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**OPEN LETTER TO THE PRIME MINISTER OF BANGLADESH,
SHEIKH HASINA:
GOVERNMENT MEMORANDUM RESTRICTING ACCESS TO
CHITTAGONG HILL TRACTS POSES SERIOUS HUMAN RIGHTS
CONCERNS**

Dear Prime Minister

Amnesty International wishes to call your attention to its grave concern regarding a government memorandum which places restrictions on people wishing to visit or organise activities in the Chittagong Hill Tracts (CHT) region of the country. I am writing to you, in your capacity as Minister of Home Affairs, to ask that you ensure your government's compliance with its international obligations vis-à-vis the human rights of Indigenous Peoples and other communities in the CHT, by withdrawing the memorandum.

The memorandum, first issued in January 2015, was greeted with national and international criticism; in response, the government withdrew some of the restrictions.¹ However, the memorandum continues to impose serious restrictions on human rights.

The revised version of the memorandum, entitled "Implementation of decisions regarding the visit of foreign nationals to the CHT, having meetings with local tribal people" and issued in April, places restrictions on the rights to freedom of movement, assembly and association, and freedom from discrimination. The restrictions focus on interactions between foreign nationals (and in some cases the general population of Bangladesh) and "tribal" peoples in the CHT region, and as such, are discriminatory. They also threaten other human rights such as freedom of expression – including the right to seek, receive and impart information and ideas of all kinds – and non-interference with privacy and family. The memorandum fails to

¹ The provisions which were withdrawn were a) that the International NGO, the Chittagong Hill Tracts Commission, change its name to remove the word "Commission"; and b) that government officials be present if visitors to the CHT wish to meet with Indigenous Peoples.

explain why the restrictions are necessary and proportionate, and pursue a legitimate aim.

The memorandum requires that foreign nationals wishing to visit the region apply in advance to the government to gain permission to visit the region. It lays out the procedure to be followed depending on whether the person in question is a tourist, a diplomat or a United Nations employee, an employee of a company operating in the CHT, or other category of visitor. If visitors to the region – including Bangladeshi nationals – wish to hold a meeting with anyone in the region, they must seek prior permission from a government official,² specifying who will attend and the matters to be discussed and the reasons for the meeting. If the authorities decide to grant permission, the local law enforcement authorities will be notified.

The memorandum openly violates a number of human rights safeguards.

■ **Freedom of movement**

The International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh acceded in 2000, states that “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence” (article 12(1)). The Covenant goes on to affirm that this right “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”. As the article refers to “everyone lawfully within the territory of a State”, the rights it contains also apply to foreign nationals who are legally present in Bangladesh.

■ **Status in law**

The ICCPR is clear that any restrictions on the rights to freedom of movement, assembly and association must be provided for in law.³ The document listing the restrictions is not a law, but a memorandum; it records the minutes of an inter-ministerial meeting. Therefore it has not been subject to scrutiny and debate by the legislature, and has no standing in law. Nevertheless, according to local observers interviewed by Amnesty International, the expectation is that it will be enforced, and that those found contravening the memo will be denied entry to the CHT.

■ **Freedom of Assembly and Association**

By placing arbitrary limitations on travel to and the holding of meetings in the CHT, the memorandum undermines the right to freedom of peaceful assembly, protected by article 21 of the ICCPR, and freedom of association with others in article 22. If a government wishes to impose any restrictions on these rights, it must satisfy strict requirements,⁴ similar to those that are required in the case of freedom of movement. The Government of Bangladesh has not demonstrated that it has done this.

² Deputy Commissioner, an official appointed by central government; there is one for each of the three districts of the CHT.

³ Respectively, for the rights to freedom of movement, assembly and association, restrictions must be “provided in law” (article 12(3); “in conformity with the law” (article 21); “prescribed by law” (article 22(2)).

⁴ ICCPR, Articles 21 and 22(2)

■ **Freedom of expression**

The United Nations Human Rights Committee has stated that it will normally be a violation of article 19 of the ICCPR, which protects the right to freedom of expression, when states restrict the freedom of movement of, for example, journalists and human rights investigators, particularly to locations where there are allegations of human rights violations⁵ (as is clearly the case in the CHT – see, *inter alia*, our 2013 report ‘Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts’).⁶

■ **Right to privacy and family life**

Article 17 of the ICCPR provides that ‘no-one shall be subjected to arbitrary or unlawful interference with his privacy, family...’.⁷ It is particularly concerning that foreign nationals of Bangladeshi origin with family in the CHT, who do not possess Bangladesh citizenship, would be required to request permission to visit family members. In addition, as the nature of the meetings for which permission must be sought (even by Bangladeshi nationals) is not specified, there is a risk that this could be applied to meetings of family members and family events such as weddings and funerals, when family members – even those with Bangladeshi citizenship – must travel to those events from outside the CHT.

■ **Arbitrariness**

The memorandum does not lay out any criteria on the basis of which decisions regarding applications to visit the CHT will be taken. In this way the memorandum creates the conditions for arbitrariness and lack of transparency, which would constitute a violation of ICCPR article 12.⁸

■ **Proportionality and justification**

The memorandum does not provide any justification for the restrictions of these rights, it does not present a permissible purpose for them, nor does it explain why they are necessary or how they conform with the principle of proportionality. It does not explain how the objective which is being pursued will be achieved, or why the measures taken are the least obtrusive to achieved the desired result. The UN Human Rights Committee states that these elements must be met when placing limitations on the freedom of movement.⁹

■ **Discrimination**

While the CHT is not exclusively inhabited by Indigenous Peoples, the memorandum's title indicates that the primary aim is to place restrictions on meetings with “tribal” individuals and communities (since 2010, the government of Bangladesh has denied the existence of Indigenous Peoples in the country and instead uses the term “tribal”). 51.4% of the population of the CHT is Indigenous according to the 1991 census. This compares to the proportion of Indigenous Peoples to the total population of Bangladesh, which is estimated at 1.5%. Therefore any measure solely affecting the CHT will have a significantly

⁵ Human Rights Committee, General Comment 34 on Freedoms of Opinion and Expression, CCPR/C/GC/34, Para. 45.

⁶ <https://www.amnesty.org/en/documents/ASA13/005/2013/en/>

⁷ 'Unlawful' means that 'no interference can take place except in cases envisaged by the law'. Human Rights Committee, General Comment 16 on Article 17, Para. 3.

⁸ Human Rights Committee, General Comment 27 on Freedom of Movement, CCPR/C/21/Rev.1/Add.9, Para. 13

⁹ *Ibid*, Para. 14-15

disproportionate impact on Indigenous Peoples. As the government has not explained why measures restricting freedom of access to the CHT are necessary, Amnesty International believes that the impact of these measures will be discriminatory with regard to Indigenous Peoples.

The memorandum also places an unjustified restriction on the right of Indigenous Peoples “to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.”¹⁰ Indigenous Peoples live both within the CHT and in other parts of Bangladesh. The peoples of the CHT are closely linked to Indigenous Peoples in Myanmar and India. The memorandum would place restrictions on the right of Indigenous Peoples resident outside the CHT - both from other parts of Bangladesh and from neighbouring countries - to hold meetings in the CHT with their Indigenous kinfolk, within the meaning of this article.

I wish to thank you for your attention to this case, and would be very grateful for a response on these matters.

Yours sincerely,

A handwritten signature in black ink that reads "David Griffiths". Below the signature is a horizontal line with arrowheads at both ends, indicating the signature is written above it.

David Griffiths
Amnesty International – International Secretariat
South Asia Research Director and Transition Lead

CC:
Prime Minister’s Office
Ministry of Chittagong Hill Tracts Affairs

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples, Art. 36(1)