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Needed: Parliamentary scrutiny of NIIPs

**Review of India's
National Commission
for the Scheduled Tribes
by the Parliamentary
Committee**

**Will Bangladesh
implement the CHT
Peace Accord ?**

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Half-hearted approach
towards indigenous
peoples' rights**

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No rights, only duties to
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and forest**

**Malaysia:
Highest Court upholds
indigenous peoples'
customary rights to land**



Indigenous

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EDITORIAL

Needed: Parliamentary scrutiny of NIIPs

Across the world National Human Rights Institutions (NHRIs) or sectoral Commissions such as on Tribal/Indigenous Peoples, Dalits, Women, Children etc have been established; but these often lack autonomy, adequate resources and powers provided in the Paris Principles on National Human Rights Institutions. It has also been well-documented that many of the NHRIs themselves misuse or underuse their powers to deny justice to the victims. Therefore, scrutiny of the NHRIs is needed for improving their functioning.

In a significant step in the right direction, India's Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes evaluated the mandate, powers and working of the National Commission for Scheduled Tribes (NCST). The Committee took evidence of the representatives of the Ministry of Tribal Affairs on 18 June 2007 and submitted its report to the Parliament on 23 October 2008.

The Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its report *"National Commission for the Scheduled Tribes – It's mandate and achievements – A review of its organisation and working"* of October 2008 recommended, among others, to ensure the total independence of the NCST including by ensuring its "full administrative and financial powers"; create a separate Budget Head for NCST on the lines of other constitutional bodies such as Election Commission, Union Public Service Commission; increase the strength of the staff of NCST; take measures to fill up vacancies to the posts of Chairperson and other Members well in advance; set up more Regional Offices; creation of a separate cadre for NCST

and its all Regional Offices; amend clause (6) and (7) of Article 338A of the Constitution so that the Annual Reports of NCST are tabled in the Parliament by the Ministry of Tribal Affairs "within a prescribed time limit"; make the recommendations of NCST "mandatory" and give "greater judicial powers on the lines of the powers of a civil court"; there should not be any laxity in investigation relating to safeguards provided to tribals; increase the "level of awareness among members of Scheduled Tribes"; ensure proper use of funds provided to NGOs/Voluntary Organisations etc.

AITPN also carried out a comprehensive and detailed study on the NCST and forwarded a number of recommendations for improving the independence, powers and working procedures of the NCST, as part of AITPN's wider action to increase the effectiveness of the National Institutions for the Rights of the Indigenous Peoples (NIIPs) across Asia. In its study on NCST titled *"The National Commission for Scheduled Tribes: A Forum for political rehabilitation?"* of August 2008, AITPN recommended amendment to Article 338A of the Constitution of India to bring transparency in the appointment of the Chairperson, Vice-Chairperson and members of the NCST including by involvement of the Leader of the Opposition in both houses of parliament and tribal civil society organisations; financial autonomy of the NCST; ensure that Chairperson, Vice-Chairperson and members are appointed on time; amend the Rules of Procedure of 2004 to remove prior permission from the authorities prior to undertaking of any visit including for investigation purposes; establish more regional offices and provide adequate staffing; take measures for full utilisation of its funds allocated

including undertaking awareness raising programmes and training the staff on human rights issues, and undertake massive awareness raising programmes to inform the public about the mandate, powers and functions of the NCST, among others.

Importantly, many of the AITPN's recommendations on NCST concur with those of the Standing Committee.

The newly elected United Progressive Alliance government in India headed by Prime Minister Manmohan Singh must give top priority to the effectiveness of the National Human Rights Institutions in India if it is at all committed to combat human rights violations in the country. The government of India must come out with the Action Taken Report on the report of the Standing Committee.

If the recommendations of the Parliamentary Standing Committee are implemented, it will go a long way to strengthen the NCST. It will set the standards for the remaining National Human Rights Institutions including the National Human Rights Commission of India.

Yet, the challenge will continue to remain as to how to insulate the membership of the NCST from political appointment? As AITPN noted in its report that "Because of these loopholes, the NCST has been used for political rehabilitation of the ruling party workers" and the members of the present Commission including Chairperson Mrs Urmila Singh, Mr Maurice Kujur (Vice Chairperson), Mr Tsering Samphel (Member) and Mr Oris Syiem Myriaw (Member) were workers of the ruling Congress party prior to their appointment.

“National Commission for the Scheduled Tribes It’s mandate and achievements – A review of its organization and working” (33rd Report on Ministry of Tribal Affairs) of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes

On 4 August 2008, the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes headed by Ratilal Kalidas, Member of Parliament, adopted the 33rd Report on the Ministry of Tribal Affairs – “National Commission for the Scheduled Tribes – It’s mandate and achievements – A review of its organization and working.” It was presented to the Lok Sabha (Lower House) and the Rajya Sabha (Upper House) on 23 October 2008.

Summary of observations and recommendations-

1. The Parliamentary Committee on the Welfare of the Scheduled Castes and Scheduled Tribes (hereinafter referred to as “The Committee”) observed that functions and duties entrusted to the National Commission for Scheduled Tribes (hereinafter referred to as “NCST”) under clauses (5), (8) and (9) of Article 338A are very vast and cover different problems and needs of tribal people. The Committee was of the view that the NCST would not be able to accomplish its objective fully and effectively unless the present strength of the Commission is increased. Therefore, the Committee strongly recommended that the existing strength (five-members) of the Commission should be increased with a view to assigning each member with a specific job so that each of the members may their full attention to the subjects allocated to them.
2. The Committee expressed concerns on the failure of the Government of India to fill up post of Chairperson, Vice Chairperson and Members on time due. Appointments to these posts were pending for a long time due to which NCST’s functioning was paralysed. The Committee recommended that the process of filling up the post of Chairperson, Vice-Chairperson and Members should be completed well in advance in future so as to maintain continuity of and effective discharge of constitution mandates of the NCST;
3. The Committee wished that it should be apprised of the policy matters on which the Commission had been consulted by the Union and the State Governments under Clause (9) of Article 338A (Mandatory requirement of consultation by Governments on all issues affecting members of the Scheduled Tribes) of the Constitution and whether the same were actually concurred by them.
4. The Committee recommended that in view of the enormous functions assigned to the NCST, the Government should take earnest and credible steps to make NCST more strong and effective. The Committee also recommended that the Government should ask the Department of Personnel & Training (DOP&T) to submit its study report on performance of NCST immediately so that timely corrective action is taken.
5. The Committee expressed concerns on the failure of the Ministry of Tribal Affairs to take initiative for up-gradation of four NCST regional offices, augmentation of the existing strength of supporting staff in six regional offices and creation of four more regional offices. The Committee observed that it was naïve to think that merely setting up of a separate Commission without sufficient number of regional offices and staff is good enough to achieve the objective for which it has been constituted. Therefore, the Committee recommended that the Government should set up more regional offices according to the present need, upgrade the four regional offices and augment the existing staff strength of NCST accordingly on a priority basis.
6. The Committee expressed concerns over the fact that despite conferred the powers of a Ministry/Department of the Central Ministry as provided under the Delegation of Financial Power Rules, 1978, the NCST functions under the administrative control of the Ministry of Tribal Affairs and the proposals involving financial implications are required to be referred to the Integrated Finance Division of the Ministry through the concerned Administrative Branch of the Ministry of Tribal Affairs. The

Committee noted that it is sad that the Commission, which has been given statutory status, has to depend upon the Ministry for its day to day functioning and has to route its proposals on financial, administrative and legal matters through the Ministry. The Committee expressed its anguish that the suggestion of the Planning Commission to show the budgetary provisions for NCST under a separate Demand for Grants instead of being a part of the Demand for Grants of the Ministry of Tribal Affairs, has not been agreed to by the Ministry of Finance. The Committee expressed apprehensions that NCST would not be able to work fearlessly and independently unless it is given independence in its day to day working by allowing it to decide on its own administrative, financial and legal matters.

7. Having considered all the above facts, the Committee strongly recommended that full administrative and financial powers should be given to NCST so that it is not dependent on the Ministry of Tribal Affairs for every piece of proposal having financial implications. The Committee opined that being an independent statutory body, the NCST has every right to have a separate Budget Head to advance its Demand for Grants in a realistic manner. The Committee asked the Government to appraise it of the reasons adduced by the Ministry of Finance for rejecting the proposal of the Planning Commission for separate Demand for Grants for NCST. The Committee also recommended that a fresh proposal should be sent to

Ministry of Finance for creating a separate Demand for Grants for NCST on the lines of other constitutional bodies such as Election Commission, Union Public Service Commission, etc. and asked the Government to appraise it of the outcome within three months.

Having considered all the above facts, the Committee strongly recommended that full administrative and financial powers should be given to NCST so that it is not dependent on the Ministry of Tribal Affairs for every piece of proposal having financial implications. The Committee opined that being an independent statutory body, the NCST has every right to have a separate Budget Head to advance its Demand for Grants in a realistic manner.

8. The Committee expressed concern that the procedure for appointment and regulation of staff of the Secretariat of NCST is complicated and that the secretarial staff at the headquarters of NCST belongs to different cadres such as CSS, CSSS and CSCS and are controlled by different agencies. The Committee particularly noted that officers for Group 'A' posts namely, Director, Deputy Director and Assistant Director controlled the Ministry of Social Justice & Empowerment being the cadre controlling authority,

whereas the staff for the posts of Research Officer, Senior Investigator and Investigator is provided by the National Commission for Scheduled Castes (NCSC) being the cadre controlling authority for such posts. The NCST has controlling authority only over secretarial staff of regional offices and appointing authority only over Group 'D' staff and some of the Group 'C' posts at the headquarter in Delhi. The Committee expressed distress over the multiplicity of cadre controlling authorities and for delay in filling up of vacancies that have existed since 1.12.2004.

9. The Committee observed that out of the sanctioned strength of 125 in Group 'A', 'B', 'C' and 'D' posts, 43 vacancies in these groups had not been filled up till 1.1.2007 despite NCST's repeated correspondence with the Ministry of Social Justice and Empowerment and NCSC to fill up these posts. Therefore, the Committee recommended that the Government initiate action to create a separate cadre for NCST and its all Regional Offices at the earliest and appraise actions taken in this regard within three months of the presentation of this report to Parliament.
10. The Committee expressed concerns over the long delay caused by the Ministry of Tribal Affairs in presenting the first annual report of the NCST in each house of the parliament. The Committee was concerned that there is no time limit fixed for the submission of reports by the Government to the Parliament after it has been presented to the President and opined that unless

- timely action is taken on the recommendations made in the report, the purpose for which the recommendations were made may lose their relevance. Therefore, the Committee strongly recommended that necessary amendment in clause (6) and (7) of Article 338A of the Constitution may be made so that target to lay reports of NCST within a prescribed time limit in the Parliament is fixed and adhered to.
11. The Committee noted that the recommendations of NCST are of advisory nature, which is sent to the Government for appropriate action and as such, acceptance of the same depends on the sole discretion of the concerned organisation/the Central Government or the State Governments making the very purpose for the existence of a Constitutional body becomes meaningless. In view of this, the Committee recommend that the Constitution should be amended in such a manner that recommendations of the NCST may be taken by concerned authorities as mandatory and it functions with greater judicial powers on the lines of the powers of a civil court so that it is empowered to act as an effective and independent organisation.
 12. The Committee strongly recommended that there should not be any laxity in investigation relating to safeguards provided to STs.
 13. The Committee recommended that the Centre for Policy Research, New Delhi which has commissioned for a study on NCST by DOP&T on 29 December 2005 should be advised to complete its study expeditiously so that corrective measures can be taken to enhance the service and service delivery system.
 14. The Committee recommended that NCST should send teams to remote tribal areas not only to monitor and evaluate the working of safeguard physically but also to create an increased level of awareness among members of Scheduled Tribes and that working of NCST should also be publicised through Doordarshan and All India Radio.
 15. To ensure that funds provided to NGOs/Voluntary Organisations are spent on the welfare of the targeted beneficiaries, the Committee cautioned that utmost care should be taken to choose only those NGOs which are genuinely working for the welfare of tribal people. In order to ensure that the Committee recommended that NCST should examine whether the fund granted to NGOs during the last 3 years have actually been incurred for the purpose for which it had been granted and whether it has resulted in improvement in the lives of tribal people.
 16. The Committee recommended that it should be apprised whether the measures suggested by the NCST in their report to control the problems of alienation of tribal land and proper rehabilitation of tribals on acquisition of their land and the study "Evaluation Study on Resettlement and Rehabilitation" undertaken by the National Institute of Rural Development, Hyderabad have been taken into consideration while preparing the National Tribal Policy 2007;
 17. Expressing concerns over migration of large number of tribals from their villages in search of employment, the Committee recommended that the Ministry of Tribal Affairs should take up this matter with the concerned authorities to ensure that tribals who migrate to work elsewhere for a limited period of time in a year, should be covered under Rural Employment Guarantee Schemes and facility of residential schools for children of migrant tribals who leave their villages for employment.
 18. To prevent and protect young tribal girls who migrate to cities from exploitation exploited for want of proper shelter and opportunity, the Committee strongly recommended that proactive action should be taken expeditiously. In this regard, the Committee desired to know whether the report by the Working Group on "Migration of Tribal Girls" has been completed and presented to the Ministry of Tribal Affairs.
 19. Expressing distress over by the sufferings of the tribals by way of displacement on alienation due to development projects for instance in uranium mining in Meghalaya, the Committee recommended that the Ministry of Tribal Affairs should take immediate su-moto action whenever it is reported that tribal people are agitating against displacement and endangerment to their lives.
 20. The Committee expressed distress over non-adherence of Planning Commission's guidelines for adoption of Tribal Sub Plan (TSP) strategy by the Ministries of the

Successes and failures of UPR mechanism on Bangladesh

Central Government and State Governments asked to know the names of defaulting Ministries and States. In this regard, the Committee recommended that the Planning Commission should that annual budget plans of the Central Ministries are not approved unless TSP/SCP are not provided in their plans as in the case of approving as States plans;

21. Expressing concern over the lack of mechanism to monitor that the funds goes in the programmes for which they are allocated; the Committee recommended that the Ministry of Tribal Affairs should evolve an effective and credible system of mechanism regarding utilisation of funds under TSP. The Committee also recommended that apart from the Ministry of Tribal Affairs, NCST should also regularly monitor utilisation of funds under TSP.
22. The Committee expressed concerns over the refusal of loans by Banks and financial institutions to entrepreneurs and businessmen belonging to the Scheduled Tribes and observed that the amount of loan available from the state level Scheduled Tribes Development and Finance Corporations and the National Scheduled Tribes Finance and Development Corporation is simply insufficient for business in present times. Therefore, the Committee recommended that a proposal should be sent to the Ministry of Finance for examination for issuing necessary guidelines to Banks/ Financial Institutions to lend money to entrepreneurs and businessmen belonging to the Scheduled Tribes.

The first ever review of Bangladesh under the newly established Universal Periodic Review (UPR) mechanism of the Human Rights Council on 3 February 2009 achieved an important success from the perspective of the indigenous peoples, that is, the assurance of the government of Bangladesh to fully implement the Chittagong Hill Tracts Peace Accord signed in 1997. But there were serious failures as well – particularly the inability to scrutinize Bangladesh for its deplorable treatment of its minorities and indigenous peoples.

The delegation of Bangladesh headed by its Foreign Minister Dr Dipu Moni made forceful defence of Bangladesh's human rights records and highlighted a series of positive measures Bangladesh has taken to promote human rights of all sections of the Bangladeshi population. But the delegation had little to show in terms of providing rights to the indigenous peoples except that "a separate Ministry had been set up for the tribal communities residing in the Chittagong Hill Tracts". The Ministry of CHT Affairs was established in July 1998. So, what's new about it?

Earlier, in its national report (A/HRC/WG.6/4/BGD/1) submitted on 19 November 2008, the government of Bangladesh painted a rosy picture on the condition of the indigenous peoples and the religious minorities. The report was very economical with the truth regarding the indigenous peoples and the religious minorities. AITPN was one of the few organizations to criticize the National Report of Bangladesh and circulated a

follow-up report titled "Bangladesh: Q & A session at the UPR" among the diplomats to facilitate an effective scrutiny of Bangladesh following significant developments in the country since the submission of the National Report.

I. Successes of the UPR process

The UPR mechanism has received skepticism from various quarters from the very beginning on the ground that state members would not be critical to the state party under review. But for the indigenous peoples of CHT there are reasons to cheer about, although Bangladesh escaped scrutiny for the deplorable treatment meted out to the indigenous peoples and minorities. The Outcome Document (A/HRC/11/18) reflected little concern for the indigenous peoples in Bangladesh. But the hallmark of the Outcome Document was the recommendation to Bangladesh to: "Fully implement the Chittagong Hill Tracts Accord as a matter of priority and develop a time frame for its full implementation".

In reply to the recommendation of Norway and Australia, the government of Bangladesh stated -

"Bangladesh accepts the recommendation, and is in the process of full implementation of the Accord. Most of the provisions of the CHT Peace Accord have already been implemented. The rest will be implemented within the shortest possible time within the framework of the Constitution of Bangladesh." (A/HRC/11/18/Add.1)

Hence, the most important achievement of the UPR mechanism

was the extraction of an assurance from the government of Bangladesh that it would fully implement the CHT Peace Accord “within the shortest possible time”. However, Bangladesh remained non-committal to ratification of ILO No. 169 and investigation into complaints of discrimination against members of religious minorities.

Recommendations and replies of Bangladesh

As expected, most governments refused to be critical of Bangladesh. In fact, they praised Bangladesh’s records and positive measures taken to improve the human rights of all sections of the population, including the indigenous peoples and the religious minorities.

Nonetheless, a few important recommendations concerning indigenous peoples were made by some governments. These

recommendations and the replies of the government of Bangladesh are given in the Table.

II. Failures of the UPR process

a. Little concern for indigenous Jumma peoples of CHT

While AITPN wholeheartedly welcomes the recommendation made by Australia and Norway to the government of Bangladesh to take steps to fully implement the CHT Peace Accord and Bangladesh government’s acceptance of this recommendation, there was hardly any discussion on the situation of the indigenous peoples of CHT during the review process.

AITPN raised several critical issues and some of them have been duly reflected in the report of the Summary of the Stakeholders prepared by the OHCHR (A/HRC/WG.6/4/BGD/3). The issues raised by AITPN

and included in the OHCHR’s report included continued presence and expansion of military bases and human rights violations by the army in the Chitagong Hill Tracts (CHT); targeting of the indigenous human rights defenders or those working for the indigenous peoples; attacks on Buddhist temples; exclusion of the indigenous peoples from participation in planning processes and denial of access to decision making; lack of constitutional recognition of indigenous peoples; state policy of grabbing lands of indigenous peoples, including in CHT by army and illegal settlers; denial of rehabilitation to indigenous IDPs while illegal settlers have been provided free rations and other facilities by the government; etc. The government of Bangladesh however escaped scrutiny on these issues.

The reply of the government of Bangladesh that “Most of the

Recommendations concerning IPs/ minorities	Replies of the government of Bangladesh
<p>“Fully implement the Chittagong Hill Tracts Accord as a matter of priority and develop a time frame for its full implementation” (Norway, Australia)</p> <p>[Recommendation No. 34]</p>	<p>Bangladesh accepts the recommendation, and is in the process of full implementation of the Accord. Most of the provisions of the CHT Peace Accord have already been implemented. The rest will be implemented within the shortest possible time within the framework of the Constitution of Bangladesh.</p>
<p>Consider ratifying ILO No. 169 Convention on Indigenous and Tribal Peoples (Mexico)</p> <p>[Recommendation No. 2]</p>	<p>Bangladesh has ratified the ILO indigenous and tribal population convention, 1957 (No-107) in 1972, which covers a number of issues including fundamental rights, land rights, employment, vocational training, health etc of the indigenous and tribal peoples. The convention no 111 on discriminations (employment and occupation) was also ratified by Bangladesh in 1972. Though the Convention no. 169 on indigenous and tribal peoples is not yet ratified by Bangladesh, the tribal peoples of CHT are already enjoying most of provisions enshrined in the ILO convention No. 169 through the implementation of the CHT Peace Accord. Most of the provisions of the Accord have already been implemented. The present government is continuing the process of implementation within the framework of the constitution of the People’s Republic of Bangladesh.</p>
<p>Investigate complaints concerning discrimination against members of minority religions, while developing educational and awareness programmes addressing these human rights violations (Holy See)</p> <p>[Recommendation No. 17]</p>	<p>The Government does not condone discrimination against anybody on the basis of race, colour, sex, religion, or any other status. Equality for all citizens is guaranteed in the constitution, legal provisions as well as State practice. Moreover, positive measures are in place to facilitate access to education, job and other areas for these groups. The present Government is particularly mindful of the welfare of religious minorities. Allegations of any discrimination are being dealt with seriously.</p>

provisions of the CHT Peace Accord have already been implemented” while accepting the recommendation to fully implement the CHT Peace Accord is completely false and misleading.

As AITPN in its submission pointed out the CHT Peace Accord of 1997 remained largely unimplemented. The government failed to implement key provisions of the Accord: demilitarisation of CHT, returning back the lands to the original indigenous owners and rehabilitation of returnee Jumma refugees. Neither the CHT Land Commission nor the Task Force for Implementation of the Peace Accord nor the Task Force on Internally Displaced Persons has been functioning. The government has also failed to hold elections in the CHT Regional Council since its establishment in 1998 and the CHT Hill District Councils since 1989.

The CHT continues to remain heavily militarized and the biggest threat for the indigenous peoples today comes from systematic land grabbing both by the army and the illegal settlers with the aid of the army. An estimate suggested that during March -November 2007 alone, a total of 399.22 acres of land belonging to 133 Jumma families and a primary school in 14 villages under four Unions of Maischari, Kiang-ghat, Kamalchari and Khagrachari Sadar No.1 under Khagrachari district have been forcibly grabbed by illegal plain settlers. The attack on indigenous Jummas by the illegal plain settlers in Sajek is an “emblematic case of Bangladesh policy in the CHTs”. On 20 April 2008, hundreds of illegal plain settlers attacked seven indigenous Jumma villages of Nursery Para, Baibachara, Purba Para, Nangal Mura, Retkaba, Simana para and Gangaram Mukh under Sajek Union under Baghaichari upazila (sub-district) in Rangamati

district, burning down at least 500 houses. Several indigenous Jummas were wounded and an unknown number of women were raped by the perpetrators.

Surprisingly, these critical issues raised by AITPN did not find place in the Summary of the Stakeholders’ Report prepared by the OHCHR.

The Outcome Document (A/HRC/11/18) reflected little concern for the indigenous peoples in Bangladesh. But the hallmark of the Outcome Document was the recommendation to Bangladesh to: “Fully implement the Chittagong Hill Tracts Accord as a matter of priority and develop a time frame for its full implementation”.

b. Silence on the situation of the indigenous peoples in plain areas

The Bangladeshi delegation was totally silent on the rights of the indigenous peoples living in plain areas, outside the CHT. In its National Report, the government of Bangladesh stated “The country hosts many tribal communities that reside in both plain lands and hilly areas”. Yet, as for measures taken for “the development of religious and ethnic minority groups” Foreign Minister Dr Dipu Moni had nothing more to show other than “a separate Ministry” [Ministry of CHT Affairs] set up in 1998. No country raised questions on the conditions of the indigenous peoples residing in plain lands of Bangladesh.

In its submission “Bangladesh: “We want the lands, not the indigenous peoples”, AITPN highlighted the ongoing human rights violations against the indigenous peoples in the plain areas of Bangladesh. The indigenous peoples living in plain areas in mainland Bangladesh faced land grabbing by the mainstream Bengalis as well as the government agencies. AITPN, quoting a survey conducted by Jatiya Adivasi Parishad (National Indigenous Peoples Council) which was released in Dhaka on 10 May 2008, stated that around 1,983 indigenous families in 10 North-western districts of Bangladesh have lost 1,748 acres of their ancestral land due to land grabbing including by Forest Department and mainstream Bengalis. Many indigenous leaders were killed including Cholesh Ritchil, a Garo leader, who was killed in custody of the security forces at Khakraid under Modhupur Police Station in Tangail district in March 2007 for protesting against acquisition of indigenous peoples’ land to establish an Eco-Park.

Unfortunately, the Summary of the Stateholders report prepared by the OHCHR failed to reflect the critical issues highlighted by AITPN about the plight of the indigenous peoples living in plain areas in mainland Bangladesh.

The Bangladeshi Foreign Minister, Dr Dipa Moni during the review process stated that the government has ensured “representation of religious and ethnic minorities at all levels of government service, parliament and public life” (A/HRC/11/18, Para 61). This runs contrary to the claims made by AITPN that in plain land Bangladesh, indigenous peoples do not have representations in the Parliament, Upazila Parishad (Sub-district Council) and in the Union Parishad, the lowest representative body.

Implementation of CHT Peace Accord: Will they, won't they?

In response to the recommendation made by Norway and Australia, during review of Bangladesh under the Universal Period Review (UPR) on 3 February 2009, to fully implement the Chittagong Hill Tracts Accord of 1997 “as a matter of priority and develop a time frame for its full implementation”,¹ the government of Bangladesh has stated - “Bangladesh accepts the recommendation, and is in the process of full implementation of the Accord. Most of the provisions of the CHT Peace Accord have already been implemented. The rest will be implemented within the shortest possible time within the framework of the Constitution of Bangladesh.”²

A decade has passed since signing of the CHT Peace Accord in 1997 but Dhaka kept on dilly-dallying its implementation. With the fresh assurances made by the government of Bangladesh at the United Nations, the question is: will they, won't they?

I. Claims of implementation of CHT Peace Accord: Little truth, all lies

The statement of Bangladesh before the Working Group of UPR of the Human Rights Council that “Most of the provisions of the CHT Peace Accord have already been implemented” is false and misleading. There can be little truth in that statement as few of the provisions of the Accord today actually stands fully implemented.

For example, the government of Bangladesh could claim that it has implemented Section 17 (a) of Part D of the Accord which requires that “[...] all the temporary camps of the Army, the Ansars and the Village Defence

Party (VDP), excepting the Border Security Force (BDR) and permanent Army establishment (being those three at the three district headquarters and those at Alikadam, Ruma and Dighinala), shall be taken back by phases from Chittagong Hill Tracts to permanent cantonments and the time-limit shall be fixed for its purpose [...]” or that the CHT Land Commission had been constituted to resolve the disputes involving land. But the fact is that in the last 11 years of signing the Accord, the CHT Land Commission is yet to become functional. Needless to say, it has failed to adjudicate even a single case of land dispute. As a result, thousands of indigenous peoples in CHT remain landless citizens. A total of 9,780 families out of total 12,222 Jumma families who returned from India following the CHT Peace Accord have not got back their lands, orchards or gardens and homestead, occupied by the illegal settlers as well as by the Bangladesh military. Ironically, some 38,156 non-tribal Bengali settler families have been identified by the Task Force Committee as “internally displaced persons” in CHT while about 10,000 tribal IDP families were left out by the Task Force Committee. Only 90,208 indigenous Jumma families were recognized as IDPs. Clearly, by including the non-tribal people, who in the first place were brought into the CHT to capture the lands of the indigenous Jummas, the government sought to legitimize their settlement in the CHTs. While the Jumma IDPs were not provided any rehabilitation or food aid, educational facilities, health care services, sanitation and safe drinking water etc, illegal settler families have been provided free

rations and other facilities by the government since 1978.³

The Army continued to remain the *de facto* rulers of CHT and they are the worst violators of human rights of the indigenous Jummas. Only 31 military camps of the estimated 520 temporary camps have been withdrawn although the CHT Peace Accord states that “all the temporary camps of the Army, the Ansars and the Village Defence Party (VDP)” would be withdrawn in a time bound manner. The inability to respect the civilian rule and democratic rights of the indigenous Jummas of CHT is evident from the fact that no election was held in the three Hill District Councils of Rangamati, Bandarban and Khagrachari since 1989. Even the CHT Regional Council established in 1998 did not have any elections. Both these three Hill District Councils and the CHT Regional Council continued to be governed by people nominated by Dhaka.⁴ The all powerful Army rules the roost and they have the authority to intervene in civil matters under the executive orders of “Operation Uttoron” (Operation Upliftment) in CHT.⁵

Non-implementation of the Accord has left the indigenous peoples in CHT marginalized, impoverished and their human rights incessantly violated.

II. Recent human rights violations by the Army

The Army personnel have been responsible for systematic and widespread human rights violations against the indigenous Jummas of CHT. Raids, torture, arbitrary arrest

and detention of innocent Jumma civilians are the order of the day in CHT. Army conducts its operations without any accountability and any dissent voice is suppressed. For example, the Army summoned the reporter of *Daily Star* Jasim Majumder and threatened to take action against him after he reported in the daily on 18 June 2009 about the protest rally organized by indigenous peoples against land grabbing by the illegal settlers in Khagrachari on the previous day.⁶ For all its atrocities the institution of the Army and its personnel strike fear into the minds of the Jummas.

Some of the instances of abuse documented by AITPN in the recent months are given below.

a. Raids and torture

The Army conducts frequent raids upon the Jumma villages. Illegal arrests, torture and other forms of human rights violations against the Jummas are inexorable parts of such raids.

At least one jumma villager was tortured to death in the custody of the Army in the last one year. On 7 July 2008, a Jumma villager identified as Niranjon Chakama (40 years), son of Lalit Kumar Chakma was tortured to death in Army custody in Belaichari under Rangamati district. A group of Army personnel from Kangarachari Army camp raided the house of Niranjon Chakma at Nareychari village under Kangarachari Union. The soldiers reportedly found a copy of the *Pitribhumi*, mouthpiece of the Students and Youths Against Land Aggression and took him to the Army camp. There he was tortured to death.⁷

On 27 June 2009, the Army raided two Jumma villages of Manji Adam and Gongotyatoli under Fatikchari

Union of Kawkhali Upazila. At least one Jumma villager identified as Sona Ram Chakma, a farmer, was allegedly tortured during the raid at Manji Adam.⁸

On 13 April 2009, the Army personnel beat up Monang Dewan, an elected Councilor of Khagrachari Municipality, at Zero Mile check post. Mr Dewan had gone there to enquire into an allegation that the Army at the check post was providing shelter to some miscreants who had kidnapped a Jumma woman.⁹

On 23 September 2008, a Jumma youth was arrested and tortured during an Army raid at Down Nuopara village in Belaichari in Rangamati district. The raid was conducted by a group of Army personnel led by Captain Tanvir of Merangchari Army camp. The Army personnel picked up Hiro Chakma alias Ranjan (20 years), son of Lakshmi Chakma from his home, beat him up and then took him to the camp. He was released on 24 September 2008 without any charge.¹⁰

On 4 August 2008, a group of about 30 - 40 Army personnel from Dhupchari camp went to the house of Tonnyapu Tonchongya, son of Kangchandra Tonchongya in Downpara. They demanded a few chickens from him. When Mr. Tonchongya refused, the soldiers took him to Downpara Government Primary School premises, blind folded him and beat him up resulting in the fracture of his right leg. Thereafter, the army personnel forced the local village chief, Anil Chandra Tonchongya and Doctor Priya Dorshi to sign a statement stating that Mr. Tonnyapu Tonchongya got his leg fractured while trying to flee.¹¹

Even the women were not spared during such Army raids. On 10 February 2009, four Jumma villagers

identified as Chokkya Chakma (45 years), his wife Sneha Moyee Chakma (35 years), their daughter Bali Chakma (20 years) and Jagadish Chakma (70 years) were tortured by a group of 26 Army personnel led by Lt. Col. Sharifuddin Ahmed during a raid in Bot-toli village under Lakshmichari Upazila in Khagrachari district.¹²

b. Illegal arrest and unlawful detention

The Army personnel have been responsible for illegal arrest and unlawful detention. Often the arrests took place during raids upon the indigenous Jumma villages.

On 7 May 2009, Army personnel from Baghaihat Zone reportedly arrested five Jummas from Gulokmachara and Nuopara villages in Rangamati district. Four of those arrested have been identified as Gharbenga Chakma (26 years), Jibonneye Chakma (41 years), Phara Hulo Chakma (42 years) and Biju Kumar Chakma (age unknown). The reason for their arrest was not known. Earlier the Army had issued ultimatum to the Jumma peoples to release two unnamed Bengali settlers who had allegedly disappeared. It is believed that the five Jummas were arrested in this connection. However, they were released without any charges.¹³

During a midnight raid by the Army on 13 April 2009, Army personnel arrested two innocent Jumma villagers from Duluchari Headman Para village in Kudukchari of Rangamati district. The arrested Jummas were identified as Gyana Ranjan Chakma (40 years), son of Punong Dhan Chakma and Elin Chakma (22 years), son of Dayal Krishna Chakma. They were reportedly taken to Kudukchari Army camp and tortured. However, they were released the following day at the intervention of the village

elders. The Army however did not return the photographs contained in a photo album which the Army had seized during the arrest of one of the victims.¹⁴

On 18 March 2009, a group of Army personnel from Kudukchari camp raided Kabukchari village under Rangamati district and arrested Amal Chakma (45 years) and Dharma Chan Chakma (45 years). They were reportedly taken to the Kudukchari Army camp. No reason was provided for their arrest.¹⁵

On 15 March 2009, the Army arrested three innocent Jumma villagers identified as Shanti Ranjan Chakma (45 years), son of late Ram Charan Chakma, Amar Singh Chakma (40 years), son of Biro Sen Chakma and America Chakma (45 years), son of Kalabiza Chakma from Sarnath Arannyo Kuthir (Buddhist temple) area in Karallyachari under Mahalchari Upazila in Khagrachari district. They were arrested by Warrant Officer, Md. Wahid of 13 Bir stationed near the Sarnath Arannyo Kuthir (a Buddhist temple) and handed over to the police station in Mahalchari. The reasons for their arrest were not known.¹⁶

c. Violations of the rights of women and children

The Army personnel were responsible for violations of the rights of Jumma women and children. On 16 February 2009, two Jumma villagers including the wife of a UPDF member were arrested during an Army raid in Lakshmichari Upazila under Khagrachari district. The Army personnel from Lakshmichari zone raided the house of Lakshmi Chakma, a member of the UPDF in Golachari village and arrested his wife Sumitra Chakma (26 years) along with another villager Bigunnya Chakma (26 years), son of Chaga Chakma. The

Army did not provide any reason for their arrest.¹⁷

On 12 February 2009, the Army raided the house of Ruikhoi Marma, a central committee member of UPDF at Bot-toli village under Lakshmichari Upazila in Khagrachari district. The raid was led by Lt. Col. Sharifuddin Ahmed, Commanding

The Army continued to remain the de facto rulers of CHT and they are the worst violators of human rights of the indigenous Jummas. Only 31 military camps of the estimated 520 temporary camps have been withdrawn.

Officer of Lakshmichari zone. During the raid the Army personnel beat up Rajeshwari Chakma, wife of Ruikhoi Marma, and their daughter-in-law Mrs. Najjai Marma and interrogated them about the whereabouts of Ruikhoi Marma. The Army placed the family members under house arrest.¹⁸

Indigenous women and children were also victims of sexual abuse. On 4 August 2008, a Jumma woman identified as Ms Shanti Devi Chakma (40 years), wife of Lakshmi Chakma was reportedly raped by Army personnel in Belaichari under Rangamati district. A group of Army personnel led by Captain Tanvir from Merangchara camp raided the village of Down Nuopara in Belaichari Sadar. The soldiers met Ms Shanti Devi Chakma near the village and raped her. The soldiers also beat up her two sons - Ranjan Chakma (20 years) and Rubel Chakma (11 years).¹⁹

On 19 July 2008, a group of Army personnel led by a Warrant Officer raided the village of Magainpara in Rajstali under Rangamati district. The Army officer attempted to rape 15-year-old Ms Jika Rani Tonchongya, daughter of late Dharon Moni Tonchongya, when they found her alone in the house. The minor girl somehow managed to run out of the house.²⁰

d. Repression on Jumma political activists

The Election Commission of Bangladesh has, in an arbitrary manner, refused to register United People's Democratic Front (UPDF) as a political party. On 2 December 2008, the High Court issued notice to the Election Commission to explain as to why it refused to recognize the UPDF as a political party.²¹ Even as the judgement of the High Court is awaited, the Army continued to terrorise the Jumma political activists.

On the night of 19 June 2009, the Army arrested two supporters of the UPDF - Motilal Chakma (22 years), son of Bizu Kumar Chakma of Suridas Karbari Para village and Unuching Marma from Bandarban. They were arrested from Kudukchari in Rangamati by the Army personnel from Ghilachari camp in Choddo Mile area.²²

On 16 March 2009, the Army from Kudukchari camp raided the house of Ananda Prakash Chakma, a member of the central committee of the UPDF at Pora Adam village in Kudukchari. After the Army did not find anything incriminating in the house, they picked up a neighbour identified as Tindukkya Chakma (32 years).²³

On 3 March 2009, two members of the UPDF identified as Sonamoni Chakma (24 years), son of Baghaia

Chakma of Kudukhari Uporpara village and Sunendu Chakma (20 years), son of Hiron Kumar Chakma of Biharpur village, were arrested by the Army from Ghilachari under Naniachar Upazila in Rangamati district. They were reportedly going to Naniachar unit UPDF office and were carrying coupons of the Hill Women's Federation (HWF) to raise funds for HWF's programme to mark the International Women's Day (8 March). The Army handed them over to the Naniachar police station. However, they were released without any charge on the night of 3 March 2009 after intervention by HWF activists and local Jumma elders.²⁴

On 26 November 2008, Onyon Talukder (28 years), son of Gobinda Talukder, who was an office keeper of the UPDF, was arrested in Kawkhali under Rangamati district. The Army personnel from Talukderpara camp came to the UPDF office in a pick-up van and took away Onyon Talukder. He was allegedly tortured in custody during interrogation. Later he was taken to Panchari village where the Army arrested some other Jumma villagers allegedly on the confessions made by Onyon Talukdar.²⁵

On the midnight of 18 November 2008, the Army personnel raided the office of the UPDF at Kawkhali and ransacked the office. Earlier, the Army had ordered the UPDF to close down the office which was reopened on 17 November 2008 after the government of Bangladesh had withdrawn a ban on political activities imposed during Emergency.²⁶

On 18 September 2008, two village chiefs identified as Kri Aung Marma (45 years) and Pajei Marma (45 years), chiefs of Kalapani and Tabalapara villages respectively, were arrested from Kalapani village in Ramgarh under Khagrachari district. They were arrested by the Army personnel attached to Batnatoli camp.²⁷

III. Conclusion

On 29 April 2009, Prime Minister of Bangladesh Ms Sheikh Hasina reiterated her pledge to repeal all laws and rules which discriminate against minority communities, including, of course, indigenous peoples; ensure the protection of their human rights, including the freedom of religion and freedom of expression; and fully implement the Chittagong Hill Tracts Peace Accord of 1997.²⁸ Implementation of the Accord was one of the promises made by the Awami League in its last election manifesto. After the Awami League won the election by a huge margin, there could be no hurdle for the Hasina-led government to implement the Accord to honour the aspirations of the ethnic minorities.

Prime Minister Sheikh Hasina has a responsibility to fully honour the CHT Peace Accord which her government had signed during her previous stint as Prime Minister in 1997. But it is yet to be seen if she was the necessary political will to fully implement the Accord "within the shortest possible time" – an assurance her delegation gave in the Human Rights Council.

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Cambodia: Half-hearted approach towards indigenous peoples' rights

On 9 March 2009, in a plenary meeting presided over by Deputy Prime Minister Sok An, the Council of Ministers of the Royal Government of Cambodia agreed to replace the term "ethnic minority" with "indigenous minority" and reviewed the two draft policies pertaining to- (i) land registration and land use rights and (ii) development.¹

Both these developments are welcome but the Royal Government of Cambodia needs to take more pro-active rights-based measures if it sincerely wants to uplift the conditions of the indigenous peoples. The replacement of the term "ethnic minority" with "indigenous minority" is encouraging but the term "indigenous peoples" should be more relevant as it reflects a rights-based approach. Given that Cambodia had supported the United Nations Declaration on the Rights of the Indigenous Peoples it should not have any hesitation to adopt the term "indigenous peoples".

According to estimates given by the Department of Ethnic Minorities Development at the Ministry of Rural Development in December 2008, the total population of indigenous peoples is around 220,000 comprising 1.5 percent of Cambodia's population. They are located in 15 provinces but concentrated mostly in Ratanakkiri, Mondulakiri, Preah Vihear and Kratie provinces.² They are variously called as *ethnic minorities, hill tribes, highlanders, highland people, and Khmer Leu*; they often call themselves *Choncheat*.³ Earlier, the 1998 National Population Census identified 17 different indigenous groups.⁴

Failure to transform intended plans into action remains the single most obstacle in the uplift of the indigenous peoples in Cambodia. Similar commitments were made in the past but remained un-realised. The best example is failure of the government led by Prime Minister Samdech Hun Sen to finalize and adopt the draft policy pertaining to land registration and land use rights for years to facilitate the full implementation of the Land Law of 2001.

The root cause of the land rights problems is poor enforcement of and non-compliance with the provisions of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. In majority of the land concessions, the legal requirements as provided in the Land Law and Sub-Decree on Economic Land Concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments, have not been met.

Discrimination against indigenous peoples persists. They remain excluded and are unable to take part in policy dialogue or the process of negotiation, especially on development activities.⁵

Indigenous peoples are marginalized in most aspects of life. Their population is small and negligible, disadvantaged by language, social and cultural barriers. To depict the present conditions of the indigenous peoples it is pertinent to examine the various issues that affect their lives and livelihood.

I. Land alienation

In Cambodia, indigenous communities are largely dependent upon their natural resource base for survival. As in other countries, indigenous peoples of Cambodia share a much stronger relationship with their land than other groups. So when they lose their land the consequences are more severe.

Without the requisite Sub-Decree on Procedures of Registration of Land of Indigenous Communities, the Land Law of 2001 is not implemented and alienation of indigenous land goes on unabated.⁶ Almost eight years have passed since the passage of the Land Law in 2001, the Sub-Decree on Procedures of Registration of Land of Indigenous Communities is still a draft. The lack of implementation and enforcement has left indigenous peoples vulnerable to exploitation by commercial and state interests, which are increasingly attracted to the economic potential of the forests and fertile upland areas traditionally used and managed by indigenous communities.⁷

Alienation of indigenous land rights as a result of illegal land transactions has been plaguing many of the indigenous communities in the country, especially those in the Northeast. According to an August 2006 report of the NGO Forum, Cambodia titled, "Land Alienation in Indigenous Minority Communities-Ratnakiri, Cambodia", in most of the communes in the districts of Andoung Meas, Bar Keo, Ou Chum, Ou Ya Dav, Ta Veang and Veun Sai in Ratnakiri province where the rate of alienation of indigenous land was low in 2004 became either moderate or high or severe in 2006. In those communes where the rate of alienation was high in 2004 became severe. In only two communes in Ou Chum district and one commune in Ou Ya Dav district where the rate of alienation was low in 2004 remain the same in 2006.⁸

II. Denial of rights to indigenous peoples through land economic concessions

According to statistics available in the website of the Ministry of Agriculture, Forest and Fisheries of the Royal Government of Cambodia, total land area of 895,176 hectares have been granted to 65 companies as of November 2008.⁹ However, independent sources put total area of economic land concession at a much high figure. In a report, "Economic Land Concessions in Cambodia: A Human Rights Perspective" of June 2007, the United Nations Office of High Commissioner for Human Rights, Cambodia stated that over 943,069 hectares of land in rural Cambodia have been granted to private companies as economic land concessions, for the development of agro-industrial plantations. 36 of the 59 concessions granted until June 2007 have been granted in favour of foreign business interests or prominent political and business figures. These statistics exclude

smaller economic land concessions (under 1,000 hectares) granted at the provincial level.¹⁰

Since 1996, successive Special Representatives of the United Nations' Secretary-General for human rights in Cambodia have expressed concerns about the adverse effects of economic land concessions on the human rights and livelihoods of rural communities, most particularly the indigenous communities. Although the concerns raised over the past decade remain the same today, the Cambodian Government failed to effectively address the situation.

Economic land concessions have had a devastating impact on

In the absence of effective recognition and safeguard of their rights the process of decentralization that started in 2002 does not contribute much to empowerment of indigenous peoples in Cambodia. Rather than accommodating diversity, decentralization contributes to consolidating the societal institutions of the Khmer majority culture. Decentralization in its current design contributes to the marginalization of indigenous peoples by undermining the institutional and natural resources upon which their empowerment, participation and the reduction of their poverty depends.

non-indigenous and indigenous communities alike, but indigenous communities are particularly vulnerable. Land and forest resources being central to their livelihoods, culture and traditions, loss of lands means loss of basis of their physical, spiritual and cultural survival. The following may be summarized as the common impacts of grant of economic land concessions- loss of livelihood due to encroachment on agricultural and grazing land; loss of access to forests and non-timber forest products due to encroachment on forested areas, displacement; deprivation of areas of cultural and spiritual significance; and environmental destruction.¹¹

The root cause of the land rights problems is poor enforcement of and non-compliance with the provisions of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. In majority of the land concessions, the legal requirements as provided in the Land Law and Sub-Decree on Economic Land Concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments, have not been met. The alienation of indigenous land through the grant of concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law.¹²

III. Education

The overall situation in education sector in Cambodia is slowly improving as a result of the ongoing Education Sector Program. The situation is improving gradually after the expansion of bilingual education program. In 2002, UK-based CARE International, Cambodia

has developed a bilingual education program for primary education using a community school model and the same is being implemented with the support of the Ministry of Education, Youth and Sport and groups of indigenous elders.¹³ The Ministry of Education, Youth and Sport (MEYS) has set up bilingual community schools in Stung Treng, Mondulakiri and Ratanakiri and a number of state schools have adopted bilingual education in the Kreung, Tampuen, Bunong and Kavet languages in Ratanakiri. The Royal Academy and the MEYS have also reportedly approved over 80 readers in different languages to be used in formal education.¹⁴

However, the efforts described above are yet to have their desired impacts in areas of indigenous peoples and lack of educational services still remain a serious problem that needs to be addressed. The situation of education is poor in areas with indigenous peoples. In the majority of indigenous villages, schools are not available above grades 2 or 3 and in numerous indigenous villages the existing schools are not functioning. Most schools in indigenous villages lack qualified teachers. At schools of higher level, indigenous students are reportedly required to pay large amount of money to be able to pass Ninth and Twelfth standards.¹⁵ The number of indigenous peoples not having access to school or leaving school mid-way remained far higher than the national average.¹⁶

IV. Health services

Health status of indigenous peoples in Cambodia is significantly poorer and remains below the national average. For example, mortality rates for children under the age of 5 in Mondulakiri and Ratanakiri provinces,

both having majority indigenous populations, are 165 deaths per 1,000 live births compared with the national average of 83 deaths per 1,000 live births.¹⁷

Malaria, tuberculosis, diarrhea, vaccine preventable diseases and acute respiratory infections continue to be endemic. Majority of children and most women are anemic, and rates of vitamin A deficiency are reportedly high.¹⁸

The majority of the indigenous peoples are yet to be significantly benefitted from the ongoing national health sector reforms as these are hardly available at health facilities in the province where indigenous people live. Language barriers and cultural differences between indigenous peoples and the public health service providers, who are mostly Khmer people, remain major obstacles. Money, transportation, language, discrimination, low levels of education and traditional beliefs/obligations are all cited as major barriers to accessing health services and information.¹⁹ Indigenous peoples are reportedly forced to pay

Language barriers and cultural differences between indigenous peoples and the public health service providers, who are mostly Khmer people, remain major obstacles to accessing health services by indigenous peoples.

high informal medical fees in order to get medical services and due to lack of staff who speak indigenous languages, the indigenous peoples face problems while accessing healthcare services.²⁰

Indigenous peoples' health is also threatened by activities (including displacement) that affect their traditional territories. Increasing degradation of natural resources has had telling effects on the already poor health and nutritional status of the indigenous people.²¹

V. Lack of opportunities for participation in decision/policy making level

In the absence of effective recognition and safeguard of their rights the process of decentralization that started in 2002 does not contribute much to empowerment of indigenous peoples in Cambodia. Rather than accommodating diversity, decentralization contributes to consolidating the societal institutions of the Khmer majority culture. Decentralization in its current design contributes to the marginalization of indigenous peoples by undermining the institutional and natural resources upon which their empowerment, participation and the reduction of their poverty depends.²²

According to the NGO Forum, Cambodia, the current design of decentralization contributes to the marginalization of indigenous peoples in the following ways²³:

a. Language barrier

Article 14 of the *Law on Khum/Sangkat Administrative Management* of 2001 requires that besides other qualifications, candidates for the commune council should be "able to read and write Khmer". This

requirement effectively deprives the indigenous traditional authorities from contesting commune election and favours young, Khmer-literate candidates. As a result, indigenous people are underrepresented in most commune councils.

b. Turning the indigenous peoples into minority due to drawing of commune boundaries

Due to the drawing of boundaries of Communes pursuant to the Commune Law of 2001, indigenous people became minority in most communes after their previously self-governing societies fell in different commune constituencies. Therefore, instead of empowering indigenous communities, the drawing of commune boundaries in many instances has turned the indigenous peoples into minority.

c. Decentralization facilitates migration of majority Khmers from outside

Decentralization contributes to in-migration, by establishing institutions of local governance that operate in Khmer language and are tailored towards the needs of the Khmer majority, allowing majority Khmer settlers to easily participate and advance their interests at the cost of traditional inhabitants. Moreover, infrastructure projects carried out by and funded through commune councils ease settler's access to indigenous territories and resources.

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Indonesia: No rights, only duties to conserve environment and forest

In a letter to the Government of the Republic of Indonesia on 18 March 2009¹, Fatimata-Binta Victoire Dah, Chairperson of the Committee for the Elimination of Racial Discrimination (CERD Committee) expressed concerns over the failure of Indonesia to provide information on implementation of CERD Committee's recommendations on reviewing of *Law No. 18 of 2004 on Plantations* and interpreting and implementing the same to ensure respect for rights of indigenous peoples to possess, develop, control and use their communal lands. At paragraph 17 of the Concluding Observations, the CERD Committee recommended that Indonesia secures the possession and ownership rights of local communities before proceeding further with the Kalimantan Border Oil Palm Mega-project and that the State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it.

Asian Indigenous and Tribal Peoples' Network (AITPN) in its alternate report titled, "Indonesia: Piecemeal approaches to systematic and institutionalised discrimination" of August 2007 to the CERD Committee had highlighted discriminations faced by the indigenous, *Adat*, communities. AITPN had expressed concerns over the failure of the Indonesian Government to protect the rights of the indigenous peoples over land and natural resources and highlighted how various laws of Indonesia, including the Constitution (Article 33) ignored and denied the indigenous peoples *ulayat*, customary rights, over land and

natural resources. AITPN, *inter alia*, recommended that² –

- (i) The Committee should recommend to the State party to amend various laws relating to indigenous peoples in particular the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes to recognise the rights of the indigenous peoples; and
- (ii) The Committee should urge the State party to fully respect and implement the right of ownership, collective or individual, of the members of indigenous communities over the lands traditionally occupied by them in its practice concerning indigenous peoples. The State party should seek the prior informed consent of communities while taking away any land for the Kalimantan Palm Oil Project in full conformity with the general recommendation No. 23 of the ICERD.

In paragraph 31 of its Concluding Observations, the CERD Committee asked Indonesia to provide information on the implementation of the CERD Committee's recommendation contained in paragraph 17 of the Concluding Observations within a year. But Indonesia failed to do so. On the other hand, Indonesia not only failed to implement the recommendations of the CERD Committee but also continues to enact or in the

process of enacting new laws and regulations that seek to perpetuate discrimination against indigenous peoples and allow further denial of their rights. For example, Indonesia's draft "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Degradation" of 2008 reiterates the Act No. 41 of 1999 on Forestry that seeks to deny *Ulayat*, collective community rights, to the indigenous peoples.³

In early March 2009, Indonesia has applied to the World Bank asking for assistance from the Bank's \$350 million Forest Carbon Partnership Facility, also known as Reduced Emissions from Deforestation and Degradation (REDD). This program supports developing nations' efforts to fight deforestation and help them earn cash through the sale of tradable carbon credits. The REDD also supports developing states design and create projects under a U.N. backed scheme that could eventually earn poorer nations billions of dollars a year by protecting their forests.⁴

A perusal of Indonesia's draft "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Degradation" of 2008 only confirms the fact that indigenous peoples would be further marginalized in the guise of reducing emissions from deforestation and forest degradation because of the following reasons.

I. Carrying forward the discriminatory and regressive Forestry Law (Law 41 of 1999)

Article 1, paragraph (3) of the 2008 draft "Regulation on the Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation" defines "State forest"

as forest on land unencumbered by proprietary rights while paragraph (5) defines "Customary forest" as forest within an area of a customary community.⁵ These definitions are nearly the same as in the discriminatory and regressive Forestry Law 41 of 1999 which defines "State forest" (Article 1, paragraph 4) as any forest on a land not charged with land title and "Indigenous forest" (Article 1, paragraph 6) as state's forest situated in indigenous law community area.⁶ The draft Regulation on the Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation of 2008 is basically a repetition of the discriminatory and regressive Forestry Law 41 of 1999. Under Article 5, paragraph 3, the Government is the sole authority to stipulate status of forest as "State forest" or "title forest" (paragraph 1) and therefore "customary forest" can be included as an item of state forest. The government is again the sole authority to stipulate the existence of indigenous forest, if any. Thus, under the Forestry Law, the government is the only authority to determine the existence of indigenous peoples or community irrespective of their actual existence in a particular part of Indonesia. The 2008 draft Regulation on the Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation is similar with the Forestry Law in its word and intent is expected to result in further abrogation of rights of the indigenous peoples in Indonesia.

II. Draft Regulation on REDD of 2008 is only a tool to control international payments

Indonesia's 2008 draft Regulation on 'reduced emissions from deforestation and forest degradation' is primarily intended to control payments being received from the relevant international forums and funding agencies. Huge amounts of funds are expected to flow to

Indonesia for reducing or halting rate of deforestation.

According to submissions to the World Bank, Indonesia says that the main drivers for deforestation are extensive forest harvesting by pulp, paper and palm oil firms, expansion into rainforests and peat land by agriculture and forest plantations as well as encroachment by low-income communities into forest lands. The deforestation rate was calculated to be 2.8 million hectares per year between 1997 and 2000 which reportedly fell to 1.2 million hectares in 2000 to 2005.⁷

Even at this existing annual rate of deforestation of 1.2 million hectares, Indonesia releases huge amounts green house gas and is expected to receive huge amount of funds under the REDD scheme. But, given Indonesia's past records about the marginalization of the Indigenous peoples and gradual abrogation of their rights it is feared that payments and incentives under the proposed REDD scheme would not benefit the Indigenous people who are the real conservationist of environment and forests across the globe. Indigenous groups and forest communities have long struggled against development interests seeking to exploit their traditional lands and resources.

III. Draft Regulation on REDD will cause further marginalization of indigenous people

Even before the promulgation or enactment of Indonesia's draft "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Degradation" of 2008 there are about 20 REDD schemes currently at various stages of development in Indonesia.⁸ It is only natural that REDD activities will proliferate extensively once the draft regulation on REDD comes into force. And, with the proliferation of activities under REDD, alienation

of land of the indigenous people would aggravate further as there is no provision in the draft regulation on REDD for protection and promotion of rights of the indigenous proponents.

Most indigenous groups and forest communities across the world fear that they will not get benefits from REDD. They are apprehensive that the mechanism could trigger a new wave of land grabbing and evictions by parties seeking to capitalize on carbon payments.⁹

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Malaysia's Highest Court upholds indigenous peoples' customary rights to land

On 5 May 2009, Malaysia's Federal Court – the highest judiciary – ruled that the indigenous peoples of Sarawak state, a Malaysian state on the island of Borneo, have customary rights over their lands.¹ A panel of three Federal Court judges unanimously ruled that the concept of native customary rights (NCR) applied to the indigenous people's right over *temuda* (cultivated land), *pulau galau* (communal forest) and *pemakai menua* (territorial domain) and that the state government cannot take away the land from the indigenous peoples without compensation.²

This landmark judgement was delivered while hearing a petition filed by the Sarawak government to review its (Federal Court's) own ruling in a land rights case initiated by one Madehi Salleh. In 2007, Madehi had filed a case against the state government of Sarawak to claim his NCR rights over 6.6 acres of land in Miri. The court ruled in favour of Madehi but the state government moved the Court of Appeal against the lower court's decision. Then, Madehi filed an application in the Federal Court which ruled in his favour in October 2007. The Federal Court in its ruling recognised the pre-existence of NCR over land before any statute or legislation, in particular the Rajah Order of 1921. It said the reservation of the land under the Rajah's Order for Sarawak Oilfields Ltd (SOL) did not nullify the NCR over land. Unhappy with the Federal Court's decision, the Sarawak government filed a review petition before a different bench of the Federal Court to review its own decision. On 5 May 2009 a three-judge

bench consisting of the Chief Justice of Sarawak and Sabah, Richard Malanjun, Hashim Yusuf and Zulkifli Ahmad Makinudin dismissed the review application with costs.³

i. Consequences of the Federal Court's judgement

The indigenous peoples have a long history of struggle for justice and native customary rights over their ancestral land. On 12 May 2001, the High Court in Sarawak upheld the native customary rights of the Iban village Rumah Nor and ruled that the Borneo Paper and Pulp Plantation company did not have the right to destroy Rumah Nor's rainforest.⁴ The High Court recognized the native customary land rights over their traditional territory ("pemakai menua") including the "disputed area". But in 2005 the Court of Appeal overturned parts of the judgement stating that there was insufficient evidence to prove the "occupation of the disputed area". Nonetheless, the Court of Appeal recognized the NCR of the indigenous peoples over their lands outside the "disputed area".⁵

Hence, the judgement of the Federal Court of Malaysia dated 5th May 2009 in Madehi Salleh's case will have positive long term consequences on the restoration of NCR of not only the indigenous peoples of Sarawak state but of entire Malaysia. There are reportedly as many as 203 cases relating to land rights pending in the courts. The cases mainly relate to alleged encroachment into NCR land by government and private actors and complaints of harassment of native peoples to occupy their

ancestral land. In most cases, the state government is a defendant.

The land rights of the indigenous peoples of Sarawak state are officially recognized under the Federal Constitution of Malaysia,⁶ but the state instead of providing land titles to them, often give licence to the logging and palm oil companies and other business enterprises to exploit the forests and other resources in the indigenous peoples' ancestral land. In the last 20 years, the government of Sarawak has leased out more than one million hectares of land, majority of which is NCR land, to many private companies and state agencies – mainly for palm oil plantation and logging activities.⁷ The community lands have been leased out by the state government without consulting or obtaining the free, prior and informed consent of the indigenous peoples.

So far the government of Sarawak has held the opinion that the lands of the indigenous peoples belonged to the State unless they proved their ownership by producing evidence that they have cultivated their land for many years. As the indigenous peoples such as the Penans and others are hunter-gatherers and grow very little of their food, it is quite difficult for them to prove legal ownership over their ancestral land.⁸

Presently, all cases involving NCR over land have been put on hold until September 2009 to allow the Sarawak government to bring in topography experts to resolve disputed claims by complainants.⁹ The 5th May 2009 judgement of the Federal Court is

expected to play a critical role while deciding over 200 cases relating to land rights that will come up for hearing from September 2009. The judgement is also expected to open a floodgate for the indigenous peoples for filing litigations for defending their land rights and protecting their resources from illegal/destructive logging by state and private companies.

ii. Palm oil plantation and land grabbing

Malaysia produces 50% of the world's palm oil, a trade worth billions. By 2010, the Sarawak government expects to double palm oil plantations to 1 million hectares.¹⁰ Palm oil plantation has been associated with land disputes with indigenous peoples. As the state of Sarawak aggressively pursues the expansion of palm oil plantation amid a rising demand for biofuels, more and more lands belonging to the indigenous peoples are being forcibly grabbed.

Many of those affected are impoverished indigenous communities whose ownership of the land is often not recognized by local authorities. There are scores of cases filed in the courts against forcible land acquisition.¹¹

Following an on-the-spot investigation about the conditions of the Penans in Sarawak, London-based campaigner Miriam Ross wrote¹² -

"It was terrifying to see the devastation of the Penan's land, and all the more so to know how quickly it is happening. I went to Penan communities where the loggers have taken so much of the forest that the animals have gone and the Penan have real difficulty finding food.

"Where the forests have already been logged to death, they are being replaced with oil palm plantations for biofuels and other uses. Oil palm is even worse

for the Penan than the logging, because the plantations leave no space for them to hunt or gather. Their way of life becomes impossible.

"And this is not all. A series of twelve huge hydroelectric dams is planned for Sarawak, and will submerge the villages of Penan and other indigenous people. The first dam is already under construction, and the Penan in the area have been told they have to leave."

iii. Destructive logging and human rights violations in Sarawak

The indigenous peoples in Sarawak state are collectively known as *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kelabit, Berawan and Penan. They constitute around 50% of the population of Sarawak state of 2.3 million people.¹³ The state of Sarawak has unleashed a regime of repression

The judgement of the Federal Court of Malaysia dated 5th May 2009 in Madehi Salleh's case will have positive long term consequences on the restoration of NCR of not only the indigenous peoples of Sarawak state but of entire Malaysia. There are reportedly as many as 203 cases relating to land rights pending in the courts. The cases mainly relate to alleged encroachment into NCR land by government and private actors and complaints of harassment of native peoples to occupy their ancestral land. In most cases, the state government is a defendant.

against the indigenous peoples. Their socio-economic conditions remained deplorable.

Malaysian logging company, Interhill Enterprise Sdn. Bhd, has been responsible for destruction of the primary forests and livelihood of the Penans due to its destructive logging practices in Sarawak's Middle Baram region. The company has caused extensive environmental degradation of the tropical rainforests in the Middle Baram region since the late 1980s which included losses of biodiversity, soil erosion, landslides and pollution of Patah and Akah rivers due to its logging activities. The indiscriminate logging practices have made the survival of the Penans difficult as the access to natural resources such as rattan, sago, poison dart trees and medicinal plants has been hampered. Moreover, the Interhill has also little regard for the legitimate Native Customary Rights claims of the local indigenous communities. The lives of Penans living in Long Item, Long Pakan and Ba Abang villages that are located within logging concession T 0339, Interhill's logging operations area, have been critical.¹⁴

The indigenous peoples have vehemently carried out campaigns against illegal and destructive logging by timber companies. In September 2008, the government of Sarawak announced that it would no longer recognize elected leaders in some Penan communities.¹⁵ This is largely seen as an attempt to break the Penans' resistance to illegal logging by deposing headmen opposed to logging companies. The Penans, a nomadic tribe, have been fighting for more than twenty years to stop logging companies destroying the tropical rainforest in which they live. They have erected blockades against logging and in retribution, faced arrests, violence and acute food shortages.

v. Sexual abuse against Penan women by workers of logging companies

As the Penan communities have been struggling to prevent destruction of their ancestral lands by logging firms, their womenfolk are being victimised by timber company workers in the various settlements within the companies' operation areas. In particular, there have been allegations that the Penan women including schoolgirls in the Middle Baram area of Sarawak were sexually abused "on a regular basis" by the workers hired by Malaysian logging companies Interhill and Samling. Swiss-based NGO, Bruno Manser Fund, which conducted a research on the sexual violence against the Penan women, alleged that the company workers based in logging camps usually frequented, in a drunken condition, in the Penan settlements looking for women. The Penan women were so terrified that they fled into the forests when they heard sound of vehicles approaching. The situation becomes the worst during the school holidays when students return home to spend their vacation.¹⁶

The young school girls have been more vulnerable to sexual abuse by the company workers who would take advantage of the disadvantaged positions of the Penans. As the schools are far away from the Penan villages, the schoolchildren have to either walk for several hours or take vehicles to reach the schools. But the Penans are poor and cannot afford vehicles for their children. Hence, they depended on the companies' vehicles to ferry their children to schools. The Penan girls have become vulnerable as the company workers would often arranged the transportation in such a way that schoolgirls had to stay overnight at a logging camp, where they were abused. Bruno Manser

Fund further reported that there had been several incidents of pregnancy among the Penan women and girls due to the abuses and that the logging workers also carried arms to intimidate the Penan community.¹⁷ In 2007, a 16-year-old student from Long Kawi, a settlement in the Middle Baram, became pregnant after being raped while returning to her boarding school. The victim was raped in the logging camp when taking transportation provided by companies to go to her school SMK Long Lama.¹⁸

On 6 October 2008, *The Star* reported that "interviews conducted in settlements in the Middle Baram area in northern Sarawak, revealed that several students had become victims of rapes by logging workers".¹⁹

No perpetrator has been brought to justice. The Penan community leaders alleged that while complaints to the company managers did not work, the police also failed to take any action against the perpetrators. In October 2008, the Ministry of Women, Family and Community Development has reportedly set up a task force to investigate allegations of sexual abuse against Penan women and girls in Sarawak.²⁰ The Royal Malaysian Police is presently investigating into alleged cases of sexual abuse.

But there is little international concern over the continuous struggle waged by the indigenous peoples of Sarawak for survival as a result of exploitation of the indigenous peoples and their resources by the logging companies and other business enterprises in the state of Sarawak. The lack of insensitivity has been poignantly demonstrated by England when it recently conferred honorary Knighthood to Tiong Hiew King, the founder of the Rimbunan Hijau Group which has been responsible for destruction of the livelihood of

the Penans in Sarawak by its logging activities.²¹

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Thailand: Dumping the Hmong refugees to the wolves

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The high profile visit of Thai Prime Minister Abhisit Vejjajiva, his Foreign Minister Kasit Piromya and Army Chief General Anupong Paojinda to Laos from 22-23 January 2009 prepared the grounds for repatriation of nearly 5,000 ethnic Hmong refugees sheltered in the military-controlled Huai Nam Khao camp in Thailand's northern province of Petchabun. These refugees from Laos had to flee their homes in 2004 to escape state-sponsored persecution. Unwanted by the Thai authorities, their conditions have been deplorable in the refugee camp. Their refoulement to Laos, despite imminent persecution they would face there, had been decided when the then military government of Thailand signed an agreement with the Laotian authorities to deport over 7,700 ethnic Hmong refugees on 20 September 2007. Prior to signing of the agreement, then Thai Prime Minister Surayud Chulanont had clarified on 6 August 2007 that failure to send the refugees back to Laos would create a "never-ending problem" for Thailand.¹ Since then hundreds of refugees were forcibly sent back. The ouster of the only independent international humanitarian organization, the Médecins Sans Frontières (MSF) from the Huai Nam Khao refugee camp on 20 May 2009 is the final assault ahead of preparations for deportation of the entire population of Hmong refugees, in contravention to international humanitarian law.

1. Refoulement : violation of international humanitarian law

The UN Convention relating to the Status of Refugees is clear

about prohibition of refoulement of refugees: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."²

But Thailand is neither a party to the Refugee Convention nor recognizes the Lao Hmongs as "refugees". It plainly term them as "illegal economic migrants" and has refused the United Nations High Commissioner for Refugees (UNHCR) or any other independent body access to screen the Hmongs which could have resulted in granting of legal rights to many of them. Hence, for years they have been living at the mercy of the Thai authorities including the military.

In the absence of any concern for the Lao Hmongs, Thailand has deported hundreds of them to Laos, without any guarantee for their safety and security, under the guise of "voluntary" repatriation. According to the statistics of MSF, there were 1,451 families consisting of about 7,850 Hmong refugees sheltered in military-controlled Huai Nam Khao camp in Petchabun province as of April 2008 but there were only some 4,700 left in the camps as of 20 May 2009.³ In addition, 158 Hmongs have been granted refugee status and detained at the Nong Khai Immigration Detention Centre for the last two years.⁴ This means that 2,992 persons could have been victims of refoulement to Laos since April 2008. In 2009 alone, a total of 642 Hmong

refugees were reportedly repatriated to Laos. This included 190 Hmongs (from 44 families) who were handed over to the Laotian authorities at the Thai-Lao Friendship Bridge on 2 February 2009,⁵ and 452 Hmong refugees (from 112 families) who were handed over to the Laotian authorities at the Borikhamsay border checkpoint opposite Thailand's Nongkhai province on 16 March 2009.⁶ Both the Thai and Laotian authorities have claimed that these refugees volunteered to return but according to a report by independent media *Radio Free Asia*, 40 Hmong refugees who were to be refouled on 16 March 2009 managed to flee and they have since "disappeared".⁷

In a bid to force the refugees to go back home, the Thai military has been using various coercive measures in the relief camp. Not only the refugees, the Thai military has even used pressure and intimidation against the staff of Médecins Sans Frontières (MSF), the only independent international humanitarian organization allowed to work among the Hmong refugees, to convince the refugees to accept repatriation. The increased threats of refoulement have left the Hmong refugees traumatized.

Very little is known about the fate of those who have been sent back as the Lao government refused to grant

access to any independent third party to monitor the repatriation and post-repatriation process. There are credible reports and statements given by those who have managed to come back to Thailand, after being repatriated, that they were subjected to "repeated beatings, rapes, and other abuses during their detention in Laos" following repatriation.⁸

Yet Thailand, which is Lao's leading trading partner and foreign investor,⁹ is determined to hand them over to the wolves, without any assurance or guarantee for protection of the Hmongs after repatriation.

On 16 January 2009, Thailand's Foreign Minister Kasit Piromya announced that Hmong refugees living in Huay Nam Khao camp would be sent back by mid-2009.¹⁰ An agreement to this regard was reportedly reached between the two countries on 24 March 2009¹¹ during the visit of Mr Piromya to Laos. According to Mr Piromya, Thailand has offered to provide 1.5 million baht (US\$ 42,247.5) to support Hmong's settlement at Pha Lak village outside the Lao capital of Vientiane.¹²

2. Use of coercive measures against Hmong refugees

The Thai authorities have consistently toed the Laotian government's claim that the Hmongs are "illegal economic migrants" and, hence, needed to be sent back.¹³ Since the visit by Thai Prime Minister Abhisit Vejjajiva, his Foreign Minister Kasit Piromya and Army Chief General Anupong Paojinda to Laos from 22 to 23 January 2009 to "strengthen" their bilateral relations,¹⁴ the pressure on the 4,700 Hmong refugees sheltered in Huai Nam Khao camp to accept voluntary repatriation increased many folds.¹⁵ In a bid to force the refugees to go back home, the Thai military has been using various

coercive measures in the relief camp. Not only the refugees, the Thai military has even used pressure and intimidation against the staff of Médecins Sans Frontières (MSF), the only independent international humanitarian organization allowed to work among the Hmong refugees, to convince the refugees to accept repatriation.¹⁶ The increased threats of refoulement have left the Hmong refugees traumatized.

The MSF alleged that the Thai military has been using "coercive tactics" such as the arbitrary detention of refugee leaders, blocking food supply, restricting access to health care services provided by the MSF etc. The MSF has further confirmed that Thai military had been restricting MSF's activities and that "*The Thai army has on numerous occasions attempted to involve MSF in its strategies to pressure the Hmong to return to Laos. At several points, the military have asked MSF to not distribute food to the population in order to punish the people.*" Such restrictions and coercion put up by the Thai military forced MSF to finally withdraw from the Huai Nam Khao refugee camp on 20 May 2009.¹⁷

On the night of 28 March 2009, Thai authorities in Huay Nam Khao camp reportedly arrested Joua Va Yang, a Hmong refugee who in 2004 guided a BBC TV team to Laos to document atrocities committed against the Hmongs there. Mr Yang was allegedly beaten up during the arrest.¹⁸ He faces danger of being deported to Laos. The UNHCR has sought a clarification from the Thai government about his status.¹⁹

3. Laos' situation not conducive for Hmongs' return

Both Thailand and Laos have claimed that the return of the Hmongs would be voluntary but reports suggest that the situation in Laos is not conducive for their return. In January

2009, human rights groups alleged intensified attacks by Laos military against the Hmong ethnic community in Xieng Khouang province in Laos. Human rights groups such as Hmong Lao Human Rights Council, the United League for Democracy in Laos, Inc., and the Center for Public Policy Analysis alleged that several Hmong and Laotian civilians were killed and scores wounded in these intensified attacks by the Lao military in Xieng Khouang Province, in particular at Phou Bia Mountain and Phou Da Phao.²⁰

According to Vaughn Vang, Director of the Hmong Lao Human Rights Council,

*“Special Lao military units, in some cases led by ethnic Hmong commanders of the LPA, are now ruthlessly hunting down Hmong civilian groups in hiding using brutal and relentless artillery attacks; the Lao military is now moving forward with a new and intensified offensive at Phou Bia and Phou Da Phao surrounding Hmong civilian groups in hiding and forcing them out of the jungle and mountains where many have been killed or are dying without food or water.”*²¹

Under such situation, the Hmong refugees cannot be refouled.

The international community is practically doing precious little to stop the proposed plan of forced repatriation of Hmong refugees. While UNHCR appears helpless in the face of refusal by Thailand to grant it any access, neither the European Union nor the US are serious about the fate of the refugees. While some kind of pressure is being put by some US lawmakers on the Obama administration to call upon Thailand to abandon its plan to refoule the Hmong refugees and allow access to international third party to the refugee camp,²² the recent decision of President Barack

Obama to remove Laos from trade blacklist on the assumption that the communist country “ceased to be a Marxist-Leninist country”²³ does not help the cause of ethnic Hmongs – both inside Laos and in the Thailand refugees camp.

The fate of the Hmong refugees was sealed the day Médecins Sans Frontières was forced to withdraw its humanitarian mission.

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Unabated State terror in West Papua

In Indonesia's West Papua, where a movement for independence is ongoing, the state terror against the indigenous Papuans continued unabated. This state terror intensified in the run up to the country's General Election which was held on 9 April 2009 under the shadow of renewed demand for West Papua's independence by the indigenous peoples. The security forces and the intelligence services brutally cracked down the peaceful democratic protests by pro-independence activists in West Papua.

Asian Indigenous and Tribal Peoples Network (AITPN) expresses its serious concern over such use of brutal force and fire arms on peaceful protestors, arbitrary arrests and torture of civilians including human rights defenders. The uncanny involvement of the intelligence personnel in the shootings of unarmed civilians, who were not even part of the protest rallies, and absolute lack of accountability for such crimes are worrying.

I. Continued state terror

The Indonesia security forces and the intelligence personnel have been responsible for flagrant human rights violations in West Papua. The West Papuans have been denied the freedom of expression and opinion. Even the voices uttered against acts of human rights violations by the state are suppressed.

On 3 April 2009, thousands of Papuans participated in the pro-independence rallies in two Papuan towns of Nabire and Wamena. The protestors demanded an

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independent investigation into the ongoing human rights violations by the state agencies in West Papua, called for a referendum on the question of self-determination and boycott of the 9th April 2009 general elections. In Nabire, the police used excessive force to disperse the protestors, injuring at least seven of them in police firing. Four of them were admitted in hospital in critical condition, including a 10-year-old student who was shot while returning from school.¹ Many protestors were arrested and detained. On 18 June 2009, charges were filed against 17 Papuans arrested during the April 3rd pro-independence rally in Nabire. Most of those charged are students arrested for attacking

and vandalizing a police vehicle while one is a housewife who has been charged with possession of a "Morning Star" flag.²

On 3 April 2009, the police raided and ransacked the office of the Papuan Customary Council in the West Papua capital Jayapura and arrested 15 people. The police also confiscated documents, a laptop, mobile phones and various other materials from the office. The police also claimed having found two guns in the office. However, the ownership of the guns has not been established.³

The police also cracked down on the West Papua National Committee (KNPB). On 3 April 2009, the police arrested three KNPB activists identified as Mako Tabuni, Serafin Diaz and Yance Mottealong with 14 others in Jayapura for alleged subversive activities. While the three activists of KNPB were detained, the others were released.⁴ The KNPB said it had on 4 April 2009 wrote to the police for prior information to hold a protest rally in Nabire on 6 April 2009. In reply the police launched a surprise raid on the KNPB camps at around 3 am (local time) on 6 April 2009. The police shot dead a youth activist identified as Jerry Nawipa (18 years), set afire two tents in the camp and arrested 15 KNPB activists.

However, the indigenous peoples went on to hold the scheduled rally in Nabire on 6 April 2009 wherein around 200-300 demonstrators participated. Police opened fire on the demonstrators, injuring at

least eleven demonstrators.⁵ There has been report that prior to the scheduled protest, armed Indonesian military intelligence officers were seen sitting in ambush in the houses belonging to non-Papuans around the Karang Tumaritis area where the protest rally was scheduled to take place. When the protest rally was taken out, the police personnel attacked the protestors while the hidden security officials allegedly shot at civilians who even did not participate in the protest. The indiscriminate shooting injured several civilians.⁶ At least 11 injured persons were admitted to the Nabire Regional Public Hospital in critical conditions.⁷ Some of the victims have been identified as⁸:

- i. Fritz Samuel Singamui (Male/ 30 Years) – He was shot in the left side of the chest and his condition was critical at Nabire Public hospital. He was not involved in the demonstration
- ii. Albertus Tagi (Male/10 Years) is an orphan, a 4th grade student at the local elementary school. He was shot in his right ribs as he was going home from school. His condition was critical in Nabire Public hospital
- iii. Yunandi Pigome (Male/28 Years) is a farmer. He was shot at his left back skull as he was going home. He was not involved in the demonstration. His condition was critical in Nabire hospital
- iv. Ipo Boga (Male /28 Years), a farmer – he was shot in the buttocks and the bullet passed through near his genitals. He went to the local market and was returning home when shot. He was not involved in the demonstration

- v. Hengky Boma (Male/25 years), a farmer, was shot in his right thigh. He was not involved in the demonstration
- vi. Alfonse Yeimo (Male/ 22 Years, a student was shot in the forehead
- vii. Yafeth Keiya (Male/26 Years) a farmer - he was shot in the right wrist. He was going to market when shot and was not involved in the demonstration, and
- viii. Hengky Tenouye (Male/ 20 Years), a farmer - he was shot on the left side of his chest.

There has been report that prior to the scheduled protest, armed Indonesian military intelligence officers were seen sitting in ambush in the houses belonging to non-Papuans around the Karang Tumaritis area where the protest rally was scheduled to take place. When the protest rally was taken out, the police personnel attacked the protestors while the hidden security officials allegedly shot at civilians who even did not participate in the protest. The indiscriminate shooting injured several civilians. At least 11 injured persons were admitted to the Nabire Regional Public Hospital in critical conditions.

He was not involved in the demonstrations.

In a separate incident, the Mobile Brigade police shot dead Mica Boma (58 years) and injured three others in open firing at Enarotali town in Paniai on 30 June 2009. The deceased was reportedly shot in the abdomen. In defence, the Papua Police chief Inspector General Bagus Ekodanto claimed that the residents shot arrows at the officers when they were passing by injuring one officer. According to the police chief, this prompted the police to open fire.⁹

II. Suppression of human rights defenders

Indonesia's treatment towards human rights defenders has been worse. Ms Hina Jilani, then Special Representative of the Secretary General on the situation of human rights defenders in her report, following her visit to Indonesia in June 2007, confirmed this and she recommended the following, among others: "setting up of mechanisms to investigate complaints of violations committed against human rights defenders"; to "review administrative procedures in order to remove restrictive regulations that impede the right of defenders to freedom of assembly and of association"; to "prevent the prosecution of human rights defenders aimed at their harassment for conducting activities that are legitimately a part of their function for the defence of human rights"; and to sensitize the judicial and prosecutorial officials as well as the police that the activities of human rights defenders were not criminal activities.¹⁰

On 2 February 2009, the Indonesian security forces attacked a group of indigenous West Papuans who were holding a peaceful protest against repeated postponement of the local election in Nabire. Several protestors

were shot by rubber bullets, kicked and beaten up. The protestors then called up respected human rights defender Yones Douw to document the violations committed by the security forces. When Yones Douw came to the spot he was assaulted too. Eyewitnesses stated that Yones Douw was kicked by police officers, beaten on the side of his head and then punched in the face. At least seven of the demonstrators along with Yones Douw were arrested. However, they were released after one day in custody. The police chief of Nabire, Commander Rinto Jatmono was reportedly directly responsible for the assault on the peaceful protestors. It is believed that Indonesian National Intelligence Service personnel participated in the assault along with the police and the notorious BRIMOB (Mobile Brigade), the paramilitary police.¹¹

Several West Papuans are presently serving long jail sentences or facing trial for alleged involvement in peaceful demonstrations or for possessing or raising the banned Morning Star flag. According to the US State Department, at least 30 Papuan pro-independence activists, including a 16-year-old boy, were under detention for raising the Morning Star flag in 2008.¹²

On 17 June 2009, prosecutors demanded 10 years imprisonment for pro-independence activist Bucchar Tabuni in the district court in Jayapura, Papua. Bucchar Tabuni, chairman of the International Parliamentarians for West Papua (IPWP), was arrested in Jayapura in December 2008 for leading a peaceful demonstration to support the launch of the IPWP in London and has been facing charges of treason against the state.¹³

Earlier, on 29 January 2009, the Jayapura District Court acquitted

human rights lawyer Iwanggin Sabar Olif alias Sabar of all the charges brought against him by the Indonesian government. Iwanggin Sabar Olif was charged under Section 160 of Indonesia's Criminal Code for inciting "in public to commit a punishable act, a violent action against the public authority or any other disobedience". He was arrested on 18 October 2007 for allegedly distributing a text message stating that Indonesian President Susilo Bambang Yudhoyono had ordered for eradication of the Papuan population through food poisoning and other violent actions. Iwanggin Sabar Olif denied the charge.¹⁴

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The State of India's Indigenous and Tribal Peoples 2009

Executive Summary

A. Tribal/indigenous peoples and armed conflicts

At present, 21 out of 28 states of India are afflicted by armed conflicts. With the exception of Jammu and Kashmir, conflicts in all other states involve indigenous peoples. During 2008, the indigenous peoples continued to be further engulfed into the armed conflicts. Media reports estimated that nearly 1.2 lakh Gutti Koya tribals have fled to Andhra Pradesh's Khammam district from Bastar and Bijapur districts of Chhattisgarh during January-June 2008 to escape violence by the Maoists and the *Salwa Judum* activists.¹

B. Violations of the rights of the indigenous/ tribal peoples

According to the 2007 Annual Report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,532 cases against Scheduled Tribes (or tribals) were reported in the country during 2007 as compared to 5,791 cases in 2006 showing a decline of 4.5% in 2007 over 2006.

But the NCRB figures do not reflect the actual intensity of violence against the indigenous peoples of India. During 2007, the conviction rate for crimes against the tribals remained as low as 27%.² Clearly, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 remained largely unimplemented.

The Central government failed to introduce the Scheduled Castes and the Scheduled Tribes (Prevention

of Atrocities) (Amendment) Bill, 2008 in the Parliament although it was listed for introduction during the Monsoon Session (17 July-23 December 2008).³ The Bill sought to amend Section 14 of the Act to give "absolute jurisdiction" to Special Courts to try the cases under the Act.⁴

The security forces were responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial killing and extrajudicial killings in the name of "counter-terrorism" measures. On 7 January 2008, the para-military Tripura State Rifles (TSR) personnel shot dead one Dhananjay Debbarma, a 17-year-old tribal school student, mistaking him for an insurgent during a counter-insurgency operation in Kunjaban under Kalyanpur police station of West Tripura district of Tripura.⁵ Dhananjay had gone to the jungles to collect bamboo. The killing led to violent protests by the tribals.⁶

Following the attack on West Bengal Chief Minister Buddhadeb Bhattacharya's life by the Maoists on 2 November 2008, the police inflicted inhuman atrocities on the tribal villagers including women and children in Lalgargh in West Midnapur district of West Bengal. Many tribal villagers including school children were arrested as Maoists.⁷ The tribals protested by cutting off Lalgargh area for nearly a month. The protests were suspended only after Mr Bhattacharjee apologized publicly to the tribals and withdrew some police camps from Lalgargh area.

In Chhattisgarh, the tribals had to face violent retribution from the *Salwa Judum* forces for deposing before the visiting NHRC investigation team. An independent fact-finding team of civil society groups found that 11 houses belonging to the tribals were burnt down by the *Salwa Judum* members at Nendra village in Konta block in Dantewada district in reprisal to depositions by the villagers before the NHRC investigation team on 10 June 2008.⁸

C. Violations by the armed opposition groups

During 2008 the armed opposition groups (AOGs), in particular the Maoists, continued to be involved in killing, abduction, summary trial and execution, and torture. The Maoists continued to kill tribal civilians on the charge of being "police informers", members of the anti-Maoist civilian militia such as "Salwa Judum" and for not obeying their diktats.

On the night of 17 January 2008, Maoists killed 35-year-old tribal, Samireddy Ganesh of Bhiram village under G. Madugula mandal in Visakhapatnam district of Andhra Pradesh after abducting him on the charge of being a "police informer". In the custody, the victim was allegedly tortured and then axed to death.⁹ On 27 July 2008, Maoists abducted and killed a tribal leader, Niram Singh Dhruv, ex-head of Amagaon village under Mainpur police station in

Chhattisgarh. Accusing him of being a "police informer", the Maoists tied

him to an electricity pole in village square at Amagaon and shot him in the chest.¹⁰

D. Violations of the rights of tribal/indigenous women

Indigenous/tribal women faced violence including killing, torture, rape, and other inhuman and degrading treatment at the hands of the law enforcement personnel, the armed opposition groups, and village pachayats, among others.

According to the NCRB, a total of 627 cases of rape of tribal/indigenous women were reported in 2007. There was a marginal decrease since 2006 in which 699 cases of rape of tribal/indigenous women were reported. Out of these 627 rape cases reported during 2007, 45.9% were reported from Madhya Pradesh.¹¹ Non-tribals were involved in these rape cases.

The women were vulnerable and discriminated because of their sex. On 12 March 2008, a tribal woman identified as Aapaima Mog (21 years) (wife of Polo Mog) was allegedly raped and killed by Jagadish Shil, a Special Police Officer (SPO) of District Armed Reserved (DAR) at Avangacherra village (Chefru Mog Para) under Baikhura police station in South district of Tripura. An investigation by the police confirmed that the SPO had killed the victim after rape.¹²

On 6 October 2008, a tribal woman identified as Gujriya, wife of Hakma, was forced by the village panchayat to dip her hands into a vessel filled with boiling water to prove her innocence after she was accused of being a "witch" at Khara village in Sirohi district of Rajasthan. Later, she was allegedly beaten up with hot iron rods.¹³ In another clear case of denial of justice on the ground of sex, the Showuba Village Council in Nagaland let off the four rapists

by merely fining them Rs 15 each after they had abducted and raped a pregnant tribal woman on 27 August 2008 at Showuba village near Dimapur in Nagaland.¹⁴

E. Violations of the rights of tribal/indigenous children

The tribal/indigenous children were vulnerable at the hands of the

The security forces were responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial killing and extrajudicial killings in the name of "counter-terrorism" measures. On 7 January 2008, the para-military Tripura State Rifles (TSR) personnel shot dead one Dhananjay Debbarma, a 17-year-old tribal school student, mistaking him for an insurgent during a counter-insurgency operation in Kunjaban under Kalyanpur police station of West Tripura district of Tripura. Dhananjay had gone to the jungles to collect bamboo.

security forces, the armed opposition groups and the society at large. The protectors turned predators. On 24 January 2008, a 10-year old tribal girl (name withheld) was allegedly raped by police constable Arvind

Kumar Das at Chandli village in Giridih district of Jharkhand. The accused constable was arrested and suspended following a complaint by the victim's family.¹⁵ Again on 3 July 2008, a 14-year-old tribal girl (name withheld) was allegedly raped by Head Constable Zakir Khan posted at Bisthan Police post in Khargone district of Madhya Pradesh. The accused barged into the victim's house near the Bisthan police post when she was alone and raped her. Later, the victim was admitted to the Khargone district hospital in a critical condition.¹⁶

F. Alienation of tribal land

Despite of the Constitutional and various legal protections against alienation of tribal land, the problem is widespread and alarming. The Ministry of Rural Development of the Government of India in its 2007-2008 Annual Report states, "The State Governments have accepted the policy of prohibiting the transfer of land from tribals to nontribals and for restoration of alienated tribal lands to them. The States with large tribal population have since enacted laws for this purpose." The 2007-2008 Annual Report further states, "Reports received from various States, indicate that 5.06 lakh cases of tribal land alienation have been registered, covering 9.02 lakh acres of land, of which 2.25 lakh cases have been disposed off in favour of tribals covering a total area of 5.00 lakh acres. 1.99 lakh cases covering an area of 4.11 lakh acres have been rejected by the Courts on various grounds".¹⁷

Once the tribal lands have been alienated, it is extremely difficult to restore the land to the original tribal owners. A few states such as Jharkhand have been providing legal aid to the tribal victims to help them restore their lands. But not many

lawyers were interested to fight the cases for the tribals for merely Rs 5,000 per case as part of Jharkhand government's legal aid assistance. The state government of Jharkhand has provided an annual budget of Rs 50 lakh for its legal aid programme for the poor tribals but the authorities have reportedly spent less than 10% of the total budget over the last six years.¹⁸

G. Displacement of indigenous/tribal peoples

Development-induced displacement

The indigenous/tribal peoples who constituted 8% of the total population of India at 1991 census also constituted 55.1% of the total development project-induced displaced persons up to 1990. The Ministry of Tribal Affairs in its Draft National Policy on the Tribals stated that nearly 85.39 lakh tribals have been displaced until 1990 on account of mega developmental projects like dams, mining, industries and conservation of nature etc.¹⁹ Tens of thousands of tribals have been displaced from 1990 onwards without proper rehabilitation. Yet, no study has been conducted in regard to displacement and rehabilitation of tribals in the country.

The tribals across India have been protesting against various so-called development projects like dams, mining, and industrial plants. On 8 August 2008, the Supreme Court allowed POSCCO India Pvt Ltd, a subsidiary of Korea-based POSCO, to build its Rs 51,000-crore steel plant in Paradeep in Jagatsinghpur district of Orissa.²⁰ On the same day, the Supreme Court also allowed Sterlite India Limited, a subsidiary of Britain's Vedanta Resources Plc, to mine bauxite in Niyamgiri hills in Kalahandi district of Orissa considered sacred by Dongria Kondh tribe.²¹ The Supreme Court's order has undermined the tribal protests

and encouraged further acquisition of lands of the tribals leading to their displacement without proper rehabilitation, destruction of their culture and posing threats to their survival in the name of development.

Conflict-induced displacement

According to the estimate of AITPN, a total of 4,01,425 tribals have been displaced due to the armed conflicts and ethnic conflicts across India. This included 47,940 Adivasis in Chhattisgarh,²² 2,03,485 tribals (Bodos, Santhals and Garos) in Asom (formerly Assam), about 1,20,000 Gutti Koya tribals (from Chhattisgarh) in Andhra Pradesh²³ and 30,000 Brus in Tripura.

The displaced people have been living miserable lives. The National Commission for Protection of Child Rights (NCPCR), which sent a fact finding team to Dantewada district in Chattisgarh and Khammam district in Andhra Pradesh in December 2007, has expressed serious concern about health, nutrition and education conditions of the displaced children.²⁴ Initially, the state government of Andhra Pradesh had provided benefits of various schemes including ration cards, jobs under the National Rural Employment Guarantee Scheme to about 1.2 lakh Gutti Koya tribals who fled Chhattisgarh to take shelter in Khammam district of Andhra Pradesh but later withdrew these facilities following the killing of more than 30 Greyhound police commandos by the Maoists in an ambush at Chitrakonda reservoir in Orissa on 29 June 2008.²⁵

In September 2008, the National Commission for Protection of Child Rights said the team was "*appalled by the sub human conditions under which the families had to survive.... There was none or little, if any, registration of births and deaths, marginal*

immunisation, no health facilities or primary health centres, no functional schools, no safe drinking water, poor sanitation and inadequate rations" in the Bru relief camps in Tripura.²⁶

Displacement due to security reasons

In Mizoram, a total of 35,438 Chakma tribals from 5,790 families in 49 villages would be displaced due to the ongoing India-Bangladesh fencing project which is being constructed for security reasons. Till date there is no plan to resettle the fencing affected families. The Home Department of Mizoram has refused to consider the out-fenced victims as "displaced" because "the Fencing Line is not the boundary of Indo-Bangladesh Border". In other words, it is uncertain whether the government of Mizoram will provide the fencing victims adequate resettlement and rehabilitation.

H. Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act came into force on 1 January 2008 but the Act remained largely unimplemented across India. Tribals continued to be arrested for accessing minor forest produce, evicted from their lands, their huts gutted and even killed by the forest officials. On 8 February 2008, forest guards shot dead a 16-year-old tribal boy Shyamal Rabha at the Buxa Tiger Reserve in Jalpaiguri district of West Bengal. The forest officials accused him of being a "timber smuggler" but the locals and family members said he and three others had gone to the forest to collect firewood for domestic use.²⁷

On 2 July 2008, Jalgaon Khandesh Forest Department officials and personnel of State Reserve Police Force burnt down 125 huts and

forcibly evicted over 400 Pardhi tribals from forest land near Wadoda village under Jalgaon Jamod taluka in Buldhana district of Maharashtra.²⁸ On 4 December 2008, forest officials allegedly set ablaze 17 huts belonging to tribals near Malbazar in Jalpaiguri district of West Bengal when the tribals allegedly failed to show the land documents.²⁹

I. Failure of the affirmative action programmes

The Constitution of India provides for “positive discrimination” in favour of the tribals but these affirmative action programmes have not been properly implemented.

Non-implementation of the reservations in employment

The Scheduled Tribes (STs) and the Scheduled Castes (SCs) are provided mandatory reservation of 7.5% and 15% respectively in government jobs. But almost all the departments of the government have failed to ensure this prescribed minimum representation of the SCs and STs. The Parliamentary Standing Committee on Welfare of Scheduled Castes and Scheduled Tribes stated that as of 1 January 2005, the overall representation in Groups A, B, C and D posts in the government of India services among SCs was 11.9%, 13.7%, 16.4% and 18.3% respectively and the representation of STs was 4.3%, 4.5%, 6.5% and 6.9% respectively.³⁰ Various departments often blame the lack of “suitable candidates” among tribals to fill up the vacancies. This is not true.

Non-use and mis-use of tribal funds

Various state governments do not fully utilize or misutilized the funds allocated to them for tribal development. A report by the Comptroller & Auditor General of India, tabled in the Jharkhand State Assembly in March 2008, found that the Jharkhand government used only Rs 85.55 crore out of Rs 183.84 crore it

had received from the Centre during 2003-2007 under the Integrated Tribal Development Project. The unused funds were kept in banks and the interest it earned was used to repair official buildings.³¹

Funds could not be released for the development of tribals due to failure of the various state governments to submit Utilization of Certificate under the Fiscal Responsibility and

According to the estimate of AITPN, a total of 4,01,425 tribals have been displaced due to the armed conflicts and ethnic conflicts across India. This included 47,940 Adivasis in Chhattisgarh, 2,03,485 tribals (Bodos, Santhals and Garos) in Asom (formerly Assam), about 1,20,000 Gutti Koya tribals (from Chhattisgarh) in Andhra Pradesh and 30,000 Brus in Tripura. The displaced people have been living miserable lives.

Budget Management Act. During 2007-08, the Ministry of Tribal Affairs had to withhold grants under Special Central Assistance to the Tribal Sub Plan to the states of Asom, Bihar, Chhattisgarh, Jharkhand, Jammu & Kashmir, Madhya Pradesh, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand due to their inability to furnish Utilization Certificates and unspent balances.³²

Lack of awareness of the schemes

The Parliamentary Standing Committee on Social Justice and

Empowerment stated that the Ministry of Tribal Affairs has not taken “sufficient steps” to generate awareness among tribal people about the various schemes being implemented for their upliftment.³³

J. The state of National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes (NCST) is a powerful constitutional body mandated to protect and promote the rights of the indigenous and tribal peoples. But it has been hamstrung due to its lack of independence. The NCST has framed such Rules of Procedures which has made it subservient to the State. Rule 83 of Rules of Procedure of the NCST states - “All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission” which has undoubtedly reduced the NCST into being another department of the Government of India. The NCST has no financial autonomy. The NCST’s investigation procedure is deeply flawed. As per its Rules of Procedure, the NCST has to take prior permission from the concerned state government to investigate any human rights violation in that state and NCST team members are expected to follow the “norms” prescribed by the state authorities. The NCST has no power to implement its recommendations. The NCST suffers from acute shortage of human and financial resources. The sanctioned strength of staff is 124 in the Headquarters in Delhi as well as the six Regional Offices. But the actual strength of staff never reached the sanctioned strength during the last five years of its functioning. There were only 89 staff in position as on 1 December 2004; only 85 staff in position as on 31 December 2005; only 83 staff in position as on 31 December 2006; and only 83 staff in position as on 31 December 2007.³⁴ This has hugely impacted the

functioning of the NCST including its ability even to reply to queries under the RTI Act. It is true that the NCST lacks sufficient funds but ironically, it has failed to utilize the allocated funds optimally. The NCST has failed to utilize Rs. 59,99,000/- during the financial year 2004-2005; Rs.1,27,94,000/- during financial year 2005-2006 and Rs. 1,14,54,473/- during financial year 2006-2007.³⁵

K. Denial of voting rights to Chakmas and Hajongs

The Electoral Registration Officers (EROs) and Assistant Electoral Registration Officers (AEROs), who are officials appointed by the State Government of Arunachal Pradesh, continue to willfully violate the guidelines/orders of the Election Commission of India (ECI) with regard to the enrolment of the Chakmas and Hajongs as voters. During 2005-2008, the ECI has held four summary revisions and one Intensive Revision of electoral rolls in Arunachal Pradesh but rather than increasing, the number of Chakma and Hajong voters has consistently decreased during the last 5 years. For example, in 46-Chowkham Assembly Constituency the total of 323 voters in 2004 came down to 291 in 2008, in 49-Bordumsa-Diyun Assembly Constituency, the total of 1164 voters in 2004 came down to 1134 in 2008. In 50-Miao Assembly Constituency names of only 4 new Chakma voters out of about 3500 claimants have been included during the last 5 years. The ECI failed to fix accountability for serious/willful non-compliance of its directions/guidelines by the local electoral officers although the ECI's own officials found prima facie grave wrongdoings by these local electoral officers.

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The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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