

Ms. QUIGLEY. In the case of Burma, for the Rohingya and sort of the other indigenous minorities in Burma, it has been critical to have a partnership between the grassroots organizations, the people on the ground who are collecting the information. They understand what the problems are and what the solutions are with the international community, and it has been that partnership that has sort of been the driving force behind how it is they are going to affect change inside, particularly in the case when it comes to getting information out.

So in learning about the atrocities that are taking place against these communities, we rely on the grassroots networks inside the country to relay that information to, say, outside groups like ourselves and then to get international actors to respond to that, to apply pressure on the Burmese regime, because the Burmese regime doesn't really care how the grassroots feel about the situation, but they do care about how the international community feels. So it is that partnership that has been critical towards inching closer to maybe some sort of semblance of rights in the future of Burma.

Cochairman McGOVERN Mr. Sering.

Mr. SERING Thank you, sir. Well, Gilgit-Baltistan has to go a long ways. Until 2009, there was complete censorship. There was no freedom of expression or political activity for the local people. Only Pakistani political parties were allowed to participate in the local council elections.

Now there is a semblance of democracy, but still, there should be more international pressure from different nations on Pakistan to grant freedom of expression and political activity to local people in Gilgit-Baltistan. More than 180 people are behind bars facing sedition charges just because they want to talk about religious or political rights.

So advocacy is a very challenging topic, and it is a very difficult uphill task when it comes to Gilgit-Baltistan.

Cochairman McGOVERN We have been joined by Congresswoman Donna Edwards from Maryland and Congressman Joe Pitts from Pennsylvania who have been strong supporters of indigenous community rights at every level. I want to turn this over to Congresswoman Edwards now, if I could.

Ms. EDWARDS Thank you very much, and I apologize, I wasn't here for your earlier testimony. But I did have a chance to read it, and I think one of the concerns I have is what is the relationship between the migrations that are happening with indigenous people and things like human rights abuses as opposed to their economic circumstances? I wonder if you in any of you could speak to that?

Ms. QUIGLEY. Well, in the case of Burma, yes, it is sort of all wrapped up into one. We have religious persecution, ethnic persecution, human rights abuses, mass atrocities all tied up in potentially development projects and economic interests inside Burma.

So what we are seeing right now, first and foremost, is the building of hydropower plants on ethnic minority territories, and it is tied up in the regime wanting to get rid of its ethnic minority problem, and it is basically the regime is to protect the Chinese interests as well as annihilate their ethnic minority resistance, attacking these groups, ending cease-fires, and for them their military policy is human rights abuses. So it is the raping of women, it is the destruction of villages, it is forced labor, it is human land mine sweepers.

So for us in the case of Burma with its indigenous communities it is basically everything wrapped up into one package that will result in their destruction.

Ms. EDWARDS. And it is not even behind, it is kind of in front of what purports to be an economic development kind of strategy, right?

Ms. QUIGLEY. And as you hear from some of the others, none of that will benefit any of these communities. It will result in the destruction of these communities to benefit the Chinese or to benefit the state power.

Ms. EDWARDS. Then I have a question that relates particularly to Burma and what can be done, looking at the programs from the UNHCR and what can be done either to strengthen or make those more effective, and what you have been able to see in terms of the UNHCR programs and what is happening with indigenous people.

Ms. QUIGLEY. Well, Burma is a unique case when it comes to UNHCR, because the refugee population in Thailand, which is the longest standing refugee population, is controlled by a NGO consortium and not by UNHCR. They have a very limited role there. But the biggest problem there is that Thailand has not allowed a refugee registration since 2005. More than half of the camp populations now are unregistered refugees. So we have a dangerous situation where UNHCR really needs to be given the role to allow to register new refugees.

In the case of Bangladesh, our biggest problem, again, is the Bangladeshi government not allowing UNHCR to register 200,000 unregistered refugees, which is the result of them not receiving aid, which has resulted in them being subjected to periods of really vicious violence by local communities that resent their presence in those sort of like impoverished communities.

In the case of, say, like Malaysia or Indonesia or other countries where you see there are Rohingya going by boats winding up on their shores, again, it becomes this process of the UNHCR not being allowed by the host governments to register these

refugees.

So in the case of UNHCR the biggest problem is needing countries like the United States to step in and say they need to be allowed to register new refugees. So because a lot of the times what has been happening now is the numbers of refugee populations for Burma are being reported and it is underreported because UNHCR is not allowed to register these refugee populations and then they are not afforded the protections and rights as official refugees and are not provided the level of humanitarian assistance that they need.

Ms. EDWARDS. Then with respect to India, I didn't ask this earlier, but it is related. How much of India's desire to be sort of at the forefront of the global economic community is tied to its treatment of indigenous people?

Ms. EKKA. So, yes, migration happens also because of economic reasons, because of food insecurity, but the mass migrations are happening because of displacement. So the eastern part of India, where I am from, it has the largest amount of riches under the soil in the form of minerals, but the people living there are the poorest. And the industries which are coming up, the steel companies, the different mines, they have been around for the past 100 years, but more are being built still.

And, yes, that is part of India's plan to become a more successful country, and I don't think indigenous people are necessarily in conflict with development. They want to be developed as well. They want education. They want access to food and water and electricity and roads. But the problem is that when these mines are set up, these factories are set up, they are displaced and they are not rehabilitated, which means they are not given equal compensation in terms of land, money and enriching, because their primary occupation, you know, if it was farming or collecting resources from the forest floor, that has been taken away and they don't have any new skills.

So they essentially end up, you know, as landless laborers or doing construction work, et cetera. They might find employment in these new companies, but they are the lowest labor menial level. Hence, development does not happen for them and they are left even more destitute than they were with their land before.

Ms. EDWARDS. With respect to Gilgit-Baltistan, as concerned as I am about the impact of economic development on the ability of indigenous people to participate both in the existing economy and not to be displaced, I get concerned that a policy that is related to our desire to have a stronger and more effective relationship with Pakistan results in not being as animated in terms of our consideration of the positions of those people.

So can you describe for me, if you would, a way in which the United States could do what we need to do in terms of our relationship with Pakistan, but that doesn't have to jeopardize indigenous people?

Mr. SERING. Well, I believe that rather than having a long-term relationship with the Pakistani military, the United States Government or the Congress or the society can have a long-term relationship with the people of Pakistan and understand the situation in areas where the minorities or the occupied people have been impacted.

Gilgit-Baltistan is such one region which has remained concealed for almost 62 years because of Pakistan's own policies. And I think because of its proximity to China, Afghanistan and India and the nexus that we see between China and Pakistan, I think it is imperative for the United States to pay more attention to the needs of the indigenous

people in Gilgit-Baltistan.

I also want to, you know, say a little bit about the migration issue. In 1974, Pakistan abolished a law, which is called state subject rule, that forbid Pakistanis or any foreigners to acquire immovable assets in Gilgit-Baltistan. Since then, Pakistanis have been settling and systematically in Gilgit-Baltistan, changing the local tomography. Pakistani militants, they attack local people and they not only kill local people, but they displace them, and a lot of these internal displaced people have not been rehabilitated and their lands have been taken by the Pakistani nationals.

So there is a lot of issues that are important for the local people, and I do understand that the United States has its own interests in Pakistan, given the geopolitical situation. And I think this is sort of a turning point, where it will be more beneficial for the United States Government as well as Congress to have a relationship with the communities there in Gilgit-Baltistan.

Ms. EDWARDS. Thank you very much.

I don't have any other questions. I will just say in closing from my time, I think as we recognize every nation will claim that there are a lot of these issues that have to do exclusively with their internal affairs and working, and therefore the international communities should take a step backwards. I do think that the United States, often, we have to figure out what the balance, the appropriate balance is, that is struck in our relationship with our other nations in protection of indigenous and other peoples from human rights abuses and violations that also run up against our own values.

While we do in the case of Pakistan, India and a lot of places have other external concerns, we have to take into consideration how we balance that with our desire to make sure that people are able to fulfill their aspirations as indigenous people.

With that, I would close. Thank you.

Cochairman McGOVERN Thank you very much. Before I yield to Mr. Pitts, Ms. Richardson, did you want to add something?

Ms. RICHARDSON. Just one quick point on the question about migration, a little bit less about the displacement of indigenous communities, and more about the transmigration of ethnic majorities into traditionally indigenous areas. And here, I would point to the extraordinary migration of Hun Chinese into regions like Tibet and Xin Jiang, and of Javanese into places like Papua, where one of the problematic aspects is not just that this is in pursuit of central government designed and imposed development models, but is also almost always accompanied by an enormous security presence, very heavy military presences who tend to be, I think, disproportionately skeptical of the local population and contribute arguably more than any other dynamic I think to some of the discrimination that Ms. Ekka very evocatively described.

And if you talk to members of the Indonesian military who have served in Papua, to hear them talk about Papuans is appalling. It is appalling. I mean, you will hear people be described as subhuman. And these are people who have been sent essentially to defend certain specific economic infrastructural investments, not to defend the population as a whole, against deprivations of their rights. I think that is seriously problematic and deserves a lot more attention from the U.S.

Cochairman McGOVERN Thank you very much.

Mr. Pitts.

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this hearing. I

will start with Ms. Quigley. I am a little more familiar with Burma and the ethnic minorities there.

What percentage of the population of Burma would be comprised of indigenous people or ethnic minorities?

Ms. QUIGLEY. About a third of the population.

Mr. PITTS. Only one-third. Now, in the tribal areas, the Kayin, the Karenni, the Rakhine, the Mon, the Wa, the Chin, the Kachin, which area has the most severe repression by the Burmese government?

Ms. QUIGLEY. It would be the Rohingya. It would be the example in my testimony today.

Mr. PITTS. That is not an ethnic minority, as far as a tribal area, is it?

Ms. QUIGLEY. It is a dispute, to be honest.

Mr. PITTS. And it is on the western side in the Chin area, next to the Chin area?

Ms. QUIGLEY. Yes, it is just west of the Chin in Arakan State on the Bay of Bengal, so it borders the sea as well as in Bangladesh.

Mr. PITTS. So you would say that is the most repressive?

Ms. QUIGLEY. It is. It is.

Mr. PITTS. And what would be the second most repressive?

Ms. QUIGLEY. The Kayin.

Mr. PITTS. The Kayin. And of the 30 percent of the population, do you have a number on internally displaced people in Burma? Do you know about how many?

Ms. QUIGLEY. The most accurate figures also only really characterize the internally displaced on Burma's eastern and northern front, so that would exclude the Chin and the Rohingya, and that number is about 600,000.

Mr. PITTS. Of IDPs.

Ms. QUIGLEY. Of IDPs.

Mr. PITTS. How many are refugees who have left the country and are on the border?

Ms. QUIGLEY. People think over 2 million, if you count all the countries, Bangladesh, Malaysia, Thailand, China, all the countries that they have gone to.

Mr. PITTS. Okay. And in the areas where this is occurring, the violence, how many villages have been destroyed by the Burmese Army?

Ms. QUIGLEY. The most accurate figures represent the north and eastern part of the country, not Arakan and Chin State, but that number would be 3,700 since 1996.

Mr. PITTS. 3,700 villages totally wiped out?

Ms. QUIGLEY. Yes.

Mr. PITTS. Okay. And the dams that you mention being built, are they in the tribal areas? Are they being built in the tribal areas?

Ms. QUIGLEY. Yes, they are all being built in the tribal areas.

Mr. PITTS. Who is building the dams? Are these being built by conscripted labor, slave labor? Ethnic minorities have been captured for that purpose?

Ms. QUIGLEY. It is a mixture of imported Chinese labor and conscripted labor.

Mr. PITTS. And what percentage would be slave labor?

Ms. QUIGLEY. That I am not sure. I think there is about 42 hydropower projects going on in Burma right now. They have influxed many Chinese laborers for this, as well as using forced conscription, but I don't know the percentage for each.

Mr. PITTS. And the forced conscription, are these people too old and too young to escape who are eligible, you know, who are captured for that purpose?

Ms. QUIGLEY. Yes. I mean the age range is from as young as you can imagine to as old as you can imagine.

Mr. PITTS. This is primarily in the Kayin and the Kachin area, did you say?

Ms. QUIGLEY. It is not exclusive to the Kayin and the Kachin areas, because you could also include the Shan and you will see this very much that are with the Rohingya population. You will see it more so with the Chin coming up with -- some of these are in the early stages of the development and so you will see increased forced labor the further along these projects get in their construction.

Mr. PITTS. Okay. Now, Burma also -- these ethnic minorities are not considered Burmese, are they?

Ms. QUIGLEY. The term "Burmese" does refer to somebody who is nationally from Burma. The ethnicity comes Burman. So like somebody determining if they are Burmese is something I leave up to that person, because that is considered more of a state identity.

Mr. PITTS. The government, the dictatorship, do they consider the ethnic minorities Burmese?

Ms. QUIGLEY. They consider them an ethnic nationality of Burma with the exception of the Rohingya. But they now don't use the term Burmese either. They use the term Myanmarese. And so they do consider them Myanmarese, with the exception of the Rohingya.

Mr. PITTS. Okay. Now, the ones who managed to escape and get to the Thai border and the refugee camps that we visited, the young people, do they get an opportunity or right to pursue schooling? Do they get higher education once they go through the elementary?

Ms. QUIGLEY. So it gets tricky. Each country that hosts refugees treat them differently. So you have access to primary education or secondary education for official refugees in official camps. You don't have that access for those who are unofficial refugees, with the exception of those being tolerated right now in the camps in Thailand. We don't know how long that will go on.

Mr. PITTS. Even for the official refugees, if a student wants to pursue a higher education and go to a college outside of the refugee area, are they permitted?

Ms. QUIGLEY. No.

Mr. PITTS. That was the complaint that I received when I visited hundreds and hundreds of these young people in the refugee camp there in the Kayin area.

In India, Ms. Ekka, you are talking about the tribal community, correct, not the Dalits?

Ms. EKKKA. No.

Mr. PITTS. Are the tribal people considered to be Dalits by the Indians?

Ms. EKKKA. No. In the Caste system, the Dalits fall outside of the Caste system. They are the untouchables. They are below the four classes. Now, the indigenous people would traditionally be outside of society in the forests. So they are usually considered, like I said, in the ancient texts they are perceived as rakshasas, the demons. We were supposedly --

Mr. PITTS. So they are not Dalits, but they are sort of on par with them in the

way they are treated, or below?

Ms. EKKA. Below. We are considered ati-sudra, which roughly translates to below the Dalits as well. Also because of our status as living away in the forests and being meat eaters, we are considered barbarians, subhuman, that category.

Mr. PITTS. Yes. So they are not considered untouchables.

Ms. EKKA. No, we are not unclean in that sense because we do not do -- Dalits are considered untouchables because they do what is unclean, and unclean is what is dealing with human wastes or dead things. So if you worked with leather or you worked in the cemetery, right, then you would be considered unclean and hence a Dilat.

Mr. PITTS. Now, what is the number of tribal people in India?

Ms. EKKA. Eight percent of India's population.

Mr. PITTS. What number would be that? How many million?

Ms. EKKA. Eighty-five million as of the 2001 census. So if that is growing as the same rate as the rest of India, we would be about 100 million now, 10 years later, yes.

Mr. PITTS. And what other kind of repression do the tribal people in India undergo? I have heard of violation of, for instance, religious beliefs. What other kinds of human rights abuses do they experience?

Ms. EKKA. The main human right abuses right now is in relation to industrialization. So when a company wants to set up, they have to grab land, so there is land acquisition where indigenous people are living. These land acquisitions are -- in recent times there has not been a single case of a peaceful land acquisition. They are not done in consultation with the people who live there. So there are, you know, many small movements. Every where there is a little factory coming up, there is a little movement going on over there.

And the human rights abuse comes from, you know, sometimes what the people will do is they will, what we call, surround of the land, encircle the land and keep it safe. So you build a little fortress and the indigenous people will not let the government or the company or the police come in and then there ends up being a violent altercation. This just happens because there is lack of communication, lack of understanding of how the process of the land acquisition will move forward, because indigenous people perceive they are not being given a good deal for the land that is being acquired.

Mr. PITTS. Now, back to Burma and land acquisition, this is also occurring with the land being taken for the dam sites, is that correct?

Ms. QUIGLEY. Yes. Yes, it is. Forced displacement is widespread and it is basically for both cajoling the people into controlled areas as well as for development projects.

Mr. PITTS. What about the problem in Burma with child soldiers? I understand there is something like 400,000 child soldiers in the Burmese army. Are some of these or many of these the ethnic minorities?

Ms. QUIGLEY. Well, first, 400,000 is number of the total armed forces in Burma. There are disputed numbers as to how many of them are child soldiers. But they sort of consider potentially as up to a quarter of that to potentially be child soldiers. But nobody wants to put an exact figure on it, except to sort of comfortably say that Burma has more child soldiers than any other country in the world.

Now, there are several different ways in which they get them. Yes, some of them are ethnic minorities being forced to. The other is Burman, the majority, sort of tricking

children, young boys, forcibly into -- sort of like, say, they are on their way to the tea shop and they didn't have their identity card and so their choice was to go to a labor camp or to join the army. So they, of course, knowing the atrocities that take place in the labor camps, pick joining the army instead.

So those sort of situations are very, very common for the Burman population, the majority as well as some of the ethnic minorities.

Mr. PITTS. Mr. Sering, I am not as familiar with the Pakistani situation. What number of indigenous people in Pakistan -- I think you spoke of Pakistan -- would be in Pakistan?

Mr. SERING. Gilgit-Baltistan is not considered a part of Pakistan. It is a U.N.-declared disputed territory. The total population is anywhere close to 2 million people, and about 200,000 of them are Pakistani settlers who have started arriving since 1947.

Mr. PITTS. In what region of the world is that?

Mr. SERING. Is up in the north bordering Afghanistan, Tajikistan, China and Indian Kashmir. It used to be part of the former Princely State of Kashmir, and in 1947, Pakistan occupied it through military intervention.

Mr. PITTS. Is that now called Azad Kashmir?

Mr. SERING. It is north of Azad Kashmir. It is governed directly from Islamabad due to its sensitive geo-strategic location, but it is still considered by Pakistani constitution and by the supreme court verdict as part of the former Princely State of Kashmir and not part of Pakistan.

Mr. PITTS. And what is the religious persuasion of the Gilgit-Baltistan people?

Mr. SERING. Well, Pakistani predominantly is Sunni and Wahhabi, but Gilgit-Baltistan 80 percent different denominations nations of Shi'a. So we have about 10 percent Ismaili 10, we have got 10 percent Sufis, about 60 percent the Shi'as who follow the same sect as in Iran or Iraq, and then we have about 20 percent Sunni.

Mr. PITTS. And what is the primary method of discrimination that is experienced by this minority?

Mr. SERING. It is at all different levels. It is ethnic, it is linguistic, it is religious. Our language is considered profane and not accepted by Pakistan as a legitimate language.

Mr. PITTS. What is the language?

Mr. SERING. Well, I speak a dialect of Tibetan. There are three or four different languages spoken in the area which are related to Tajik language, Tibetan, Kashmiri language, and there is an unclassified language called Barusu, which is one of the three international languages considered as unclassified.

So these languages are not taught in the local schools. Local religion is not taught in the local schools. The Sunni and the Wahhabi interpretation of Islam is being imposed, preaching jihad, and local people are discriminated based on their ethnicity.

For instance, I can give you a few examples. Like there is a Pakistani military institution called Frontier Works Organization which is responsible to construct all the bridges and roads in Gilgit-Baltistan with more than, I think, 10,000 employees, and not a single person has been hired from Gilgit-Baltistan. Similarly, the telecommunications sector is more than 95 percent Pakistanis. They take up the jobs and the local people do not have access to those jobs.

Most of these mining projects and these dam constructions which are taken by the Chinese, they bring their own labor, so local people clash with them. There was a death that happened last year when local people tried to stop the Chinese from extracting minerals from their village.

And there are other forms of discrimination which is mainly gender-based discrimination, and I would not, you know, exclusively blame Pakistan for that. Obviously, local male population is also responsible for that.

Mr. PITTS. And how many schools are in the area that would be considered elementary or secondary?

Mr. SERING. Well, the last time there was any credible information was the World Bank census, and they said the male literacy is anywhere between 15 to 20 percent and female literacy is less than 5 percent. But since the last 20 to 30 years, nonprofit organizations, like Aga Khan Foundation and USAID has given a lot of money into that, DFID has given a lot of money into that, French government, Canadian CIDA, they have established a lot of schools. So privately funded schools have contributed to another about 20-30 percent of literacy in the region.

Mr. PITTS. Thank you, Mr. Chairman.

Cochairman McGOVERN. Well, thank you very much.

I thank Congresswoman Edwards and Congressman Pitts for being here. I want to thank all of you for your testimony and response to the questions. This has been very, very informative. I began by talking about the need for our U.S. Government officials to be more out in the field to listen, to learn more, to have more of a connection to the indigenous communities.

I would just add, I think that is the same for Members of Congress who travel routinely to a number of countries that we have talked about here today, but who oftentimes overlook the indigenous questions, questions regarding indigenous communities. They could actually meet with some of the representatives of the indigenous communities. I think that would be a signal, one, that we care, two, to the government in which these communities exist that, you know, it is important.

Again, I think probably what we are supposed to be about is advocating for human rights at every level and to declare the indigenous communities, not just in Asia, but around the world, that have taken the brunt of discrimination and hardship.

Let me just, before I close, ask any of you if you have any closing words of wisdom that you would like to leave with us? I will yield the floor to you if you have anything you want to add.

Mr. PITTS. Mr. Chairman, I forgot, I had a question for Ms. Richardson and forgot to ask it.

In some areas, you said some countries, like the Philippines, they have passed laws to protect the indigenous communities. What kind of laws should a country pass to protect the rights of the indigenous people?

Ms. RICHARDSON. Well, as a starting point, governments can look to the ILO convention and to the U.N. Declaration on the Rights of Indigenous Peoples as the sort of baseline documents that point to the kinds of rights abuses that these communities suffer, and the legislation that would flow from that is fairly obvious.

The Philippines, I believe, is actually the first country in Asia to pass this kind of legislation, and it addressed their primarily collective land rights, titling, access to

education and other kinds of government services like health care, schooling, particular kinds of -- I believe it is the Philippines that actually has some interesting language about respecting traditional models and providing for traditional models of health care, as opposed to sort of standard forms or what the majority expects in terms of health care.

But I think the basics really have to do with recognition, with land rights, and with, I think, very strong and clear protections against discrimination. I mean, the kinds of discrimination these communities face is so pervasive that you can imagine legislation that went on and on and on to build in provisions to prevent against it.

But also, I think, particular stipulations with respect to free prior and full consent about development projects, be they private or public ones, I think is also -- it is such a common problem across the region that I think legislation should particularly focus on that.

Mr. PITTS. Thank you.

Cochairman McGOVERN. And legislation is just one part of it, because there are some great laws on the books all over the world, but no one seems to want to implement them or follow them. I don't know how many countries are signed on to the International Declaration of Human Rights who routinely kind of disregard it. It is the laws and it is the political will to implement those laws.

Ms. Ekka, you wanted to add something?

Ms. EKKA. I just wanted to add to that, in India we are recognized as tribal people, not as indigenous people, and therefore, it has different implications. Yes, as Sophie was saying, if we were identified and recognized as indigenous people, I don't think we would be facing the same kinds of trouble with our land and water rights.

Cochairman McGOVERN. Ms. Richardson?

Ms. RICHARDSON. Just to put things on the to-do list, I mean, look, one thing that Congress can do and does better than just about anybody else is call U.S. companies and ask them to talk about their activities in some of these regions and ask them to describe in detail how they have ensured in their business practices that they are respecting the rights of indigenous communities and indeed how they are working with the governments of those countries to make sure that happens.

Certainly reaching out to these communities yourselves, but also making it clear not just to the State Department, but to the Pentagon and other agencies that reaching out to those communities is very important. I mean, I have spoken to people at the Pentagon about Papua a lot and I am a little bit taken aback at how little contact some of the people who have worked there on Indonesia for years have ever had with these communities. It is extraordinary. So I think stipulating or encouraging them to do that would be very helpful.

Cochairman McGOVERN. What might be helpful to us too is if there are particular companies and corporations that you think need a little reminding that they need to be a little more sensitive, that would be very helpful.

Ms. RICHARDSON. I would be delighted.

Cochairman McGOVERN. Or if there are companies that are models, that are doing the right thing, that would be helpful as well. Any final closing statements?

Mr. SERING. I would like to add few more words. Gilgit-Baltistan is situated in an area where the three greatest mountain ranges of Karakoram, Himalaya and the Hindu Kush converge, and Karakoram is the youngest mountain range as they call it in the

world today and there is a lot of seismic activity in the region.

In 2005, for instance, there was an earthquake that killed more than 100,000 Pakistanis and the seismic epicenter was very close, actually on the border of Gilgit-Baltistan. So all these activities that are happening, like mining and dam building by China and Pakistan, is very catastrophic, not only for the local people, displacing them and marginalizing them, disenfranchising them, but also going to create problems, environmental, as well as economic and strategic at the local levels.

So, I mean, I am very grateful, and once again, I request the U.S. Congress to look into the matter, and hopefully Gilgit-Baltistan would be one of the regions under the radar.

Cochairman McGOVERN. Well, thank you very much. I want to thank all of you. Again, I would encourage you to stay up with the Commission if there is follow-up work you think we should do. And, again, I reiterate what I said at the beginning, I think it is important for our government, not only at the executive level but at the congressional level, to reach out to some of these communities when we are traveling to various places around the world. Sometimes we don't because we just are not aware. You are helping to make us aware.

If there are some concrete suggestions of places that people need to go or people need to talk to when they travel various countries, please let us know that as well.

Thank you very much. I appreciate it.

[Whereupon, at 11:34 a.m., the Commission was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



**Tom Lantos Human Rights Commission (TLHRC)
Hearing**

Indigenous Peoples in Asia

**Tuesday, July 26, 2011
10 a.m. – 11:30 a.m.
2172 Rayburn House Building**

Please join the Tom Lantos Human Rights Commission for another in a series of hearings regarding the rights of indigenous peoples from around the world, this time focusing on Asia.

There are an estimated 260 million indigenous people in Asia, making it the most culturally diverse region in the world. Although some countries have legislative protections for indigenous groups, many states ignore or overrule these guaranteed rights or, worse yet, fail to provide any protections. The core challenges facing indigenous peoples in Asia include the denial of self-determination, a lack of control over resources, and various pressures exerted by states in their development efforts which have a devastating impact in indigenous communities.

This hearing will look at the most common and urgent human rights concerns facing indigenous peoples in Asia. In addition to a general survey of issues, the Commission will examine the specific cases of the Adivasis in India, the Rohingyas in Burma, and the indigenous people of the Gilgit Baltistan region in Pakistan.

The following witnesses have been invited to testify:

- Sophie Richardson, Asia Advocacy Director, Human Rights Watch
- Rashmi Ekka, Founder and Executive Director, Adivasi Development Network
- Jennifer Quigley, Advocacy Director, U.S. Campaign for Burma
- Senge Sering, Institute for Gilgit Baltistan Studies

If you have any questions, please contact Molly Hofsommer (Rep. McGovern) at 202-226-6379 or Kalinda Stephenson (Rep. Wolf) at 202-225-3622, or send an email to tlhrc@mail.house.gov.

James P. McGovern
Member of Congress
Co-Chair, TLHRC

Frank R. Wolf
Member of Congress
Co-Chair, TLHRC

Written Testimony of Rashmi Kiran Ekka
Founder and Executive Director
Adivasi Development Network
Before
The Tom Lantos Human Rights Commission
United States Congress
On
Indigenous Peoples in Asia
July 26, 2011

Good Morning and Johar! My name is Rashmi Ekka and I am a member of the Oraon tribe from the Eastern state of Jharkhand in the Chotanagpur Plateau of India. Today we will discuss the issues plaguing the indigenous people of India.

So who are Adivasis? Adivasis are the Indigenous people of India. According to the 2001 census there are 85 million people who are part of various tribes and constitute 8 percent of India's one billion. If Adivasis are growing at the same rate as the rest of India, we are now closer to the 100 million indigenous people mark today. That would be approximately a third of the United States population. Also we are a significant percentage of Asia's 260 million indigenous people.

We collectively call ourselves Adivasis - the first inhabitants of India. The government recognizes us as Scheduled Tribes in the Constitution of India. With over 600 distinct tribes spanning the length and breadth of India, with as many different cultures and languages it is difficult for me to represent all Adivasis. However our problems across the country are largely the same. We live in the remotest parts of the country. We are isolated - economically, socially, politically and geographically. We are the lowest point of every socio-economic indicator.

1. Economic Challenges

- **Poverty** - Adivasis make some of the poorest people in the world. India's per capita income is \$1,265. In my state, where 30 percent of the population is Adivasi, the per capita income is \$99 meaning that an average Adivasi in my state earns only 27 cents a day. Poverty brings with itself a myriad of problems - the primary three being lack of education, lack of access to health care and proper nutrition and lack of economic opportunities.
- **Education** – Literacy among Adivasis (40.7 percent) is considerably lower by 12.9 percent compared to overall literacy of 53.6 percent in the state of Jharkhand. Only 27 percent of Adivasi women in my state are literate as compared to 54 percent literacy in women across the country. Those Adivasi students, who are fortunate enough to go to school, often go to Public Schools that teach in the dominant regional language different from their mother tongues. Hence Adivasi students are put in a disadvantageous position with their counterparts for whom the regional languages are their mother tongues; the retention of the Adivasi students is naturally reduced. In this process,

Adivasis are also gradually losing their languages and along with it their oral tradition. This is responsible for low level of literacy among the Adivasis.¹ Only 50 percent of the total seats reserved for Adivasi students as part of Affirmative Action in Medical and Engineering Colleges are being filled. With low levels of education, employment prospects are few and far between.

- **Employment Opportunities:** 80 percent of Adivasis in Jharkhand are smallholder agriculturists who depend on rain to grow their food. Severe food insecurity haunts them each year as they are given to the vagaries of draught and monsoons. Because of low levels of education, Adivasi participation in various industries (steel and mining industry dominates in the region) are limited to manual labor with poor compensation and labor rights. Although the policy of reservation (Affirmative Action) has been in operation for more than 50 years now, yet the share of Adivasis in government employment and institution of higher learning fall short of size stipulated. By 1999 the share of the Adivasis in Class I central government service 3.35%, in Class II 3.39, in Class III 6.07% and Class IV 7%. With regard to employment the shortage is higher at the upper rank of the government services.²
- **Food insecurity:** Food insecurity has had severe consequences on our children. Many Adivasis do not receive proper nutrition between the ages of 6 months and 2 years and this leads to physical and mental stunting. Many Adivasis are thus not able to live and grow to their full potential as they did not get enough nutrition. Malnutrition is high at 77 percent for babies and 68 percent for pregnant women in Jharkhand. Infant mortality rate is high at 9.3 percent in Jharkhand.
- **Health:** A recent tour report of the visit of the National Commission for Scheduled Tribes to Jharkhand, noted a shortage of doctors (about 600) and para-medical staff. Very few hospitals are operating in rural areas. Diseases such as Tuberculosis, Goiter, Hypertension and Alcoholism were commonly noted. Lack of proper health facilities and starvation is leading to the extinction of some of the smaller tribes. The Birhors who were 8,083 in 1991

¹ M. G. KARIAPURAM, *Contextual Reflections*, 108-113. A Committee of experts sponsored by the UNESCO in 1951, on the use of vernacular in education reported that a lingua franca is not an adequate substitute for the mother tongue, unless the children are familiar with it before they go to school.

² V. XAXA, "Tribal Scene in India Today", *Understanding Tribal Cultures for Effective Education*, eds., J. Anikuzhikattil *et al.*, Commission for Education and Culture CBCI Centre - DBCIC Publications Sacred Heart Theological College, New Delhi - Shillong 2003, 70-78, at 75. Some of the main provisions of reservations contained in the Constitution are reservation in educational institution, government employment, parliament and state legislature, special administration of the areas inhabited predominantly by the tribes and assistance in their economic development. For administration purpose the areas inhabited by tribals are divided into scheduled area governed by provisions contained in the 5th Schedule and tribal area governed by 6th Schedule. The 5th Schedule has provision for special legislative power of the governor, governor's report, and most importantly the tribal advisory council. The 6th Schedule has provision for autonomous district council and hence it provides scope for self-governance. 6th Schedule is in operation mostly in the northeastern region while 5th Schedule in other areas of India where tribals are majority in a district.

had declined to 7,514 in 2001. The Savaria Paharias, 48,761 in 1991 were 31,050 in 2001 and the Paharias who were 30,421 in 1991 have declined to 20,786 in 2001.

- **Mass Migration from Rural Areas to Urban Centers:** The migration of Adivasis is most often induced or forced by external agents or factors like poverty, deprivation and displacement. The men take on jobs in mining, construction and other sectors and live in urban slums. Girls as young as 10 are trafficked into bonded labor. As domestic help they are often physically and sexually abused. Migration disastrously and sometimes irreversibly affects tribal life, values and identity.
- **Trafficking of Women:** Every year thousands of minor Adivasi girls from Indian states like Jharkhand, West Bengal, Bihar, Chhattisgarh and Orissa are forced into bonded labor and trafficked to Delhi, Mumbai and other metropolitan Indian cities. In Delhi alone it is estimated that there are about 85,000 to 100,000 female Adivasi domestic laborers, most of them unmarried and in the age group of 12 to 25.³ Likewise there are thousands of Adivasi girls in other metropolises of India. The abuses and exploitations of thousands of these young and innocent Adivasis in itself is a major and serious issue – which includes cases where girls have been literally sold, cases of missing girls never to be traced back, cases of physical tortures and punishments, cases of brutal sexual abuses etc.⁴ Adivasi girls often start their journey being lured by promises of a better life. Once in the big city, they spend years working as bonded slaves with “Job Placement Agencies” taking a major portion from their salary. Unorganized, these Adivasi girls are unable to raise their voice and demand better working conditions. Aware of the political powerlessness and social alienation of Adivasis, employers have no qualms in torturing Adivasi girls, and even sexually abusing them.
- **Exploitation in the Plantation Systems:** During the British Rule, Adivasis were forced to migrate to different parts of India like Assam, Bengal, Andaman Islands and even outside India to work in the various plantations of tea, coffee, indigo and sugarcane.⁵ However the Adivasi migrations to Assam, Bengal and Andaman created a lasting impact⁶ in their place of origin as well

³ S. VARGHESE, “Speaking up for Missing Women,” *Labouring Domestics and Domesticating Labours: A Survey of Domestic Workers in Delhi and their Vulnerabilities to various forms of Exploitation*, ed. F. D’SOUZA, Media House, Delhi 2005, 159-168, at 160.

⁴ M. SCARIA, “The Right of Tribal Migrant Working Women”, *Labouring Domestics and Domesticating Labours: A Survey of Domestic Workers in Delhi and their Vulnerabilities to various forms of Exploitation*, ed. F. D’Souza, Media House, Delhi 2005, 91-121, at 106.

⁵ R. TOPPO, *The Dynamics of Tribal Migration in India*, 89-100.

⁶ F. EKKA, “Linguistic implication of Migration to the Tea Garden”, *Tea Garden Labourers of North East India: a Multidimensional Study on the Adivasis of the Tea Gardens of North East India*, eds. S. Karotemprel - B. Dutta Roy, Vendrame Institute, Shillong 1990, 143-155. Here the author deals with the lasting impacts and changes the migration caused on the Adivasis.

as their destination, as it affected the demography, cultural and social system.⁷ The tea plantations of Assam and Bengal are run by a huge labor-force constituting mainly of Adivasis. In Assam they constitute nearly one fifth of the total population. The Tea industry exploits the Adivasis in innumerable ways.⁸ The wage of a tea garden worker is not only substantially lower than that of a worker in the jute or textile industries, but even much lower than a worker of an unorganized industry such as coal mines.⁹ Their working and living conditions are unhygienic with very meager facilities for medical care.¹⁰ There is exploitation of women whose wages are typically lesser than men's wages, although both do the same work.¹¹ Child labor is a serious problem.¹² The schools in the tea gardens are not functional. Child labor kills the child's incentive to study.¹³ The seriousness of the exploitation, marginalization, and deprivation is better understood when it is contrasted with the huge profit the tea industry makes which is not equitably distributed to the laborers.¹⁴ Although tea garden laborers are contributing considerably towards the state's incomes, there are hardly any developmental plans, policies and projects for them. In fact these laborers do not profit in any way from many of the developmental projects that are being executed at the district and block level. Though the Government of India and Assam has passed several laws to enforce a welfare-oriented policy towards tea garden laborers the conditions of life and work have not improved.¹⁵

⁷ B. B. DAS, "Migration and Settlement of Tea Garden Labourers in North East India", *Tea Garden Labourers of North East India: a Multidimensional Study on the Adivasis of the Tea Gardens of North East India*, eds. S. Karotemprel - B. Dutta Roy, Vendrame Institute, Shillong 1990, 58-62.

⁸ H. TOPPO, "Violation of Human Rights in the Tea Plantation of Assam and Bengal", *Identity of Adivasis in Assam*, ed., T. Pulloppillil, Indian Publishers Distributors, Delhi 1999, 133-150; see also M. HUSSAIN, *The Assam Movement: Class, Ideology and Identity*, Manak Publications Pvt. Ltd. in association with Har-Anand Publications, Delhi 1993, 181-196.

⁹ S. BHOWMIK, "Wages of Tea Garden Workers in West Bengal", *Economic and Political Weekly* 17 (1982), 1600-1601. Here the author points to fact that the wage of a tea garden worker is not only substantially lower than that of a worker in the jute or textile industries, but even unorganized labor outside urban area, such as in coal mines, who gets twice his wage.

¹⁰ S. JAIN, "Tea Gardens in Assam: Patterns of Recruitment, Employment and Exploitation of Tribal Labourers", *Social Action: A Quarterly Review of Social Trends* 33 (1983), 278-279.

¹¹ E. KANIAMPADY, *Status of Women Working in the Tea Plantations (A Case Study)*, Akansha Publishing House, New Delhi 2003.

¹² S. K. BHOWMIK, "Plantation Labour Act and Child Labour", *Economic and Political Weekly* 42 (1992), 2285-2293, at 2288.

¹³ Z. BAXLA, "The Adivasis in Assam", *Indian Missiological Review*, 3-4 (1990), 242.

¹⁴ N. A. GOKHALE, *The Hot Brew: The Assam Tea Industry's most turbulent Decades (1987-1997)*, Spectrum Publications, Guwahati : Delhi 1998, 145. The city Guwahati (Assam) has the world's largest CTC auction centre annual offering of tea being around 140 million kg. Assam produces nearly 400 million kg or 53 percent of the all-India production. The total estimated turnover of the industry is Rs. 2,000 crore and the industry's contribution to the state exchequer is Rs. 140 crore. Against all these huge figures the money earmarked by ABITA (The Assam Branch Indian Tea Association) for social welfare is only Rs. 1 crore. Out of this Rs. 1 crore, only 15 to 25 percent may trickle down to the laborers and the major portion is pocketed by the middle men, of course, the bureaucratic class.

¹⁵ S. JAIN, "Tea Gardens in Assam: Patterns of Recruitment, Employment and Exploitation of Tribal Laborers", 282.

- 2. Socio-Cultural Challenges:** Adivasis are not part of the Indian Caste System. Historically our status is hence that of a *mlechcha* or barbarian. As traditional forest dwellers and meat eaters we have been perceived as *rakshasas* or demons in the ancient books. We are considered to be *ati-sudra* meaning lower than the “untouchable castes” (known as Dalits or Scheduled Castes today). Even today, upper class Indian refer to Adivasis as *jangli*, a derogatory term meaning those “who are like wild animals”, uncivilized or sub-humans.

The Adivasis neither believe nor practice caste system, but they are victimized by caste mentality and ‘caste social structures’ that continue to thrive in the social, political and economic spheres. In the past and to some extent in the present, the non-Adivasi Anthropologists, Sociologist, Historians and authors indeed have done great service to the Adivasis by recording their history, culture, tradition and the value systems. However, many who have not made serious efforts to understand the world-view, the aspirations, religio-socio-cultural values of the Adivasis have, sometimes misrepresented and misinterpreted them, even branding them with derogatory names.¹⁶

The Adivasis have very rich traditional cultures, languages, tribal values of equality and sense of justice, and profoundly eco-friendly social, cultural and economic structures. Adivasis have few cultural and social taboos. These cultural differences contribute to our social isolation.

This mindset severely handicaps our integration into India’s mainstream population. We are discriminated against on the basis of our ethnicity, our color, our language, our religious practices and our culture. Adivasis carry with themselves a heavy baggage of low self-esteem. Mainstream culture often reinforces the belief that we are not intelligent, not beautiful and cannot be successful. As recognized members of Scheduled Tribes we are beneficiaries of Affirmative Action; however the prevailing mindset impacts our everyday relationships with non-Adivasis and makes it difficult for us to find acceptance and success at school and the workplace.

The Government of India has granted us Affirmative Action in Education as well as Government jobs. Those few of us who have been able to have education and be successful in life owe it to the benefits of Affirmative Action. But as beneficiaries of Affirmative Action we face added discrimination in the school and workplace and have to live with the stigma of “not being meritorious enough” to be in that position.

- 3. Political Challenges:** Adivasis have long struggled for a political voice at the National level in India. Even today, as a strong collective of nearly a 100 million people, we do not have any leaders with national appeal and influence. We have

¹⁶ J. LAKRA, “Rewriting Tribal Anthropology”, *Sevartham* 22 (1997), 11-28, at 11-13, 27. Some non-tribals authors have give a negative picture of Adivasis by using derogative names like ‘primitive’, ‘illiterate’, ‘uncultured’, ‘rough’, ‘rude’, ‘savage’, ‘wild’, *junglee* [wild], ‘half-naked’, which are not only wrong and biased but also very unkind and unfair.

found some degree of success on a more regional level. However many of our problems related to regulations still remain.

- **Forest and Land Rights:** As noted by Adivasi Activist, Gladson Dundung, “Land and Forest are not only essential livelihood resources but also means of identity, dignity and social security for Adivasis. They have been living in the forest for ages and have the customary right over its natural resources.” In 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was passed. As traditional forest-dwellers we are now legally entitled to the resources from the forest which had been denied to us for decades. However the implementation of this Act has been less than perfect and forest dwellers are still susceptible to harassment, eviction, extortion of money and sexual molestation by forest officials.
- **Land Alienation:** The Adivasis are alienated from their land for various reasons like displacement by development projects, induced or forced migration, land grabbing by non-Adivasis by fraudulent means and even the use of force and threats, due to the impact of urbanization, industrialization and globalization.¹⁷ According to the Chotanagpur Tenancy Act (1908), the land of an Adivasi can only be transferred to a non-Adivasi by the prior permission of the Deputy Commissioner. There are many cases where Adivasis have been illegally alienated from their land because of poor implementation of this Act. It is estimated that Adivasis have lost 2,200,000 acres of land, since the Independence of India from British Rule in 1947.
- **Kokrajhar Incident:** In 1996 and 1998 in two major attacks by Bodo militants, more than 8000 Adivasis of Kokrajhar district, Assam were killed, and more than 20,000 were rendered homeless and landless. Being compelled to live in inhuman and unhygienic relief camps for more than a decade many more hundreds further died. In 2010, further inhuman treatment and torture was meted out to Adivasis in the name of eviction in Kokrajhar district of Assam. More than 200 Forest Guards from the Bodo community torched 1,200 houses in 33 villages, in an act of ethnic violence on October 30th – October 31st 2010. The men were chased and fearing arrest they hid themselves. The food stock kept safe in the baskets and granaries were burnt, the livestock was carried away as booty, and the utensils/cooking pots were smashed. A total of 40 men were arrested. The Eviction Team also burned down 8 schools, and 2 churches. In total 1,200 families with 7,000 individuals are affected. Adivasis who live in Assam face additional sufferings as they are not recognized as Scheduled Tribes in the State of Assam. These Adivasis migrated to Assam from the neighboring states where they are recognized as Scheduled Tribes. Because of this lack of recognition, Adivasis in Assam do not have access to the benefits of Affirmative Action.

¹⁷ A. DOONGDOONG, *The Kherias: Identity and Modernity*, S. J. Ranchi Province, Ranchi, 2007², 101-104.

4. Geographical Challenges: Adivasis live in the remotest parts of the country. Only 26% of Adivasi habitats in my state have road connectivity.

- **Displacement:** Indigenous people the world over have a knack for settling down in lands that are rich in minerals, forest produce, timber and other resources. 40 percent of India's minerals including uranium reserves come from my state, Jharkhand. Jharkhand is blessed with iron ore, manganese, coal, limestone, graphite, quartzite, asbestos, lead, bauxite, zinc, copper and some gold among other minerals. As development has happened, Adivasis have had to pay the price. Every time a dam has been built, a mine has been mined, a factory has been set up, our land, and our home has been taken away from us. Since 1951, 60 million people have been internally displaced in India because of development projects. 24 million of them are Adivasis. Most Adivasis did not receive proper compensation and rehabilitation, and without their land, rivers and forests they were often left with little means of making a livelihood. These projects have failed to bring about equitable and holistic development. On the contrary, it has widened the gap between the haves and the have-nots, between regions, communities and sections of society, causing widespread unrest, conflict as well as extensive socio-environmental crises. This process of land alienation and displacement is estimated to intensify in the coming decade.¹⁸ Apart from the very many negative impacts of displacements, it has adversely and deeply affected the Adivasi tribal way of life.

With so many issues plaguing our daily lives, basic survival is in question for many Adivasis. Growing dissent has caused some to protest against the government using violent means. India's largest internal security threat –Naxalism – feeds on the grievances of the people she has let down. Your support will assist us in our journey to find solutions.

In closing I would like to say that India's Adivasis who come from over 600 different tribes are a people rich in their knowledge of the natural world. We know the magic of different plants and their medicinal properties. We have preserved the majority of India's bio-cultural diversity. We belong to our land, which is the source of our science, technology, way of life, religion and culture. It is the essence of our existence. As we approach a 9 billion people world which will be plagued with food insecurity, climate change and rising levels of pollution, the world can learn how to live in harmony with Nature from Indigenous People. Thank you! Johar!

¹⁸ See L. LOBO & A. MITRA, "Globalization, Hindu Nationalism and Adivasis of India", *Third Millennium* 7 (2004), 48-64, at 51-55. The authors continue to argue on the intensification of such displacement with facts and figures. In Orissa, of the 2.32 million acres acquired for development projects in between 1951 and 1995, 106,000 were for industries. But future plans show that 200,000 acres will be acquired for industry alone in the next 10 years.

TOM LANTOS HUMAN RIGHTS COMMISSION
HEARING ON "INDIGENOUS PEOPLES IN ASIA"
TESTIMONY OF
ARMSTRONG WIGGINS
DIRECTOR OF THE WASHINGTON D.C. OFFICE
INDIAN LAW RESOURCE CENTER
July 26, 2011

My name is Armstrong Wiggins. I serve as the Director of the Washington D.C. office of the Indian Law Resource Center. I am a Miskito Indian from the village of Karata on the Atlantic Coast of Nicaragua. Before joining the Indian Law Resource Center in 1980, I served as the leader of my community and the regional and national Indian organizations in Nicaragua.

For more than thirty years, the Indian Law Resource Center has worked with indigenous communities in the Americas to regain ancestral territories, defend against environmental degradation, protect sacred sites and defend other human rights of indigenous peoples.

We commend the Tom Lantos Human Rights Commission on its attention to the rights of indigenous peoples. Indigenous peoples throughout the world still face discrimination and assaults meant to terminate their very existence. We hope that the Commission can use its influence to make a positive difference for indigenous peoples who may be affected by the United States' policy decisions related to foreign aid and trade agreements.

While we do not focus on issues affecting indigenous peoples in Asia, we do advocate for better policies on indigenous peoples' issues within multilateral institutions. Institutions like the World Bank and other United Nations agencies must adopt policies that recognize and protect the human rights of indigenous peoples; otherwise, they risk harming already vulnerable communities.

World Bank management began reviewing its social safeguard policies in September 2010, with the intention of releasing a consolidated safeguard policy in late 2012. We have grave concerns about this process. Our concerns are outlined in a letter to President of the World Bank Robert Zoellick, attached to my testimony.

We also have serious concerns about how REDD+ (Reducing Emissions from Deforestation and Forest Degradation) programs of the World Bank, UN-REDD Program and other agencies are being carried out without recognition of, or protections for, the rights of indigenous peoples. Many of these programs operate in Asia. In particular, REDD+ conservation initiatives in Indonesia have sparked a new wave of forced relocations of indigenous peoples and are leading to other human rights violations. Our comments on the Forest Carbon Partnership Facility (FCPF) and UN-REDD Programme Guidelines on Stakeholder Engagement are attached.

Again, thank you for your attention to the rights of indigenous peoples.

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Letter to President of World Bank Robert Zoellick, dated July 11, 2011

July 11, 2011

Robert B. Zoellick
President
The World Bank
1818 H Street, NW
Washington, D.C. 20433

Updating and Strengthening the World Bank Indigenous Peoples' Policy

Dear Mr. Zoellick:

The purpose of this letter is to express our concerns related to the World Bank (Bank) safeguard policy review process. Instead of adopting weak and general policies covering social issues, the Bank should strengthen its social safeguard policies by incorporating current human rights standards and maintaining separate safeguard policies for distinct issues. We also urge the Bank to conduct global, regional, and local consultations to ensure the full and effective participation of indigenous peoples during the safeguard policy review process. Finally, the Bank should ensure that its climate programs, and especially REDD+ programs, avoid promoting the violation of the rights of indigenous peoples, and instead, operate under safeguard policies that promote respect and protection for their rights.

The Indian Law Resource Center (Center) is a non-profit law and advocacy organization established and directed by American Indians. We provide legal assistance to indigenous peoples in the Americas who are working to protect their lands, resources, human rights, environment and cultural heritage. We have been advocating for better policies on indigenous peoples' issues within international institutions such as the United Nations and the World Bank since 1980.

Worldwide, indigenous peoples constitute some of the poorest of the poor. This poverty often stems from violations of their collective human rights. As an institution charged with eradicating poverty world-wide, incorporating the aspirations of indigenous peoples into the Bank's plans becomes a moral, strategic, and economic imperative. The safeguard policy update process is an historic moment and opportunity for the Bank to fulfill its mission and align its safeguard policies with current international human rights standards.

Development projects implicate the rights of indigenous peoples when projects take place on their lands or affect their natural resources or environment.

When this happens, projects are often halted or become a flashpoint for resistance against development in general. The conflict between the indigenous people of the Xingu River Basin and Brazil over the construction of the Belo Monte hydroelectric dam illustrates this point. We understand that the Bank has not financed this project; BNDES, Brazil's national development bank, is heavily involved in its development. We note, however, that Brazil received a \$1.3 billion loan from the Bank in 2009-10; a significant portion of this loan was directed at the improvement of BNDES' social and environmental policies. Noticeably absent from BNDES' new social and environmental policy, are safeguard policies strong enough to have prevented the Belo Monte crisis.

The Bank has made symbolic gestures to indigenous peoples by inviting indigenous individuals to high level meetings, such as the first "Dialogue between the Vice-Presidency of the World Bank and Indigenous Peoples" held at the Bank's headquarters in November 2010.

However public relations efforts should not be confused with genuine attention to the rights of indigenous peoples. Instead, we demand that Bank adopt safeguard policies that recognize the importance of avoiding human rights violations and actively promote protections for the rights of indigenous peoples. We make the following recommendations:

1. Including the Indigenous Peoples policy into a safeguard policy covering all vulnerable groups amounts to a regression of almost 30 years of policy development; instead, the policy on indigenous peoples should remain as a stand-alone policy and should be updated to reflect current international standards on the rights of indigenous peoples.

For 29 years, the Bank has recognized that indigenous peoples have distinct rights; it has been an institutional leader in this area. In 1982, the Bank adopted its first "Tribal Policy" (Operational Manual Statement (OMS) 2.34 "Tribal People in Bank-financed Projects"). The Tribal Policy constituted a critical step forward in overcoming risks to indigenous peoples in the design and implementation of Bank projects. In 1991, the Bank adopted a revised policy (OD 4.20/BP 4.10), which paid particular attention to the rights of indigenous peoples to participate in, and benefit from, development projects. Within the 2005 policy review process, the Bank updated this policy (the current OP/BP 4.10) in

light of fresh advances in international recognition of the rights of indigenous peoples. Bank management now plans to collapse the Bank's 10 social safeguard policies into one umbrella policy covering all vulnerable people. What most concerns the Center with consolidation is that one umbrella policy will confuse the rights that distinct groups enjoy, lowering the standard for all groups, but especially for indigenous peoples. To a certain extent, this is already happening. Bank Climate programs such as the Forest Carbon Partnership Facility and the Forest Investment Program have adopted policies that fail to sufficiently distinguish between the collective rights of indigenous peoples and the rights of local communities.

The Bank has historically recognized that its failure to recognize these distinctions could harm, or even destroy, indigenous peoples. In its 1982 "Tribal Policy", the Bank acknowledged that "failure to design components of projects to benefit these poorest of the poor in developing member nations widens the gap between nationals and the tribal peoples, and may even result in the destruction of the tribal peoples," and "failure to understand customary tribal rights to land will result in considerable implementation of delays... Tribal groups may also, at some future date, resort to legal actions to claim reinstatement of their original territories or compensation for loss of these lands, if acquired in a manner inconsistent with acceptable customary laws and practice." Simply stated, weak safeguard policies encourage undue risk: risk that the Bank will harm indigenous peoples; and risk that Bank projects will be delayed or fail due to legal challenges.

The UN Declaration on the Rights of Indigenous Peoples (UN Declaration), now a consensus document, sets forth many distinct rights indigenous peoples enjoy. These rights include the right to self-government and self-determination, and the right to legal recognition of their collective right to lands, territories, and natural resources. These rights are distinct from the rights enjoyed by other groups: local communities, women, workers, etc. Certainly, Bank safeguard policies should recognize and protect the rights of vulnerable individuals and communities; however, the safeguard policies should also recognize that indigenous peoples enjoy distinct protections due to their unique relationship with their lands, territories, and natural resources, and their political, social, and historical circumstances.

Instead of weakening the indigenous peoples' policy by consolidating it as one component of a vulnerable peoples' policy, the Bank should strengthen OP/BP 4.10 by incorporating principles from the UN Declaration and other standards that recognize the collective rights of indigenous peoples. The International Finance Corporation (IFC) incorporated many of these principles into its Performance Standard 7, including adoption of Free, Prior and Informed Consent and Benefit Sharing for the use or sale of cultural or natural resources belonging to indigenous peoples.

We stand with others calling for the Bank to incorporate human rights standards into the Bank's safeguard policy, especially with respect to the policy on indigenous peoples. In a joint letter to the Bank President dated July 2010, the three UN mechanisms with specific mandates on the rights of indigenous peoples (UN Special Rapporteur on the Rights of

Indigenous Peoples, UN Permanent Forum on Indigenous Issues and UN Expert Mechanism on the Rights of Indigenous Peoples) emphasized that the Bank should ensure that its policy reforms are consistent with international standards related to the rights of indigenous peoples, especially those on consultation and free, prior and informed consent. The letter is attached for your information.

2. The Bank should adopt a stand-alone Human Rights safeguard policy to assist countries in avoiding human rights violations and achieving sustainable growth.

In the last century, the world community created universal and regional systems for the protection of the fundamental rights of persons. These fundamental rights became known as “human rights,” not social risks or impacts. The world community also developed an autonomous system to address labor rights, the International Labor Organization, based on the universal belief that lasting peace could only be achieved if social justice and labor rights are promoted. The Bank, however, continues to avoid the language of human rights; it has also failed to develop a labor rights policy.

Assessments of human rights impacts and risks are critical for assuring the effectiveness of the Bank’s projects and essential to the Bank’s overall goal of eradicating poverty. As part of the safeguard policy review process, the Bank should develop a safeguard policy to allow for the assessment of each project’s impact on human rights and provide guidance on how to avoid undue risk. The failure to incorporate human rights within the safeguard policy review process would constitute a significant step backward for the Bank.

Continuing to reject a human-rights based approach appears contrary to the position of the Nordic countries, which have contributed substantially to the Bank through the Nordic Trust Fund with the goal of better incorporating respect for human rights in Bank operations. It also cannot be justified by the argument that the Articles of Agreement prohibit it. Since 2006, two individuals serving as General Counsel for the Bank have released legal opinions recognizing that the balance has now shifted in favor of protecting human rights in development practices.

First, Roberto Danino concluded that the Articles of Agreement do allow the Bank to acknowledge the human rights dimension of its policies and operations. Later, Ana Palacio agreed with Mr. Danino’s observations and went on to conclude that the Bank may update its internal legal stance according to the current international law standards on human rights.

Finally, the IFC, a member of the World Bank Group, has incorporated a human rights-based approach to several areas of its updated Policy and Performance Standards. While the Bank should learn from the forward-thinking leadership of the IFC, it must go further. The IFC has made a critical step forward by, not only adopting the Guide to Human Rights Impact Assessment and Management in June 2010, but also updating its PS 7 Indigenous Peoples in light to the UN Declaration. The IFC’s Guide to Human Rights Impact Assessment and Management, however, remains a voluntary tool. The Bank

should adopt a Human Rights safeguard policy to ensure that human rights are addressed in every Bank-funded project.

3. The Bank should carry out more extensive consultations with indigenous peoples generally, but especially, during the safeguard policy update and consolidation process.

As part of the safeguard policy review process, and in general, the Bank should ensure the full and effective participation of indigenous peoples. We have seen the Bank beginning to consult with indigenous people on issues that affect their interests and rights, but more should be done. The Bank's practice of choosing one indigenous individual to represent an entire region (i.e. Africa, Latin America, and Asia) does not amount to effective consultation. Further, while consulting with members of the Permanent Forum is a good start, we urge the Bank to consult with indigenous peoples at the regional, national, and grassroots levels. The Bank should provide key information in a proper and timely fashion well in advance of consultations.

Since the commencement of the safeguard policy update and consolidation process in September 2010, nearly nine months have passed and the Bank has shared very little information. The Bank has not shared whether the policies exist in draft form; no draft policies have been released. We are aware of only two occasions when Bank officials provided information on the review process. These presentations, at the Bank Spring meetings and the UN Permanent Forum on Indigenous Issues, provided little substantive information about the proposed policies. Instead, these presentations focused on the review process itself. The failure to communicate in a timely fashion about the substance of the proposed policies seems to violate the recently adopted Bank "Access to Information Policy." The Center encourages the Bank to promptly release the proposed policies and provide stakeholders, including indigenous peoples, a detailed timeline of how the process is expected to proceed.

4. A rights-based approach to safeguard policies is particularly important for the Bank's climate programs, including REDD+ programs, which should recognize the rights of indigenous peoples to self-government and their rights to lands, territories and natural resources.

REDD+ presents some of the same challenges the Bank faces in ordinary development projects, but there are additional challenges as well. For some time, the Bank has recognized that projects developed on lands wrongfully taken from indigenous peoples will be vulnerable to future legal challenges. Poor practices in REDD+ programs will also alienate the Bank's best potential allies in the fight against climate change – the indigenous people who love the land, the waters and the forests. Many indigenous peoples in Mexico and Central and South America already oppose REDD+. They fear that such climate change initiatives are simply a new way for states to steal their lands, territories, and natural resources. At least one state, Indonesia, seems to be preparing for REDD+ programs by forcibly evicting indigenous peoples from their homes and territories.

What we have seen from the Bank has not been encouraging. Bank REDD+ programs focus on measuring, reporting, and verifying carbon, and avoid addressing issues important to indigenous peoples – securing title to lands, territories and natural resources; avoiding forced relocations; ensuring that REDD+ programs have robust benefit-sharing components that allow indigenous communities to continue to practice their ways of life. Bank REDD+ programs operate under a cloak of secrecy and fail to share important information with the public. For example, the FCPF empowered a taskforce to harmonize safeguard policies of three organs (the FCPF, the UN-REDD Programme, and the Inter-American Development Bank) without soliciting public input. FCPF management selected indigenous individuals to participate in this taskforce, without publically requesting input from grassroots communities. Non-English speakers were effectively excluded from meaningfully participating on the taskforce because all of the working documents were written in English and most of the meetings were conducted in English. Most troubling is the fact that the “common approach” developed by the taskforce and adopted by the Participants’ Committee of the FCPF has never been made available for public comment.

Institutions designing REDD+ programs must ensure that (1) climate programs adopt safeguard policies that recognize and protect the rights of indigenous peoples to self-government and rights to land, territories, and natural resources and encourage the full and effective participation of indigenous peoples in every stage of program development; (2) indigenous peoples actually benefit from REDD+; (3) indigenous peoples do not suffer for the environmental damage caused by others; (4) REDD+ programs prohibit the involuntary relocation of indigenous peoples; and (5) states that engage in human rights violations related to REDD+ are excluded.

It is in the best interest of the Bank and other multilateral institutions to work with indigenous peoples and ensure that REDD+ programs have the highest degree of safeguard policies for the rights of indigenous peoples. Accordingly, we urge the FCPF and other Bank climate programs to conduct extensive consultations with indigenous peoples on REDD+ and develop REDD+ safeguard policies to ensure both the success of the programs and the full and effective participation of indigenous peoples. A copy of our comments on the FCPF and UNREDD Programme’s Draft Guidelines on Stakeholder Engagement is attached for your information.

The Center remains eager to work towards producing the strongest possible Bank policy on indigenous peoples. We also welcome Bank officials, especially those from the legal department, to engage in dialog on these issues.

Sincerely,

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**IndianLaw Resource Center comments on the FCPF and UN-REDD Programme
Guidelines on Stakeholder Engagement.**

**Comments and Recommendations on the Forest Carbon
Partnership Facility and UN-REDD Programme's
*Draft Guidelines on Stakeholder Engagement in REDD+
Readiness, with a Focus on the Participation of Indigenous
Peoples and other Forest-Dependent Communities***

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With the generous support of the C.S. Mott Foundation

**Comments and Recommendations on the Forest Carbon Partnership Facility and UN-
REDD Programme's**

***Draft Guidelines on Stakeholder Engagement in REDD+ Readiness, with a Focus on the
Participation of Indigenous Peoples and Other Forest-Dependent Communities***

By Leonardo A. Crippa* Philomena Kebec** & Lindsey Trainor***

June 2011

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ACRONYMS AND TERMS

Center	Indian Law Resource Center
ECOSOC	Economic and Social Counsel
FCPF	Forest Carbon Partnership Facility
FPIC	Free, Prior and Informed Consent
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IFC	International Finance Corporation
ILC	International Law Commission
MDB	Multilateral Development Banks
Indigenous Policy	OP/BP 4.10 Indigenous Peoples
PSNR	Permanent Sovereignty over Natural Resources
UN	United Nations
UN Declaration	UN Declaration on the Rights of Indigenous Peoples
UN-REDD	UN-REDD Programme

I | INTRODUCTION

1. The Indian Law Resource Center (Center) is a non-profit law and advocacy organization established and directed by American Indians. We provide legal assistance to indigenous peoples in the Americas who are working to protect their lands, resources, human rights, environment and cultural heritage. We work to overcome the grave problems that threaten Native peoples by advancing the rule of law, by establishing national and international legal standards that preserve their human rights and dignity, and by challenging the governments of the world to accord justice and equality before the law to all indigenous peoples of the Americas. Since 1978, we have been engaged at the UN level with the development of the recently adopted UN Declaration on the Rights of Indigenous Peoples (UN Declaration), among many other human rights law developments. We have been advocating for better policies at the World Bank Group on indigenous peoples' issues since 1980.

2. The *Draft Guidelines on Stakeholder Engagement in REDD+ Readiness, with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities* (the *Guidelines*), prepared by the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme (UN-REDD), was produced to give the public sector a tool for engaging stakeholders in REDD+ readiness, with an emphasis on the participation of indigenous peoples and forest-dependent communities. On June 6, 2011, the *Guidelines* became public and open for comments until July 1st. This paper offers comments and recommendations on the *Guidelines* from a legal perspective addressing indigenous peoples' particular human rights concerns.

3. Three issues of particular interest to indigenous groups exist within the *Guidelines*. First, both the FCPF and UN-REDD are agencies, which are part of larger

international inter-governmental organizations in which the world's countries are acting together to make decisions. Second, both agencies provide advice to countries, which have assumed international human rights law obligations by ratifying at least one treaty and/or contributing to the crystallization of customary international law. Finally, there is a serious need to address the human rights dimension of development practices and programs, such as REDD+ programs. Thus, it is critical that indigenous peoples are consistently consulted regarding policy developments at both the FCPF and UN-REDD to ensure that REDD+ programs fully respect their legal rights.

4. Keeping in mind these issues, we address the *Guidelines* as a critical tool, which should not only engage indigenous peoples as “stakeholders,” but more importantly, address them as rights-holders. For reasons that are not clear, the *Guidelines* group indigenous peoples with local communities and fail to address the collective rights of indigenous peoples at any stage of REDD+ programs taking place on their lands and/or affecting their natural resources. We also note that neither the FCPF nor the UN-REDD are developing a human rights impact assessment in order to provide countries with a critical tool to address today's challenge in development practices: the protection of human rights.

5. Indigenous peoples should be addressed as rights-holders, not merely as stakeholders, in the formulation and implementation of REDD+ strategies and policies. The *Guidelines* lacks clarity between the rights of indigenous peoples and the right of non-indigenous groups or individuals. This difference is critical because indigenous peoples, unlike non-indigenous communities, depend on their lands, territories, and natural resources for their economic, social and spiritual existence. Maintenance of this relationship is generally critical to the very existence of an indigenous people. In several places, the *Guidelines* mistakenly groups indigenous peoples and local communities, implying that these groups enjoy the same rights. Both domestic and international law recognizes indigenous peoples' distinct legal rights because indigenous peoples are distinct political, social and legal entities within existing nation-states. This particularity should not be underestimated. We suggest that the *Guidelines* better define the distinction between the rights enjoyed by indigenous peoples and the rights others enjoy.

6. In particular, indigenous peoples' permanent sovereignty over their natural resources (PSNR) should be the guiding international legal principle in both the REDD+ program cycle and the *Guidelines*. According to a critical UN Special Report, indigenous peoples' PSNR “might properly be described as a collective right by virtue of which the State is obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources.”¹⁹ In our opinion, this approach should be incorporated in REDD+ programs, as it addresses indigenous peoples' rights to self-determination, self-government and natural resources as a whole within their special relationship with traditional lands. Surprisingly, not even the UN-

¹⁹ U.N. Special Rapporteur, Erica-Irene A. Daes, *Indigenous Peoples' Permanent Sovereignty over Natural Resources*, ¶ 40, E/CN.4/Sub.2/2004/30 (July 13, 2004).

REDD is embracing this legal approach, which is critical for the full respect of indigenous peoples' governments and rights to land, territories and natural resources.

7. The collective rights of indigenous peoples are of particular importance for REDD+ programs. Instead of guidance on how to seek free, prior and informed consent (FPIC), mandatory directions should be provided to countries on how to ensure that core substantial rights—including the right to self-determination, the right to self-government and full ownership rights to land, territory and natural resources—are not violated via REDD+ programs. REDD+ projects, including forest conservation and deforestation remediation, have the potential to create collisions between indigenous peoples' rights and environmental protection interests. In past conservation efforts' failure to guarantee these rights resulted in the loss of indigenous lands from the creation of protected areas on indigenous lands. For example, Guatemala's Protected Areas Law violates indigenous peoples' full ownership rights to land by only recognizing their right to remain on their land if they adapt to the distinct uses allowed within the protected area.²⁰ This law also weakens the right of self-determination and self-government by depriving indigenous communities, not only of any participation in the process of declaring a protected area in their territories, but also of management or control over their territories.²¹ As a UN agency, the UN-REDD must reverse such a discriminatory conservationist approach in order to live-up to the UN Declaration standards.

8. A human rights impact assessment should be developed not only to better address “social” issues, but also to assess the legal issues connected to REDD+ activities. This is a critical approach to identify, in a comprehensive and effective manner, the human rights risks that REDD+ activities imply not only for indigenous peoples, but also for other forest-dependent communities and individuals. Only a human rights impact assessment can properly address the diversity of the legal rights that a group or individual is entitled to in connection to a certain REDD+ program. The rights of indigenous peoples, other forest-dependent communities and individuals should be properly addressed along the REDD+ program cycle.

9. Surprisingly, neither the FCPF nor the UN-REDD is developing a human rights impact assessment to assure the effectiveness of REDD+ activities. There is an undeniable link between environmental and human rights issues that must be addressed in REDD+ activities. The development of REDD+ strategies and policies present a critical opportunity to develop the proper tool to address such a linkage in development practices and programs. We encourage the FCPF and UN-REDD to pay closer attention to this issue. We will return to this point later.

10. One final general observation and suggestion may be too obvious to be necessary. The future draft of the *Guidelines* should be made available with all the documents that

²⁰ See Protected Areas Law [Ley de Áreas Protegidas] of 1989, Art. 11, 18-22. See also Reglamento de Ley de Áreas Protegidas of 1990, Categoría Tipo V Reserva Natural Privada, Categoría Tipo VI Reserva de la Biosfera, a) Zona Natural o Núcleo.

²¹ *Ibid.*

the Guidelines itself refers to, in order to assure meaningful feedback from stakeholders. Within the present round of consultations, key components of the *Guidelines* were not made available, such as the UN-REDD's FPIC and Recourse Guidelines.²² As a result, this round of consultations is not serious and we call for further consultations on the *Guidelines* making available all relevant documents.

11. The following comments correspond to the headings within the draft *Guidelines*.

II | SUMMARY OF PRINCIPAL RECOMMENDATIONS

- The FCPF and UN-REDD must adopt a guiding international legal principle recognizing indigenous peoples' permanent sovereignty over natural resources in both the REDD+ program cycle and the *Guidelines*.
- The FCPF and UN-REDD must develop a human rights impact assessment to help countries prevent violations of the rights of indigenous peoples, other forest-dependent communities and individuals throughout the REDD+ program cycle.
- The FCPF and UN-REDD must ensure that no REDD+ program violates indigenous peoples' collective rights, such as: the right to self-determination, the right to self-government and full ownership rights to land, territory and natural resources.
- The FCPF and UN-REDD must ensure that the right of indigenous peoples to benefit from REDD+ programs taking place on their lands and/or affecting their natural resources is fully respected.
- The FCPF and UN-REDD should conduct further consultations on the *Guidelines* with indigenous peoples located in the countries in which the *Guidelines* will apply.
- The FCPF and UN-REDD should carry out further consultations on the *Guidelines* since the UN-REDD FPIC and Recourse *Guidelines*, a key component for REDD+ policy developments, was not made available for this round of consultations.
- The *Guidelines* should address indigenous peoples as rights-holders, not merely as stakeholders, in order to ensure appropriate consideration of indigenous peoples' legal rights.
- The *Guidelines* should offer greater clarity between the rights of indigenous peoples and the rights of other groups or individuals.

²² *Draft Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities*, Annex 1 (May 18, 2011).

- The *Guidelines* should make sure that no country executes a REDD+ program without fully implementing FPIC with indigenous peoples when a program: (1) takes place in their lands or involves their natural/cultural resources; (2) takes place not on their lands, but which may substantially affect their lands, territories and natural/cultural resources or may infringe their human rights; and (3) may result in relocation from their lands and territories.
- Prior to the commencement of any REDD+ Readiness, the UN-REDD must develop a project-complaint mechanism, in which REDD+ program-affected communities can file complaints for proper investigation/redress of potential/existing negative impacts.

III | IMPORTANCE OF INDIGENOUS PEOPLES

12. We appreciate the *Guidelines*' recognition of the unique status of indigenous peoples and the need for safeguard policies that protect their rights. However, we reiterate here that the collective rights of indigenous peoples are of particular importance for a successful formulation and implementation of REDD+ activities. Including being stakeholders, indigenous peoples are also rights-holders, as they are entitled to legal rights recognized by domestic and international law. Failure to adopt a rights-holders approach in REDD+ activities will be a set back for both the FCPF and UN-REDD.

13. We welcome the UN-REDD focus on FPIC, but more needs to be done to secure full respect of indigenous peoples' legal rights in the context of UN-REDD programs. As stated earlier, indigenous peoples' PSNR must be the guiding legal principle in the formulation and implementation of REDD+ activities. We call the attention to the lack of transparency in this round of consultations because not all the necessary documents referred to in the *Guidelines* are available for review. The UN-REDD's FPIC and Recourse Guidelines is not available yet and will not be available until the third quarter of 2011. The UN cannot call for consultations on the *Guidelines* without having completed all critical documents first, especially those related to FPIC. We encourage the UN-REDD to carry out further consultations with indigenous peoples making sure that all documents are made available in a proper and timely fashion.

14. We are seriously concerned about the current FCPF approach to REDD+ issues. First, there is no certainty on whether the World Bank safeguard policies applicable to FCPF will properly protect the rights of indigenous peoples in its REDD+ programs. Around eight months have passed since the World Bank's "Updating and Consolidation Process" started, but no draft policies have been made available for public comments. Then there is no way to realize the likelihood of the ten safeguard policies under review, especially the OP/BP 4.10 Indigenous Peoples policy (Indigenous Policy). Only by the end of this policy review process in late 2012 will indigenous peoples know whether the World Bank policies protect their legal rights.

15. Second, we believe the World Bank must update the Indigenous Policy in light of the UN Declaration. Its fellow member of the World Bank Group, the International

Finance Corporation (IFC) in updating its PS 7 Indigenous Peoples policy, incorporated many relevant standards of the UN Declaration.²³ We expect the World Bank to do the same. If, however, the World Bank adopts weaker standards, there is a real risk that the FCPF will be unable to carry out its REDD+ readiness activities in a way that will establish good governance practices and ultimately lead to successful REDD+ projects. The current Indigenous Policy falls short in meeting the UN Declaration standards. For example, it takes no notice of the rights of indigenous peoples to self-determination and to self-government; they are not even mentioned in the policy text. According to the UN Declaration, the right of indigenous peoples to self-determination includes the right to self-government, which implies the collective right to exercise full authority over land and natural resources.²⁴ We believe this is critical to respect indigenous peoples' right to control their land, natural resources and livelihoods in REDD+ programs.

16. Finally, we disagree with the World Bank's belief that its current Indigenous Policy provides for a proper guidance on FPIC. Free, prior and informed consultation leading to broad community support does not meet the global accepted FPIC standard for indigenous peoples. This is why its fellow World Bank Group member, the IFC, and the UN General Assembly recently adopted the FPIC standard, rejecting the World Bank's approach. We do not understand why the World Bank is neither following the world community's stance on this issue, nor following the IFC's approach. We believe indigenous peoples deserve a clear explanation on this position and we call for a high-level discussion on this particular issue within the ongoing World Bank policy review.

IV | PRINCIPLES OF STAKEHOLDER ENGAGEMENT

17. We welcome the *Guidelines'* governing principles on stakeholder engagement. It provides directions on how to carry out consultations in a proper and timely fashion; as well as establishes particular measures to take with respect to indigenous stakeholders. From our point of view, this is critical to ensure the full and effective participation of indigenous peoples in the development of REDD+ strategies and policies.

18. Meaningful consultation with indigenous peoples in REDD+ countries requires making relevant documents available in the native language. The UN Declaration Article 13 guarantees to indigenous peoples the right to use their own languages and requires states to ensure that indigenous peoples can understand and be understood.²⁵ Furthermore, domestic laws in several REDD+ eligible countries have made indigenous languages official languages or have created substantial protection requiring that important materials are translated into indigenous languages. These countries include but are not limited to Bolivia,²⁶ Colombia,²⁷ Costa Rica,²⁸ Mexico,²⁹ Guatemala³⁰ and Peru.³¹

²³ See generally IFC Policy Review, available at <http://www.ifc.org/policyreview>

²⁴ Leonard A. Crippa, "Multilateral Development Banks and the Human Right Responsibility," American University International Law Review 25, no.3 (2010): 564.

²⁵ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 (Sept. 13, 2007).

²⁶ New Constitution of the State, Art. 5 (Bolivia) (English version, Oct. 2008). Article 5 also lists thirty-six of the indigenous languages of Bolivia.

²⁷ Political Constitution of Colombia of 1991, Article 10 (English version).

²⁸ Political Constitution of the Republic of Costa Rica, Article 76 (English version, 2009 translation).

We encourage the FCPF and UN-REDD to provide relevant documents in indigenous languages within the context of consultations on the *Guidelines* for indigenous peoples located in the countries in which the *Guidelines* will apply.

V | OPERATIONAL GUIDELINES FOR PARTICIPATION AND CONSULTATION

19. We appreciate that the FCPF and UN-REDD's provide operational guidelines to countries for REDD+ readiness and REDD+ programs. However, these guidelines and the evaluation of environmental and social risks within the same framework are not as effective in preventing human rights violations as a human rights impact assessment would be.

20. We believe that both the FCPF and UN-REDD have to comply with the human rights mandate of their parent organization: the UN. The UN Charter expressly calls for the universal respect of human rights without discrimination (Article 55.c), as well as for the cooperation with the UN for the achievement of this purpose (Article 56). The World Bank is a specialized agency of the UN by virtue of the agreement entered into with the ECOSOC³² in accordance with related Articles of the UN Charter³³, and the FCPF is an organ of the World Bank's Carbon Finance Unit. The UN-REDD is a collaboration between three organs of the United Nations: the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and the United Nations Environment Programme. As bodies of the UN, the FCPF and UN-REDD are obligated to comply with the same human rights mechanisms that bind actions by the UN.

21. We encourage the FCPF and UN-REDD to reevaluate the effectiveness of social assessments and design a tool that can properly lead countries to assess and manage

²⁹ Ley General de Derechos Lingüísticos de los Pueblos Indígenas, Art. 9, 10.

³⁰ Law on National Languages of 2003, Art. 1, 3, 14.

³¹ Political Constitution of Peru, Articles 2.19, 48, *reprinted in* WORLD CONSTITUTIONS ILLUSTRATED (Jefri Jay Ruchti ed., Adela Staines & Jefri J. Ruchti trans., William S. Hein & Co. 2011) (1993, As Consolidated to Law No. 29402 of 7 September 2009) .

³² Agreement between the United Nations and the International Bank for Reconstruction and Development art. 1(2), Apr. 15, 1948, 109 U.N.T.S. 341 ("The Bank is a specialized agency established by agreement among its member Governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of the nature of its international responsibilities . . . the Bank is, and is required to function as, an independent international organization.")

³³ See U.N. Charter, art. 57 (stating that specialized agencies are those intergovernmental organizations operating in conjunction with the United Nations and pursuant to Article 63 of the Charter). Article 63(2), in turn, provides that ECOSOC " may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations." *Id.* art. 63(2).

human rights risks. In guiding countries on national readiness management arrangements and stakeholders consultation, it is critical to address the human rights of those who will be impacted by REDD+ programs. Social assessments are not effective in measuring the human rights dimension of development practices and projects. For many years, this gap in development practices has been ignored by multilateral development banks. This is one reason why countries have been condemned by international human rights bodies because of human rights violations connected to development projects sponsored by these banks. In September 2010, the World Bank's Inspection Panel found numerous failures by the management group for Panama's Land Administration Project. Among other violations, the management group failed to pay adequate attention to land demarcation and failed to develop an Indigenous Peoples Development Plan as required by World Bank's Indigenous Policy, resulting in a lack of legal protection for indigenous territory.³⁴ We hope due diligence measures are taken to prevent human rights violations related to REDD+ programs.

22. Human rights impact assessments are effective means to address human rights risks and manage human rights impacts. As agencies that provide advice to the public sector on developing governance structures necessary to support REDD+ projects, the FCPF and UN-REDD cannot ignore the need of developing a policy to address the human rights risks that countries will encounter throughout the REDD+ program cycle. Such a policy will help countries to fulfill their international human rights law obligations. The UN Economic and Social Council (ECOSOC) stated that for the purpose of ensuring that rights protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) are not undermined, obligations under the ICESCR should be considered in all aspects of a member state's *negotiations with international financial institutions*.³⁵ Countries face human rights today in every single development project. We hope proper guidance on this challenge is provided to countries.

23. Needless to say, lessons can be learned from recent related policy developments concerning business and human rights. First, the IFC, a member of the World Bank Group, made a critical step forward by adopting the Guide to Human Rights Impact Assessment and Management in June 2010.³⁶ IFC's private sector clients can now start taking due diligence measures to address human rights issues. Finally, more recently, the UN Special Representative of the Secretary-General for Business and Human Rights issued a report containing a set of human rights guiding principles for states and business enterprises.³⁷ The report explains that states have a fundamental responsibility under international law to prevent human rights abuses within their territories, including abuses committed by third parties or business enterprises, and states do not relinquish that

³⁴ The Inspection Panel, *Investigation Report, Panama: Land Administration Project* (Loan No. 7045-PAN), ¶¶ 268, 332-340, 347 (Sept. 16, 2010).

³⁵ ECOSOC, *Conclusions and Recommendations, Jordan*, ¶ 28, U.N. Doc. E/C.12/1/Add.46 (2000) (emphasis added).

³⁶ See IFC and International Business Leaders Forum, "Guide to Human Rights Impact Assessment and Management" (June 2010), available at <http://www.guidetohriam.org/welcome>

³⁷ UN Special Representative of the Secretary-General for Business and Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (March 21, 2011).

responsibility by contracting with business enterprises.³⁸ States also must ensure that human rights are protected when states are acting as members of multilateral institutions.³⁹ The report also indicates that private businesses have a responsibility to avoid causing or contributing to “adverse human rights impacts” caused by their own activities or activities directly linked to their operations, products, or services, and it recommends that businesses fulfill their responsibilities by developing human rights policy commitments, due diligence processes, and remediation processes for adverse human rights impacts.⁴⁰

24. As subjects of international law, the FCPF and UN-REDD must also realize their international law obligations and prevent human rights violations via REDD+ programs. In the *WHO* opinion, the International Court of Justice (ICJ) made it clear that “[i]nternational organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”⁴¹ According to the UN International Law Commission (ILC), “[t]here is a breach of an international obligation by an international organization when an act is not in conformity with what is required by that obligation.”⁴² International obligations arise not only from treaties but also from other sources of law as enunciated in Article 38 of the ICJ Statute, especially from unwritten law such as customary international law and general principles.⁴³ For instance, many human rights law obligations arising out of the Universal Declaration of Human Rights have crystallized in binding rules of customary international law.⁴⁴

25. Lastly, we made a final call to the FCPF to ensure that human rights issues are addressed in the World Bank’s REDD+ programs. Since 2006, two General Counsels of the World Bank released consistent legal opinions by recognizing that the balance has now shifted in favor of protecting human rights in development practices.⁴⁵ First, Roberto Danino concluded that the Articles of Agreement do allow the Bank to acknowledge the human rights dimension of its policies and operations.⁴⁶ Secondly, Ana Palacio asserted that Mr. Danino’s statement makes “the state of the law” clear and permits the Bank to properly update its internal legal stance according to the current

³⁸ *Id.* at ¶¶ 1, 3, 5.

³⁹ *Id.* at ¶ 10.

⁴⁰ *Id.* at ¶¶ 11, 13, 15.

⁴¹ Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73, 89-90 (Dec. 20) (emphasis added).

⁴² ILC, *Responsibility of International Organizations—Titles and Texts of the Draft Articles 8-16 Adopted by the Drafting Committee*, art. 8, U.N. Doc. A/CN.4/L.666/Rev.1 (June 1, 2005)

⁴³ Leonard A. Crippa, *supra* note 6, at 555.

⁴⁴ ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 86 (2006).

⁴⁵ Leonard A. Crippa, *supra* note 6, at 557-558.

⁴⁶ ROBERTO DANINO, GENERAL COUNSEL OF THE WORLD BANK, LEGAL OPINION ON HUMAN RIGHTS AND THE WORK OF THE WORLD BANK (Jan. 27, 2006) (on file with author) (“The World Bank’s objectives and activities are deeply supportive of the substantive realization of human rights.”), at 25.

international legal order.⁴⁷ Finally, its fellow member of the World Bank Group, the IFC, has made a critical step forward by adopting the Guide to Human Rights Impact Assessment and Management in June 2010.

VI | CONCLUSION

26. We hope that these observations and recommendations will be helpful in preparing a revised edition of the *Guidelines*. We recognize the difficulty of the task of producing common guidelines for agencies that are member of larger organizations with different mandates. However, critical legal approaches to the formulation and implementation of REDD+ policies should be the guiding principles to respect the human rights in play. For this reason, we have tried to keep our suggestions modest and limited in number. Closer attention should be paid to those core substantial rights of indigenous peoples that might be potentially affected by REDD+ programs; as well as to the legal approach that should guide REDD+ policies to assess and manage human rights risks. We realized that both issues are not addressed throughout the *Guidelines*.

For further information on our submissions or questions regarding the recommendations herein, please do not hesitate to contact:

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⁴⁷ Ana Palacio, *The Way Forward: Human Rights and the World Bank* (2006), available at <http://go.worldbank.org/RR8FOU4RG0>.

“Forest Rights of Indigenous Peoples in India”

**Written Statement
by
Nick Wertsch
on Behalf of Samata,
A tribal rights advocacy group in Andhra Pradesh, India**

**before the
Tom Lantos Human Rights Commission
Indigenous Peoples in Asia
U.S. House of Representatives,
Thursday, July 26 2011**

Mr. Chairman, Members of the Commission, it is a great honor to be able to present my testimony to the Tom Lantos Human Right Commission on the current state of Adivasi affairs in India, the impact of the Forest Rights Act of 2006, and the recent successes and struggles the Adivasi have faced.

My name is Nicholas Wertsch, I am a recent graduate of Georgetown University, and I will be returning to India on a Fulbright grant this fall to conduct research on development and democracy issues. From 2009 to 2010 I worked as a volunteer with Samata, a tribal rights advocacy group in Andhra Pradesh, India. Throughout that time I worked closely with Mr. Ravi Rebbapragada, the Executive Director of Samata and a renowned advocate for tribal communities across India and particularly in Andhra Pradesh. Over the course of my time with Samata, I had the opportunity to visit Adivasi communities, engage tribal leaders, conduct field visits to learn about conditions in rural areas, and observe the impact of the Forest Rights Act of 2006 on Adivasi livelihoods and communities.

I have organized my testimony into several broad sections: an introduction and overview, an explanation of the Forest Rights Act of 2006, a brief summary of the implementation of the Forest Rights Act of 2006 across the country, a brief summary of its implementation in the state of Andhra Pradesh, and a short section including my personal observations and conclusions from field visits.

An Introduction and an Overview

Before I begin, I would like to note that the terms ‘tribal’, ‘indigenous’, ‘aboriginal’, ‘scheduled tribes’, and ‘Adivasi’ are often used interchangeably to describe the section of the Indian population which has often been persecuted, exploited, and marginalized throughout the modern history of India and dating back to the British colonial period. This group of people is actually comprised of a complex set of subgroups and identities, though they are often referred to under the general terms mentioned above. For the sake of clarity, I will primarily use the terms ‘Adivasi’ and ‘tribal’ to refer to this population group, as these terms are most frequently used by self-identifying members of this group.

During the British colonial period, the colonial government instituted laws to declare large swaths of land to be under government control. The forest laws from the last quarter of the 18th century marked large tracts of the hills in tribal areas to be part of the Reserve Forests of the British Empire. This legislation restricted the freedom of Adivasi people to access the forests and to practice shifting cultivation of the land. Tribal agricultural practices primarily used shifting cultivation in the regions with hills and forests as part of an adaptation to the natural landscape that would allow the land to regenerate between cultivation cycles. Adivasi communities resented the new colonial restrictions on their agricultural traditions; this was the cause of more than one hundred tribal rebellions in 125 years of forest administration.

“Forests” in Indian law often have nothing to do with actual forests as we typically imagine them. Under the Indian Forest Act, areas were often declared to be "government forests" without recording who lived in these areas, what land they were using, or how they used the forest.

Over 80% of the state of Madhya Pradesh's forest blocks and 40% of the state of Orissa's reserved forests were never surveyed; similarly 60% of India's national parks have still not completed their process of enquiry and settlement of land rights. As the Tiger Task Force of the Government of India put it, "in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme." Because of this situation, millions of people are subject to harassment, evictions, and extortion on the pretext of squatting in their own homes and on their own land. Torture, bonded labor, extortion of money and sexual assault are all extremely common. In the latest national eviction drive from 2002 onwards, more than 300,000 families were driven out of their homes. In Madhya Pradesh alone, more than 125 villages have been burned to the ground. The situation is so bad that the then Commissioner for Scheduled Castes and Scheduled Tribes said in his 29th Report, "The criminalisation of entire communities in the tribal areas is the darkest blot on the liberal tradition of our country."

The Indian Forest Act of 1927, India's main forest law for many years, reserved forest lands for British timber production and to answer the global needs of the British Empire. The law says that at the time a "forest" is declared, a single official (the Forest Settlement Officer) is to enquire into and "settle" the land and rights of people living in that area. These all-powerful Forest Settlement Officers often did nothing or only recorded the rights of powerful and wealthy citizens. The same model was subsequently built into the Wild Life Protection Act, passed in 1972, with similar consequences. Those consequences included the abuse of the rights of Adivasi communities across India. However, the original purpose of the Indian Forest Act and the Wild Life Protection Act – environmental conservation – has also not been met. Here is a look at some of the results of these laws and how they have been implemented:

- The loss of more than 90% of India's grasslands to commercial Forest Department plantations;
- The destruction of 5,000 square kilometers of forest for mines, dams and industrial projects in the past five years alone;
- The clearing of thousands of square kilometers of forest for monoculture plantations by the Forest Department;
- Recent proposals to privatize "degraded" forest lands for private companies' timber plantations.

Furthermore, the forest laws destroyed the community management and regulation systems that were already in place, forcing people to choose between abandoning the homes on forest land entirely or living as 'criminals' on or near it. To this day it is a criminal offence to plant a tree in a reserved forest; but it is legal for the Department to fell the entire forest so long as it has the consent of the central government.

Forest Rights Act of 2006

The Forest Rights Act of 2006 (also known as the FRA) was created to address the unjust administration of forest lands and to provide greater opportunities for participative democracy among tribal populations disproportionately affected by the administration of forest lands. The FRA grants legal recognition of the rights of traditional forest dwelling communities, partially correcting the injustices caused by the earlier forest laws, and makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

The FRA applies to people living in or depending on forest lands. The FRA is designed to address the historical injustices committed against the Adivasi and other people living off of the land, and the act applies to both Adivasi in forest land areas as well as non-Adivasi peoples who can prove they have lived on the land for the past three generations (non-Adivasi recipients are referred to as 'Other Forest Dwellers' or OTFDs). An applicant under the FRA must be able to prove their claim to the land and show that they are continuing to use the land even now.

The FRA recognizes three types of rights: land rights, use rights, and the right to protect and conserve.

Land rights are contingent on several important conditions: a person must have been cultivating land prior to December 13, 2005 and must still be cultivating that land currently. If someone is cultivating the land but does not have documentation to prove ownership, they can claim up to 4 hectares as long as they are using the land for their

livelihood. If someone does have documentation (called a “patta” – proof of a government lease on the land to the person) but has had their lands taken by the Forest Department, they can now reclaim their lands.

So, as an example, if I am cultivating half a hectare on December 13, 2005, I receive a title to that half a hectare alone; and if I am cultivating nothing, I receive nothing. If I am cultivating more than 4 hectares without documents or a dispute, I receive title to only 4 hectares.

The land cannot be sold or transferred to anyone except by inheritance.

Use rights apply to the right of people to use or collect traditional minor forest produce (not including timber), use grazing grounds and water bodies, and use traditional areas of nomadic or pastoral communities (communities that move with herds instead of practicing settled agriculture).

The right to protect and conserve gives communities the right to manage the forest. This right had previously only been reserved for the Forest Department. This is a vital and significant change for thousands of tribal village communities wishing to protect land and wildlife against threats from the negative effects of development projects and outside forces.

In order to recognize these rights, the FRA mandates a transparent three step procedure. First, the gram sabha (the village assembly, similar to a town council) makes a recommendation on who has been cultivating land and for how long. The gram sabha is critical in this process since it is a public body with open participation – in other words, it is the most accessible, transparent, and localized democratic institution for addressing these issues.

The gram sabha's recommendation goes through two stages of screening committees at the taluka and district levels (the next levels up in the Indian democratic structure). The district level committee makes the final decision on who holds a valid claim to forest land. A committee has six members - three government officers and three elected persons. At both the taluka and the district levels, any person who believes a claim is false can appeal to the committees. Land recognized under FRA cannot be sold or transferred.

Implementation of FRA: Process and Institutions

While the FRA offers critical new opportunities for Adivasi peoples to reclaim the forest lands they have traditionally used for many years, there are still many problems with the implementation of the new law. Many state governments across India set initial deadlines for addressing land claims that forced the process to be hurried and rushed. Naturally, this led to distortions in FRA implementation. State governments hoped to point to the number of claims processed as a sign of fidelity to the new law, but this came at the expense of the quality of the claims process. In a large number of cases forest land distribution and reallocation has taken place without even measuring the actual dimensions of the land in question. It is to be noted that no deadline for implementation was provided in the FRA.

On the other hand, in eleven states the implementation process has not yet started or is only just now getting underway. In most of the northeastern states (Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim) the state governments felt that the FRA was not relevant to their situation or were not clear on how it applies to certain government lands. Most of them are currently re-examining their position. Whereas in states of Bihar, Uttarakhand, Jharkhand, Himachal Pradesh and Goa, the FRA is clearly relevant but the states have been very slow in implementation. In Tamil Nadu because of restrictive orders by the High Court on a petition filed in the state courts, the progress has also been extremely slow.

State governments formed State Level Monitoring Committees (SLMC), District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) as provided in the rules of the FRA for monitoring and implementation of the FRA. But serious flaws have marred the formation of Forest Rights Committees (FRC) at the grassroots level. The Forest Rights Committee plays a crucial role in assisting the gram sabha in determining the validity of forest land claims from individuals. The FRC is responsible for receiving, consolidating, and verifying these claims on the ground.

In most states, the decisions to be made by the gram sabhas (at the village level) have been made by the panchayats (a higher level including multiple villages). This has hampered the transparency of the process and made it more difficult for local democratic participation. In addition, FRCs in some of the States have not been formed in a fair manner. Women and tribal people have not been adequately represented. In other cases, government officials have had an overbearing hand in the formation of FRCs, and this is often to the detriment of the interests of women and tribal groups.

Even when SDLCs and DLCs are constituted, they have only partially discharged their responsibilities with little attempt to proactively help people with claims and evidences. On the contrary, they often issue rejection letters without justification or on inadequate grounds. This has been one of the biggest reasons for the poor implementation of the FRA in most parts of India. The State Level Monitoring Committees have also failed to live up to their duties in many states. Monitoring has been haphazard because of the infrequency of SLMC meetings and scant attention paid to the guidelines for implementation. Several SLMCs have issued illegitimate deadlines and guidelines. This has caused serious implementation problems, such as not measuring the land before issuing titles or overreliance on satellite imagery when assessing claims.

Perhaps one of the biggest hurdles to implementing the FRA is the lack of preparedness at the grassroots level. Land surveying, marking boundaries, and settling land rights disputes between the Revenue Department and the Forest Department is a complex and difficult task. Some tasks (such as measurement or claim preparation) have been outsourced to temporary staff on contract. This has adversely affected the quality and accuracy of the output in many states resulting in wrongful rejections and also in a few cases wrongful acceptance of a number of claims. Without the proper planning and resources from the government departments responsible for these duties, the FRA has little chance of properly addressing the concerns around land rights – and this is particularly true for tribal peoples who have been historically disadvantaged in these matters.

Certain technologies – like remote sensing (RS), global positioning systems (GPS), and geographic information systems (GIS) – have the potential to accelerate the land rights process. But this is only true as long as skilled operators are using these systems, those operators can guarantee transparency, and the process is understood by the public. Otherwise the entire process runs the risk of being perceived as illegitimate and losing the faith and support of the people who stand to gain the most through this process. Only one state (Maharashtra) has used the full suite of technologies (RS, GIS, and GPS) in a relatively transparent manner. But the SLMC stopped this process half way through because of the ‘slow progress’ and now title deeds are granted without land measurement, which is a very serious concern. The state of Gujarat has recently attempted to use this approach also, but its approach is poorly designed and lacks proper ground verification and transparency.

The FRA also stipulates that forest-dwelling tribal people cannot be evicted or removed from forest land under their occupation until the process of recognition and verification of their rights is complete. During field visits, committee members from the various levels of FRA oversight have witnessed that Forest Department officials have violated this provision. At the same time there have been several cases of forest clearance and fresh encroachments after the FRA has gone into effect – which would make such actions illegal. Both cases, obviously, have to be dealt with sternly under the new law. Furthermore, there have been some cases of relocation from protected areas, including tiger reserves, without completing the procedures under the FRA. Relocation under these circumstances is a gross violation of the FRA.

Against the tide of poor implementation, there are a number of cases of innovative, pro-active moves by civil society organizations, communities, and officials that have helped in making claims. Awareness programs have been extremely productive where they are being used. Some officials have distributed simple explanatory materials in local languages, and this is perhaps one of the best ways to expand awareness about the FRA and how it should be implemented. Block and district level officials have reached out to gram sabhas to make sure they have the support they need to file village level claims and record proper evidence of land rights. In other instances, advocacy groups have held unresponsive government officials publicly accountable, and this has spurred those officials to action.

FRA Implementation in Andhra Pradesh

Andhra Pradesh is the seventh largest state in the country. Andhra Pradesh has 10 integrated tribal development agencies covering 36,793 square kilometers with 5,947 villages in scheduled areas and 2,818 villages in non-scheduled areas. According to the FRA, the Forest Department has to form village level Forest Rights Committees in 8,765 villages – but only 3,744 village level committees were formed in the state. The national FRA Advisory Committee visited Andhra Pradesh during the last year. The Advisory Committee members include Mr. Ravi Rebbapragada, Mr. Devendar Pande, and Mr. Ravi Chellam. They visited villages throughout northern coastal Andhra Pradesh and organized meetings with local officials responsible for implementing the FRA to cite their concerns about the problems plaguing the process. They also communicated these concerns to state level officials to make sure they are aware of the FRA implementation failings at the lower levels of the state government.

The official records of Andhra Pradesh claim that the state is at the forefront of implementing the Forest Rights Act (FRA). However, the issue of titles was delayed by a year and started only in June 2009 due to public interest litigation on FRA implementation. The state government has provided Rs. 200 million for implementation of FRA; so far they have used a little over half of that money. As of June 2010, of the total 323,131 individual claims received, 174,244 claims were approved; land titles were issued in the majority of those cases. But 149,867 claims have been rejected and the rest are pending at various levels adjudication. In most of those cases, GPS has been used to survey the land and little on the ground measurement has occurred, which raises serious questions about government transparency and credibility for tribal stakeholders. Forest Rights Committees were constituted at the panchayat level instead of at the gram sabha or village level.

Official state reports portray the FRA implementation process as a strong achievement; realities on the ground tell a very different story. The FRA recognizes community and individual rights over natural resources and traditionally cultivated land. Displacement is not only a loss of one's home for many tribal people; it also denies tribal peoples the right to continue their traditions which are rooted in their environment. Gram sabhas are supposed to have a high degree of authority in addressing individual and community rights; when the FRA is poorly implemented, it not only represents a loss of land rights but also a negative blow against India's most localized form of democracy.

Personal Observations and Conclusions

While working and volunteering with Samata from 2009 to 2010, I made several field visits with Samata's field organizers. We traveled to tribal communities seeking to protect their land rights in the face of major mining development projects. Our field visits covered communities that were considering whether they should accede to the demands of local government officials and mining company operators to give up their land; we also saw communities that had previously agreed to these development projects or had refused them. In all cases, land rights stood as the central issue that dominated the discussion. The development projects required large quantities of land; many of the tribal communities depended on this land for their livelihoods and their culture.

One of the most disturbing things I witnessed was the blatant disregard among many officials and mining project officers for community rights, tribal land claims, and the democratic process. I recall visiting one local government officer in northern coastal Andhra Pradesh who refused to answer basic questions about how his department was addressing the land claims of tribal people in the area. The official insisted that he was taking care of the matter but refused to explain what that involved; when pressed with questions about the specifics of the programs he was supposed to be overseeing, the official fled from the room rather than answer simple queries. Meanwhile, villagers in the area spoke about how they had been neglected by their local government, that their land claims were being ignored, and that they feared they would soon need to leave their lands and their homes.

A field visit to a village situated near a large bauxite mineral deposit also proved to be eye-opening. State government officials and mining company operators hoped to mine the bauxite inside a nearby hill; the villagers at the foot of the hill refused to allow surveyors to visit the hill to take measurements of the bauxite underground because the villagers did not want any kind of development project to go forward that would displace the village and destroy their agricultural land. The villagers made it abundantly clear that they would take great personal risks in order to protect their homes and their land. Later, after I returned to the city from the field visit, I learned of several covert attempts by the mining company to acquire rock samples from the hill against the wishes of the villagers; the villagers literally chased down the person who would have delivered the rock samples, stopped them, and confiscated the illegal samples before they would reach the mining company. These actions are motivated in part by

courage and a desire to protect the community; these actions are also motivated by a deep fear and strong belief that their right to live on the land will not be protected against wealthier interests.

On another occasion, I met a tribal woman who lived in a village that had been ordered to relocate to another area because their land would be used for the construction of a new mining refinery. The local woman refused to budge from her home because the government and the mining company operators had not gone through the community's free and prior informed consent for the development project. Because of her insistence that she would not move from her land, she received threats against her safety and was thrown in jail three times. But, each time bulldozers appeared on the edges of her community's land, it was this woman who would lead the rest of the villagers in driving away the bulldozer operators. This was an extraordinary show of courage and daring, especially considering the enormous political and economic forces pushing for her and her community to give up their land. The woman and her community have managed to retain their lands so far, but they have a wary outlook on the future. This kind of story is not uncommon across Andhra Pradesh or rural India, though often it ends with the community being forced off their lands without any recourse for appealing the decision or receiving proper compensation.

The Forest Rights Act of 2006 is a tremendous tool for tribal communities seeking to protect their land rights. It has enormous potential for securing the land and the homes of tribal people who have lived in fear of eviction for years. Beyond the homes, livelihoods, and land of tribal people, the FRA represents a legitimate attempt to protect their traditions and cultures – traditions and cultures that frequently have strong links to the local environments. Currently, there might not be a more important law in India for protecting tribal communities and individuals at the local level.

This is not merely a local question, either. Democracy lies at the heart of this piece of legislation – it encourages grassroots participation at the village level in the gram sabhas, requires transparency of government at all levels, and places power in the hands of population groups that have faced marginalization throughout the recent past.

In summary, it is critical that the FRA is properly implemented to protect the basic land rights and human rights of tribal people across India. By encouraging India to enforce the FRA and observe its mandates, we not only promote the protection of basic human rights – we are also supporting freedom, transparency, and participation in the world's largest democracy.

**Written Testimony of
J.P. Raju
Jenu Kuruba Adivasi Leader**

**Before the
Tom Lantos Human Rights Commission
July 26, 2011**

1. About the writer

J. P. Raju is a Jenu Kuruba Adivasi leader living in the forest area of Kodagu District in Karnataka. He is engaged in Agricultural/farming activities for the survival of self and his family members. As a Social Worker working for the welfare of the Adivasi's communities, he represent the issues/grievances of all the six tribal communities existing in Kodagu district and also the neighboring districts. Because the local BKS comprises all these six tribal communities, he is aware about their respective culture, the relationship and their existence with the forests and nature. He is also aware about how their ancestors lived harmoniously amidst the forest and the way they were contributing to protect and conserve the biodiversity.

After introduction of forest policy 1927 by the British, the forest usages were towards commercialization. The forests timbers are used for railway construction purposes, after independence also the same forest policies enacted by the British are being followed. The change of forest policy by the independent India aimed for displacement of the adivasi's in the name of development, forest conservation, protection/ and earmarking national parks, sanctuaries. This new policy has displaced as many as 30 million adivasi's. These displaced adivasi's are in the fringe of forests and also in the city slums struggling for their life and sustenance.

Presently he is the president of the National Adivasi Andolan and the Budakattu Krishikara Sangha, a local Adivasi's community based organization functioning in Kodagu District, which represents the Indigenous communities like Jenukuruba, Malekudiya, Soliga, Bettakuruba, and Yarava Communities in Kodagu, South Karnataka, India. He has been the head of the LAMPS, co-operative of the adivasi's gathering minor forest produce.

This testimony sets to inform the readers of the present status of the adivasi community in India. It will focus mainly on the implementation of the Forest Rights Acts (FRA) 2006 which is presently the burning issue for the community. I will predominantly focus on Kodagu district and the State of Karnataka whilst highlighting some of the important events from the other adivasi communities around India.

2. Introduction

The adivasi people of India are the forest dwellers who have primitively lived in forests and have depended for their livelihood cultivating in its land, tending and caring for the forest and living off the produce from the forest, without in anyway compromising on the ecosystem and biodiversity of the natural habitat. While this specific section of the Indian population is "indigenous" the government of India considers all its citizens as indigenous. However for administrative purpose the adivasi community is categorized as "Scheduled Tribes" (ST). Herein lays the first major problem for the adivasi people as there remains a large section of the community who are not included in the category of ST. E.g.- The tribes of Tamilnadu who do not have caste and community certificates which is much needed to help them avail the benefits due to them.

The ST's inhabit about 15-20% of the land area of the Indian Sub-continent. The ST population is estimated to be 84,326,240 or 8.2% of the Indian population. This constitutes approximately 600 tribal communities throughout India. This shows that India is home to over a quarter of all indigenous peoples in the world. The planning commission of India observed in its Eleventh Five Year Plane 2007 – 12 that 'the Scheduled Tribes are mainly landless poor forest dwellers and shifting cultivators, small farmers and pastoral nomadic herders. This indicates that the adivasi people are essentially dependent on agriculture, for which land is a basic need. Keeping this short introduction in mind I would like to move into the main issue confronting the adivasi's of India – the implementation of the FRA.

3. The Forest Rights Act 2006 (FRA)

On January 1, 2008, the government of India notified the scheduled tribes and other traditional forest dwellers the recognition of their forest rights through the FRA, 2006.

- a. Some significant provisions that the 2006 FRA provides
 - i. Tenurial security and access rights to forest dwellers
 - ii. The right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood.
 - iii. The right of ownership access to collect, use and dispose of minor forest produce that has been traditionally collected within or outside village boundaries.
 - iv. Other community rights of uses or entitlements such as fish and other products of water bodies, grazing and other traditional resources accessed by nomadic or pastoralised communities
 - v. Rights of settlement and other conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests (whether recorded, notified or not) into revenue villages.
 - vi. The rights to protect, regenerate, conserve or manage any community forest resource that they have been traditionally protecting or conserving for sustainable use.
 - vii. The right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

Since the introduction of this legislation, the adivasi community all over India, along with community organizations has been working tirelessly to try and implement this key piece of legislation. However the spirit in which the act was passed and informed to the community has not been shown by the government, the forest department officials and the bureaucrats. Four years on and the process of implementation is moving at a snail's pace.

The FRA empowers the 'Gram Sabha' (a traditional village assembly recognized by the PESA Act.) to play a pivotal role in ensuring the rights of forest dwellers, decision making, planning and management and the power to determine who has what rights. This is then verified by an elected Forest Rights Committee (FRC). The forest department only needs to be notified by the FRC before spot verification of a claim. However, it has been very difficult to implement this as the forest department has usurped the power to approve or veto such claims. The forest department is unwilling to lose control over the forests that were controlled by them following the colonial nationalisation of the forests.

4. The challenges in implementing the FRA

Under the Forest Right Act 2006, the Adivasi communities of Jenu Kuruba, Betta Kuruba, Soligas, Male Kudiya, Yarava, Pani Yarava and Asalaru, communities in Kodagu, Mysore and Chikmagalur District have submitted 1,62,874 individual and 2,773 community claim forms to the Government through Gram Sabha's. As per the Notification of Central Government, the FRA implementation process should have been ended by the end of 2009. But the Government has failed to implement the law till date properly.

In the implementation process of FRA, the Government has not done proper community and individual survey as per the Act. There are cases showing that the government instead of recognizing community rights and measuring traditional boundaries it has concentrated on the individual survey and issued pattas for 3 to 5 cents which is against to the Forest Rights Act.

A recent case in point is the adivasi village of Hallekere in the Periyapatna Taluk of the Mysore District, where the officials had entered the village and surveyed their land whilst the people had all been out at work. Subsequently "patta" had been issued to the families for 3 – 4 cent which is much lesser than the land they presently owned.

However every individual has the right to get cultivatable land to the tune of minimum 4 hectares and maximum to the extent of 10 acres according to FRA act. The community has rights to vast tracts of forests that they used earlier for food collection and sacred place to worship.

The status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for the period ending 31st October 2010 reveals that more than 30.05 lakh claims have been filed and more than 10.80 lakh titles have been distributed. Of these titles 8,223.50 acres of forest land have been distributed in the State of Karnataka. However on analyzing this report released by the Ministry of Tribal

Affairs it is very visible that the officials concerned are shying away from implementing the community rights of the adivasi community.

In this situation the leaders of the adivasi community of Karnataka has been helping its community to understand their present condition and helping them get their rights over their ancestral and traditionally inherited land and forests. This has helped the adivasi's to enhance their capacity to fight for their rights in getting the government policies for their self reliance. Organisations such BKS is working for the empowerment, welfare, educating and strengthening the Adivasi people in Kodagu, Mysore and Chikmagalur District.

5. Some case studies

a. Adivasi community faces false court cases filed against them by the forest department and the Police, where in some instances even bail is not granted.

Case 1

The village of Hanninathota under Maldare Grama Panchayath of Virajpet taluk is surrounded by teak forests. In February 2010 the adivasi's caught hold of illegal transportation of teak logs by forest guards. When it was complained the case was booked by the forest department on the adivasi's.

Case 2

At Cheenihadlu cases have been booked on P.C.Ramu Yarava tribe 100 (24) 64 (A) 24, 21, 30, 35, 50, 51, 21, 24 saying he has encroached forest land which comes under Nagerhole area he being the paralegal activist.

b. The forced eviction of adivasi's from their present hadi's instead of providing their rights in the forest. In the name of CTH – Critical Tiger Habitat, Wild Life Sanctuaries, World Heritage centre and Elephant Corridor.

Case 1

The adivasi's from the Nagerhole national park area were evicted and relocated to Veeranahosali in the name of Critical Tiger Habitat, Wild Life Sanctuary. However as the facility they had inside the forest was not available in their new location they returned once again to their natural habitat. Once again at the end of 2010, 13 families from Kodange, 13 families from Kolli hadi and 41 families from Murkal once again from the Nagerhole National Park area in the Virajpet taluk were evicted to Shethali of Hunsur Taluk in Mysore district were evicted on voluntary relocation, promising to give them Rs. 10 lakhs of which 3 lakhs to be in a fixed deposit and three acres of land. (Vijaya Karnataka 9th December 2010,)

Case 2

On 1st of August 2010 Mr. Y. C. Raju of Bombu Kadu hadi, Thithimati, Nagerhole was pulled out of his hut and abused him in foul language and beaten him up by forester Shivappa Doddamani and Guard Lingaraju. A police case was filed accusing him of disturbed their official duty.

Case 3

In the Muthanga forest in the State of Kerala of the 104 families' resident there 1 family was evicted by the promise of 10 lakhs.

c. The Forest Rights Committee consists of non tribal's in certain areas.

In Tamilnadu the members of the Joint Forest Planning and Management programme are also the members of the Forest Rights Committee which implements the FRA. This is to enable the forest department to control the FRC, which is a clear violation of the FRA. However, with the protest of TAAK they had agreed to change the members.

d. Implement PESA Act 1996 under which the Grama Sabha is constituted

The 5th schedule is not implemented in Tamilnadu, Kerala and Karnataka.

e. The Gram Sabha's powers to manage, control and protect natural resources are not respected and displacement continues.

At Gardhanora in Chhattisgarh the land near the Gobarahin temple is not recognized as community land as it is being used for government quarters. The government is providing industrialization in this area. Companies such as

TATA and Essar have occupied many hundreds of acres of land with the protection of the government. The decision of the Gram Sabha is cancelled by the authorities in such cases.

f. The erection of solar fences and the cutting of trenches preventing the tribal's from entering the forest.

On December 10, 2010 in Adoni Dhannakki Hara village of the Mudigere taluk, Mysore District (survey No. 252) a JCB was brought and the forest officials started digging a trench around their village bordering the forest preventing the community from entering the forests. But, the reason given by the forest department is to keep the elephants away. This has made the tribal community to keep to their own areas surrounding their village. Once again the same effort was made on April 3rd, 2011. The adivasi community opposed this move of forest department this and complaint was made to the Tahshildar (Taluk government official), who called for a meeting and instructed the forest officials that the adivasi's should not be harassed and the Community Rights have to be given, hence the cutting of trenches have to be stopped.

g. Harassment of adivasi communities

Case 1

The huts of 18 of the 28 families of the Meenukolli hadi in the Somwarpet taluk were destroyed by the forest department with the help of the police on the 5th of February 2011.

Case 2

12 adivasi families of the Tasirimata village in the N.R. Pura Taluk in Chikmagalur have been given eviction notice in the game sanctuary. In another incident in the same district in the village of Muthodi of Chikmagalur taluk game area the adivasi plantations had been destroyed.

h. The government (Central and State) continue to take over forest land for industries, plantations, so-called "critical habitat" and the forced eviction of people continues. The consent of the Gram Sabha and compliance with the law should be required in every case.

i. Joint Forest Management should be shut down. The money channeled into JFM should be put in to the Employment Guarantee Act and the rights and power of the community to manage forests should.

j. Claim forms

- i. The non availability of claim forms for individual and community rights
- ii. The nature of requesting information. All Forest Department interference, illegal demands for unnecessary evidence, and illegal rejections should be halted. The forms consist of only 'yes', 'no' answers. In the process the right to ownership is lost. Therefore only where NGO's or Community Organisations are working with the adivasi community claims are being filed by the tribal's.

Case 1

In Jagdalpur a survey on status of FRA implementation was conducted in 30 villages by Adiwasi Samta Manch. The survey revealed that there is very poor implementation of FRA and highlighting that most of the people are not even aware of this progressive act. This makes the community easy bait for the officials. However the community organizations there had been able to educate the adivasi communities in these villages and provide guidance in filling the claim forms along with the survey they conducted.

- iii. Claims that are filled are not being followed properly at every step.

Case 1

In Kanker in North Bastar in Chhattisgarh of the 1,150 claim forms filled in 41 villages only 150 received their rights. That too was based on the survey done in 1980.

Case 2

In Bokhara in Jharkhand of the 826 applications made all applications were rejected except for 5. The villages called all district officers for a meeting and fined the forest department Rs. 7051/-. It was decided by the Grama Sabha that if the fine was not paid they will be tied up to a tree and beaten up, after which the fine was paid.

With the adivasi community facing issues such as old or false survey of land and the rejection of supporting documents for the claim forms, the non interest in giving their community rights The National Adivasi Alliance which constitutes NGO's and Community Organisations from 7 states in India have commenced a programme to map out the adivasi habitat which rightfully belongs to them with the use of GPS mapping equipment. The community leaders are constantly trained and organizations are in position of equipment which is used for this purpose.

6. The Western Ghats

The United Educational Scientific and Cultural Organisation (UNESCO) recommended 4 wildlife sanctuaries, 5 reserves forests and 1 national park inside the Western Ghats to be declared as World Heritage site. The Western Ghats run through the states of Kerala, Tamilnadu and Karnataka. It is a burning issue of the Kodagu district in the state of Karnataka, as the Western Ghats runs through the Kodagu District. Though the UNESCO has not included this in its list of world heritage sites for 2011, the BKS is strongly opposed to such a move since it will further curtail the rights of the adivasi people living in these areas, deprive them of their habitat and livelihood, even though the Central Government has assured the adivasi community that the adivasi community will not be dislocated.

7. POSCO Struggle

The recent incident in Dhinkia and Gobindpur areas in Odisha, the armed intimidation and threat of violence displayed by the Odisha police in an effort to acquire land for South Korean Steel Company POSCO in Jagatsinghpur once again goes to show the double standard of the government. Local tribal people stand to lose their livelihood resources like land, Forest and water, other traditional minor produces. This is an illegal land grab and violation of the Forest Rights Act. Though the Grama Sabha has more power as per the Forest Rights act the Government not was recognising resolutions taken by the people where more than 65 % of the villagers participated in both the Grama Sabha's and passed the resolutions rejecting the proposal for diversion of land. Mr. Jairam Ramesh and the state government of Orissa disrespected the resolution of Gram Sabha, which opposed any handover of land to the proposed project.

The Orissa government itself continues with the project even though the MoU with POSCO has not been renewed for over a year. It has been proved over and over again that promises made when mega projects are commenced, at the expense of local community's habitat and livelihood, that once the projects have been established all promises are forgotten and the community is at loss. Mr. Jaিরাম Ramesh former Minister of Environment of the Central government gave final forest and environmental clearance to POSCO Company for use of 1253 hectare of forest land in Orissa area.

Today POSCO has entered the State of Karnataka and is being welcomed by the Chief Minister with open hands.

8. Other programmes implemented

Under the patronage of the National Adivasi Alliance programmes such as Eco Village and Climate change are taking place nationally. Many training programmes have been conducted and the participants are expected to give life to the knowledge gained.

a. Community Rights Sangama

as you are aware, the present policies of the Government tend to sell, rob and loot the natural resources to the corporate – a resource base of various communities including adivasi's, dalits, farmers, fisher folk and the forest workers who are entirely dependent on these natural resource bases for their livelihood. The denial of the commons to the communities is a violation of the fundamental rights as well as a violation of human rights. The rights for the natural resources cannot be taken away from the community either by the State or the corporate world. It is very crucial that the struggles for community rights have to be provided a platform, so that common issues can be discussed and common agendas can be framed. We believe that the natural resources are not endless and the real protectors of nature have to be recognized. Time has come to realize that no single issue movement will succeed without the support and solidarity of all other issue-based struggles. In this context, we are proposing a convention

of representatives of the struggles of adivasi's, fisher people, dalits, and forest workers to discuss and evolve a common agenda to fight for the rights of communities in relation to land, forest and water which will be held in October 2011.

9. Ongoing process

The release of press notes, press meetings to bring to light the none implementation of the FRA and to expose the corrupt officials, one day training programmes, Samelans, Mass campaign and rally's on FRA, the agitation for the implementation of the community rights, lobbying people centered and media advocacy to ensure the rights of the adivasi people continue to take place organized by the local NGO's and Community Organisations.

10. Conclusion

Years of agitation, lobbying and impressing on bureaucrats, government ministers resulted in the passing of legislature – the “Forest Rights” Act 2006 to restore to the Tribal community of India their rights to live in their historical habitat, the ‘forest’. The state and central government's commitment to implement the FRA on one hand and opening up the forest land to MNC's with the promise of development and better life to an indigenous people who want nothing but their right to continue to live in harmony with nature exposes their double standard. The government and the forest department is condemned for their un-urgency in implementing the community rights in the same spirit they have been implementing the individual rights though that too has been at a snail's pace. The continuous obstruction to the tribal community to enter the forest and co habit with nature is a blatant violation of the right of the forest dwellers is disrespect for the very legislative body which passed the FRA.

**Testimony
Of
Rebecca Adamson
First Peoples Worldwide**

**Indigenous Peoples in Asia
The Tom Lantos Human Rights Commission
United States Congress
July 26, 2012**

Thank you to the Tom Lantos Human Rights Commission for hosting a hearing on Indigenous Peoples in Asia, and allowing First Peoples Worldwide to participate. My testimony will cover the impacts of conservation on indigenous groups throughout Asia. I will focus on indigenous conservation efforts and successes, as well as communities threatened by political oppression and external conservation initiatives.

In the May hearing on Indigenous Peoples in Africa, the witness Phillemon Nakali Loyelei, discussed how the construction of Gilgel Gibe III Dam threatens his community's water resources and farming crops, causing famine for his people. Yet right next door in the Ngorongoro region of Tanzania, conservation poses as their biggest threat. Maasai have been told to "not use their hunger as an excuse" to farm on a protected conservation area. Since the Ngorongoro farming bans were instigated in 2009, there has been widespread famine throughout the region. Although context and geography differ across the globe, land and subsistence rights that are taken away from Indigenous Peoples in order to "conserve" an area is repeated time and again in South America, in Africa, and in Asia.

In the name of conservation, human rights violations of indigenous peoples - including eviction, violent conflicts, and starvation - persist globally. Often U.S. tax dollars fund conservation projects throughout Asia that are instrumental in evicting indigenous peoples from their homes and robbing them of their livelihood.

Asia has more indigenous peoples than any other continent in the world, with an estimated 700 indigenous groups and over 260 million Indigenous Peoples. Indigenous peoples represent 5% of the world's population and occupy 18-24% of the earth's surface in traditional land claims. They inhabit over 85% of the world's protected areas; correspondingly, 80% of the world's remaining biodiversity exists on Indigenous lands. Using traditional Indigenous knowledge and stewardship, it costs \$3.50 per hectare to conserve lands, forests, and biodiversity on Indigenous territories. The administration and management of national parks and protected areas by large conservation organizations costs \$3500 per hectare.

The long-standing efficacy of Indigenous stewardship is proven by Indigenous lands harboring the majority of the world's remaining biodiversity. Indigenous traditional knowledge consists of "knowing the land", the collective ecological knowledge of an area essential to the survival of a tribe or community in a particular habitat. This knowledge is often passed down through generations and treated as common sense.

Historically, science-based conservation areas are required to be "pristine", or people-free. To create pristine reserves or areas, people are evicted - on the ground by police forces or government officials within a country, and indirectly by international conservation initiatives. According to Mark Dowie in his book *Conservation Refugees*, the most recent and rapid expansion of protected areas has occurred in Africa and Asia. India alone has at least 100,000 peoples displaced by "exclusionary conservation", and is one of the only two countries that actually tracked their number of conservation refugees. Overall, it is estimated that 5 million to tens of millions of people globally have been displaced by conservation.

Throughout Saudi Arabia and the Middle East there is a revival occurring that uses the traditional land stewardship system called hema. Over 1500 years old and practiced by the Prophet Mohammad, Hema systems have gradually died off, leaving only few that still operate. Literally meaning "reserved pasture land", it is a range-

focused grazing program practiced by Bedouin tribes. Part of hema was abolished in 1953 by the Royal Decree, and the few areas that still practiced it were required to do so in secret. A dedicated program to revive hema began in 1979, and now there are about 71 hema systems in the mountain areas west of Saudi Arabia, re-established and operated by locals.

Globally there are 110,000 protected areas created for biodiversity conservation, 11.75 million square miles of the earth's surface, with more areas added every month. **Roughly half of the land that has been turned into "protected areas" had been occupied by Indigenous peoples.** Protected areas are hardly ever down-graded and are largely considered malleable with ever-shifting boundaries and degrees of protection (from "community-conserved areas" to strictly guarded "wilderness areas"). Indigenous stewardship programs and those who run them are often pushed off of their land, bought out, or ignored.

The Karen peoples of Burma, self-organized under the Karen National Union (KNU), have been at war with their government since 1949. In 1982 they created several of their own protected areas within the Karen State. When the KNU requested international assistance in maintaining and protecting their conservation areas, contained within one of the 136 most critical eco-systems in the world, they were completely ignored. The Burmese government partnered with the Wildlife Conservation Society and the Smithsonian (with strong support from the World Wildlife Fund) to establish the Myinmoletkat Nature Reserve in 1996. The new reserve encroached on large areas of the adjacent Karen and Mon States with no regard for the KNU's already declared protected areas. During the formation of the Reserve and an expansion of its borders to include a road and gas pipeline, Karen and Mon villagers were evicted from their homes and many were forcibly employed for these construction projects. In establishing the Reserve, 65 km worth of Karen villages were destroyed, 30,000 Karen evicted from their land and livelihood, and 2,000 murdered, all courtesy of the Burmese military. In an attempt by an indigenous community to acknowledge and protect their threatened region, the Karen were ignored and their land plundered. A KNU official even stated support for the Myinmoletkat Nature Reserve for the sake of protecting the region, save for the violent evictions and destruction that ensued. While the Burmese government shows no signs of restraining industry OR conservation in jeopardized areas, we must question why the only other voices we hear are from dispossessed indigenous groups, and not so much as a whisper from international conservation NGO's.

New, inherently self-initiated stewardship programs have appeared in Indigenous communities throughout Asia, despite the continued intervention of international forces. In Nagaland, straddling the border of Burma and India, Nagas began noticing their regional wildlife on the brink of extinction, at the hands of their own people. Villages gradually began adopting a hunting ban and implementing community-managed wildlife refuges, without any assistance from conservation NGO's or any other foreign aid. The once-threatened wildlife of the region is now making an impressive recovery.

Even in the face of political conflict and oppression, community-oriented stewardship has produced the most sustainable and successful results. In Iraq, Marsh Arabs have nearly completely restored their wetlands. The marshlands, considered the richest wetland eco-system in the Middle East, extended over 6,000 square miles and supported a unique plant and wildlife habitat for over 7,000 years. The area was destroyed under orders from Sadaam Hussein in the late 1980's as a political strategy – by 1991, the marshlands had dried up to only 10% of what they once were, due to upstream damming and strategic draining. It is thought to be one of the greatest engineered environmental disasters in history (UNEP). With the use of artillery and aerial attacks, 500,000 Madan, or Marsh Arabs, were forced to take refuge in other areas of Iraq or in neighboring countries. Despite the continued political unrest, local people began breaching dykes and reverting water pumps back to the marshlands in the early 2000's. After collective Indigenous efforts, the marshlands are now restored to 50% of their original state (despite droughts in recent years) and around 100,000 Marsh Arabs have returned to the area. The only potential hindrance facing the marshlands today is damming in Turkey, Iran, Iraq, and Syria, which affects water flow and capacity.

Indigenous communities are invested and dedicated to their land and livelihood. Local, community-oriented organizations have shown the most progress in biodiversity preservation because they value traditional indigenous knowledge and stewardship. Often, local or international organizations need only ask indigenous groups what they want and need, frequently finding that their priorities are the same. RAIPON, representing Indigenous peoples of northern Russia, persuaded the Russian government in the early 1990's to adopt "Places of Traditional Nature Use" policies as a new environmental management category for areas maintained by traditional stewards. However the Russian provinces have yet to designate PTNUs, as discovered by the Evenki reindeer herders in

Siberia. The Evenki of Ekonda, having registered and actively occupied their Clan Territory land, suspected Russian officials of tampering with their boundaries to allow for extended hunting areas by outsiders. With access to a GPS and mapping capabilities, Evenki were able to trace their boundaries by sled and produce a formal, public map that was less prone to manipulation. The Evenki were then able to successfully contest a pipeline that had been constructed through their territory.

According to U.S. Foreign Assistance, USAID distributed at least \$137.6 million to environmental projects throughout Asia in 2010, 65% of its total funding on the continent. Requests from countries throughout Asia for environmental projects in 2012 total at least \$179.5 million. USAID works with both regional and international organizations on environmental projects, partnering with organizations such as World Wildlife Fund, Nature Conservancy, Wildlife Conservation Society, and Conservation International. These happen to be four of the five major conservation NGO's and they receive billions of dollars every year from USAID and various other international funding agencies. Yet only 30% of those funds make it to the country of focus, let alone to its indigenous peoples. In fact, even within programs that specify "community involvement", indigenous communities receive virtually 0% of these funds.

Upholding Indigenous peoples land tenure and stewardship serves U.S. interests in cost-effective conservation, mitigation of climate change, and global food security. Recognition of Indigenous Peoples globally is essential – for U.S. national security, economic well-being, the preservation of our environment, and the basic value of human rights. I ask that Congress address three requests: 1) that the House Sub-Committee on Human Rights and International Organizations be assigned legislation jurisdiction for Indigenous Peoples issues, concerns and interests , 2) to direct the annual State Department Human Rights Reports to include a section for reporting specifically on the human and indigenous rights status in law and practice of indigenous peoples, and 3) to request a GAO audit and report on the international human rights status of Indigenous Peoples in each of the countries receiving foreign aid or otherwise relevant under the Foreign Assistance Act.

Furthermore, I request that all biodiversity project funding flowing into Indigenous Peoples' territories be required to have indigenous involvement in design and implementation – any entity interacting with Indigenous Peoples or their lands must comply with Free, Prior, and Informed Consent. Congress must enact a moratorium on all U.S. funding of conservation until these standards are met. In honoring the autonomy, traditional knowledge, and land stewardship of indigenous peoples, the U.S. will be a leader in both human rights *and* conservation, allowing for a just and sustainable future globally.