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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written Statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication which is
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DESTRUCTION OF THE RAIN FOREST IN SARAWAK, MALAYSIA, AND THE
PENAN, AN INDIGENOUS PEOPLE IN PERIL

I. INTRODUCTION

1. The Penan are a people in peril. This indigenous people of Sarawak, Malaysia, in northern Borneo is risking its existence in an attempt to preserve its hereditary lands from deforestation by Malaysian and foreign logging companies. It is currently losing the battle. Consequently, it is estimated that within several months the nomadic Penan will exist no more: the Penan section of the Sarawak rain forest will be destroyed, its timber cut and sold for export, and the nomadic Penan will be forced to migrate to long houses in scattered roadside shanty towns.

II. BACKGROUND AND STATEMENT OF FACTS

2. The Penan are among the last truly nomadic rain forest people, whose culture extends back thousands of years. The Penan are master ecologists and the original inhabitants of the earth's oldest and richest forest.

3. Yet, the Malaysian Government is one of the world's most serious offenders with regard to the destruction of rain forest lands. Malaysia openly encourages the logging industry which exports heavily to the Japanese timber cartel. The Penan have been fighting to save their land and their way of life for the past several years: their struggle has been non-violent and has consisted primarily in creating human blockades to stop the spread of logging roads. None the less, today, there is no corner of Penan territory not threatened by logging. The State's allowance of unfettered harvest of timber has led to the relocation of indigenous people in long houses, in roadside shanty towns, and has forced them to turn to non-traditional agricultural practices.

4. The Malaysian human rights group Sahabat Alam Malaysia (SAM), and United States organizations, such as the Endangered Peoples Project and the Congressional Human Rights Foundation, have documented the fact that indigenous peoples, especially the Penan who rely on the forests and rivers for their livelihood, are being forced to forage in smaller and smaller areas for food and water - much of which is contaminated. This has resulted in malnutrition never before experienced by these indigenous people, the spread of many infectious diseases, an unusually high level of birth defects, and diseases related to the use and addiction of sugar, alcohol, and tobacco.

5. The despair of the Penan continues to grow as their forest and rivers, the source of their livelihood, continue to be degraded and destroyed by logging activities. Inadequate food and medical care further diminish their emotional strength.

6. Appeals by these indigenous people to the authorities continue to be ignored, the courts are slow to hear customary law claims, last-ditch blockades are harshly dealt with, and international efforts to date have resulted in an increase in logging operations (in some contested areas, hauling has actually increased to 3-shift, 24-hour operations). Included with the deforestation of tropical forests is the loss of plants that offer promise in research for new medicines.

7. The livelihood and culture of the indigenous people is destroyed through these logging and resettlement activities, and no action is taken by the State or Federal Governments to prevent this destruction. These abuses have been documented and repeatedly brought to the attention of the Governments of Sarawak and Malaysia, but have been ignored or dismissed. The Sarawak Government continues to provide licenses to timber companies to log lands necessary for the survival of the Penan. The Government's authorization of continued, unfettered logging of their lands has resulted, and will continue to result in, human rights violations as discussed below.

III. LEGAL ANALYSIS

A. International law of human rights

Right to life (Universal Declaration of Human Rights, article 3)

8. Food sources for the nomadic Penan are dwindling as more and more of the rain forests are cleared by efforts now continuing 24 hours a day. The Sarawak and Malaysian Governments' authorization and/or acquiescence in these activities indicates a reckless disregard for the survival of the Penan as a nomadic people and violates the universally recognized right to life.

Right to health and welfare (Universal Declaration of Human Rights, article 25 (1))

9. In no case may a people be deprived of its own means of subsistence. The only means of survival of the nomadic Penan is the forest in which they dwell. It is the forest that provides them with their food, shelter, medical necessities, and cultural artifacts. The destruction of this habitat is the sure destruction of the Penan's health and well-being.

Right to culture and protection of cultural heritage (Universal Declaration of Human Rights, articles 22 and 27)

10. If logging of the rain forest in Sarawak continues at the current rate, the Penan's nomadic culture will literally be destroyed in a few years. They will have no forest in which to live in the ways of their ancestors. They will be forced to change their nomadic life-style to accommodate Western interests in a life heretofore unknown to them: life in shanty towns at the edge of a cleared forest. The State's authorization of and/or acquiescence in the logging of this forest to its destruction, and to the destruction of the Penan culture, is a violation of the Penan's right to protection of their cultural heritage.

The Right to be free from discrimination (Universal Declaration of Human Rights, article 7)

11. The land laws and policies of the Government of Malaysia and the State of Sarawak discriminate against the Penan on the basis of culture. The Government has disregarded the rights of the Penan to pursue their nomadic existence in the rain forest in permitting local and foreign timber companies to continue logging. In none of these decisions were the Penan allowed to participate, even though these lands are indispensable to the existence of the Penan and to the protection of their culture.

Right to be free from the arbitrary deprivation of property (Universal Declaration of Human Rights, article 17)

12. While the Penan are nomadic and do not "own" property pursuant to most Western legal understandings, they have customary rights to their lands. The Penan have occupied a specific area of the forest, and have used this area for rights of way and as burial grounds for their people. The Penan also depend entirely on the forest ecosystem for their daily subsistence. The State has not protected their customary rights to these lands, nor provided just compensation for the taking of the Penan forest area, in violation of its own laws and its international legal responsibilities.

Involuntary resettlement (Universal Declaration of Human Rights, articles 13 and 17)

13. The Penan's ability to move freely throughout their forest dwelling has been severely constrained by logging, and within several months will be made impossible by the clearing of their forest. Furthermore, the Penan are prohibited by the Government to move about and dwell within designated "parklands", formerly their ancestral lands. The imminent destruction of the area of the rain forest in which they have now been confined will result in the total loss of their movement about their homeland.

B. International law of natural resources and human rights

14. The close relationship between human rights and the environment is borne out by the fate of the Penan. While the right of the State to exploit its natural resources is internationally recognized, this right does not enable the State to do so in a manner which violates the human rights of its people. It must provide for the welfare of its people, including its indigenous population. The taking of the Penan forests, even if the Government were to provide monetary compensation, would not compensate for the emotional and cultural losses to these people. Compensation may not be an adequate means to re-establish the standard of living of the nomadic Penan or to provide for their welfare.

15. The Stockholm Declaration of 1972 recognizes the right of all people to a healthy subsistence - adequate food and safe water. In addition the Declaration requires that human settlements and urbanization must be planned with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all.

16. The World Charter for Nature requires that any activity likely to pose a significant risk to nature must be preceded by an exhaustive examination of these risks. Not only does the destruction of the rain forest threaten the habitat and species in the forests, but the unfettered logging now sanctioned by the State causes massive soil erosion which jeopardizes the rivers and drinking water of the indigenous peoples of Sarawak.

17. The Malaysian Government has rejected attempts by the Penan to classify their forests as a protected Biosphere Reserve. An International Biosphere Reserve is a recent addition to categories for Conservation Area Management recognized by the 1984 International Union for the Conservation of Nature and

Natural Resources (IUCN). The concept originated within the UNESCO Man and the Biosphere Program (MAB), and over the last decade it has become a central feature of MAB. The Penan area qualifies as a protected area under the IUCN.

IV. RECOMMENDATIONS TO THE SUB-COMMISSION

18. Taking the critical situation of the Penan people into consideration, Human Rights Advocates, in conjunction with the Natural Heritage Institute, respectfully urges the Sub-Commission to consider the following recommendations:

1. To appoint a special rapporteur to investigate the human rights abuses of the Penan and other tribal peoples from logging the rain forest in Sarawak, Malaysia, and from other forms of environmental degradation;
2. To call upon the Malaysian Government to redress these violations, and to urgently protect the nomadic Penan and their rain forest; and
3. To call upon all nations to support the designation of an International Biosphere Reserve for the protection of the Penan and other indigenous tribes.
